

**CONTRACT DOCUMENTS FOR CONSTRUCTION OF:**

**DEPOE BAY HARBOR  
DOCKS 2-4 REPLACEMENT**

**PREPARED FOR:**

**City of Depoe Bay, OR**

**PREPARED BY:**



**OCTOBER, 2022**

## **SECTION 00010**

### **CONTRACT DOCUMENTS - TABLE OF CONTENTS**

00010 Contract Documents Table of Contents

#### **BIDDING REQUIREMENTS**

00020 Invitation to Bid  
00100 Instructions to Bidders  
00200 Bidder's Checklist  
00301 Bid Form  
00310 Bid Bond  
00320 Noncollusion Affidavit  
00330 Resident/Nonresident Bidder Status  
00335 Project Certification  
00340 First-Tier Subcontractor Disclosure Form

#### **CONTRACT FORMS**

00500 Agreement  
00610 Performance Bond  
00620 Payment Bond  
----- Statutory Public Works Bond

#### **CONDITIONS OF THE CONTRACT**

00700 EJCDC Standard General Conditions  
00800 Supplementary Conditions  
00822 Prevailing Wage Rates

#### **TECHNICAL SPECIFICATIONS**

Divisions 1, 2, 5 and 16

#### **CONSTRUCTION PLANS**

**DEPOE BAY HARBOR DOCKS 2-4 REPLACEMENT**

**CERTIFICATE OF ENGINEER**

The technical material and data contained in this document were prepared under the supervision and direction of the undersigned, whose seal, as a professional engineer licensed to practice as such, is affixed below.

EXPIRES: XX-XX-XXXX

## **BIDDING REQUIREMENTS**

**SECTION 00020**  
**INVITATION TO BID**

**CITY OF DEPOE BAY**  
**DEPOE BAY HARBOR DOCKS 2-4 REPLACEMENT**

**Bids due 2:00 PM, July 13, 2022**

Sealed Bids for furnishing all labor, materials and equipment required for construction of the Depoe Bay Harbor Docks 2-4 Replacement Project will be received by Brady Weidner, City of Depoe Bay, 570 SE Shell Avenue, Depoe Bay, Oregon 97341 until the BID CLOSING TIME at **2:00 p.m. local time, on July 13, 2022** at which time the bids will be publicly opened and read. No bids will be received after BID CLOSING TIME. Bidders must deliver First Tier Subcontractor Disclosure Forms to the same location within two working hours of the BID CLOSING TIME in accordance with ORS 279C.370. The First-Tier Subcontractor Disclosure Form shall be submitted in a sealed envelope separate from the Bid. A contract will be awarded or bids rejected within sixty (60) days after opening bids.

The proposed Work is to be awarded to a single bidder and consists generally of furnishing labor, materials and equipment for the installation of the following:

- A. Demolish and remove floating docks 2, 3 and 4, including piles, gangways, utilities
- B. Furnish and install new floating docks
- C. Furnish and install new steel pipe piles
- D. Furnish and install new ADA gangway and access pier
- E. Furnish and install new dock utilities, including electrical service, lighting and potable water
- F. Other miscellaneous work as indicated in the plans

The Work shall be substantially completed within **90 days** of Notice-to-Proceed, and completed and ready for Final Payment in accordance with paragraph 14.07 of the General Conditions within **120 days** after Notice-to-Proceed.

**DOCUMENT EXAMINATION AND PROCUREMENT**

Each complete set of Bidding Documents are comprised of: Contract Documents, Specifications and 11"X 17" Plans, and may be examined or obtained at the following location:

OWNER: City of Depoe Bay

STREET ADDRESS: City Hall, 570 SE Shell Avenue, Depoe Bay, Oregon MAILING ADDRESS: P.O. Box 8, Depoe Bay, OR 97341

TELEPHONE: City Hall 541-765-2361 or Brady Weidner 541-765-3005 EMAIL: [info@cityofdepoebay.org](mailto:info@cityofdepoebay.org) or [weidner@cityofdepoebay.org](mailto:weidner@cityofdepoebay.org)

Individual sets of Bidding Documents will be provided: via email for no fee; hard copy pick up at City Hall for \$100 pre-paid/non-refundable, or hard copy via US regular first class mail for \$120 pre- paid/non-refundable.

Parties procuring Bidding Documents **shall** provide: company contact person name, telephone and facsimile numbers, mailing address and email address to be included on an official Plan Holder's List maintained by the OWNER. Bidders agree that all addenda and other additional information will be delivered via email or facsimile transmission.

#### GENERAL INFORMATION AND TECHNICAL QUESTIONS

For general information regarding this project, prospective bidders may contact City Superintendent Brady Weidner 541-765-3005, or PND Engineers, John Olson, P.E. at 206-624-1387.

#### PREQUALIFICATION

Contractors must be qualified in order to enter into a contract with the Owner for public work in Oregon. To document qualifications, bidders shall have previously executed a Contractor's Prequalification Application with the State of Oregon. The prequalification application forms may be obtained at the State of Oregon Department of Transportation: **ODOT Procurement Office**, Construction Contracts Unit MS#2-2, 3930 Fairview Industrial Drive SE, Salem, Oregon 97302-1160; 503-986-2710. Alternatively, the prequalification application may be downloaded at:

<http://www.oregon.gov/ODOT/CS/CONSTRUCTION/pages/prequalification.aspx>

Submit a signed letter or other form of documentation from the State of Oregon in the bid proposal which confirms the BIDDER is qualified in accordance with the applicable parts of ORS 279.

#### BID SECURITY

Each Bid shall be accompanied by bid security made payable to OWNER in an amount not less than five (5) percent of the Bid price and in the form of a certified or bank check or bid bond. No bid will be considered unless accompanied by such deposit, to be forfeited to the City of Depoe Bay in the event the successful BIDDER shall fail or refuse to enter into a contract with the OWNER for the performance and construction of the aforesaid Work.

#### CONTRACT SECURITY

The successful BIDDER shall furnish a separate performance bond and payment bond guaranteeing faithful performance of the Contract in the full amount of the contract price, faithful payment and fulfillment of the obligation of a two year guarantee period.

#### SITE VISITS

Prospective BIDDERS and sub-bidders are required to become familiar with and satisfy themselves as to the general, local and site conditions that may affect the cost, progress, performance and furnishing of the Work. A pre-bid conference will **not** be held for this project. All prospective Bidders are encouraged, however, to visit the site and to familiarize themselves with the project.

#### OTHER

In order to bid and perform public work, the Successful BIDDER and its subcontractors, prior to Contract award, shall hold or obtain such licenses as may be required by State Statutes, and federal and local laws and regulations. BIDDERS must be registered with the Oregon Construction Contractor's Board in accordance with ORS 701 prior to submitting a bid.

This project is for public works subject to ORS 279C.800 to 279C.870 or if applicable the federal prevailing

rate of wage required under the Davis-Bacon Act (40 USC 3141 et seq). BIDDER's attention is directed to the requirements and conditions of employment to be observed and minimum wage rates to be paid under this contract as specified in ORS 279C.800 to ORS 279C.870 or if applicable the federal prevailing rate of wage required under the Davis-Bacon Act (40 USC 3141 et seq).

BIDDERS shall be qualified in accordance with the applicable parts of ORS 279C in order to submit a bid for public work in Oregon.

The project does not require a contractor or subcontractor to be licensed under ORS 468A.720 for asbestos abatement.

The successful BIDDER will be required to furnish performance and payment bonds for faithful performance of the Contract in the full amount of the contract price.

Each Bid must contain a statement as to whether the Bidder is a resident bidder as defined in ORS 279C.365(h). Out of state Bidders may have a percentage added to their bids in accordance with ORS 279A.120.

The City of Depoe Bay reserves the right to reject any and all Bids and to waive informalities, in accordance with ORS 279C.395.

Dated this 15th day of June, 2022.

**PUBLISHED IN THE DAILY JOURNAL OF COMMERCE and THE NEWS TIMES: Wednesday, June 15, 2022**

**SECTION 00100**  
**INSTRUCTIONS TO BIDDERS**

**1. PREPARATION AND SUBMISSION OF BIDS**

- 1.1 Each prospective BIDDER is furnished one copy of the Bidding Documents. This document is to be completed and submitted with the Bid security.
- 1.2 Complete sets of Bidding Documents must 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.
- 1.3 OWNER and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.
- 1.4 Enclose the Bid Form, Non-Collusion Affidavit, Bid Bond, Resident/Non-Resident Bidder Status, Project Certification, certified check or cashier's check in an opaque sealed envelope, plainly marked with the Project title – *Depoe Bay Harbor Docks 2-4 Replacement* and the name and address of the Bidder. Bids are to be delivered to City of Depoe Bay, 570 SE Shell Avenue, Depoe Bay, OR, Attention: Brady Weidner. If mail or other delivery system is used to submit the Bid, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "Bid Enclosed". A mailed Bid shall be addressed to City of Depoe Bay, at the address given on the Bid Form.
- 1.5 All Bids must be clearly and distinctly typed or written using ink and be on the form furnished by OWNER. In addition to necessary unit price items and total prices in the column of totals to make a complete Bid, all applicable blanks giving general information must be filled in and the Bid signed by the Contractor or a duly authorized agent in ink. Any statement accompanying and tending to qualify a Bid may cause rejection of such Bid.
- 1.6 Unless otherwise specified, BIDDERS shall bid on all items included in the Bid and the lowest responsive, responsible BIDDER shall be determined as noted in Subsection 15.1, Award of Contract. Except as provided herein, Bids, which are incomplete, or fail to reply to all items required in the Bid may be rejected.
- 1.7 State whether business is being done as an individual, a co-partnership, a corporation, or a combination thereof, and if incorporated, in what state, and if a co-partnership, state names of all partners. The person signing on behalf of a corporation, a co-partnership or combination thereof shall state the position held with the firm or corporation, and state whether the corporation is licensed to do business in the State of Oregon.
- 1.8 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers and dates of which must be filled in on the Bid Form.

**2. QUALIFICATION OF BIDDERS**

- 2.1 Refer to Prequalification/Minimum Qualifications required found in Section 00020 Invitation to Bid.

**3. MODIFICATION AND WITHDRAWAL OF BIDS**

- 3.1 Bid may only be withdrawn by written request of BIDDER and received by OWNER prior to the scheduled closing time for submitting bids.



- 3.2 Prior to Bid Opening, changes may be made provided BIDDER or his agent initials the change. If the intent of BIDDER is not clearly identifiable, the interpretation most advantageous to OWNER will prevail.
4. LATE BIDS
- 4.1 Bids received after the scheduled closing time for filing bids, as set forth in the Invitation for Bids will be rejected and returned unopened to BIDDER unless such closing time is extended by OWNER. To ensure receipt and consideration, bids should be delivered by the BIDDER in person or by messenger. The OWNER assumes no responsibility for the receipt and consideration of bids that are mailed.
5. BID SECURITY
- 5.1 Each Bid must be accompanied by Bid security made payable to OWNER in an amount of five (5) percent of the BIDDER's maximum Bid price and in the form of a certified or cashier's check or a Bid Bond issued by a surety meeting the requirements of the Bid Form and Paragraph 5.01 of the General Conditions.
- 5.2 The Bid security of the Successful BIDDER will be retained until such BIDDER has executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful BIDDER fails to execute and deliver the Agreement and furnish the required contract security and insurance certificates within ten days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of that BIDDER will be forfeited. The Bid security of other BIDDERS whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the sixtieth (60) day after the Bid opening, whereupon Bid security furnished by such BIDDERS will be returned. Bid security with Bids which are not competitive will be returned within seven days after the Bid opening.
6. CONTRACT TIMES AND LIQUIDATED DAMAGES
- 6.1 The Contract Time is the numbers of days within which, or the dates by which, the Work is to be substantially completed, and completed and ready for final payment, and for any identified interim milestone dates (the Contract Time), are set forth in Section 00500 - Agreement. The Liquidated Damages are the amount the OWNER is entitled to subtract from the amount of the Contract value for each day that the Contractor fails to complete the Work within the required Contract Times, and are set forth in Section 00500 – Agreement.
7. INTERPRETATION OF CONTRACT AND ADDENDA
- 7.1 If it should appear to a BIDDER that the Work to be done or matters relative thereto are in conflict or not sufficiently described or explained in the Contract Documents or that Contract Documents are not definite and clear, the BIDDER shall make written inquiry regarding same to the Engineer. Written inquiries submitted less than 7 work days prior to the bid date may not be answered. Where such inquiries are not answered, Bidders shall make their own interpretation of the requirements and costs and shall include in their bid the more stringent and/or higher cost concerning the topic of the written inquiry.
- 7.2 If in the judgment of the Engineer additional information or interpretation is necessary, such information will be supplied in the form of an addendum, which will be delivered to

all individuals, firms and corporations who have taken out contract documents. Such addendum shall have the same binding effect as though contained in the main body of the Contract Documents.

- 7.3 Any addendum or addenda issued by the OWNER which may include changes, corrections, additions, interpretations or information, and issued seventy-two hours or more before the scheduled closing time for filing bids, shall be binding upon the BIDDER. OWNER shall send copies of such addenda to all registered plan holders who have obtained copies of the Contract Documents from the OWNER for the purpose of bidding thereon, but failure of a prospective BIDDER to receive or obtain such addenda shall not excuse it from compliance therewith, if it is awarded the Contract. Addendum or addenda may be issued by telephone facsimile or electronic mail (e-mail).
- 7.4 Oral instructions or information concerning the Bid Documents or the project given out by officers, employees or agents of the OWNER to prospective BIDDERS shall not be binding on the OWNER. The Bid Documents may only be changed via written addenda issued by the OWNER.

8. EXAMINATION OF CONTRACT, SITE OF WORK AND SUBSURFACE DATA

- 8.1 It is the responsibility of each BIDDER, before submitting a Bid to:
- A. Examine thoroughly the Contract Documents and other related data identified in the Bidding Documents (including "technical data").
  - B. Visit the Site to the extent possible and become familiar with and satisfy BIDDER as to the general, specific, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
  - C. Become familiar with and satisfy BIDDER as to all Federal, State, and local laws and regulations that may affect cost, progress, or performance of the Work.
  - D. Obtain and carefully study (or assume responsibility for doing so) all 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 safely precautions and programs incident thereto;
  - E. 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;
  - F. 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, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;

- G. 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
    - H. Determine that the Bidding Documents are generally sufficient to indicated and convey understanding of all terms and conditions for the performance of the Work.
  - 8.2 The submission of a Bid will constitute an incontrovertible representation by BIDDER that BIDDER has complied with every requirement of this Article 8, 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, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.
9. COMPLIANCE WITH LAWS AND ORDINANCES
- 9.1 The BIDDER shall comply with all Federal, State and local laws, ordinances, and regulations, which in any manner might affect those, engaged or employed in the work or the materials or equipment used in the proposed construction, or which in any way affect the completion of the work. If the BIDDER, or Contractor, shall discover any provision in the Contract, which is contrary to or inconsistent with any law, ordinance or regulation, it shall immediately report it to the OWNER in writing. No plea of misunderstanding or ignorance of the law will be considered. Bidder shall familiarize themselves with Lincoln County Code 1.0145 and 1.3230 for specific information applicable to conditions governing work within the roadway right-of-way.
  - 9.2 Contractor and subcontractors shall supply and file with the OWNER, and with the Wage and Hour Division, B.O.L.I. (1400 SW 5<sup>th</sup> Ave, Portland OR 97201), a statement in writing that conforms to ORS 279C.800 to ORS 279C.870. The schedule for submitting payroll information is as follows: once before the first payment and once before the final payment is made. In addition, for projects exceeding 90 days for completion, submissions are to be made at 90 day intervals.
  - 9.3 In accordance with ORS 279C.370, within two (2) working hours following specified time for submission of the Bids, the BIDDER must submit a Disclosure of any first-tier subcontractor that:
    - A. Will be furnishing labor or will be furnishing labor and materials in connection with the public improvement project; and
    - B. Will have a contract value that is equal to or greater than five (5) percent of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid.
  - 9.4 The Disclosure of first-tier subcontractors shall include the name and address of each subcontractor; the registration number assigned to the subcontractor by the Construction Contractor's Board, if the subcontractor is required to have a certificate of registration issued by the Board; and the amount of subcontract. The lowest responsible bidder accepted by the OWNER may substitute a first-tier subcontractor by submitting the name

of the new subcontractor and the reason for the substitution in writing to the OWNER. A prime contractor may substitute a first-tier subcontractor pursuant to this section in the following circumstances:

- A. The subcontractors disclosed under ORS 279C.370 fail or refuse to execute a written contract after having had a reasonable opportunity to do so after the written contract, which must be reasonably based upon the general terms, conditions, plans and specifications for the public improvement project or the terms of the subcontractor's written bid is presented to the subcontractor by the contractor.
  - B. When the disclosed subcontractor becomes bankrupt or insolvent.
  - C. When the disclosed subcontractor fails or refuses to perform the subcontract.
  - D. When the disclosed subcontractor fails or refuses to meet the bond requirements of the contractor that had been identified prior to the bid submittal.
  - E. When the contractor demonstrates to the OWNER that the subcontractor was disclosed as the result of an inadvertent clerical error.
  - F. When the disclosed subcontractor does not hold a certificate of registration from the Construction Contractor's Board and is required to be registered with the Board.
  - G. When the contractor determines that the work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or that the subcontractor is substantially delaying or disrupting progress of the Work.
  - H. When the disclosed subcontractor is ineligible to work on a public improvement pursuant to the applicable statutory provisions.
  - I. When the substitution is for good cause. The Construction Contractors Board shall define "good cause" by rule. "Good cause" shall include, but not be limited to, the financial instability of a subcontractor. The definition of "good cause" shall reflect the least cost policy for the improvements established in ORS 279C.305.
  - J. When the substitution is reasonably based on the contract alternates chosen by the OWNER.
- 9.5 BIDDERS shall complete Section 00340: First-Tier Subcontractor Disclosure Form and submit to the OWNER within two (2) working hours after the date and time designated for the submission of Bids. BIDDER's submission of the subcontractor disclosure shall be submitted at the place designated for submission of Bids. (See Section 00200 – Bidders Checklist)
- 9.6 The WORK under these Bidding Documents is to paid for by public funds; therefore, minimum prevailing wage rates published by the State Department of Labor are included as Section 00822 0 BOLI Prevailing Wage Rates.
- 9.7 ORS 279C.365(1)(g) requires that all Bids for public work, including those public projects financed by federal funds and subject to the Davis-Bacon Act, shall include a statement by the Bidder that the Bidder will comply with the provisions of ORS 279C.840 or 40 USC 279a. The Bid Form in the Bidding Documents contains the required statement of Bidder's declaration of compliance with ORS 279C.840 or 40 USC 279a. The BIDDERS signing the Bid

constitutes compliance with this Oregon statute.

10. AMOUNT OF WORK TO BE DONE

- 10.1 OWNER reserves the right to increase or decrease the amount of any class or portion of the work and to delete any bid items in their entirety. No such change in the work shall be considered as a waiver of any condition of the Contract nor shall such change invalidate any of the provisions thereof.
- 10.2 The estimate of quantities of work to be done under unit price bids is approximate and is given only as a basis of calculation for comparison of bids and award of the Contract. The OWNER does not by implication agree that the actual amount of work will correspond to the amount shown or estimated. Payment will be made at unit prices only for work actually performed or materials actually furnished according to actual measurement. If the amount of any major work item changes by more than 50% except as noted, compensation for all work that differs from the original estimated quantities for that work item may be made on such basis as may be agreed to in advance of performance of work, or in case no such basis has been agreed upon, an allowance may be made, either for or against the Contractor in such amount as the Engineer determines is fair and equitable.
- 10.3 BIDDERS must include in the bid prices the entire cost of each item of Work set forth in the Bid.
- 10.4 The unit contract prices and/or lump sum prices for the various bid items of the Contract shall be full compensation for all labor, materials, supplies, equipment, tools and all things of whatsoever nature required for the complete incorporation of the item into the Work the same as though the item were to read "In Place."

11. REJECTION OF BIDS

- 11.1 OWNER reserves the right to reject any or all Bids in whole or in part or to waive irregularities as specified in ORS 279C.375, ORS 279C.395 and ORS 279C.440.
- 11.2 When, in the opinion of the OWNER, any of the unit prices are excessively unbalanced (either above or below the amount of a reasonable bid) to the potential detriment of the OWNER, such bid may be rejected.
- 11.3 The Invitation to Bid does not commit the OWNER to pay any costs incurred by any BIDDER in the preparation or submittal of a Bid.
- 11.4 Failure to provide the subcontractor Disclosure to the OWNER within the allocated time frame will result in the rejection of a Bid. The OWNER is not required to determine the accuracy or the completeness of the subcontractor Disclosure.
- 11.5 OWNER reserves the right to waive any informality in bids received when such waiver is in the interest of the OWNER.

12. CONFLICT OF INTEREST

- 12.1 BIDDER filing a Bid thereby certifies that no officer, agent, or employee of the OWNER who has a financial interest in this Bid has participated in the Contract negotiations on the part of the OWNER, that the Bid is made in good faith without fraud, collusion, or connection of any kind with any other BIDDER for the same call for bids, and that the BIDDER is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

13. INELIGIBILITY FOR PUBLIC CONTRACTS FOR FAILURE TO PAY PREVAILING RATE OF WAGE

13.1 The BIDDER, in submitting the Bid, certifies that the BIDDER is not ineligible to receive a Contract for a public work, as set forth in ORS 279C.860 and agrees, if awarded a Contract, that every Subcontractor will be required to certify such compliance, and certification will be filed with the OWNER prior to such Subcontractor commencing any work under the Contract.

14. ORS 654.150 SANITARY FACILITIES

14.1 Contractor shall be responsible for all costs that may be incurred in complying with or in securing exemption or partial exemption from the requirements of ORS 654.150, (Sanitary facilities at construction projects; standards, exemptions) and the rules adopted pursuant to ORS 654.150. Whether or not ORS 654.150 is applicable to the Project is the sole responsibility of the Contractor.

15. AWARD AND EXECUTION OF CONTRACT

15.1 AWARD OF CONTRACT

- A. OWNER intends to make the award to a single BIDDER submitting the lowest responsive, responsible Bid. The award will be made by the OWNER on the basis of that Bid, which in the OWNER'S sole and absolute judgment, will best serve the interest of the OWNER.
- B. While price extensions are required as a matter of convenience, in the event of error in extensions, the unit price bid shall govern. The written description of individual unit prices shall have precedence over the numerical value in the event of a discrepancy. The Bid shall be the total cost of all bid items identified in the Bid Form.
- C. Determination of the lowest BIDDER and award are subject to review and determination by the OWNER's attorney as to legal sufficiency of any bid submitted.
- D. 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.
- E. Award and tender of Contract, if it is awarded, shall be made within ninety (90) calendar days, unless otherwise specified, after the date of opening of Bids.

15.2 EXECUTION OF CONTRACT

- A. The BIDDER to whom award is made shall execute and return the Contract in the required number of copies, and shall furnish a Performance Bond and a Payment Bond and other required bonds or security and insurance satisfactory to OWNER within ten (10) calendar days after award of the Contract.

15.3 FAILURE TO EXECUTE CONTRACT

- A. Failure on the part of the BIDDER to whom the Contract is awarded to execute the Contract as provided for in Subsection 15.2 shall be just cause for cancellation of the award, withdrawing tender of the Contract and forfeiture of the Bid Guaranty

to OWNER. The forfeited Bid Guaranty shall become property of OWNER, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsive, responsible BIDDER, or the Work may be re-advertised, or otherwise, as OWNER may decide.

16. TRANSFER OF CONTRACT AND INTERESTS THEREIN

16.1 Excepting Surety assignment under the Performance Bond and Payment Bond, the Contract is not assignable to any other party or parties without the prior written consent of OWNER. In case of any attempted transfer without permission, OWNER may refuse to continue the Contract either with the transferor or the transferee, but all rights of action for any breach of the Contract by Contractor are reserved to the OWNER. Subcontracting shall not be considered assignment of the Contract. No officer of OWNER, nor any person employed in its service is or shall be permitted any share or part of the Contract or is or shall be entitled to any benefit which may arise from the Contract.

16.2 Any assignment of money shall be subject to all proper set offs and withholdings in favor of OWNER and to all deductions provided for in the Contract, and particularly all money withheld, whether assigned or not, shall be subject to being used by OWNER for completion of the Work in the event Contractor should be in default.

17. PERFORMANCE AND PAYMENT BONDS

17.1 At the time of execution of the Contract, furnish a separate Performance Bond and Payment Bond executed solely by a surety company or companies holding a certificate of authority to transact surety business in the State of Oregon and approved by the OWNER and OWNER's attorney in an amount equal to the amount of the Contract based upon the estimate of quantities or lump sum as set forth in the Bid, conditioned upon a compliance with and fulfillment of all terms and provisions of the Contract, including maintenance, repair and replacement, and all applicable laws for prompt payment, as due, to all persons supplying labor and/or material for prosecution of the Work.

18. PROOF OF INSURANCE

18.1 Obtain all insurance required in the Contract and furnish a certificate for approval by the OWNER's attorney. Maintain insurance throughout the life of the Contract which will hold OWNER and OWNER's Agents harmless and shall indemnify OWNER and OWNER's Agents for any and all losses to third persons or to OWNER or OWNER's Agents arising out of the operations, including any contingent liability.

19. NON-RESIDENT BIDDER

19.1 A Non-Resident BIDDER awarded a contract with a price exceeding \$10,000 under provisions of ORS Chapter 279A.120, shall promptly report to the Department of Revenue on forms to be provided by the Oregon Department of Revenue the total contract price, terms of payment, length of contract and such other information as may be required before final payment can be received on the public contract. Final payment shall not be made until this provision has been accomplished.

20. PROTEST OF CONTRACTOR SELECTION, CONTRACTOR AWARD

20.1 Purpose: An adversely affected or aggrieved prospective BIDDER must exhaust all avenues of administrative review and relief before seeking judicial review of the OWNER's Contractor selection or Contract award decision.

- 20.2 Notice of Intent to Award: Unless otherwise provided in the Bidding Documents, the OWNER shall provide written notice to all BIDDERS of the OWNER's intent to award the Contract. The OWNER's award shall not be final until the later of the following:
- A. 7 days after the date of the notice, unless otherwise provided therein; or
  - B. Until the OWNER provides a written response to all timely filed protests that denies the protest and affirms the award.
- 20.3 Right to Protest Award.
- A. An adversely affected or aggrieved prospective BIDDER may submit to the OWNER a written protest of the OWNER's intent to award within 7 days after issuance of the notice of intent to award the Contract, unless a different protest period is provided under the Bidding Documents.
  - B. The prospective BIDDER's protest shall be in Writing and must specify the grounds upon which the protest is based.
  - C. A prospective BIDDER is adversely affected or aggrieved only if the prospective BIDDER is eligible for award of the Contract as the Responsible BIDDER submitting the lowest Responsive Bid and is next in line for award, i.e., the protesting BIDDER must claim that all lower BIDDERS are ineligible for award (A) because their Bids were nonresponsive or (B) the OWNER committed a substantial violation of a provision in the Bidding Documents or of an applicable procurement statute or rule, and the protesting BIDDER was unfairly evaluated and would have, but for such substantial violation, been the lowest BIDDER.  
  
The OWNER shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Bidding Documents.
  - D. The OWNER shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Bidding Documents.
- 20.4 Authority to Resolve Protests. The Purchasing Manager, or designee, has the authority to settle or resolve a written protest submitted in accordance with the requirements of this rule.
21. Decision. If a protest is not settled, the Purchasing Manager, or such person's designee, shall promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.
22. ENVIRONMENTAL AND NATURAL RESOURCES LAWS
- 22.1 In compliance with ORS 279C.525, lists of federal, state and local agencies of which the County has knowledge that have enacted ordinances or regulations relation to environmental pollution and the preservation of natural resources that may affect the performance of the Contract are listed in the 2008 Oregon Standard Specifications for Construction, Section 00170.01.

**END OF SECTION**



**SECTION 00200**  
**BIDDER'S CHECKLIST**

The BIDDER's attention is called to the following forms that must be completed in full as required and submitted as part of the Bid. Additional forms and/or information shall be submitted as part of the Bid as identified in the Bid Documents.

Form

- ☐ Section 00020 - ODOT Prequalification Certification
- ☐ Section 00301 - Bid Form
- ☐ Section 00310 - Bid Bond
- ☐ Section 00320 - Non-Collusion Affidavit
- ☐ Section 00330 - Resident/Nonresident Bidder Status
- ☐ Section 00335 – Project Certification

The "Bid Bond" form is to be completed by the bidder and the surety company unless bid is accompanied by a certified check, postal money order, or cashier's check. The amount of this deposit shall not be less than five (5) percent of the total amount of the Bid Proposal and may be shown in dollars or on a percentage basis.

Bid shall be submitted no later than the date and the time prescribed and at the place indicated in the Invitation to Bid and shall be enclosed in an opaque sealed envelope, plainly marked with the Project title – "DEPOE BAY HARBOR DOCKS 2-4 REPLACEMENT", the name and address of the Bidder, and shall be accompanied by the items listed in the check list above. If the Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED". A mailed Bid shall be addressed to City of Depoe Bay, at the address given on the Bid Form.

The BIDDER's attention is directed to the following requirement: Within 2 working hours following the closing time for submission of Bids, BIDDER shall submit to the OWNER a disclosure of any first- tier subcontractors that will furnish labor and materials in connection with the Work as defined in ORS 279C.027. Complete and submit Section 00340 – First-Tier Subcontractor Disclosure Form. Bidder shall complete, sign and submit this form regardless of whether BIDDER has included subcontractor services in the Bid, or not.

Form

- ☐ Section 00340 – First-Tier Subcontractor Disclosure Form

**END OF SECTION**

**SECTION 00301**

**BID FORM**

To: City of Depoe Bay  
570 SE Shell Avenue  
Depoe Bay, Oregon 97341

Attn: Brady Weidner

Project Title: Depoe Bay Harbor Docks 2-4 Replacement

1. **BIDDER'S DECLARATION:**

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 and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2. **BIDDER ACCEPTS:**

BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for sixty (60) consecutive calendar days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Documents within ten (10) consecutive calendar days after the date of OWNER's Notice of Award.

3. **BIDDER's REPRESENTATIONS:**

In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

- A. BIDDER has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all which is hereby acknowledged: (List Addenda by Number and Date):

Addenda Number	Date of Issue
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

- B. BIDDER has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work.
- C. BIDDER understands and is satisfied as to all Federal, State and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work. This includes BIDDER acknowledgment that the provisions of ORS 279C and amendments thereto and regulations issued thereunder, relating to prevailing wages, benefits and other

requirements are to be complied with.

- D. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (Surface, Subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction required by the Bidding Documents to be employed by BIDDER, and safety precautions and programs incident thereto.
- E. BIDDER does not consider that any additional 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 and in accordance with the other terms and conditions of the Bidding Documents.
- F. BIDDER has correlated 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.
- G. BIDDER has given Engineer written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Bidding Documents and the written resolution thereof by Engineer is acceptable to BIDDER, and the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- H. Where conflicts, errors, ambiguities or discrepancies have been discovered in or between the Contract Documents and/or other related documents, and where said conflicts, etc., have not been resolved through interpretations of clarifications by the Engineer as described in Section 00100 – Instructions to Bidders, because of insufficient time or for any other reason, BIDDER has included in the Bid the greater quantity or better quality of Work, or compliance with the more stringent requirement resulting in a higher Bid.
- I. It is understood that there will be interfering utilities and other underground pipes, drains and structures encountered on underground projects that are not shown or are shown incorrectly on the Plans and/or have not been previously discovered in the field. BIDDER agrees this is a normal and usual occurrence in the construction of underground improvements. Furthermore, bidders understand and agree that work in some cases must be done in close proximity to said utilities and underground pipes, drains, and structures not shown or shown incorrectly on the Plans which may require a change in operations; the BIDDER agrees that a reasonable number of these occurrences are usual and ordinary on underground projects and are reflected in the Bid and plan of operation. The BIDDER shall protect utilities at all times during construction. Time described above includes down time necessary in order to resolve the conflict and time associated with the work done in close proximity to said utilities and underground pipes, drains and structures not shown or shown incorrectly on the Plans. No further compensation will be provided for items found during the course of construction under this paragraph unless the number of occurrences exceed those which could be expected as usual and ordinary as determined by the Owner.

This project is located in the Oregon Utility Notification Center area, which is a utilities notification system for notifying owners of utilities about work being performed in the

vicinity of their facilities. The utilities notification system telephone number is 1-800-332-2344.

Comply with OAR 952-001-0020 through 952-002-0090 and Oregon Laws 1995, Chapter 691, Section 7, which is printed in the 1998 Supplemental Standard Specifications for Highway Construction. Contact the Oregon Utility Notification Center at (503) 232-1987 for question about these rules.

- J. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.
  - K. BIDDER agrees to comply with the provisions of ORS 279C.800 through 279C.870.
  - L. Certifies that BIDDER has not discriminated against minority, women, or emerging small business enterprises, or a business enterprise that is owned or controlled by or that employs a disabled veteran, in obtaining subcontracts.
  - M. Certifies that BIDDER holds current licenses that businesses or services professionals operate in this state must hold in order to undertake or perform the work specified in these Contract Documents.
  - N. Certifies that BIDDER is covered by liability insurance and other insurance in the amount(s) required by the solicitation.
  - O. Certifies that the BIDDER qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
  - P. Certifies that the BIDDER is legally qualified to contract with the OWNER.
  - Q. Certifies that no Commissioner, officer, Agent or employee of Lincoln County or Owner is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representations, statement or statements, oral or in writing, of the County or Owner, its Commissioners, officers, agents or employees has induced him to enter into this contract and the papers made a part hereof by its terms.
  - R. Certifies that, pursuant to ORS 279C.502(2), Bidder has an employee drug testing program in place, and will maintain such program for the entire period of this contract. Failure to maintain such a program shall constitute a material breach of contract.
4. TOTAL BID:
- A. BIDDER will complete the Work in accordance with the Bidding Documents for the prices listed in the following proposal and as described in Technical Specification Section 01025 – Measurement and Payment.:

**SCHEDULE OF PRICES**

<b>Bid Item</b>	<b>Item Description</b>	<b>Basis of Measure</b>	<b>Approx. Quantity</b>	<b>Unit Price</b>	<b>Total Amount</b>
1	Mobilization and Demobilization	LS	1		
2	Demolition	LS	1		
3	Furnish and Install Floating Docks	LS	1		
4	Furnish and Install 16" Float Piles	EA	33		
5	Install Salvaged 12.75" Float Piles	EA	6		
6	Furnish and Install Bearing Piles	EA	2		
7	Furnish and Install Pier	LS	1		
8	Furnish and Install ADA Gangway	LS	1		
9	Furnish and Install Dock Water System	LS	1		
10	Furnish and Install Dock Electrical and Lighting System	LS	1		
11	Fire Extinguishers, Life Rings and Dock Safety Ladders	LS	1		
<b>BID SCHEDULE TOTAL</b>					

TOTAL BID AMOUNT (In Figures): \$ \_\_\_\_\_

TOTAL BID AMOUNT (In Words): \_\_\_\_\_

\_\_\_\_\_

5. Completion.

BIDDER agrees that the Work will be substantially completed and finally completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement. BIDDER agrees that Work associated with all defined interim milestones will be completed on or before the dates or within the number of calendar days indicated in the Agreement.

BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to achieve substantial completion, and make the Work finally complete and ready for final payment, and for completion of all defined interim milestones, within the Contract Times specified in the Agreement.

6. Attached Documents.

The following documents are attached to and made an integral part of this Bid. Failure to submit any of these documents shall render the bid non-responsive. Error in completing these documents may render the bid non-responsive.

- A. Required Bid Security in the amount of five (5) percent of the Bid amount in the form of a certified or bank check, or Bid Bond per Section 00310 – Bid Bond.
- B. Required BIDDER's Noncollusion Affidavit form per Section 00320.
- C. Required BIDDER's Resident/Nonresident BIDDER Status form per Section 00330.
- D. Required BIDDER's Project Certification form per Section 00335.

8. The following document shall be submitted within two (2) working hours after the time and date specified for submission of Bids and shall be made an integral part of the Bid.

- A Required BIDDER's First-Tier Subcontractor Disclosure Form per Section 00340.

9. Bidder Contact for Communications.

BIDDER's person to contact for additional information about this Bid:

Name: \_\_\_\_\_

Phone and facsimile no.: \_\_\_\_\_

10. Defined Terms.

Terms used in this Bid have the meanings indicated in the Instructions to Bidder, the General Conditions, and the Supplementary Conditions.

11. BIDDER.

SUBMITTED on \_\_\_\_\_, 2022.

Oregon State CONTRACTOR License No. \_\_\_\_\_.

If BIDDER is:

An Individual:

By \_\_\_\_\_

(Individual's Signature)

\_\_\_\_\_  
(Printed Name)

doing business as \_\_\_\_\_

Business address: \_\_\_\_\_

Phone and facsimile no.: \_\_\_\_\_

A Partnership:

By \_\_\_\_\_

(Firm name)

\_\_\_\_\_  
(General Partner's Signature)

\_\_\_\_\_  
(Printed Name)

Business address: \_\_\_\_\_

Phone and facsimile no.: \_\_\_\_\_

A Corporation:

By \_\_\_\_\_  
(Corporation name)

\_\_\_\_\_  
(State of incorporation)

By \_\_\_\_\_  
(Signature of person authorized to sign)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

(Corporate Seal)

Attest \_\_\_\_\_  
(Secretary)

Business address: \_\_\_\_\_

Phone and facsimile no.: \_\_\_\_\_

**END OF SECTION**



**SECTION 00310**

**BID BOND**

Bond No.: \_\_\_\_\_

Amount: \$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_

\_\_\_\_\_  
As BIDDER (PRINCIPAL), and \_\_\_\_\_

\_\_\_\_\_  
a corporation duly organized under the laws of the State of \_\_\_\_\_

having its principal place of business at \_\_\_\_\_

\_\_\_\_\_ in the State of \_\_\_\_\_

and authorized to do business in the State of Oregon, thereafter "Surety," are jointly and severally held and firmly bound unto CITY OF DEPOE BAY, a Municipal Corporation of the State of Oregon, as OWNER (OBLIGEE), in the sum of FIVE PERCENT (5%) of the total amount of the bid of the Principal, in the sum of \_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The BIDDER is herewith submitting its offer for the fulfillment of the OWNER's contract for construction of the Depoe Bay Harbor Docks 2-4 Replacement.

NOW THEREFORE, if the bid proposal submitted by the BIDDER is accepted and the contract awarded to the BIDDER, and if the BIDDER shall execute the proposed Agreement and shall furnish such insurance certificates and performance and payment bonds as required by the Contract Documents within the time fixed by the documents, then this obligation shall be void; if the BIDDER shall fail to execute the proposed contract and furnish the bonds, Surety hereby agrees to pay to the OWNER the above sum within ten (10) days of such failure. The surety and OWNER agree that failure or neglect of the BIDDER to furnish, execute and deliver to the OWNER the required performance bond and payment bond and evidence of insurance, and to enter into, execute and deliver to the OWNER the Agreement of the form provided within ten calendar days after receiving written notice from the OWNER that the award has been made and the Agreement is ready for execution will cause damage to the OWNER; that the calculation of the damages is very difficult and therefore the amount payable to the OWNER under the bid guaranty bond, or cash or certified cashier's check shall be paid to OWNER as liquidated damages; that this is a reasonable estimate of the damages the OWNER will suffer; that this is not a penalty.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_ (SEAL) \_\_\_\_\_ (SEAL)

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

Its: \_\_\_\_\_ Its \_\_\_\_\_

“BIDDER:

“SURETY”

If the BIDDER is operating under an assumed business name, there must also be set forth in the first paragraph of the bond the names of all the partners or the individual owning the business, and the bond must be executed by one of them.

If the BIDDER is a corporation or a Limited Liability Company, the bond must be executed by one of the officers authorized to execute bonds, showing his official title and the seal of the corporation.

The bond must be executed by an attorney-in-fact for the surety company, shown on the face thereof the Oregon agent for service, and bear the seal for the surety company. Where the bond is executed by an agent, there must be included a copy of the authority of the agent to act for the surety company at the time of the execution of the bond.

To each executed original of this bond, there must be attached a complete set of Contract Documents, with all corrections, interlineations, signatures, etc., completely reproduced therein.

**END OF SECTION**

**SECTION 00320**

**NON-COLLUSION AFFIDAVIT**

State of \_\_\_\_\_ ) Contract Bid Name \_\_\_\_\_  
 ) ss.  
County of \_\_\_\_\_ )

I state that I am \_\_\_\_\_ (Title) of \_\_\_\_\_  
\_\_\_\_\_ (Name of Firm) and that I am authorized to make this  
affidavit on behalf of this firm and its owners, directors, and officers. I am the person responsible in this  
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 noncompetitive Bid or other form of complementary Bid.
- (4) The Bid of this 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 noncompetitive Bid.
- (5) \_\_\_\_\_ (name of this 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 in the attached appendix.

I state that \_\_\_\_\_ (name of this firm) understands and acknowledges that the above representations are material and important, and will be relied on by the City of Depoe Bay in awarding the contract(s) for which this Bid is submitted. I understand and this firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the City of Depoe Bay of the true facts relating to the submission of Bids for this contract.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Company/Position

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public for Oregon

This commission expires \_\_\_\_\_

**END OF SECTION**

**SECTION 00330**

**RESIDENT/NONRESIDENT BIDDER STATUS**

Oregon law requires that the Owner, in determining the lowest responsive bidder, must add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the state in which that bidder resides.

Consequently, each bidder must indicate whether it is a resident or nonresident bidder. A resident bidder is a bidder that has paid unemployment taxes or income taxes in the State of Oregon during the 12 calendar months immediately preceding submission of this bid, has a business address in Oregon, and has stated in its bid whether the bidder is a "resident bidder." A "nonresident bidder" is a bidder who is not a resident bidder.

The undersigned bidder states that it is: (check one)

1. A resident bidder: \_\_\_\_\_

2. A nonresident bidder: \_\_\_\_\_

Indicate state in which bidder resides: \_\_\_\_\_

**CONSTRUCTION CONTRACTOR'S REGISTRATION**

Oregon law requires that all contractors must be registered with the Construction Contractors Board in order to submit a bid to do work and to do work as a contractor. The undersigned bidder states that it is now registered with the Oregon Construction Contractors Board.

Indicate the Bidder's Registration No. \_\_\_\_\_.

Signature \_\_\_\_\_

Name of Company \_\_\_\_\_

**END OF SECTION**

**SECTION 00335**  
**PROJECT CERTIFICATION**

**Prevailing Wage Certification for Public Works Contracts in Oregon**

I hereby certify that the provisions of ORS 279C.800 through 279C.870, the hourly rate of wage to be paid to workmen upon public works contracts greater than \$50,000.00 shall be paid not less than prevailing wage for an hour's work in the same trade or occupation in the locality where the labor is performed.

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name & Title of Authorized Person

**Public Works Bond Certification**

I hereby certify that the provisions of ORS 279C.836(3), \_\_\_\_\_ and  
Firm Name

subcontractors upon execution of the Contract shall file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the state of Oregon in the amount of \$30,000.00

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name & Title of Authorized Person

**Contractor's License Certification**

I hereby certify that under the provisions of ORS 701, \_\_\_\_\_  
Firm Name

Is licensed with the Construction Contractors Board, license number \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name & Title of Authorized Person

**END OF SECTION**

**SECTION 00340**

**FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM**

Project Name: Depoe Bay Harbor Docks 2-4 Replacement

Bid #: \_\_\_\_\_ Bid Closing: Date: \_\_\_\_\_ Time: \_\_\_\_\_

Bids which are submitted by Bid Closing, but for which a required disclosure submittal has not been made by the specified Disclosure Deadline, are not responsive and shall not be considered for Contract award.

**INSTRUCTIONS:**

The bidder will check the box below stating "Not Applicable" if the bid value of the designated project is less than \$100,000. This form must be submitted either with the bid or within two (2) working hours after the advertised bid closing date and time, but no later than the submittal date and time stated in this bid packet.

Unless otherwise stated in the solicitation, this document shall not be submitted by facsimile. It is the responsibility of bidders to submit this disclosure form and any additional sheets with the project name clearly marked, at the location indicated by the specified disclosure deadline. See "Instructions to Bidders".

List below the Name, Dollar Value, and Category of Work for each first-tier subcontractor that would be furnishing labor, or labor and materials, for which disclosure is required. Check the box stating "No

First-Tier Subcontractors" if there are no first-tier subcontractors subject to disclosure. ATTACH ADDITIONAL SHEETS IF NECESSARY.

**BIDDER DISCLOSURE:**

[ ] NOT APPLICABLE – Amount bid for this project is less than \$100,000.

[ ] NO FIRST-TIER SUBCONTRACTORS – No first-tier subcontractors will be furnishing labor or labor and materials in connection with this project.

SUBCONTRACTOR NAME	DOLLAR VALUE	CATEGORY OF WORK
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

The above listed first-tier subcontractor(s) are providing labor, or labor and material, with a Dollar Value equal to or greater than:

- a) 5% of the total Contract Price or \$15,000, whichever is greater. [If the Dollar Value is less than \$15,000 do not list the subcontractor above.] or
- b) \$350,000 regardless of the percentage of the total Contract Price.

Form Submitted By (Bidder Name): \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone # \_\_\_\_\_

**END OF SECTION**

# **CONTRACT FORMS**



## SECTION 00500

### AGREEMENT

THIS AGREEMENT is dated as of the \_\_\_\_ day of \_\_\_\_\_ in the year 2022 by and between the City (hereinafter called OWNER) and \_\_\_\_\_ (hereinafter called Contractor).

OWNER and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

#### Article 1. WORK

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

#### **Depoe Bay Harbor Docks 2-4 Replacement**

#### Article 2. THE PROJECT

The Project for which the Work is described in the Contract Documents.

#### Article 3. ENGINEER

- 3.1 The term Engineer is defined in the Supplementary Conditions.
- 3.2 Engineer is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

#### Article 4. CONTRACT TIMES

- 4.1 All time limits for milestones, if any, substantial completion, and completion and readiness for final payment are stated in the Contract Documents and are of the essence of the Contract.
- 4.2 The Contractor shall commence work within 10 calendar days after receipt of written Notice-to-Proceed. Contractor shall substantially complete the Work identified as the Base Bid within 90 days from Notice to Proceed, and the Work shall be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions 30 days later. The written notice to proceed will be forwarded to the Contractor after the Contractor submits the signed Agreement, Performance Bond and Payment Bond, and Certificate of Insurance to the OWNER and these documents have been approved as to form by the OWNER's attorney, signed by the OWNER.
- 4.3 Contractor and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.2 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. 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) Contractor shall pay OWNER **five hundred dollars (\$500.00)** for each calendar day that expires after the time specified in Paragraph 4.2 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 4.2 above for completion and readiness for final payment or any proper extension thereof granted by OWNER, Contractor shall pay OWNER **five hundred dollars (\$500.00)** for each calendar day that expires after the time specified in Paragraph 4.2 above for

completion and readiness for final payment, plus any fees or penalties imposed by regulators for other violations.

#### Article 5. CONTRACT PRICE

- 5.1 OWNER shall pay Contractor for completion of the Work in accordance with Contract Documents an amount in funds equal to the sum of the amounts determined pursuant to the paragraphs below:

Unless changes and alterations in the Plans, quantities or details of construction materially change the character of the work to be performed or the unit costs thereof, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the same unit prices as are provided under the Contract for the accepted quantities of work done.

If, however, changes and alterations in the Plans, quantities or details of construction materially change the character of work or unit costs thereof, compensation for such work will be made on such basis as may be agreed upon in advance of performance of work, or in case no such basis has been agreed upon, then an allowance may be made, either for or against the Contractor. Payment will be made at unit prices only for work actually performed or materials actually furnished according to actual measurement. If the amount of any major work item changes by more than 25%, compensation for all work that differs from the original estimated quantities for that work item may be made on such basis as may be agreed to in advance of performance of work, or in case no such basis has been agreed upon, an allowance may be made, either for or against the Contractor in such amount as the Engineer determines is fair and equitable. For the purpose of this Section, a major work item is defined as an item that constitutes at least 10% of the total contract bid amount based on either the estimated original quantities or the actual quantities and Contractor's original Bid prices.

If the Contract is done on a lump sum basis, the adjustment for increases or decreases may be based, at the sole discretion of the Engineer, on a theoretical unit price. This price will be determined by dividing the Contractor's applicable breakdown category price by the estimated quantities of all units of work within the applicable breakdown category.

Bidder must include in their Bid prices the entire cost of the work set forth in the Bid.

The Contract Price is the total price stated in Contractor's Bid, attached hereto as an exhibit.

#### Article 6. PREVAILING WAGE RATES

- 6.1 CONTRACTOR agrees that the provisions required by ORS 279C.830 pertaining to CONTRACTOR's payment of prevailing wage rates shall be included as part of this Agreement. Each worker in each trade or occupation employed in the performance of the contract either by the CONTRACTOR, subcontractor or other person doing or contracting for whole or any part of the work on this contract, shall be paid not less than the applicable prevailing wage in effect for this contract.

#### Article 7. PAYMENT PROCEDURES

- 7.1 Progress Payments and Retainage

- A. Payment for all work under the Contract will be made at the price or prices bid, and those prices shall include full compensation for all incidental work.
- B. If the Contract is for a public work and the Contract price is \$50,000.00 or more, supply and file, and require every Subcontractor to supply and file, with the OWNER and with the Wage and Hour Division, Bureau of Labor and Industries, 1400 S.W. Fifth Avenue, Portland,

Oregon 97201, a statement in writing that conforms to the requirements of ORS 279C.854. The schedule for submitting payroll information is as follows: Once before the first payment and once before the final payment is made; in addition, for projects exceeding ninety (90) days for completion, submissions are to be made at ninety (90) day intervals.

- C. Make progress estimate of work performed in any calendar month and submit to the Engineer for approval by the 5<sup>th</sup> day of the following month. These estimates shall include value of labor performed and materials incorporated in the work since commencing work under the Contract. Such estimates need not be made by strict measurements and may be approximate only, and shall be based upon the whole amount of money that will become due according to terms of the Contract when Project has been completed.
- D. If the Contract price is determined, in whole or in part, on a Lump Sum basis, prepare an itemized cost breakdown relating thereto and have the Engineer approve in accordance with Division 1 requirements; progress estimates based on said itemized cost breakdown may be the basis for progress payments. Upon direction by the Engineer provide for revision of the costs breakdown to reflect the true costs of the work as it progresses.
- E. If the Contract price is determined wholly on a unit basis, Engineer may use Unit Prices bid in making progress estimates on the work. In case said Unit Prices do not, in the opinion of the Engineer, truly represent actual relative costs of different parts of work, a percentage of the Unit Price may be used in making progress estimate adjustments.
- F. If the OWNER receives written notice of any unsettled claims for damages or other costs due to Contractor's operations including, without limitation, claims from any County Department or other governmental agency, an amount equal to the claim may be withheld from the progress or final payments until such claim has been resolved to the satisfaction of Engineer.
- G. Progress payments will be made by OWNER on a monthly basis within thirty (30) days after receipt of the Contractor's estimate of work performed, or 15 days after the payment is approved by the Engineer, whichever is the earlier date. Negotiable warrants will be issued by OWNER for the amount of the approved estimate, less five percent (5%) retainage. Such amount of retainage shall be withheld and retained by OWNER until it is included in and paid to Contractor as part of the final payment of the Contract amount. Securities in lieu of retainage will be accepted, or if Contractor elects, retainage as accumulated will be deposited by OWNER in an interest-bearing account pursuant to ORS Chapter 279 for progress payments. After fifty percent (50%) of the Work under Contract is completed, and the Work is progressing satisfactorily, the OWNER may elect to eliminate further retainage on any remaining monthly Contract payments. Said elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of the Contractor's Surety.
- H. The Engineer may decline to approve an application for payment and may withhold such approval if, in the Engineer's opinion, the work has not progressed to the point indicated by the Contractor's submittal in paragraph C above. The Engineer may also decline to approve an application for payment or may reduce said payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any payment previously made to such extent as may be necessary in his opinion to protect the OWNER from loss because of: (1) defective work not remedied, (2) third

party claims filed or failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment, unless Surety consents to such payment, (3) reasonable doubt that the Work can be completed for the unpaid balance of the Contract sum, (4) damage to another contractor's work, (5) reasonable indication that the Work will not be completed within the Contract time (6) unsatisfactory prosecution of the Work by the Contractor, (7) claims against the Contractor by the OWNER, (8) failure of Contractor to submit updated project schedules as specified.

When the above grounds are removed, payment shall be made for amounts withheld because of them. Withholding of progress payments or partial payments under the criteria set forth above shall not entitle the Contractor to interest on such withheld payments or partial payments.

- I. If Contractor fails to complete the Project within the time limit fixed in the Contract or any extension, no further estimate may be accepted or progress or other payments allowed until the Project is completed, unless approved otherwise by OWNER.
- J. Progress estimates are for the sole purpose of determining progress payments and are not to be relied on for any other purpose. The making of a progress payment shall not be construed as an acceptance of any of the work or materials under the Contract.
- K. When the progress estimate indicates that the progress payment would be less than one thousand dollars (\$1000), no progress payment will be made for that estimate period, unless approved by the Engineer.
- L. Contractors are required to provide the OWNER with a list of Contractor's personnel who are authorized to personally receive contract payments. This written authorization must be signed by an officer of the Contracting company and will be placed on file in the OWNER's office. No payment will be released to an unauthorized person.

## 7.2 Final Estimate and Final Payment

- A. Pursuant to ORS Chapter 279C, notify the Engineer in writing when work is considered complete and Engineer shall, within fifteen (15) days after receiving notice, make a final inspection and either accept the work or notify Contractor of work yet to be performed on the Contract. If accepted, Engineer shall so notify Contractor, and will make a final estimate and prepare a Certificate of Completion recommending acceptance of the Work as of a certain date.
- B. If the Contractor believes the quantities and amounts specified in the final estimate and Certificate of Completion prepared by the Engineer to be incorrect, Contractor shall submit to the Engineer within fifteen (15) days of mailing of the Engineer's final estimate and Certificate of Completion to the Contractor's last known address as shown in the records of the OWNER, an itemized statement of any and all claims for additional compensation under the Contract which are based on differences in measurements or errors of computation. Any such claim not so submitted and supported by an itemized statement within said fifteen (15) day period is expressly waived and the OWNER shall not be obligated to pay the same. Nothing contained herein shall limit the requirements of Standard General Conditions; Section 00700, Subsection 10.05, *Claims*.
- C. Upon receipt of the executed Certificate of Completion from the Contractor, and approval by the Engineer, the Engineer will process the final payment.

- D. Provided Contractor submits a claim in the manner and time as required in B. above, the Engineer, as soon as practicable, will consider and investigate the claim or claims of the Contractor for compensation earned under the Contract and not included in the Engineer's final estimate and Certificate of Completion. The Engineer will then promptly advise the Contractor of acceptance or rejection of the claim in full or part. If the Engineer allows the Contractor's claims in full or in part, Engineer will prepare a revised final estimate and Certificate of Completion, including all such items allowed and will submit the same to the Contractor.
- E. The Contractor shall execute and return the revised Certificate of Completion within five (5) days of its receipt together with notice of his acceptance or rejection of the amount there stated as being full compensation earned under the Contract.
- F. If the Engineer rejects the claim or claims, he will issue written notice of rejection mailed to the Contractor's last known address as shown in the records of the OWNER.
- G. The Contractor shall commence any suit or action to collect or enforce the claim or claims for any additional compensation arising from differences in measurements or errors of computation in the final estimate within a period of one (1) year following the original mailing of the Engineer's final estimate and Certificate of Completion to the Contractor's last known address as shown in the records of the OWNER. The Engineer's issuance of a revised final estimate pursuant to this sub-section does not alter the original final estimate date. If said suit, action or proceeding is not commenced in said one (1) year period, the final estimate and Certificate of Completion or revised final estimate and Certificate of Completion, if revisions are made, shall be conclusive with respect to the amount earned by the Contractor, and the Contractor expressly waives any and all claims for compensation and any and all causes of suit or action for the enforcement thereof that he might have had.
- H. Upon return of the fully executed Certificate of Completion from the Contractor, the Engineer will submit the Certificate of Completion and final estimate to the OWNER for approval. Upon approval and acceptance by the OWNER, Contractor will be paid a total payment equal to the amount due under the Contract including retainage.
- I. Monies earned by the Contractor are not due and payable until the procedures set forth in these Specifications for inspection, approval and acceptance of the Work, for determination of the work done and the amount due therefor, for the preparation of the final estimate and Certificate of Completion processing the same for payment, for consideration of the Contractor's claim, or claims, if any, and for the preparing of a revised final estimate and Certificate of Completion and processing same for payment have been carried out.
- J. Non-resident Contractor will provide OWNER with evidence that provisions of ORS Chapter 279A.120 have been satisfied; this is a prerequisite to final payment.
- K. Execute and deliver to OWNER, in form approved by the Attorney, a receipt for all amounts paid or payable to Contractor under the Contract, and a release and waiver of all claims against OWNER arising out of or relating to the Contract and furnish satisfactory evidence that all amounts due for labor, materials and other obligations under the Contract have been fully and finally settled or are fully covered by the Performance and Payment Bond and or insurance protecting OWNER, its officers, agents and employees as well as Contractor. This is a condition of final payment and Contractor will not be entitled to final

payment on release of retainage nor interest thereon until execution and delivery of said Receipt, Release & Waiver.

- L. If OWNER declares a default of the Contract, and Surety completes said Contract, all payments after declaration of default and retainages held by OWNER shall be paid to Surety and not to Contractor in accordance with terms of the Contract.
- M. Acceptance by Contractor of final payment shall release OWNER and Engineer from any and all claims by Contractor whether known or unknown, arising out of and relating to the Work. No payment, however, final or otherwise shall operate to release Contractor or his Sureties from warranties or other obligations required in the performance of the Contract.

## Article 8. CONTRACT DOCUMENTS

### 8.1 Contents

- A. The Contract Documents which comprise the entire agreement between OWNER and Contractor concerning the Work consist of the following:
  - 1. This Agreement
  - 2. Performance Bond
  - 3. Payment Bond
  - 4. General Conditions
  - 5. Supplementary Conditions
  - 6. Specifications as listed in Table of Contents (Appendices and Plans) of the Contract Documents, to also include the prevailing wage rates for Public Works Contracts in Oregon.
  - 7. Drawings consisting of a cover sheet and the title: Depoe Bay Harbor Docks 2-4 Replacement.
  - 8. Exhibits to this Agreement (enumerated as follows):
    - a. Addenda number(s) \_\_\_\_\_ to \_\_\_\_\_ included as Exhibit 1.
    - b. Bid Form
    - c. Bid Bond
    - d. Noncollusion Affidavit
    - e. Resident/Nonresident Bidder Status
    - f. Project Certification
    - g. First-Tier Subcontractor Disclosure Form
  - 9. The following which may be delivered or issued on or after the effective Date of the Agreement and are not attached hereto:
    - a. Notice to Proceed.
    - b. Written Amendments.
    - c. Work Change Directives.
    - d. Change Order(s).

- B. The documents listed in Paragraph 8.1.A are attached to this Agreement (except as expressly noted otherwise above).

## 8.2 Coordination of Contract Requirements

- A. In general, in the case of a conflict or discrepancy between sections of the Contract Documents, the most stringent requirement and/or the highest quality product (as determined solely by the Engineer) shall be incorporated into the Work. The drawings and specifications are intended to describe and provide for a complete Work. Any requirement in one is as binding as if stated in all. The Contractor shall provide any work or material clearly implied in the Contract Documents even if the Contract Documents do not mention it specifically, using best industry practices. If there is still a conflict within the Contract Documents, it will be resolved in the sole judgment of the Engineer by the following order of precedence:

1. Permits from other agencies as may be required by law.
2. Owner-Contractor Agreement
3. Addenda and/or Change Orders
4. Bid Form
5. Supplementary Conditions
6. General Conditions
7. Technical Specifications, Divisions 1 through 16 with Division 1 taking precedence over Divisions 2 through 16
8. Drawings
9. Bonds

Dimensions shown on the drawings or that can be computed shall take precedence over scaled dimensions. Notes on drawings shall take precedence over drawing details.

## 8.3 Conflict of Provisions

- A. In the event of any conflicting provisions or requirements between the component parts of his Contract, the component part having the lowest number, as established in Subsection 8.2 above, shall govern.

This shall in no way relieve the performance bond and public liability insurance of their respective and specific protection to the Contractor, provided, however, that such sequence control does not conflict with the intent of or harm the product in any way. In case of such conflict which would alter the intent of or harm the product, the requirement which, in the opinion of the Engineer, will result in the best product will govern. It is hereby agreed that the entire project shall be completed in accordance with the full intent of the Contract, regardless of conflicting statements, omissions, or errors. The intent of the drawings and Specifications is to outline and control the work in a manner necessary to result in the best completely finished product practicable, at a minimum cost, incorporating all items. Any omissions in the Plans and Specifications pertinent to the requirements of the specified bid items are unintentional. If such are found, the Contractor will be required to perform the work in a customary workmanlike manner to achieve the intent as stated above.

It shall be definitely understood that omissions of one or more of the Documents shall not be construed as conflicting provisions. Any requirement given in one Document shall be known to be binding as though it is repeated in all Documents alike. The intent of the Contract is to combine all requirements of all Documents into one.

#### Article 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement will have the meaning indicated in the General Conditions, and as revised by Supplementary Conditions.
- 9.2 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, moneys that may become due and moneys that are 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.
- 9.3 OWNER and Contractor each binds itself, its partners, successors, assignees, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 9.4 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.
- 9.5 Two Year Maintenance and Warranty
- A. In addition to and not in lieu of any other warranties required under the Contract, make all necessary repairs and replacements to remedy, in a manner satisfactory to the OWNER and at no cost to OWNER, any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of Acceptance of the Work due to faulty or inadequate materials or workmanship. Repair damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the Contractor in performing his duties and obligations under this Contract when such defects or damage occur within the warranty period. The two-year maintenance period required shall, with relation to such required repair, be extended two (2) years from the date of completion of such repair. Where equipment or systems are specified to have a longer warranty period, Contractor shall be bound to the longer warranty period for the specific equipment and/or systems.
- B. If Contractor, after written notice, fails within ten (10) days to proceed to comply with the terms of this section, OWNER may have the defects corrected, and Contractor and Contractor's Surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the OWNER, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor and Contractor or Surety shall pay the cost of repairs. Failure of the OWNER to act in case of an emergency shall not relieve Contractor or Surety from liability and payment of all such costs.
- C. As a means of providing surety during the maintenance period, the Contractor shall provide



to the OWNER written and legally attested proof of surety in the amount of not less than 10 percent of the final contract amount. The maintenance guarantee shall be one of the following types:

1. Continuance of the contract performance bond at the original or a reduced amount.
2. Maintenance bond in a format and with the conditions acceptable to the OWNER.
3. Cash deposit to the OWNER's Treasury, with a treasurer's receipt acting as proof of surety.
4. Other arrangements, as may be proposed by the contractor and accepted by the OWNER.

#### Article 10. GOVERNING LAW

- 10.1 It is expressly understood that this Agreement in all respects shall be governed by the laws of the State of Oregon and the ordinances of the City of Depoe Bay.

#### Article 11. ASSIGNMENT OF ANTITRUST RIGHTS

- 11.1 By entering into this Agreement, the Contractor irrevocably assigns to OWNER any claim or cause of action which the Contractor now has or which may accrue in the future, including at OWNER's option, the right to control any such litigation, by reason of any violation of 15 USC Section 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person which are used, in whole or in part, for the purpose of carrying out the Contractor's obligations under this Agreement.
- 11.2 Contractor shall require any subcontractor to irrevocably assign to the OWNER, as a third party beneficiary, any right, title or interest that has accrued or may accrue to the subcontractor by reason of any violation of 15 USC Section 1-15, ORS 646.725 or ORS 646.730, including, at the OWNER's option, the right to control any litigation arising thereunder, in connection with any goods or services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of this Agreement.
- 11.3 In connection with this assignment, it is an express obligation of the Contractor that it shall take no action which any way diminishes the value of the rights conveyed or as- signed hereunder to the OWNER. It is an express obligation of the Contractor to advise the OWNER's legal counsel:
- A. In advance of its intention to commence any action on its own behalf regarding such claims or causes of action;
  - B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
  - C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignments to the OWNER.
- 11.4 Furthermore, it is understood or agreed that in the event that any payment under any such claim is made to the Contractor, it shall promptly pay over to the OWNER its proportionate share thereof, if any, assigned to the OWNER hereunder.

#### Article 12. RECORDS RETENTION

- 12.1 Contractor shall maintain all standard records and accounts as required by the Contract

Documents throughout the life of the Agreement and for a period of three years after the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their respectively authorized officers or representatives as of the day and year first above written.

CITY OF DEPOE BAY

CONTRACTOR:

OWNER:

\_\_\_\_\_  
Company

\_\_\_\_\_  
Director

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal Tax ID Number

\_\_\_\_\_  
Date

**END OF SECTION**

**SECTION 00610**  
**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_

as PRINCIPAL, and \_\_\_\_\_

a corporation, duly authorized to do a general surety business in Oregon, as SURETY, and jointly and severally held and bound unto

the OBLIGEE herein, in the sum of \_\_\_\_\_

\_\_\_\_\_ (dollars) (\$)

for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns, firmly by these presents:

THE CONDITION OF THIS BOND IS SUCH THAT

WHEREAS, \_\_\_\_\_  
(Contractor)

the PRINCIPAL herein, on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 entered into a contract with the OBLIGEE which contract documents consist of the "Invitation to Bid"; the "Instructions to Bidders", the "Bid Proposal", the "Bid Bond", the "Performance Bond and the Payment Bond", the "Certificate of Insurance", the "Prevailing Wage Rates for Public Works Contracts in Oregon", the "General Conditions", the "Supplementary General Conditions", the "Specifications including Divisions 01 through 16", the "Plans and Drawings", and the "Agreement Form" all as hereto attached and made a part hereof, whereby said PRINCIPAL undertakes to do all labor, furnish all plant and equipment, and furnish all material, in accordance with all the terms and conditions set forth in said contract documents; and to save harmless the OBLIGEE from any claim for damages or injury to property or persons arising by reason of said work, as set out more fully in said contract documents; and to do and perform all things in said contract documents required, in the time and manner under the terms and conditions therein set forth; and in conformity with all laws, state and national, applicable thereto.

NOW, THEREFORE, if said PRINCIPAL herein shall commencing with the date hereof and continuing for two years after the complete performance of the contract and the final acceptance of the work in the contract, save harmless the OBLIGEE, its officers and agents, from all claims therefore, or from any claim for damages or injury to property or persons arising by reason of said work; and shall, in the time and manner, and under the terms and conditions prescribed, well and faithfully do, perform, and furnish all matters and things as by them in said contract undertaken, and as by law, state and national, prescribed, then this obligation shall be void; but otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions:

- (a) In no event shall the SURETY be liable for a greater sum than the penalty of this bond.
- (b) The said SURETY for the value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.
- (c) The PRINCIPAL herein shall faithfully and truly observe and comply with the terms of the contract and shall well and truly perform all matters and things by him undertaken to be performed under said contract upon the terms proposed therein and shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical and hospital care or other needed care and attention incidental to sickness or injury to the employees of such PRINCIPAL, pursuant to the laws of this state and any contract entered into pursuant thereto or collected or deducted from the wages of said employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services, and shall do all things required of said PRINCIPAL by the laws of this state.

This bond is given and received under the authority of ORS Chapter 279, the provisions of which hereby are incorporated into this bond and made a part hereof.

Provide the following information:

Bond #: \_\_\_\_\_

Agent Contact Name: \_\_\_\_\_

Agent Address: \_\_\_\_\_

Agent Phone Number: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this bond to be executed in one original, this

\_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

PRINCIPAL

WITNESSES:

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

SURETY

The attorney-in-fact who executes this bond in behalf of the surety company, must attach a copy of his power-of-attorney as evidence of his authority.

To each executed original of this bond, there must be attached a complete set of the contract documents, as the term is defined in Section 00500 Agreement with all corrections, interlineations, signatures, etc., completed reproduced therein.

Date of Bond must not be prior to date of Contract.

**END OF SECTION**

**SECTION 00620**  
**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_

\_\_\_\_\_

as PRINCIPAL, and \_\_\_\_\_

\_\_\_\_\_

a corporation, duly authorized to do a general surety business in Oregon, as SURETY, and jointly and severally held and bound unto

\_\_\_\_\_

the OBLIGEE herein, in the sum of

\_\_\_\_\_

\_\_\_\_\_ (dollars) (\$)

for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns, firmly by these presents:

THE CONDITION OF THIS BOND IS SUCH THAT

WHEREAS, \_\_\_\_\_

(Contractor)

the PRINCIPAL herein, on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 entered into a contract with the OBLIGEE which contract documents consist of the "Invitation to Bid"; the "Instructions to Bidders", the "Bid Proposal", the "Bid Bond", the "Performance Bond and the Payment Bond", the "Certificate of Insurance", the " Prevailing Wage Rates for Public Works Contracts in Oregon ", the "General Conditions", the "Supplementary General Conditions", the "Specifications including Divisions 01 through 16", the "Plans and Drawings", and the "Agreement Form" all as hereto attached and made a part hereof, whereby said PRINCIPAL undertakes to promptly make payment for all labor, services, material, and sums due the workmen's compensation board or equivalent, the collector of internal revenue, the unemployment compensation trust fund, and the treasurer of the State of Oregon in conformity with all laws, state and national, applicable thereto.

NOW, THEREFORE, if said PRINCIPAL herein shall promptly pay all persons furnishing labor, services and material, and sums due for workmen's compensation insurance or equivalent, social security and unemployment compensation, sums due to the Department of Revenue, to him and to his subcontractor, or to their assigns, on or about said work then this obligation shall be void; but otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions:

- (a) All materialmen, and all persons who shall supply such laborers, mechanics, or subcontractors with material, supplies or provisions for carrying on such work, shall have a direct right of action against the PRINCIPAL and SURETY on this bond, second only to the right of the OBLIGEE under this bond, which right of action shall be asserted in proceedings instituted in the appropriate court of the State of Oregon, and insofar as permitted by the laws of Oregon, such right of action shall be asserted in a proceeding instituted in the name of the OBLIGEE to the use and benefit of the person, firm, or corporation instituting such action and of all other persons, firms, or corporations having claims hereunder, and any other person, firm or corporation having a claim hereunder shall have the right to be made a party to such proceeding (but not later than one year after the complete performance of said contract and final acceptance of the work in the contract) and to have such claim adjudicated in such action and judgment rendered thereon.
- (b) In no event shall the SURETY be liable for a greater sum than the penalty of this bond.
- (c) The said SURETY for the value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.
- (d) The PRINCIPAL herein shall faithfully and truly observe and comply with the terms of the contract and shall promptly make payments to all persons supplying labor or material for any prosecution of the work provided for in such contract and shall not permit any lien or claim to be filed or prosecution against the OBLIGEEs, on account of any labor or material furnished, and shall promptly pay all contributions or amount due the workmen's compensation board or equivalent and all contributions or amounts due the state employment compensation trust fund incurred in the performance of said contract, and shall also pay all sums of money withheld from the employees and payable to the state tax commission pursuant to ORS 316.711, and shall do all things required of said PRINCIPAL by the laws of this state.

This bond is given and received under the authority of ORS Chapter 279, the provisions of which hereby are incorporated into this bond and made a part hereof.

Provide the following information:

Bond #: \_\_\_\_\_

Agent Contact Name: \_\_\_\_\_

Agent Address: \_\_\_\_\_

Agent Phone Number: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this bond to be executed in one original, this

\_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

PRINCIPAL

WITNESSES:

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

SURETY

The attorney-in-fact who executes this bond in behalf of the surety company, must attach a copy of his power-of-attorney as evidence of his authority.

To each executed original of this bond, there must be attached a complete set of the contract documents, as the term is defined in Section 00500 Agreement with all corrections, interlineations, signatures, etc., completed reproduced therein.

Date of Bond must not be prior to date of Contract.

**END OF SECTION**





## STATE OF OREGON

### STATUTORY PUBLIC WORKS BOND

Surety bond#: \_\_\_\_\_ CCB #(if applicable): \_\_\_\_\_

We, \_\_\_\_\_, as principal, and

\_\_\_\_\_ a corporation qualified and authorized to do business in the State of Oregon, as surety, are held and finny bound unto the State of Oregon for the use and benefit of the Oregon Bureau of Labor and Industries (BOLi) in the sum of thirty thousand dollars (\$30,000) lawful money of the United States of America to be paid as provided in ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, for which payment well and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, finny by this agreement.

WHEREAS, the above-named principal wishes to be eligible to work on public works project(s) subject to the provisions of ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, and is, therefore, required to obtain and file a statutory public works bond in the penal sum of \$30,000 with good and sufficient surety as required pursuant to the provisions of section 2, chapter 360, Oregon Laws 2005, conditioned as herein set forth.

NOW, THEREFORE, the conditions of the foregoing obligations are that if said principal with regard to all work done by the principal as a contractor or subcontractor on public works project(s), shall pay all claims ordered by BOLi against the principal to workers performing labor upon public works projects for unpaid wages determined to be due, in accordance with ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, and OAR Chapter 839, then this obligation shall be void; otherwise to remain in full force and effect.

This bond is for the exclusive purpose of payment of wage claims ordered by BOLi to workers performing labor upon public works projects in accordance with ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims which may arise hereunder shall in no event exceed the amount of the penalty of this bond.

This bond shall become effective on the date it is executed by both the principal and surety and shall continuously remain in effect until depleted by claims paid under ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, unless the surety sooner cancels the bond. This bond may be cancelled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days' written notice to the principal, the Construction Contractors Board, and BOLi. Cancellation shall not limit the responsibility of the surety for the payment of claims ordered by BOLi relating to work performed during the work period of a contract entered into before cancellation of this bond.

IN WITNESS WHEREOF, the principal and surety execute this agreement. The surety fully authorizes its representatives in the State of Oregon to enter into this obligation.

Surety by: \_\_\_\_\_  
(Seal)

Company Name

Signature

Title (e.g. Attorney-in-Fact)

Address

City

State

Zip

Principal by: \_\_\_\_\_

Name

Signature

Title

Address

City

State

Zip

**SEND BOND TO:** Construction Contractors Board  
PO Box 14140  
Salem, OR 97309-5052  
Telephone: (503) 378-4621

## **CONDITIONS OF THE CONTRACT**

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

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

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Endorsed by



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These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## TABLE OF CONTENTS

	<b>Page</b>
Article 1 – Definitions and Terminology .....	1
1.01 Defined Terms .....	1
1.02 Terminology.....	5
Article 2 – Preliminary Matters.....	6
2.01 Delivery of Bonds and Evidence of Insurance.....	6
2.02 Copies of Documents .....	6
2.03 Commencement of Contract Times; Notice to Proceed .....	6
2.04 Starting the Work.....	7
2.05 Before Starting Construction .....	7
2.06 Preconstruction Conference; Designation of Authorized Representatives.....	7
2.07 Initial Acceptance of Schedules.....	7
Article 3 – Contract Documents: Intent, Amending, Reuse.....	8
3.01 Intent.....	8
3.02 Reference Standards .....	8
3.03 Reporting and Resolving Discrepancies.....	8
3.04 Amending and Supplementing Contract Documents .....	9
3.05 Reuse of Documents.....	10
3.06 Electronic Data .....	10
Article 4 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions; Reference Points .....	10
4.01 Availability of Lands .....	10
4.02 Subsurface and Physical Conditions.....	11
4.03 Differing Subsurface or Physical Conditions.....	11
4.04 Underground Facilities .....	13
4.05 Reference Points .....	14
4.06 Hazardous Environmental Condition at Site .....	14
Article 5 – Bonds and Insurance .....	16
5.01 Performance, Payment, and Other Bonds .....	16
5.02 Licensed Sureties and Insurers.....	16
5.03 Certificates of Insurance.....	16
5.04 Contractor’s Insurance.....	17
5.05 Owner’s Liability Insurance .....	18
5.06 Property Insurance .....	18
5.07 Waiver of Rights.....	20
5.08 Receipt and Application of Insurance Proceeds .....	21
5.09 Acceptance of Bonds and Insurance; Option to Replace .....	21

5.10	Partial Utilization, Acknowledgment of Property Insurer .....	21
Article 6 – Contractor’s Responsibilities .....		22
6.01	Supervision and Superintendence .....	22
6.02	Labor; Working Hours .....	22
6.03	Services, Materials, and Equipment .....	22
6.04	Progress Schedule .....	23
6.05	Substitutes and “Or-Equals” .....	23
6.06	Concerning Subcontractors, Suppliers, and Others .....	25
6.07	Patent Fees and Royalties.....	26
6.08	Permits.....	27
6.09	Laws and Regulations .....	27
6.10	Taxes .....	28
6.11	Use of Site and Other Areas .....	28
6.12	Record Documents .....	29
6.13	Safety and Protection.....	29
6.14	Safety Representative .....	30
6.15	Hazard Communication Programs.....	30
6.16	Emergencies.....	30
6.17	Shop Drawings and Samples .....	30
6.18	Continuing the Work .....	32
6.19	Contractor’s General Warranty and Guarantee.....	32
6.20	Indemnification .....	33
6.21	Delegation of Professional Design Services.....	34
Article 7 – Other Work at the Site .....		34
7.01	Related Work at Site .....	34
7.02	Coordination.....	35
7.03	Legal Relationships .....	35
Article 8 – Owner’s Responsibilities .....		36
8.01	Communications to Contractor .....	36
8.02	Replacement of Engineer .....	36
8.03	Furnish Data .....	36
8.04	Pay When Due.....	36
8.05	Lands and Easements; Reports and Tests.....	36
8.06	Insurance .....	36
8.07	Change Orders .....	36
8.08	Inspections, Tests, and Approvals .....	36
8.09	Limitations on Owner’s Responsibilities .....	36
8.10	Undisclosed Hazardous Environmental Condition .....	37
8.11	Evidence of Financial Arrangements.....	37
8.12	Compliance with Safety Program .....	37
Article 9 – Engineer’s Status During Construction .....		37
9.01	Owner’s Representative.....	37
9.02	Visits to Site.....	37
9.03	Project Representative .....	38

9.04	Authorized Variations in Work.....	38
9.05	Rejecting Defective Work.....	38
9.06	Shop Drawings, Change Orders and Payments .....	38
9.07	Determinations for Unit Price Work .....	38
9.08	Decisions on Requirements of Contract Documents and Acceptability of Work.....	39
9.09	Limitations on Engineer's Authority and Responsibilities.....	39
9.10	Compliance with Safety Program .....	40
Article 10 –	Changes in the Work; Claims .....	40
1001	Authorized Changes in the Work.....	40
1002	Unauthorized Changes in the Work .....	40
1003	Execution of Change Orders .....	40
1004	Notification to Surety.....	41
1005	Claims.....	41
Article 11 –	Cost of the Work; Allowances; Unit Price Work .....	42
11.01	Cost of the Work .....	42
11.02	Allowances.....	44
11.03	Unit Price Work .....	45
Article 12 –	Change of Contract Price; Change of Contract Times .....	45
1201	Change of Contract Price .....	45
1202	Change of Contract Times .....	47
1203	Delays.....	47
Article 13 –	Tests and Inspections; Correction, Removal or Acceptance of Defective Work .....	48
13.01	Notice of Defects .....	48
13.02	Access to Work.....	48
13.03	Tests and Inspections.....	48
13.04	Uncovering Work .....	49
13.05	Owner May Stop the Work.....	49
13.06	Correction or Removal of Defective Work.....	49
13.07	Correction Period.....	50
13.08	Acceptance of Defective Work .....	51
13.09	Owner May Correct Defective Work .....	51
Article 14 –	Payments to Contractor and Completion.....	52
14.01	Schedule of Values .....	52
14.02	Progress Payments .....	52
14.03	Contractor's Warranty of Title.....	54
14.04	Substantial Completion .....	55
14.05	Partial Utilization.....	55
14.06	Final Inspection.....	56
14.07	Final Payment .....	56
14.08	Final Completion Delayed.....	57
14.09	Waiver of Claims.....	58
Article 15 –	Suspension of Work and Termination .....	58

1501	Owner May Suspend Work.....	58
1502	Owner May Terminate for Cause .....	58
1503	Owner May Terminate For Convenience.....	59
1504	Contractor May Stop Work or Terminate.....	60
Article 16 – Dispute Resolution.....		60
16.01	Methods and Procedures .....	60
Article 17 – Miscellaneous.....		61
17.01	Giving Notice .....	61
17.02	Computation of Times .....	61
17.03	Cumulative Remedies.....	61
17.04	Survival of Obligations.....	61
17.05	Controlling Law.....	61
17.06	Headings.....	61



## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. 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 which is evidence of the agreement between Owner and Contractor covering the Work.
  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. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
  7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
  9. *Change Order*—A document recommended by Engineer 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, issued on or after the Effective Date of the Agreement.
  10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
  11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given 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 under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *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.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *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.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *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 for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *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 at the Site.
44. *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.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *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 Subcontractor.
48. *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 those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *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, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## *1.02 Terminology*

A. The words and terms discussed in Paragraph 1.02.B through F 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 Paragraph 9.09 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 14.04 or 14.05).

### *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. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- 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. 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 Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

### **2.02   *Copies of Documents***

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

### **2.03   *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 Agreement 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 Agreement. 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 Agreement, whichever date is earlier.

#### 2.04 *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 the date on which the Contract Times commence to run.

#### 2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), 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 Documents;
  - 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.

#### 2.06 *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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### 2.07 *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 2.05.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 component parts of the Work.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, 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. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

#### **3.02 Reference Standards**

- A. Standards, Specifications, Codes, Laws, and Regulations
  1. Reference to standards, specifications, manuals, 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, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement 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, 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 Contract Documents. 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 Contract Documents.

#### **3.03 Reporting and Resolving Discrepancies**

##### **A. Reporting Discrepancies:**



1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, 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) any standard, specification, manual, or code, or (c) 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 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
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 Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); 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 Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
  1. A Field Order;
  2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

### *3.05 Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier 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
  2. 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.
- 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.

### *3.06 Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60- day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

## **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

### *4.01 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. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the

Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

- 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 the Work is to be performed 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.

#### 4.02 *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 contiguous to the Site; and
- 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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.

#### 4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed 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 4.02 is materially inaccurate; or
- 2. is of such a nature as to require a change in the Contract Documents; 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 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition 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 meet any one or more of the categories described in Paragraph 4.03.A; and
  - 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 Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor made a final 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
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
  - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous 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 shall not be responsible for 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 such information and data;
  - b. locating all Underground Facilities shown or indicated in the Contract Documents;
  - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
  - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, 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 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 *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.

#### 4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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 any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) 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 4.06.E.

- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. 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, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. 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. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. 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: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. 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 a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 – BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, 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 Documents. 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 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds 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 each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, 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 requirements of Paragraphs 5.01.B and 5.02.

### 5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### 5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.



- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

#### *5.04 Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which 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:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
  - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
    - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
    - b. by any other person for any other reason;
  - 5. 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; and
  - 6. 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 motorvehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
  - 1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or

entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and 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;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
  - a. Such insurance shall remain in effect for two years after final payment.
  - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

#### *5.05 Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, 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.

#### *5.06 Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full 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 interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of

them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;

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, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, 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.
  3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
  5. allow for partial utilization of the Work by Owner;
  6. include testing and startup; and
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### *5.07 Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies 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 of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their 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 Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (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 as trustee 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 utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.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, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, 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. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

## ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

### 6.01 *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. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- 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.

### 6.02 *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. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

### 6.03 *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.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, 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.

#### 6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 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 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

#### 6.05 *Substitutes and "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 specification or description 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 or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
  - 1. *"Or-Equal" Items:* If in Engineer's sole discretion 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, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, 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; and
      - 3) it has a proven record of performance and availability of responsive service.
    - 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.

## 2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. 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:
  - 1) shall certify that the proposed substitute item will:
    - a) perform adequately the functions and achieve the results called for by the general design,
    - b) be similar in substance to that specified, and
    - c) be suited to the same use as that specified;
  - 2) will state:
    - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
    - b) 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
    - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
  - 3) will identify:
    - a) all variations of the proposed substitute item from that specified, and
    - b) available engineering, sales, maintenance, repair, and replacement services; and
  - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of



other contractors affected by any resulting change.

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. 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.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

#### 6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned

by such replacement, and an appropriate Change Order will be issued. 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 any right of Owner or Engineer to reject defective Work.

- C. 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. 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 moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. 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.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (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 such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### *6.07 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.

#### *6.08 Permits*

- A. Unless otherwise provided in the Supplementary Conditions, 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 opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### *6.09 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 knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear 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. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

#### 6.10 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.

#### 6.11 Use of Site and Other Areas

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. 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 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 by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other 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 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 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 property to stresses or pressures that will endanger it.

#### 6.12 *Record Documents*

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

#### 6.13 *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, 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 owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- 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 6.13.A.2 or 6.13.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 (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 for protection of the Work 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 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### *6.14 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.

#### *6.15 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.

#### *6.16 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.

#### *6.17 Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

##### *1. Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- 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 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
  - b. 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 6.17.D.
- B. 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. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:
  - a. reviewed and coordinated each 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 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 and approval of that 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 both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

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 (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval 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 6.17.C.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's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

*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.

*6.18 Continuing the Work*

- A. 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, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

*6.19 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 representation of 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 or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

#### 6.20 *Indemnification*

- A. 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 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 6.20.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 6.20.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.

## **6.21**    *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 law.
- 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, Shop Drawings 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 6.21, 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 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## **ARTICLE 7 – OTHER WORK AT THE SITE**

### **7.01**    *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
  - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
  - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe

access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. 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. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, 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.

#### *7.02 Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
  - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
  - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### *7.03 Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

## ARTICLE 8 – OWNER’S RESPONSIBILITIES

### 8.01 *Communications to Contractor*

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

### 8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

### 8.03 *Furnish Data*

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

### 8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

### 8.05 *Lands and Easements; Reports and Tests*

- A. Owner’s duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

### 8.06 *Insurance*

- A. Owner’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

### 8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

### 8.08 *Inspections, Tests, and Approvals*

- A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

### 8.09 *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.

**8.10** *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

**8.11** *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.

**8.12** *Compliance with Safety Program*

- 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 pursuant to Paragraph 6.13.D.

**ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

**9.01** *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 Documents.

**9.02** *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 9.09. 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.

### *9.03 Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. 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.

### *9.04 Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which 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. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

### *9.05 Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

### *9.06 Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with 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, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

### *9.07 Determinations for Unit Price Work*

- A. 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 Paragraph 10.05.

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

*9.09 Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents 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 14.07.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 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

#### *9.10 Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

### **ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

#### *10.01 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 by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

#### *10.02 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 as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

#### *10.03 Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
  - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
  - 2. 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; and



3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

#### *10.04 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.

#### *10.05 Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
  1. deny the Claim in whole or in part;
  2. approve the Claim; or
  3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### *11.01 Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs 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 11.01.B, 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, 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 11.01.

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 5.06.D), 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 telegrams, long distance telephone calls, telephone 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 Contractor is required by the Contract Documents to purchase and maintain.

B. *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 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which 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 Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work 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 or when a Claim for an 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 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, 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.

## 11.02 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:*

1. Contractor agrees that:

- a. 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
- b. 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:*

1. 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.

*11.03 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. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- 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. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 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; and
  2. there is no corresponding adjustment with respect to any other item of Work; and
  3. Contractor believes that Contractor 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 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

### 12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for 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, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
  - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
  - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* 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 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 11.01.A.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 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
    - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
    - 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 12.01.C.2.a through 12.01.C.2.e, inclusive.

## *12.02 Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

## *12.03 Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, 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 Price or the Contract Times, or both. 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.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is 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 described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### *13.01 Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

### *13.02 Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests 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.

### *13.03 Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
  - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
  - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
  - 3. as otherwise specifically provided in the Contract Documents.
- 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 and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. 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.



- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

#### *13.04 Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, 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, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, 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 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 Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. 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, Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### *13.05 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, 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.

#### *13.06 Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. 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 removal (including but not limited to all costs of repair or replacement of work of others).

- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

### *13.07 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 land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. repair such defective land or areas; or
  2. correct such defective Work; or
  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 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. 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) will be paid by Contractor.
- 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 13.07, 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 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

### *13.08 Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may

do so. 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) 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 pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

### *13.09 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 in accordance with Paragraph 13.06.A, 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, 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 13.09, 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, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, 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 (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) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. 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 13.09.

## ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A 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.

### 14.02 *Progress Payments*

#### *A. 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 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.

#### *B. Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, 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 9.07, 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 Documents; 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 moneys 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 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
  - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

*D. Reduction in Payment:*

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. 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;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or
  - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
- 2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action 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, when Contractor remedies the reasons for such action.
- 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 14.02.C.1 and subject to interest as provided in the Agreement.

*14.03 Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### *14.04 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 (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- 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 tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. 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 tentative list.

#### *14.05 Partial Utilization*

- 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. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and 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 14.04.A through D for that part of the Work.
2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and 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 14.04 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 5.10 regarding property insurance.

#### *14.06 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 is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### *14.07 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, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
  - b. consent of the surety, if any, to final payment;
  - c. a list of all Claims against Owner that Contractor believes are unsettled; and



- d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) 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.

*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 Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. 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 14.09. 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. Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

*14.08 Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

#### *14.09 Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
  2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

### **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

#### *15.01 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 notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

#### *15.02 Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will 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 established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's repeated disregard of the authority of Engineer; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. 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
  3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.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 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) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed 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.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. 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. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

### *15.03 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;
  3. 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) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### *15.04 Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) 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 15.03.
- 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 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 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 16 – DISPUTE RESOLUTION**

#### *16.01 Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
  1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
  2. agrees with the other party to submit the Claim to another dispute resolution process; or

3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

## **ARTICLE 17 – MISCELLANEOUS**

### *17.01 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 to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
  2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### *17.02 Computation of Times*

- A. When any period of time is referred to in the Contract Documents 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.

### *17.03 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 Documents. 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.

### *17.04 Survival of Obligations*

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

### *17.05 Controlling Law*

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

### *17.06 Headings*

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

**SECTION 00800**  
**SUPPLEMENTARY CONDITIONS**  
**TABLE OF CONTENTS**

**ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**

- 1.01 Defined Terms

**ARTICLE 2 – PRELIMINARY MATTERS**

- 2.02 Copies of Documents
- 2.05 Before Starting Construction
- 2.06 Preconstruction Conference

**ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

- 3.01 Intent
- 3.07 Related Requirements

**ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS**

- 4.01 Availability of Lands
- 4.06 Hazardous Environmental Conditions at Site

**ARTICLE 5 – BONDS AND INSURANCE**

- 5.01 Performance, Payment and Other Bonds
- 5.03 Certificates of Insurance
- 5.04 Contractor's Liability Insurance
- 5.05 Owner's Liability Insurance
- 5.07 Waiver of Rights
- 5.10 Partial Utilization, Acknowledgement of Property Insurer

**ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES**

- 6.01 Supervision and Superintendence
- 6.04 Progress Schedule
- 6.06 Concerning Subcontractor, Suppliers, and Others
- 6.07 Contractor's General Warranty and Guarantee
- 6.19 Indemnification

**ARTICLE 8 – OWNER'S RESPONSIBILITIES**

- 8.02 Replacement of Engineer

**ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

- 9.08 Decisions on Requirement of Contract Documents and Acceptable Work

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIME

12.01 Change of Contract Price

12.03 Delays

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.07 Correction Period

13.08 Acceptance of Defective Work

13.09 Owner May Correct Defective Work

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.02 Progress Payments

ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

ARTICLE 17 – MISCELLANEOUS

17.05 Controlling Law

17.07 Payment of Bills by Contractor

17.08 Subcontracts

17.09 Agency and Utility Contacts

17.10 Administrative Forms and Procedures

17.11 Contractor Reporting

**SECTION 00800**  
**SUPPLEMENTARY CONDITIONS**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract 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. The numbering system used corresponds to Articles and Paragraphs of the General Conditions (Section 00700).

**1.01 Definitions**

Replace or add the following to the definitions listed in GENERAL CONDITIONS, Section 00700, Subsection 1.10, Defined Terms.

The words: directed, required, permitted, ordered, requested, instructed, designated, considered, necessary, prescribed, approved, acceptable, satisfactory, or words like import, refer to actions, expressions, and prerogatives of the Engineer.

Acceptance of Work - All work required by the Contract Documents will be considered accepted upon approval of the Certificate of Completion by Owner.

Acts of God - An Act of God is to be construed to mean an earthquake, flood, cloudburst, tornado, hurricane or other phenomenon of nature of catastrophic proportions or intensity.

Advertisement - The public announcement inviting bids for work to be performed or materials to be furnished.

Bidder - Any individual, firm, co-partnership, corporation, or combination thereof, submitting a Bid in response to the Advertisement calling for bids on the work contemplated in the Contract.

Calendar Day - Any and every day shown on the calendar, Sundays and Holidays included, beginning and ending at midnight.

Certificate of Completion - Owner's standard form which must be signed by the Contractor attesting to the satisfactory completion of the improvement, with ultimate approval and acceptance of the Certificate by Owner.

Consultant - An individual or entity having a contract with Owner to furnish services as Owner's independent professional associate or consultant with respect to the Project.

Contract Pay Items - A specific unit of work for which a price or basis of payment is provided in the Contract.

County - Lincoln County.

Easement - The right to use a defined area of property for specific purpose/purposes as set forth in the Specifications.

Engineer - The designated employee of Owner acting directly or through duly authorized representatives in the administrative management of the Contract.

Engineer's Consultant(s) - Consultants engaged by the Owner performing services under the administrative management of the Engineer.

Equal - A substitute for a product, component or process whose use in or on a particular



project is specified. The "Equal" substitute shall be the same or better for that named, in function, performance, reliability, quality, and general configuration. Equality in reference to the project design requirements shall be determined by the Engineer prior to inclusion in the project. Facsimile transmissions do not constitute notice as defined herein.

Extra Work - Work not included in any of the contract items as awarded but determined by the Engineer necessary to complete the project according to the intent of the contract. This may be paid on a negotiated price, force account, or established price basis. Once a price has been negotiated and basis of payment established, any changes to this extra work will be handled as "changed" work, which cannot be paid on a force account basis.

Force Account Work - Items of extra work ordered by the Engineer that are to be paid according to Paragraph 11.04 in the Supplementary Conditions.

Issuing Office - The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

Lump Sum - A method of payment providing for one all-inclusive payment for the work described to be done, complete and accepted without further measurement, as such work is covered under the applicable lump sum pay item.

Notice - A written communication delivered by hand or by mail to an individual, employee, agent, official, or officer of the Contractor authorized to receive notice as set forth in the Contract Documents or as prescribed by law. If delivered or sent by mail it shall be addressed to the last known business address of the individual, firm or corporation. In the case of a Contract with two

(2) or more persons, firms or corporations, notice to one shall be deemed notice to all.

OSHD Standard Specification - The latest edition, at the time of entering the contract, of the Standard Specifications for Highway Construction, Oregon State Highway Division, available from the Oregon State Highway Division, Salem, Oregon.

Owner – City of Depoe Bay

Permit - Written authorization to do work.

Plans - The official plans, profiles, cross sections, elevations, details, and other working, supplementary and detail drawings, or reproductions thereof, signed by the Engineer, which show the location, character, dimensions and details of the work to be performed. Plans may either be bound in the same book as the balance of the Contract Documents or bound in separate sets, and are a part of the Contract Documents, regardless of the method of binding.

Project Manager - The authorized representative of the Owner assigned to administer the contract for each project.

Resident Project Representative – Engineer's agent acting under the supervision of the Engineer.

Responsible and Responsive Bidder - This term denotes a Bidder who has the capability in all respects to perform fully the Contract, and the integrity and reliability which will assure good performance and who has submitted a Bid under a competitive sealed bid which conforms in all respects to the Invitation for Bids.

Right-of-Way - A general term denoting public land, property, or interest therein,

acquired for or devoted to a public street, public access or public use.

Roadway - That portion of a street and its appurtenances between curbs, gutters, or ditches, primarily used for vehicular traffic.

Shop Drawings and Submittals - Supplementary plans or data or other information which the Contract requires the Contractor to submit to the Engineer.

Shown - As used herein, the word shown, or as shown, shall be understood to refer to work shown on the Plans in the Contract.

Specified - As used herein, the word specified, or as specified, means as required by the Contract.

Street - Any public right-of-way such as, but not limited to an avenue, boulevard, alley, lane, bridge, bicycle path, road, public thoroughfare or public way and any land over which a Right-of- Way has been obtained or granted for any purpose of public travel.

Subcontractor - An individual, partnership, firm, corporation, or any combination thereof, to whom the Contractor sublets part of the Work.

Substantial Completion – All work identified in the Contract Documents has been installed and successfully tested with the exception of: minor cleanup/restoration of the areas disturbed by construction.

Successful Bidder - The lowest, qualified, responsible and responsive Bidder who has substantially complied with all prescribed public bidding procedures and requirements; who has not been disqualified by the Owner; and to whom the Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

Unit Price - The dollar amount bid to do a unit of Contract work.

Utility - Tracks, overhead or underground wires, pipelines, conduits, ducts, or structures, owned, operated or maintained in or across a public right-of-way or easement.

Work - All material, labor, tools, equipment, and all appliances, machinery, transportation, and appurtenances necessary to perform and complete the Contract, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete and satisfactory system or structure.

Working Day - Any and every day shown on the calendar, excluding Saturdays, Sundays and Legal Holidays as set forth in ORS 227.334 and Legal Holidays observed by the OWNER. Legal Holidays observed by the OWNER are: New Year's Day (January 1), Martin Luther King Jr. Day (third Monday of January), Presidents Day (Third Monday in February), Memorial Day (Last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Veteran's Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25). Whenever a holiday falls on a Saturday, the preceding day in the regular work week shall be observed as a legal holiday. Whenever a holiday falls on a Sunday, the following day in the regular work week shall be observed as a legal holiday.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.02 Copies of Documents

In Paragraph 2.02A, change ten to six.

2.05 Before Starting Construction

Add the following new paragraphs after paragraph 2.05.A

- B. Contractor's Safety Plan: Before any Work at the site is started, Contractor shall prepare and submit a site and project specific safety plan for Owner's project records. The safety plan shall identify Contractor's process for ensuring that safety is the highest priority on the project. The submittal shall include a signed statement that the Contractor is solely responsible for safety on the project, that it will conduct its operations in accordance with all applicable safety standards and requirements, and that it will continually review its operations to ensure that safe conditions are provided at all time.
- C. Contractor Drug Testing Program: Before any Work at the site is started, Contractor shall provide evidence that it has an employee drug testing program in-place that is administered and enforced by the Contractor in accordance with ORS 279C.505.

2.06 Preconstruction Conference

The preconstruction conference will be scheduled within five (5) days of the Notice to Proceed.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

Add the following to Paragraph 3.01.A

In resolving inconsistencies about two or more components of the Contract Documents, precedence shall be given in the following order:

1. Permits included in the Contract Documents
2. Agreement
3. Addenda
4. Contractor's Bid (Bid Form)
5. Supplementary Conditions
6. General Conditions
7. Specifications – Division 01
8. Specifications – Divisions 02-16
9. Drawings
10. Bonds

Change orders, Work Change Directives, Field Orders, Engineer's written interpretation and clarifications and Notice to Proceed, in precedence listed, will take precedence over all other Contract Document components reference herein. Figure dimensions on Drawings take precedence over scaled dimensions. The Drawings with the higher level of detail take precedence over less detailed Drawings,

Add the following paragraph 3.07:

3.07 Related Requirements

Each section of the specifications contains a paragraph titled to the effect "Related Requirements Specified Elsewhere." The list in this paragraph is furnished for convenience and is not meant to be exhaustive. The Contract Documents are complementary as described in the General Conditions.

#### ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

##### 4.01 Availability of Lands

Delete paragraph 4.01.B.

##### 4.06 Hazardous Environmental Conditions at Site

Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following:

- A. No reports related to Hazardous Environmental Conditions at the Site are known to Owner.
- B. Not used.

#### ARTICLE 5 – BONDS AND INSURANCE

##### 5.01 Performance, Payment, and Other Bonds

Delete phrase in paragraph 5.01B "named in the list ..... U.S. Department of Treasury", and substitute "acceptable to Owner".

Amend paragraph 5.01B by adding the following sentence at the end of the paragraph:

The performance bond shall include, in part, provisions to indemnify and hold harmless Owner, Engineer, Engineer's Consultants and their respective officers, directors, agent and employees as provided in paragraph 6.20.

##### 5.03 Certificates of Insurance

Amend paragraph 5.03.A as follows:

Replace wording "additional insured" found in four places with "expressly scheduled additional insured".

Add the following new paragraph after paragraph 5.03.E.

F. The required insurance for the project shall not be canceled or materially changed without sixty (60) days written notice to the Owner, and shall include a statement that no act on the part of the insured shall affect the coverage afforded to the Owner under this insurance. This policy(s) shall be primary insurance as respects to the Owner. Any insurance or self-insurance maintained by the Owner shall be excess and shall not contribute to it.

Coverage in the minimum amounts set forth herein, or as provided by the Contractor, if greater, shall not be construed to relieve the Contractor from liability in excess of such coverage limits.

Compliance. Failure of the Contractor to fully comply with these requirements will be considered a material breach of Contract and shall be cause for immediate termination of the Contract at the option of the Owner.

The Owner will not pay progress estimate payment due under Article 14 of the Standard General Conditions until the Contractor has fully complied with this section. This remedy is not exclusive and the Owner may take such other action as is available to it under other provisions of the

Contract, or otherwise in law.

5.04 Contractor's Liability Insurance

Delete paragraph 5.04.B.1 and replace with the following:

"With respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, the insurance, other than the professional liability and pollution liability insurance, shall include the OWNER, OWNER'S AGENTS, ENGINEER, ENGINEER'S Consultants, and all other individuals or entities identified in the Supplementary Conditions, as an expressly scheduled additional insured, all of whom shall be listed as expressly scheduled additional insured, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such expressly scheduled additional insured's, and the insurance afforded to these expressly scheduled additional insured's shall provide primary coverage for all claims covered thereby. A blanket endorsement or automatic endorsement is not sufficient to meet this requirement. Proof of insurance must include a copy of the endorsement showing all additional insureds listed as scheduled insured;"

Amend paragraph 5.04.B.4 by replacing the number "30" with "60".

Amend paragraph 5.04B.4 by striking out the words "to whom a certificate of insurance has been issued".

Amend paragraph 5.04B.6.b by striking out the words "to whom a certificate of insurance has been issued".

1. The limits of liability for the insurance required by 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
  - a. Applicable Oregon State Statutory.
  - b. Applicable Federal Statutory.
  - c. Employer's Liability Statutory
2. Contractor's General Liability under ORS 30.270 and Paragraphs 5.04 A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverage and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

a.	General Aggregate	\$1,000,000
b.	Products-Completed Operations Aggregate	\$1,000,000
c.	Personal and Advertising Injury	\$1,000,000
d.	Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
e.	Property Damage Liability Insurance will provide Explosion, Collapse, and Underground Coverage where applicable	
f.	Excess or Umbrella Liability	\$1,000,000
	General Aggregate	\$1,000,000
	Each Occurrence	\$1,000,000
3. Automobile Liability under Paragraph 5.04 A.6 of the General Conditions:

- a. Bodily Injury:
 

Each person	\$1,000,000
Each occurrence	\$1,000,000
  - b. Property Damage:
 

Each Accident	\$1,000,000
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  - c. Combined Single Limit of \$1,000,000
4. The Contractual Liability coverage required by Paragraph 5.04.B4 of the General Conditions shall provide coverage for not less than the following amounts:
  - a. Bodily Injury:
 

Each Accident	\$1,000,000
Annual Aggregate	\$1,000,000
  - b. Property Damage:
 

Each Accident	\$1,000,000
Annual Aggregate	\$1,000,000
5. The Contractor shall name as an expressly scheduled additional insured on all insurance certificate(s) the following jurisdictions and organizations, their employees, elected officers and agents:
  - City of Depoe Bay - *Owner*
  - Designated Employee of City of Depoe Bay per paragraph 1.01.19 - *Engineer*
  - PND Engineers, Inc. – *Engineer’s Consultant*

A blanket endorsement or automatic endorsement is not sufficient to meet this requirement. Proof of insurance must include a copy of the endorsement showing the County, Owner, Engineer and Engineer’s Consultant and others shown above as a scheduled insured.

Add the following new paragraph after 5.04.B.6

7. With respect to all insurance required by this paragraph 5.04, Contractor agrees to wave all rights of subrogation against Owner, Engineer, Engineer’s Consultants and each additional insured identified in the Supplemental Conditions.

A. Owner’s Liability Insurance

Delete Subsection 5.05 in its entirety.

5.07 Waiver of Rights

Add the following *italicized* clause to the end of the second sentence of paragraph 5.07.A: “All such policies shall contain ... additional insured thereunder *unless coverage is voided.*”

5.10 Partial Utilization, Acknowledgement of Property Insurer.

Add the following two paragraphs after 5.10.A

1. All insurance required by the Contract Documents, or by laws or regulations shall remain in full force and effect on all phases of the Work, whether or not the Work is occupied or utilized by Owner, until all Work included in the agreement has been completed and final payment has been made.
2. Nothing contained in the insurance requirements shall be construed as limited to the extent of Contractor's responsibility for payment of damages resulting from his operations under the Contract. Contractor agrees that he alone shall be completely responsible for procuring and maintaining full insurance coverage as provided herein or as may be otherwise required by the Contract Documents. Any approval by Owner or Engineer shall not operate to the contrary.

#### ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

##### 6.01 Supervision and Superintendence.

Add to the end of Paragraph 6.01.B. "The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor".

##### 6.04 Progress Schedule.

Add to the end of Paragraph 6.04.A.2: "If Engineer determines schedule adjustments are not appropriate, Engineer may withhold progress payments as in Paragraph 2.07."

##### 6.06 Concerning Subcontractor, Suppliers, and Others.

Add to the end of Paragraph 6.06.A. "Contractor shall ensure that any person entering into any subcontract to perform work under the Agreement is not listed on the current Oregon Bureau of Labor and Industries Debarred Contractor List".

##### 6.19 Contractor's General Warranty and Guarantee

Add the following new paragraph after 6.19.C.7

8. Any acceptance by Owner or any failure to do so.

Add the following new paragraph after 6.19.C:

- D. Contractor shall warrant the Work to be free of defects in materials and workmanship for a period of one year from the date of Final Acceptance by the Owner. The Contractor shall correct defective Work during the warranty period as described in General Conditions Paragraphs 13.07A and 13.07C. The two-year maintenance period required shall, with relation to such required repair, be extended one year from the date of completion of such repair. Where specific equipment or systems specify a longer warranty period, Contractor shall warrant the Work as defined above for the longer warranty period.

##### 6.20 Indemnification

In Paragraph 6.20. A, delete the word "negligent" in the first line.

#### ARTICLE 8 – OWNER'S RESPONSIBILITIES

##### 8.02 Replacement of Engineer

Replace paragraph 8.02.A with the following:

Should the Engineer be replaced, the Owner shall appoint a new engineer at their sole discretion,

whose status under the Contract Documents shall be that of the former Engineer.

#### ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION

##### 9.08 Decisions on Requirement of Contract Documents and Acceptability of Work

Delete Paragraph 9.08D.

#### ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

##### 10.01 Authorized Changes in the Work

Add the following to Paragraph 10.01.A.

When Owner requests contractor to present a proposal to accomplish a change in Work, the request will be made in the form of a Change Proposal Request (CPR) prepared by Engineer. The CPR will describe the change and request Contractor to propose a cost and contract time change. Contractor will propose cost and time changes, provide a breakdown for the costs, justification for any time requested, sign the CPR and return it to Engineer. Engineer will make recommendations to Owner, concerning acceptance. If the CPR is approved by Owner, the CPR will be included in a Change Order. Contractor is not authorized to proceed with a change contained in a CPR until the Change Order is properly signed and issued.

When the Contractor desires to propose changes to the Work, it may initiate a CPR in the same form as provided in Paragraph 10.01A above and submit the CPR to the Engineer for the Engineer’s review and recommendation.

#### ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRCT TIME

##### 12.01 Change of Contract Price

Change 12.01.C.2.f to read “if 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 and when both additions and credits are involved in the scope of any proposed change, the adjustment in Contractor’s fee shall be computed on the basis of the net change in cost in accordance with paragraph 12.01.C.a. to e. inclusive”.

##### 12.03 Delays

In the second sentence of paragraph 12.03.A, delete the words “acts or neglect of utility owners.”

Add the following to the end of paragraph 12.03.A and 12.03.C:

Time extensions will not be granted for rain, wind, flood, or other natural phenomena of normal intensity for the locality where Work is performed. For purpose of determining extent of delay attributable to abnormal weather phenomena, a determination shall be made by comparing the weather for minimum continuous period of at least one-fourth of the Contract Time involved with the average of the preceding 5-year climatic range during the same time interval based on U.S. Weather Bureau statistics for the locality where the Work is performed.

Amend the first sentence of paragraph 12.03.B by striking out the words “or the Contract Times, or both.”

#### ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

##### 13.07 Correction Period



In paragraph 13.07.A, first line, change the word “Substantial” to “Final.”

13.08 Acceptance of Defective Work

In paragraph 13.08.A, delete the words “as provided in paragraph 10.05” for the end of the fourth sentence.

13.09 Owner May Correct Defective Work

Delete paragraph 13.09.A and replace with the following:

Failure or refusal to comply with any Contract terms or conditions, will permit Owner to supply or correct any deficiency or defect or take other appropriate action without prejudice to any other remedy. Such action by Owner may be taken without any notice whatsoever. The cost of such action by Owner shall be deducted from the payment then or thereafter due Contractor. Contractor shall pay Owner any costs in excess of such payment due.

In paragraph 13.09.C delete the words “as provided in paragraph 10.05” for the end of the first sentence.

ARTICLE 14 – PAYMENT TO CONTRACTOR AND COMPLETION

14.02 Progress Payments

Add the following to the end of paragraph 14.02.A.1

Payment for materials and equipment satisfactorily stored at the site, but not incorporated into the Work is agreed to be paid on the basis of 80 percent of the invoice price(s). Contractor shall provide copies of invoices and keep spreadsheet accounting of such materials stored on site.

Delete Paragraphs 14.02.C.1 in the entirety and insert the following:

1. Thirty days after presentation of the Application for Payment to Owner with the amount requested in the Payment Request, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

Add the following at the end of paragraph 14.02:

- E. Progress payments will be made by Owner on a monthly basis within thirty (30) days after receipt of the Contractor’s estimate of work performed, or 15 days after the payment is approved by the Engineer, whichever is the later date. Negotiable warrants will be issued by Owner for the amount of the approved estimate, less five percent (5%) retainage. Such amount of retainage shall be withheld and retained by Owner until it is included in and paid to Contractor as part of the final payment of the Contract amount. Securities in lieu of retainage will be accepted, or if Contractor elects, retainage as accumulated will be deposited by Owner in an interest- bearing account pursuant to ORS Chapter 279C.560 for progress payments. After fifty percent (50%) of the Work under Contract is completed, and the Work is progressing satisfactorily, the Owner may elect to eliminate further retainage on any remaining monthly Contract payments. Said elimination or reduction of retainage shall be considered by Owner only upon written application by the Contractor, which application shall include written approval of the Contractor’s Surety.

ARTICLE 16 - DISPUTE RESOLUTION

Delete Paragraph 16.01 and replace with the following:

16.01 Methods and Procedures.

The parties agree that all disputes shall be litigated in the Circuit Court of the State of Oregon for the City of Depoe Bay, unless the parties mutually agree to arbitration.

ARTICLE 17 – MISCELLANEOUS

17.05 Controlling Law

Add the following to paragraph 17.05.A

1. In accordance with ORS 279C.505(2), prior to commencement of, and at all times during, the Contractor shall demonstrate to Owner that an employee drug testing program is in place, administered and enforced. Failure to do so shall be a breach of Contract.
2. In accordance with ORS 279C.370, within two (2) working hours following specified time for submission of Bids, the Bidder must submit a Disclosure of any first-tier subcontractor that:
  - A. Will be furnishing labor or will be furnishing labor and labor and materials in connection with the public improvement contract; and
  - B. Will have a contract value that is equal to or greater than five percent of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid.

The Disclosure of first-tier subcontractors shall include the name and address of each subcontractor; the registration number assigned to the subcontractor by the Construction Contractor's Board, if the subcontractor is required to have a certificate of registration issued by the Board; and the amount of subcontract. The lowest responsible bidder accepted by the Owner may substitute a first-tier subcontractor by submitting the name of the new subcontractor and the reason for the substitution in writing to the Owner. A prime contractor may substitute a first-tier subcontractor pursuant to this section in the following circumstances:

- (1) The subcontractor disclosed under ORS 279C.370 fails or refuses to execute a written contract after having had a reasonable opportunity to do so after the written contract, which must be reasonably based upon the general terms, conditions, plans and specifications for the public improvement project or the terms of the subcontractor's written bid is presented to the subcontractor by the contractor.
- (2) When the disclosed subcontractor becomes bankrupt or insolvent.
- (3) When the disclosed subcontractor fails or refuses to perform the subcontract.
- (4) When the disclosed subcontractor fails or refuses to meet the bond requirements of the contractor that had been identified prior to the bid submittal.
- (5) When the contractor demonstrates to the Owner that the subcontractor was disclosed as the result of an inadvertent clerical error.
- (6) When the disclosed subcontractor does not hold a certificate of registration from the Construction Contractor's Board and is required to be registered with the Board.
- (7) When the contractor determines that the work performed by the disclosed

subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or that the subcontractor is substantially delaying or disrupting progress of the work.

- (8) When the disclosed subcontractor is ineligible to work on a public improvement pursuant to the applicable statutory provisions.
- (9) When the substitution is for good cause. The Construction Contractors Board shall define "good cause" by rule. "Good cause" shall include, but not be limited to, the financial instability of a subcontractor. The definition of "good cause" shall reflect the least cost policy for the improvements established in ORS 279C.305.
- (10) When the substitution is reasonably based on the contract alternates chosen by the Owner.

Add the following Paragraph 17.07 as follows:

**17.07 Payment of Bills by Contractor**

- 1. The Contractor shall promptly make full payment for labor, materials, supplies and provisions at such times as they become due and payable to all persons supplying the Contractor or his subcontractor with labor, services, materials, supplies, or provisions for the prosecution of the work provided for in the contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract. The Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner for or on account of any labor, services, materials, supplies, or provisions furnished. The Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 2. In the event the Contractor fails, neglects, or refuses to make prompt and full payment of any claim for labor, services, materials, supplies or provisions furnished by any person in connection with the Contract, whether the labor, services, materials, supplies, or provisions to be performed are furnished for the Contractor or for a subcontractor, then and in such event, the Owner may withhold the amount of such claim by the person or persons furnishing such labor, services, materials, supplies, or provisions and deduct the amount of from funds due or to become due to the Contractor by reason of the Contract. The deduction of any such amounts because of claims and the manner herein authorized will not, however, relieve the Contractor or his surety from his or its obligation with respect to any unpaid claims. Sums withheld for the purposes named herein will be paid to the Contractor upon certification that said claims have been paid. Notwithstanding the foregoing, Owner, in its discretion, may pay such claims and deduct or charge that amount of the payment against funds due or to become due the Contractor by reason of the Contract.
- 3. If the Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the project within 30 days after receipt of payment from the Owner or Contractor, the Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten-day period that payment is due under ORS 279C.580(4) and any upon final payment unless payment is subject to a good-faith dispute as defined in ORS 279C.580. The rate of interest charge to the Contractor or first-tier subcontractor and the

amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is 30 days after the date when payment was received from the Owner or from the Contractor, but the rate of interest shall not exceed 30%. The amount of interest may not be waived. Contractor shall incorporate this provision into all subcontracts.

4. If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractor's Board unless payment is subject to a good-faith dispute as defined in ORS 279C.580. Resolution of such dispute and computation of amounts due plus interest, attorney's fees and costs shall be as provided in that statute. Contractor shall incorporate this provision into any subcontract related to this project.
5. The payment of a claim in the manner authorized under this section shall not relieve the Contractor or the surety from any obligation with respect to any unpaid claims.
6. Contractor shall pay subcontractor for satisfactory performance within ten days out of such amounts paid to Contractor by Owner, and shall at all times comply with ORS 279C.580, which is incorporated herein by reference.

Add the following paragraph 17.08:

17.08 Subcontracts

Contractor shall include in each first-tier subcontract, and shall require that each first-tier subcontractor include in each lower-tier subcontract; clauses for payments, interest penalties and conditions as required under ORS 279C.580, which is incorporated herein by reference.

Add the following paragraph 17.09:

17.09 Agency and Utility Contacts

The following Utility information is provided for the convenience of the Contractor.

Central Lincoln PUD	503-574-3681
CenturyLink	855-742-6062
NW Natural	503-220-2415
Broadstripe	503-255-4634

Add the following paragraph 17.10:

17.10 Administrative Forms and Procedures

The CONTRACTOR shall use administrative forms including but not limited to Requests for Information/Clarification (RFI/C), Request for Shutdown, Transmittal of Contractor's Submittals, Monthly Payment Estimate Summary, Change Order Requests, and Change Orders. The CONTRACTOR shall employ a numbering system for shop drawing submittals as directed by the ENGINEER.

Add the following paragraph 17.11:

17.11 Contractor Reporting

CONTRACTOR shall prepare and submit written Daily Construction Reports on a weekly basis that summarize the Work performed in the Project area, CONTRACTOR and subcontractor workforce

employed at the site, weather conditions, and the hour that work was started and completed each day, and other information that may be requested by the ENGINEER. The form of the report shall be as approved by ENGINEER.

**END OF SECTION**

**SECTION 00822 – PREVAILING WAGE RATE DETERMINATION**

**OREGON BUREAU OF LABOR AND INDUSTRIES**

**PREVAILING WAGE RATES  
for  
Public Works Contracts in Oregon  
Subject to The State PWR  
(Effective October, 2022)**

# TECHNICAL SPECIFICATIONS

# CONSTRUCTION PLANS