



Gregory L. Geist
Director

July 12, 2018

Board of County Commissioners
Water Environment Services Board

Members of the Board:

**Approval of an Amendment to the Intergovernmental Agreement with
Clackamas County Development Agency and Transfer of Easements for
Wetland Mitigation Services and Option to Purchase Property**

Purpose/Outcomes	Execution of an amendment to the intergovernmental agreement (“IGA”) with Clackamas County Development Agency (“Agency”) and easements required to be provided under the terms of the IGA.
Dollar Amount and Fiscal Impact	No Fiscal Impact. Approximately \$330,000 in value was exchanged from each agency to the other under the original IGA.
Funding Source	No Fiscal Impact. The value provided by each agency to the other is equivalent.
Duration	Ten years from the effective date of the IGA or at the time the wetland mitigation requirements have been completed by WES, whichever is sooner. The easements to be accepted by WES are permanent.
Previous Board Action	Original Intergovernmental Agreement with Agency approved by the Board on July 27 th , 2017.
Strategic Plan Alignment	Grow a vibrant economy. Build a strong infrastructure. Honor, utilize, promote and invest in our natural resources.
Contact Person	Dave Queener, Development Agency Program Supervisor, 503-742-4322 Ron Wierenga, Water Environment Services, 503-742-4581

BACKGROUND:

In January 2012, Clackamas County Service District No. 1 (“CCSD #1”) purchased a 15-acre property owned by the Carli family to construct a regional stormwater facility in support of water quality and stream health. The project also fulfills state and federal regulatory requirements to improve stormwater treatment in older areas that drain to urban creeks, like Carli Creek, which discharges into the Clackamas River. The main elements of the Carli Creek Enhancement and Water Quality Project (“Carli Creek Project”) include:

- 1) Re-routing stormwater conveyance systems along SE 120th St and SE Capps Road;
- 2) Regional water quality treatment facility;
- 3) Wetlands and upland habitat enhancement; and
- 4) Carli Creek habitat restoration for fish.

On July 27, 2017, the Development Agency and CCSD #1 executed an IGA to facilitate the Carli Creek Project by accommodating the construction of a new stormwater pipeline to divert runoff currently

discharged to Carli Creek to the new water quality treatment facility. The new stormwater pipeline is located on adjacent property to the east of the Carli Creek Project site. The adjacent property is currently owned by the Clackamas County Development Agency. The Development Agency is under contract to sell the adjacent property as a part of the Capps Road/Clackamas Industrial Area Opportunity Project. In order to fill wetlands on this property to facilitate development, the Agency is required to perform wetland mitigation. This mitigation has been incorporated as part of the Carli Creek Project.

CCSD #1 and the Development Agency identified a number of benefits in the coordination of these projects which will result in cost savings and efficiencies for both agencies. Accordingly, the Development Agency agreed to grant certain easements and transferred certain parcels of land to CCSD #1 in exchange for CCSD #1 incorporating and managing the wetland mitigation as part of the Carli Creek Project and granting an option to the Development Agency to allow them exclusive rights to purchase certain property owned by CCSD #1 adjacent to the Capps Road/Clackamas Industrial Area Opportunity Project.

On July 1, 2018, CCSD#1 assigned all of its rights and obligations under the IGA to Water Environment Services (“WES”).

An amendment to the original IGA is necessary to properly identify the location of the boundary line of the Agency’s property, which required CCSD#1 to adjust the location of a stormwater pipeline to ensure that the improvement did not encroach on the neighboring property. The amendment will substitute Exhibit A, which illustrates the proper location of the boundary line.

Section 2 of the IGA requires the Agency to convey a 15-foot permanent pipeline, stormwater detention, and maintenance easement to WES, along with a second 15-foot permanent access easement. The Agency and WES now wish to complete these obligations and execute the easements.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners, in its capacity as the governing body of the WES, approve the IGA amendment with Clackamas County Development Agency, and the conveyance of the easements described herein.

Respectfully submitted,



Greg Geist
Director, Water Environment Services

Attachments:

- Amendment #1 to the Intergovernmental Agreement
- Intergovernmental Agreement
- Permanent Pipeline, Stormwater Detention and Maintenance Easement
- Permanent Access Easement

**AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT
BETWEEN WATER ENVIRONMENT SERVICES AND
CLACKAMAS COUNTY DEVELOPMENT AGENCY FOR
CARLI CREEK RESTORATION AND MITIGATION**

THIS AMENDMENT (“Amendment”) is made and entered into by and between the Clackamas County Development Agency (hereafter called “Agency”), the urban renewal agency of Clackamas County, and Water Environment Services (hereafter called “District”), a municipal partnership entity formed pursuant to ORS Chapter 190, to update the descriptions of the easements associated with the stormwater pipeline and access road.

WHEREAS, the Agency and Clackamas County Service District No. 1 (“CCSD#1”) entered into a certain Intergovernmental Agreement, effective July 27, 2017 (the “IGA”);

WHEREAS, the IGA related to certain improvements associated with the Carli Creek Water Quality and Enhancement Project, as more particularly described in the IGA;

WHEREAS, after execution of the IGA, a question arose as to the location of the boundary line of the Agency’s property, which required CCSD#1 to adjust the location of a stormwater pipeline to ensure that the improvement did not encroach on the neighboring property;

WHEREAS, the parties desire to revise the IGA to correctly reflect the location of the stormwater pipeline and access road easement; and

WHEREAS, on July 1, 2018, Clackamas County Service District No. 1 assigned all of its rights and obligations under the IGA to District.

THEREFORE, the parties agree that the Agreement is amended as follows:

1. Exhibit A of the Agreement is hereby amended and replaced in its entirety with a revised Exhibit A-1 and Exhibit A-2, which are attached to this Amendment and fully incorporated herein.
2. Except as set forth herein, the Agreement is ratified and affirmed in all respects. No other amendment or modification of the IGA is intended or may be implied from the amendments set forth herein.
3. All terms not specifically defined herein shall be defined as set forth in the IGA.

IN WITNESS HEREOF, the Parties have executed this Amendment by the date set forth opposite their names below.

Clackamas County Development Agency

Water Environment Services

Jim Bernard, Chair

Jim Bernard, Chair

Date _____

Date _____

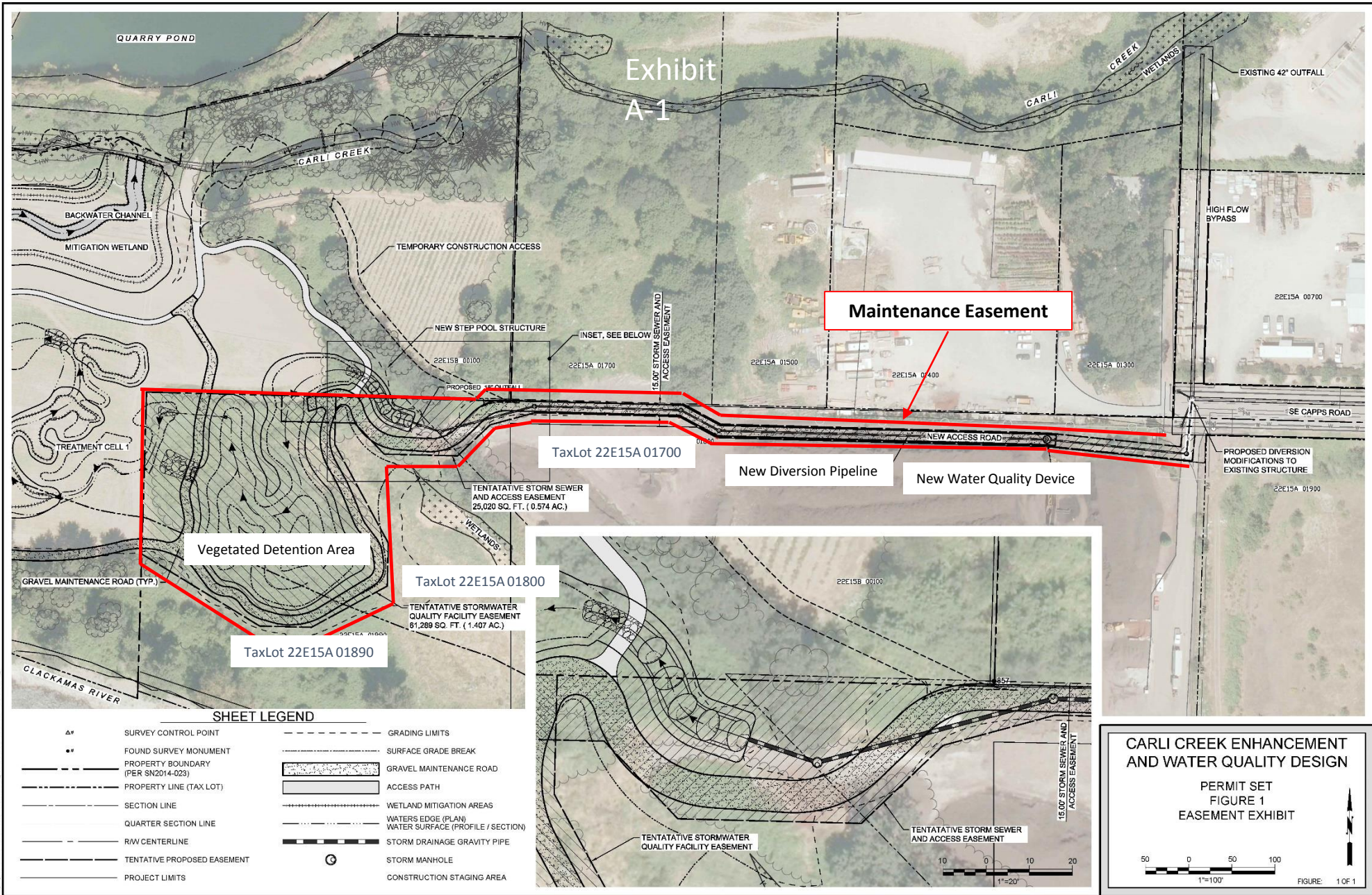
Recording Secretary

Exhibit List:

Exhibit A-1: Pipeline, Stormwater Detention, Maintenance, and Easement Map

Exhibit A-2: Access Easement Map

Exhibit A-1



Maintenance Easement

TaxLot 22E15A 01700

New Diversion Pipeline

New Water Quality Device

Vegetated Detention Area

TaxLot 22E15A 01800

TaxLot 22E15A 01890

SHEET LEGEND

▲	SURVEY CONTROL POINT	---	GRADING LIMITS
●	FOUND SURVEY MONUMENT	---	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	---	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	---	ACCESS PATH
---	SECTION LINE	---	WETLAND MITIGATION AREAS
---	QUARTER SECTION LINE	---	WATERS EDGE (PLAN)
---	RAW CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	⊙	STORM MANHOLE
		---	CONSTRUCTION STAGING AREA

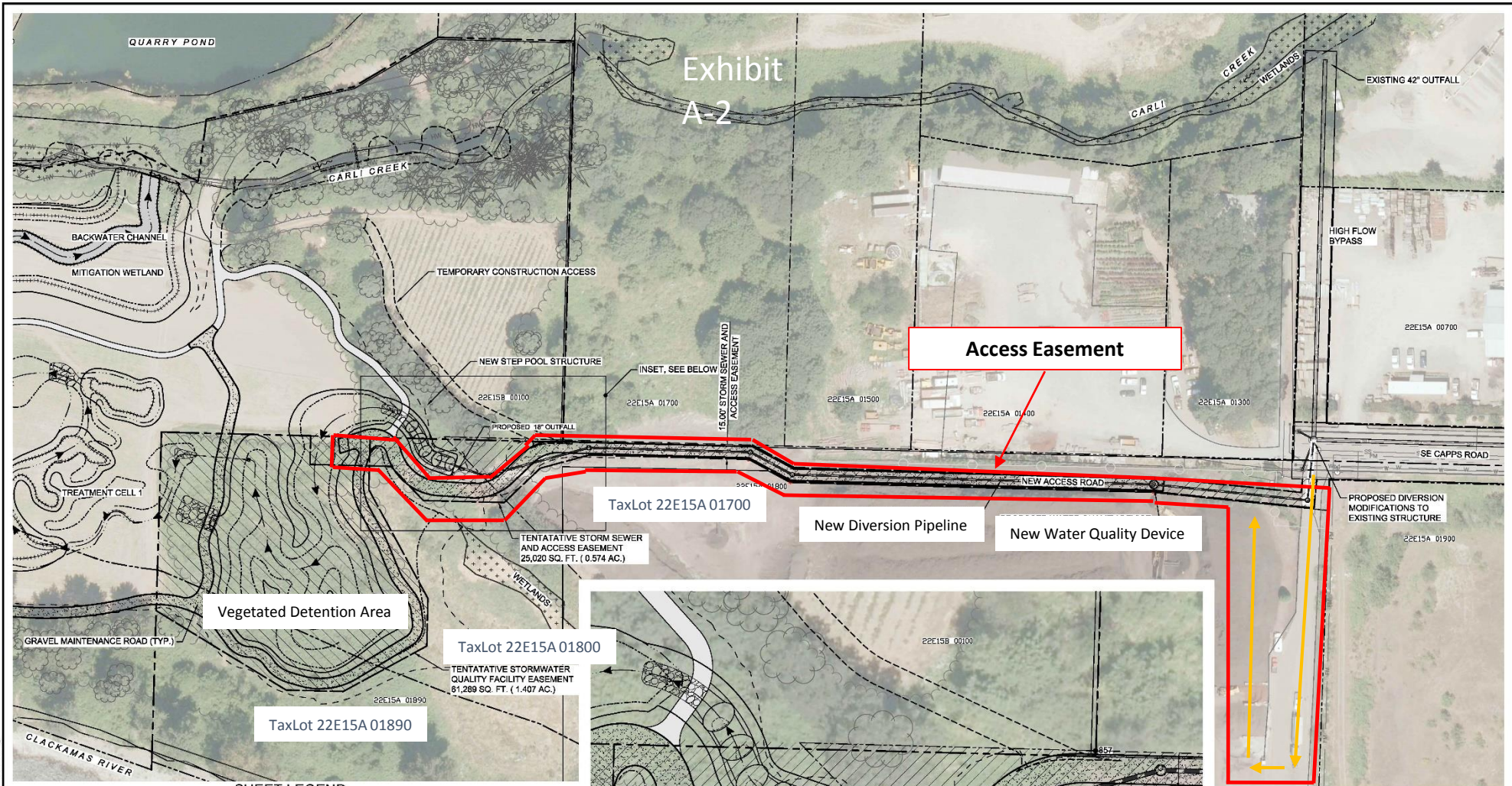
CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

FIGURE: 1 OF 1

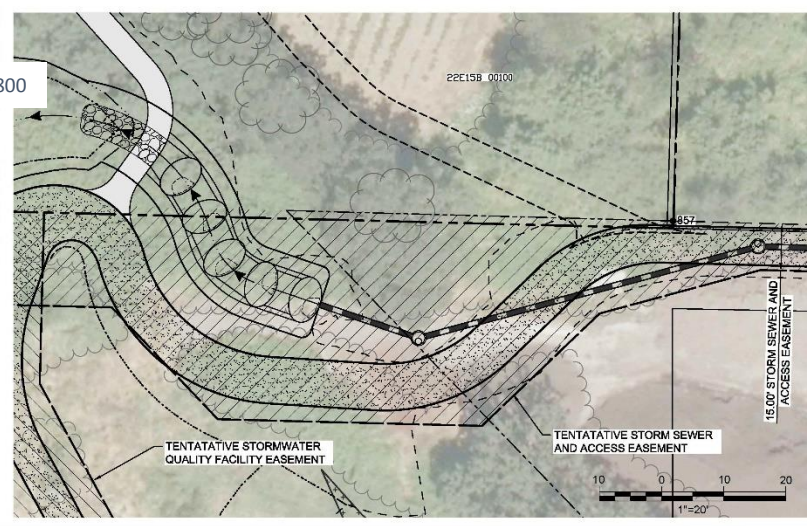
Project: March 15, 2018
 Drawing: 2018-11-15-2018-001_PDR-CARLI-CREEK-ENHANCEMENT-EXHIBIT.dwg

Exhibit A-2



SHEET LEGEND

△#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	---	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	▨	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	---	ACCESS PATH
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			CONSTRUCTION STAGING AREA



CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

Project: March 15, 2018
 C:\env\2017\0414-15655-000\POX\CAD\DWG\FIGURE\EASEMENT_EXHIBIT.dwg

Grantor: Clackamas County		State of Oregon
Development Agency		
Address: 150 Beaver Creek Road		
Oregon City, OR 97045		
		<i>DRAFT</i>
Grantee: Water Environment		
Services		
Address: 150 Beaver Creek Road		
Oregon City, OR 97045		
After Recording Return to:		
Water Environment Services		
150 Beaver Creek Road		
Oregon City, OR 97045		
Until a change is requested,		
all taxes shall be sent to:		
No Change		

PERMANENT NON-EXCLUSIVE ACCESS EASEMENT
(Corporate or Non Profit Grantor)

KNOW ALL PERSONS BY THESE PRESENTS, THAT Clackamas County Development Agency, the urban renewal agency of Clackamas County, a corporate body politic, (“Grantor”), for value received, hereby grants and conveys to Water Environment Services, a municipal partnership entity formed pursuant to ORS Chapter 190, (“Grantee”), its heirs, successors and assigns, a permanent non-exclusive easement for ingress and egress, in, under, upon, and across Grantor’s real property located in Clackamas County, State of Oregon, and with Grantor’s real property more particularly described as follows:

Grantor’s real property more particularly described as follows: A tract of fee land located in the NE ¼ of Section 15, T2S, R2E, WM, as more particularly described by that certain Warranty Deed recorded on October 8, 2009 as Document No. 2009-071163 in the Deed Records of Clackamas County, Oregon, and that Property Line Adjustment Deed (corrective) recorded on February 7, 2018 as Document No. 2018-008395 (the “Property”).

The Permanent Easement for ingress and egress is more particularly depicted in Figure “1” which is attached hereto and by this reference made a part hereof (the “Easement Area”).

This is a grant from one entity of Clackamas County to another in an intergovernmental transfer. Other consideration than money was the true and actual consideration for this conveyance.

Grantee shall have the right to enter upon and utilize the Easement Area for the purposes described in this document. Grantee may remove trees, shrubs, brush, paving or other materials within the Easement Area whenever necessary to accomplish these purposes. Grantee shall be responsible to restore any property disturbed by its use of the Easement Area to its original condition upon completion of their work or use and shall be responsible for any damage caused by same.

Neither Grantor nor Grantor’s successors in title shall construct or maintain any building or other structures upon the above described Easement Area which will unreasonably interfere with Grantee’s exercise of this easement.

Grantee shall be solely responsible for determining the location of all utilities in the Easement Area that may be affected by work performed in the Easement Area by or on behalf of Grantee. Grantee shall provide all required notification to the applicable utility companies and shall take all steps necessary to prevent damage to or disruption of all utilities and utility service and other equipment and systems in the Easement Area.

Except as otherwise provided, the Easement Area shall be non-exclusive. Grantor shall have the right to grant easements to others to cross or use the Easement Area now or in the future, provided the construction and installation of such do not unreasonably interfere with the repair, maintenance or operation of Grantee's facilities and related appurtenances.

Grantee covenants to and does hereby agree to indemnify, hold harmless and defend the Grantor and his successors and assigns, from and against all claims and all costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of any person or persons, or any accident, personal injury, loss or damage whatsoever caused to any person or entity or to the property of any person or entity as shall occur on or about the Easement Area as the result of the Grantee's exercise of the rights granted in this Agreement, or Grantee's failure to perform the obligations set forth in this Agreement. There shall be excluded from the foregoing indemnification the damages, costs and expenses to the extent that such damages, costs and expenses are caused by the negligence of Grantor, his agents, employees, representatives, or their successors and assigns.

The ingress and egress (the "Access") is currently improved and utilized and extends over the Property. Grantor hereby conveys to Grantee the right to access the Easement Area and the right to develop, operate and maintain the Access as now located on the Property for the purposes described herein. Grantee shall be solely responsible for the cost of the maintenance of the Access. Grantee shall agree to relocate the Access within a reasonable time upon written request from Grantor. Grantor shall provide an alternative route of ingress and egress on the Property which is acceptable to Grantee. Grantee shall assume the costs of relocating and reconstructing the alternative route of ingress and egress. Grantee's consent with regards to the relocation of the Access shall not be unreasonably withheld.

Statutory Land Use Disclaimer: Before signing or accepting this instrument, the person transferring fee title should inquire about the person's rights, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010. This instrument does not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify that the unit of land being transferred is a lawfully established lot or parcel, as defined in ORS 92.010 or 215.010, to verify the approved uses of the lot or parcel, to determine any limits on lawsuits against farming or forest practices, as defined in ORS 30.930, and to inquire about the rights of neighboring property owners, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010.

[Signature and Acknowledgment on Following Page]

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this _____ day of _____ 2018.

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY,
a corporate body politic under ORS Chapter 457

By: _____
Jim Bernard, Chair

STATE OF OREGON)
) ss.
County of _____)

This instrument was signed and attested before me this _____ day of _____ 2018,

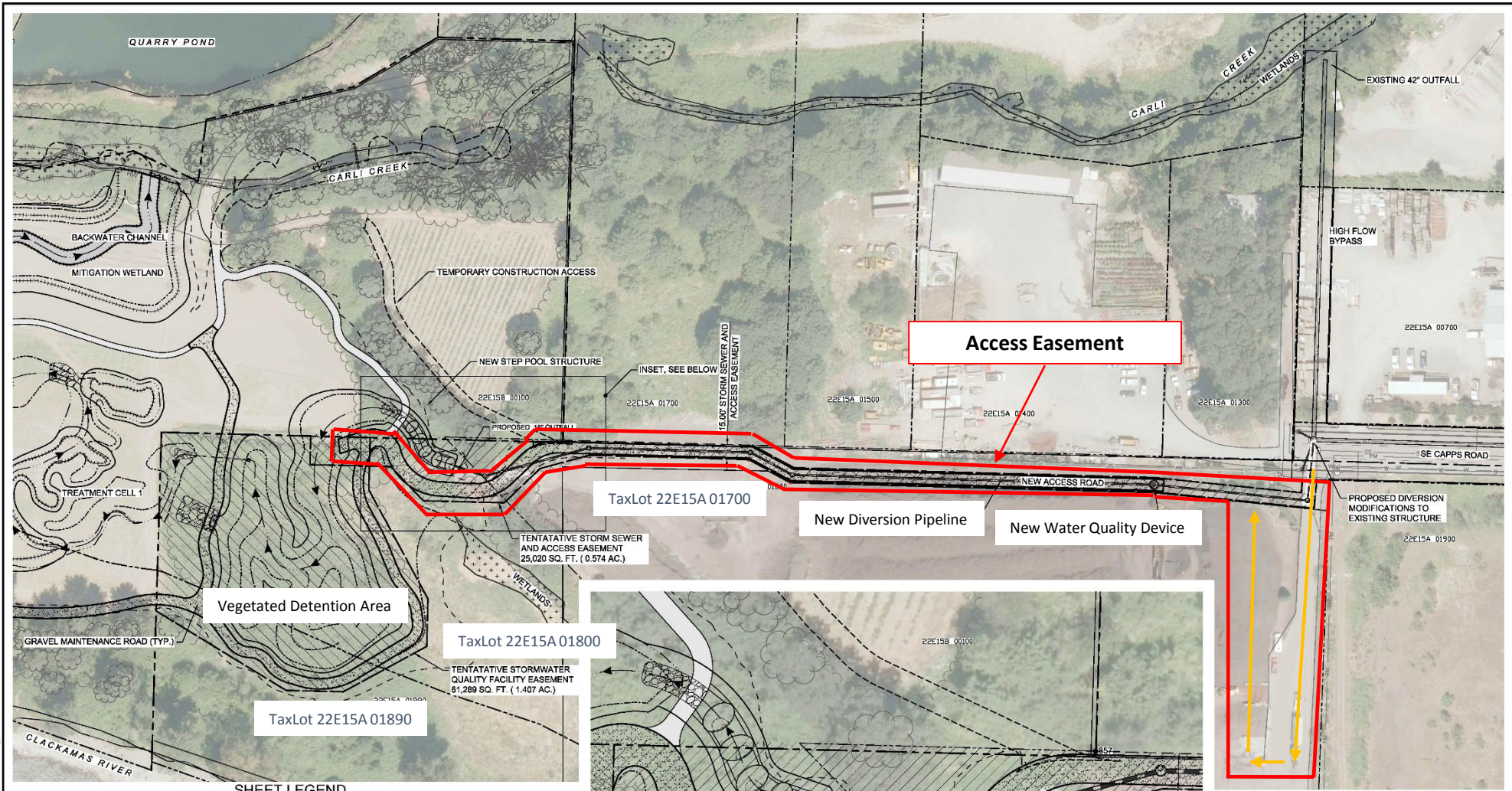
by Jim Bernard as Chair of the Clackamas County Development Agency.

Notary Public for State of Oregon
My Commission Expires: _____

ACCEPTED BY GRANTEE:
WATER ENVIRONMENT SERVICES,
a municipal partnership entity under ORS Chapter 190

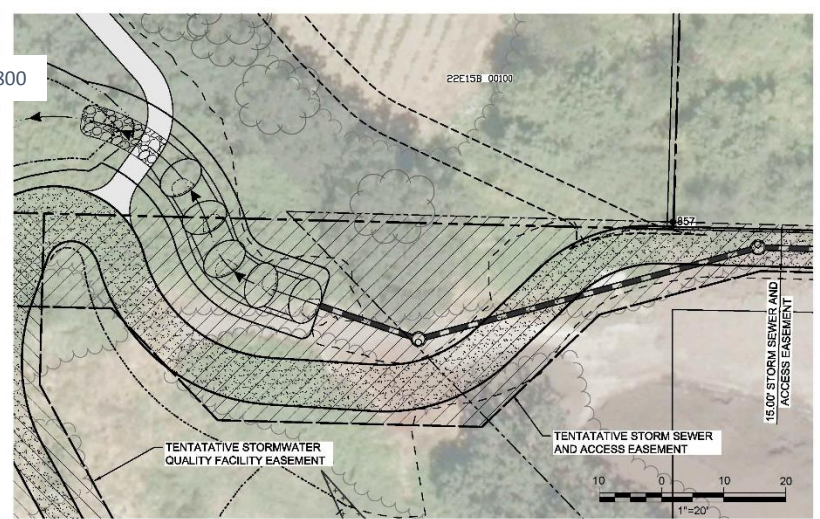
Chair

Date



SHEET LEGEND

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---	PROJECT LIMITS	Ⓞ	STORM MANHOLE
		---	CONSTRUCTION STAGING AREA



CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

FIGURE: 1 OF 1

Project: March 15, 2018
 Drawing: 2018-11-15-2595-000_PDR-CARLI-CREEK-ENHANCEMENT-EXHIBIT.dwg

Grantor: Clackamas County Development Agency		State of Oregon
Address: 150 Beavercreek Road Oregon City, OR 97045		
Grantee: Water Environment Services		
Address: 150 Beavercreek Road Oregon City, OR 97045		
After Recording Return to: Water Environment Services 150 Beavercreek Road Oregon City, OR 97045		
Until a change is requested, all taxes shall be sent to: No Change		

DRAFT

**PERMANENT NON-EXCLUSIVE PIPELINE,
STORMWATER DETENTION, MAINTENANCE**
(Corporate or Non Profit Grantor)

KNOW ALL PERSONS BY THESE PRESENTS, THAT Clackamas County Development Agency, the urban renewal agency of Clackamas County, a corporate body politic, (“Grantor”), for value received, hereby grants and conveys to Water Environment Services, a municipal partnership entity formed pursuant to ORS Chapter 190, (“Grantee”), its heirs, successors and assigns, a permanent non-exclusive easement to lay down, construct, reconstruct, replace, operate, inspect and perpetually maintain a storm water pipeline and vegetated stormwater detention facility in, under, upon, and across Grantor’s real property located in Clackamas County, State of Oregon, and with Grantor’s real property more particularly described as follows:

Grantor’s real property more particularly described as follows: A tract of fee land located in the NE ¼ of Section 15, T2S, R2E, WM, as more particularly described by that certain Warranty Deed recorded on October 8, 2009 as Document No. 2009-071163 in the Deed Records of Clackamas County, Oregon, and that Property Line Adjustment Deed (corrective) recorded on February 7, 2018 as Document No. 2018-008395 (the “Property”).

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Grantee shall have the right to enter upon and utilize the Easement Area for the purposes described in this document. Grantee may remove trees, shrubs, brush, paving or other materials within the Easement Area whenever necessary to accomplish these purposes. Except for the vegetated detention area covered by this Easement, Grantee shall be responsible to restore any property disturbed by its use of the Easement Area to its original condition upon completion of their work or use and shall be responsible for any damage caused by same.

Neither Grantor nor Grantor's successors in title shall construct or maintain any building or other structures upon the above described Easement Area which will unreasonably interfere with Grantee's exercise of this easement.

Grantee shall be solely responsible for determining the location of all utilities in the Easement Area that may be affected by work performed in the Easement Area by or on behalf of Grantee. Grantee shall provide all required notification to the applicable utility companies and shall take all steps necessary to prevent damage to or disruption of all utilities and utility service and other equipment and systems in the Easement Area.

Except as otherwise provided, the Easement Area shall be non-exclusive. Grantor shall have the right to grant easements to others to cross or use the Easement Area now or in the future, provided the construction and installation of such do not unreasonably interfere with the repair, maintenance or operation of Grantee's facilities and related appurtenances.

Grantee covenants to and does hereby agree to indemnify, hold harmless and defend the Grantor and his successors and assigns, from and against all claims and all costs, expenses and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of any person or persons, or any accident, personal injury, loss or damage whatsoever caused to any person or entity or to the property of any person or entity as shall occur on or about the Easement Area as the result of the Grantee's exercise of the rights granted in this Agreement, or Grantee's failure to perform the obligations set forth in this Agreement. There shall be excluded from the foregoing indemnification the damages, costs and expenses to the extent that such damages, costs and expenses are caused by the negligence of Grantor, his agents, employees, representatives, or their successors and assigns.

Statutory Land Use Disclaimer: Before signing or accepting this instrument, the person transferring fee title should inquire about the person's rights, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010. This instrument does not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify that the unit of land being transferred is a lawfully established lot or parcel, as defined in ORS 92.010 or 215.010, to verify the approved uses of the lot or parcel, to determine any limits on lawsuits against farming or forest practices, as defined in ORS 30.930, and to inquire about the rights of neighboring property owners, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010.

[Signature and Acknowledgment on Following Page]

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this _____ day of _____ 2018.

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY,
a corporate body politic under ORS Chapter 457

By: _____
Jim Bernard, Chair

STATE OF OREGON)
) ss.
County of _____)

This instrument was signed and attested before me this _____ day of _____ 2018,

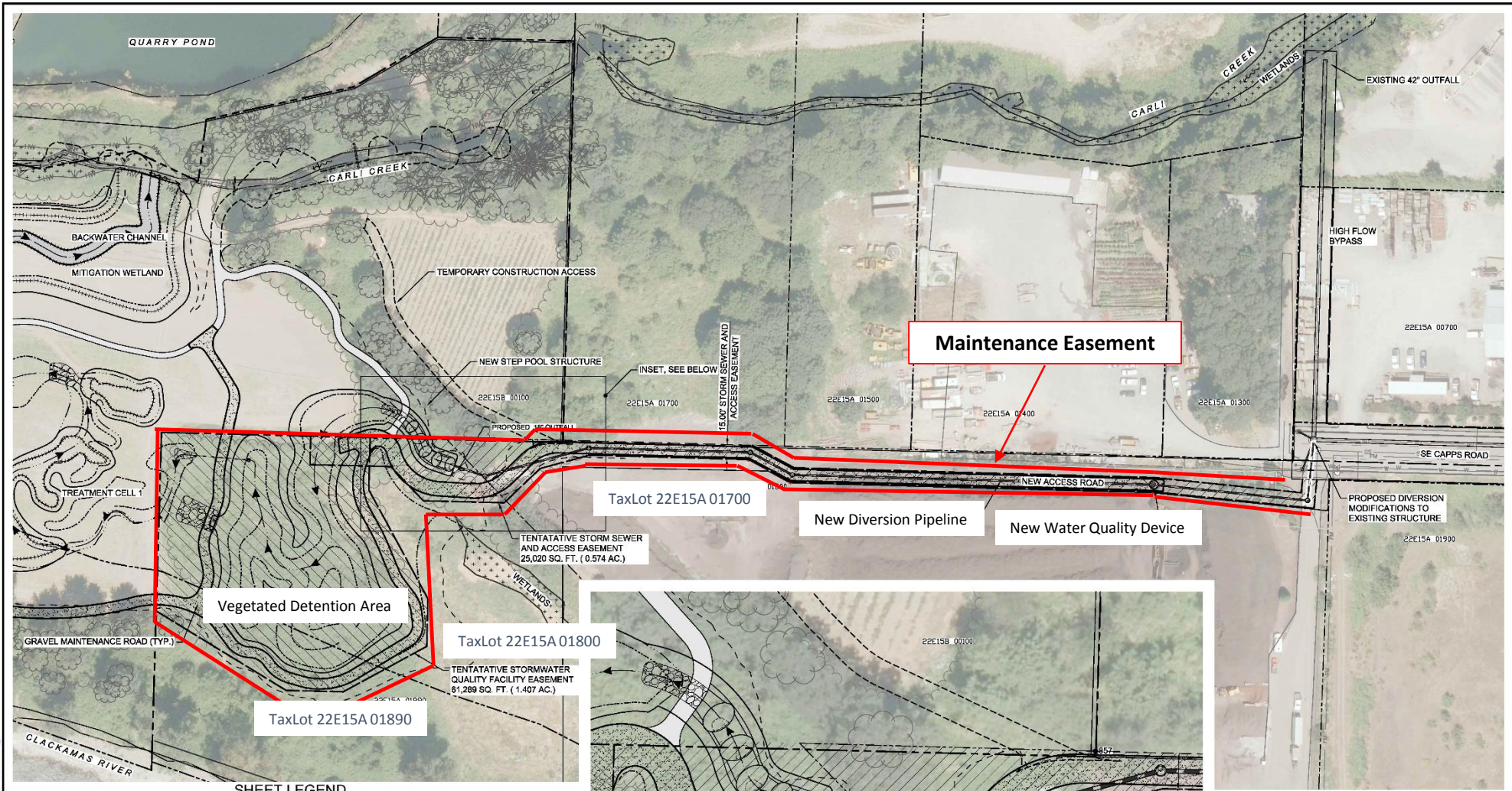
by Jim Bernard as Chair of the Clackamas County Development Agency.

Notary Public for State of Oregon
My Commission Expires: _____

ACCEPTED BY GRANTEE:
WATER ENVIRONMENT SERVICES,
a municipal partnership entity under ORS Chapter 190

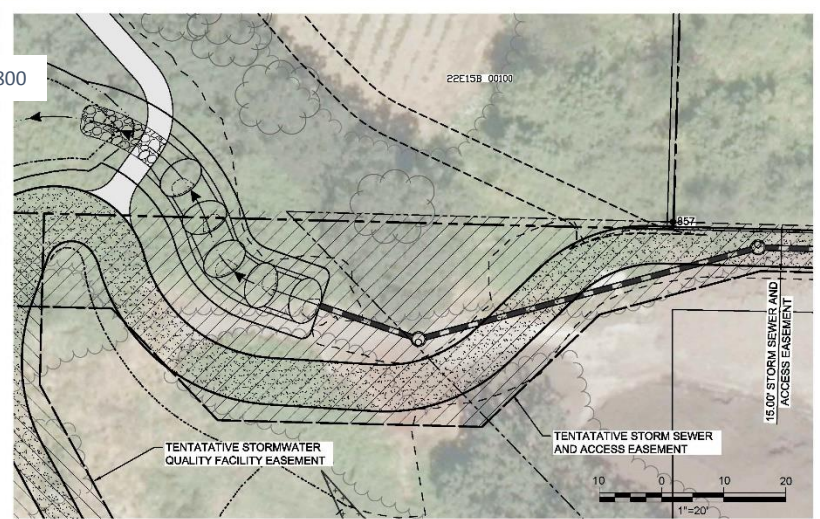
Chair

Date



SHEET LEGEND

▲#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	---	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	---	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	---	ACCESS PATH
---	SECTION LINE	---	WETLAND MITIGATION AREAS
---	QUARTER SECTION LINE	---	WATERS EDGE (PLAN)
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---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	⊙	STORM MANHOLE
		---	CONSTRUCTION STAGING AREA



CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

FIGURE: 1 OF 1

Project: March 15, 2018
 Drawing: 20181114-12958-000_PDRCD002.dwg/FIGURE/EASEMENT EXHIBIT.dwg



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Public Improvement Contract
between Water Environment Services and James W. Fowler Co.
for Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements Project

Purpose/Outcomes	Execution of the contract between Water Environment Services and James W. Fowler Co. for the Water Resource Recovery Facility Solids Handling Improvements Project.
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$33,473,352.00.
Funding Source	639-01-20100-481010- P632162
Duration	910 days from Notice to Proceed
Previous Board Action	N/A
Strategic Plan Assignment	<ol style="list-style-type: none">1. This project supports the WES Strategic Plan goal to provide properly functioning infrastructure.2. This project supports the County's Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invests in our natural resources.
Contact Person	Lynne Chicoine 503-742-4559, Jeff Stallard 503-742-4694

BACKGROUND:

The work under this Contract will consist of, but is not limited to furnishing all labor, material and equipment necessary to construct a new 1.3 million gallon anaerobic digester, a new Dewatering and Digester Control Building, a new digester gas purification system, a new digester gas storage system, a new 600kW cogeneration engine, refurbishment of systems in the existing Thickening Building, Cogeneration Building and two existing anaerobic digesters and associated systems including associated HVAC, odor control, electrical and plumbing elements. The Work includes constructing site roadways and site piping.

The work includes furnishing and installing related equipment, storm sewers, conduits, electrical, instrumentation and control, site work, building heating systems and other appurtenances necessary to complete the work and to provide a complete and functional system constructed in accordance with the Bidding Documents.

PROCUREMENT PROCESS:

This project was requested by Lynne Chicoine. This project was advertised in accordance with ORS and LCRB Rules on April 17, 2018. On May 24, 2018, three (3) bids were received: Slayden, \$37,876,800.00; James W. Fowler Co, \$33,473,352.00; and Stellar J, \$35,792,038.00. After review of the bids and all necessary documentation, James W. Fowler Co, was determined to be the lowest responsive bidder.

The contract was reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Contract between Water Environment Services and James W. Fowler Co. for the Water Resource Recovery Facility Solids Handling Improvements Project for a total contract amount not to exceed \$33,473,352.00.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the _____ agenda by Procurement.



**WATER ENVIRONMENT SERVICES
PUBLIC IMPROVEMENT AGREEMENT**

This Public Improvement Agreement (the “Agreement”), is made by and between Water Environment Services, both political subdivisions of the State of Oregon, hereinafter called “Owner,” and **James W. Fowler**, hereinafter called the “Contractor” (collectively the “Parties”), shall become effective on the date this Agreement has been signed by all the Parties and all Owner approvals have been obtained, whichever is later.

Project Name: #2018-19 Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements Project (Project P632162)

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **Thirty-Three Million Four Hundred Seventy-Three Thousand Three Hundred Fifty-Two Dollars (\$33,473,352.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the EJCDC General Conditions 2013 (“General Conditions”) and the Supplemental General Conditions), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents on the Tri-City Water Resource Recovery Facility Solids Handling Improvements Project . The Contract Price is the amount contemplated by the Base Bid.

The following documents constitute the “Contract Documents” and are incorporated by reference in this Agreement and made a part hereof:

- Invitation to Bid
- Instructions to Bidders
- Public Improvement Agreement
- EJCDC General Conditions (2013)
- Prevailing Wage Rates
- Plans, Specifications and Drawings
- Geotechnical Data Report
- All required SRF certifications and disclosures submitted by Contractor
- Bid Bond
- Performance Bond and Payment Bond
- Supplementary Conditions
- Payroll and Certified Statement Form
- Addenda 1-4

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed

No.	Milestone	Substantial Completion (Calendars Days from Notice to Proceed)
1	Gas Monitoring System in Existing Facilities and Install Truck Scale	120
2	Substantial Completion of Entire Contract	880
3	Final Completion of Entire Contract	910

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 this section 4 above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions, as amended by the Supplemental General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or other dispute resolution 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 the following amounts for each day that expires after the time specified above:

<u>Milestone</u>	<u>Liquidated Damages per Day</u>
1. Gas Monitoring System in Existing Facilities And install truck scale	\$0
2. Substantial Completion	\$4,300
3. Final Completion	\$4,300

5. Retainage.

Prior to Final Completion, Owner shall retain from progress payments and any incentive payment, five percent of the value of the work completed.

In lieu of retainage, Contractor may elect to have accumulated funds deposited by Owner in an interest-bearing account, in accordance with ORS 279C.560. Interest on such an account would accrue to Contractor. Costs incurred by Owner as a result of this option will be deducted from Contractor's final payment.

In lieu of retainage Contractor, with the approval of Owner, may deposit a surety bond for all or any portion of the retainage in a form acceptable to Owner. Such bond and any proceeds therefrom shall be made subject to all claims and liens as provided for in ORS 279C.550 to 279C.620.

6. Change Order Authorization.

Throughout the administration of this Contract, the Owner's Project Manager for this Contract is granted the authority to authorize change orders in the field for an amount up to \$10,000. As soon as possible following the authorization, the Project Manager shall complete and submit the appropriate change order form provided by Clackamas County Procurement and obtain the signature of the Director of WES, or other authorized signatory. As soon as the Director signs off on the change order form, the Project Manager may then authorize another change order for up to \$10,000. Each change order should include the cumulative cost of the entire change and may not be artificially broken up into multiple change orders to fall under the dollar threshold listed above. The authority granted to the Project Manager is limited by the Director's authorization to amend the Contract under Clackamas County's Local Contract Review Board Rules and is subject to the discretion of the Director, who may suspend or restrict the Project Manager's ability to authorize change orders at any time for any reason.

7. Insurance Certificates.

Contractor shall furnish proof of required insurance in accordance with Paragraph 6.02 of the General Conditions and Supplemental General Conditions. Insurance certificates may be returned with the signed Agreement or may be emailed to Procurement@clackamas.us.

8. Tax Compliance.

Contractor must, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Agreement. Further, any violation of Contractor's warranty in this Agreement that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Agreement. Any violation shall entitle County to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to: (A) Termination of this Agreement, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Owner's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Owner shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and Owner may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Agreement, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

9. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Agreement shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

10. Counterparts.

This Agreement may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

11. Integration.

All provisions of state law required to be part of this Agreement, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Agreement.

The Agreement constitutes the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

12. Assignment. No assignment by a party hereto of any rights under or interests in the Agreement shall be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies 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 shall release or discharge the assignor from any duty or responsibility under the Agreement.

[Signature Page Follows]



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT OPPORTUNITY

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TRI-CITY SOLIDS HANDLING IMPROVEMENTS

**CLACKAMAS COUNTY
NOTICE OF PUBLIC IMPROVEMENT CONTRACT OPPORTUNITY**

**INVITATION TO BID #2018-19
Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements
Project (Project P632162)
April 17, 2018**

Clackamas County (“County”), on behalf of the Clackamas County Service District (“CCSD1”) and Water Environment Services (“WES”), through their Board of County Commissioners is accepting sealed bids for construction of the Tri-City Water Resource Recovery Facility (“WRRF”) Solids Handling Improvements Project (Project P632162), until 2:00 p.m. local time, on the 15th day of May, 2018. Any Bids received after the specified time and date will not be considered. No electronic submissions will be accepted. First-Tier Subcontractor Disclosure Forms must be delivered to the same location at or before 4:00 p.m. local time on the same day in a separate envelope from the bid. Bids will then be publicly opened and read aloud at 4:00 p.m. local time on Tuesday, May 15, 2018 at the Owner’s office.

DELIVER BIDS TO: Clackamas County Procurement Division attention: George Marlton, Procurement Director, Clackamas County Public Services Building, 2051 Kaen Road, Suite 497, Oregon City, Oregon 97045 (“Owner’s Office”).

The Work under this Contract will consist of, but is not limited to furnishing all labor, materials and equipment necessary to construct a new 1.3-million gallon anaerobic digester, a new Dewatering and Digester Control Building, a new digester gas purification system, a new digester gas storage system, a new 600 kW cogeneration engine, refurbishment of systems in the existing Thickening Building, Cogeneration Building and two existing anaerobic digesters and associated systems including associated HVAC, odor control, electrical and plumbing elements. The Work includes constructing site roadways and site piping.

The Work includes furnishing and installing related equipment, storm sewers, conduits, electrical, instrumentation and control, Site work, building heating systems and other appurtenances necessary to complete the Work and to provide a complete and functional system constructed in accordance with the Bidding Documents.

The Work will be completed in all respects within 910 calendar days from the date when the Contract Time commences to run.

The Site of the Work is the Tri-City Water Resource Recovery Facility (“WRRF”), located at 15941 Agnes Avenue, Oregon City, Oregon 97045 (Site).

Procurement Process Questions: Ryan Rice, 503-742-5446, rrice@clackamas.us.

Technical Questions: Brady Fuller, 541-768-3086, brady.fuller@ch2m.com.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

Mandatory Pre-Bid Conference

Prospective bidders are required to attend a pre-bid conference and site visit that will begin at 9:00 a.m. and last until approximately 11:00 a.m. local time on April 25, 2018. The conference will be held at 15941 Agnes Avenue, Oregon City, Oregon 97045 (“Site”). Attendance will be documented through a sign-in sheet prepared by the County Representative. Prospective bidders who arrive more than ten (10) minute after the started time of the meeting shall not be permitted to sign in and will not be permitted to submit a bid. Detailed technical questions may be submitted in writing but they will be answered, if warranted, by addenda later. Oral statements may not be relied upon and will not be binding or legally effective.

Funding

This project is being funded, in part, with monies made available by the Clean Water State Revolving Fund (“CWSRF”). Therefore, this Project is subject to the statutory requirements known as “American Iron and Steel” that requires all of the iron and steel products used in the Project to be produced in the United States (“American Iron and Steel Requirements”) including iron and steel products provided by the Contractor and subcontractors, unless a waiver of the requirement is approved by the State of Oregon. Certification or assurance of compliance to support a waiver of the requirement must be provided.

Prevailing Wage

Prevailing Wage Rates requirements apply to this Project because the maximum compensation for all Owner-contracted Work is more than \$50,000. Contractor and all subcontractors shall comply with the provisions of the David-Bacon Act (40 U.S.C. 3141 et seq) and ORS 279C.800 through 279C.870, and shall pay the higher of either the state or federal prevailing wage rates for the type of work being performed. The Bureau of Labor and Industries (“BOLI”) wage rates and requirements set forth in the following BOLI booklet (and any listed amendments to that booklet), which are incorporated herein by reference, apply to the Work authorized under this Agreement:

PREVAILING WAGE RATES for Public Works Contracts in Oregon, January 1, 2018, which can be downloaded at the following web address: <http://www.oregon.gov/boli/WHD/PWR/Pages/PWR-Rate-Publications---2018.aspx>.

The estimated construction cost of the Work is \$35,500,000.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

Bidding Documents can be downloaded from <http://orpin.oregon.gov/open.dll/welcome>. Prospective Bidders will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Bidders are responsible for obtaining any Addenda from Website listed above. The Owner's Website, www.clackamas.us/bids, will direct Prospective Bidders to the ORPIN website. If problems are experienced downloading the Bidding Documents, please contact Ryan Rice at 503-742-5446.

Each Bid must be submitted on the prescribed Bid Form and accompanied by Bid security as prescribed in the Instructions to Bidders. Each bid must contain a statement as to whether a Bidder is a Resident Bidder as defined by ORS 279A.120.

The Bidder shall guarantee the Lump Sum Price for a period of 60 days from the date of the Bid opening.

END OF SECTION

INSTRUCTIONS TO BIDDERS

BID #2018-19 Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements Project (Project P632162)

1. DEFINED TERMS

1.1. Terms used in these Instructions to Bidders and the Invitation to Bid have the meanings indicated in the General Conditions and Supplementary Conditions. Certain additional terms used in the Bidding Documents have the meanings indicated below which are applicable to the singular and plural thereof.

1.2. Bidder – One who submits a Bid directly to Owner, as distinct from a subbidder who submits a price or quote to a Bidder.

1.3. Successful Bidder – Lowest responsible and responsive Bidder to whom Owner (on the basis of Owner’s evaluation as hereinafter provided) makes an award.

1.4. Local Contract Review Board Rules (“LCRB”) – Can be downloaded at the following address: <http://www.clackamas.us/code/documents/appendixc.pdf>.

2. COPIES OF BIDDING DOCUMENTS

2.1. Complete sets of Bidding Documents shall be used in preparing Bids. Neither Owner nor Engineer assumes responsibility for errors or misinterpretations resulting from use of incomplete sets of Bidding Documents.

Bidding Documents can be downloaded from <http://orpin.oregon.gov/open.dll/welcome>. Prospective Bidders will need to sign in to download the information and that information will be accumulated for a Plan Holder’s List. Prospective Bidders are responsible for obtaining any Addenda from Website listed above. The Owner’s Website, www.clackamas.us/bids, will direct Prospective Bidders to the ORPIN website. If problems are experienced downloading the Bidding Documents, please contact Ryan Rice at 503-742-5446.

2.2. Bidding Documents made available on the above terms are only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

3. QUALIFICATIONS OF BIDDERS

3.1. To demonstrate Bidder’s qualifications to perform the Work, within 7 calendar days of Owner’s request, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for in the Bidding Documents.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

3.2. In order to perform public work, Bidder and its Subcontractors, prior to award of Contract or as otherwise required by the jurisdiction, shall hold or obtain such licenses as required by State Statutes, and federal and local Laws and Regulations.

3.3. Bidder shall not be listed on the Bureau of Labor and Industries list of persons having violated prevailing wage rate laws as required in ORS 701.227.

3.4. Bidder shall not be in violation of any tax laws as required in ORS 305.385.

3.5. Bidder shall have a drug-testing program as required in ORS 279C.505.

3.6. Nothing indicated herein will prejudice Owner's right to see additional pertinent information as is provided in Article 15, Preparation of Bid.

3.7. Bidders and every Subcontractor performing Work on the Project must have filed with the Construction Contractors Board a public works bond in the amount of \$30,000 with a corporate surety authorized to do business in the State of Oregon before starting Work on the Project unless exempt under ORS 279C.836.

4. LICENSING REQUIREMENTS

4.1. In order to submit a Bid, a person, partnership, corporation, or joint venture shall have a current, valid license issued by the Oregon Construction Contractors Board, as required by ORS 701.021.

5. EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

5.1. Copies of reports and drawings utilized by the Engineer in preparation of the Bidding Documents will be made available by Owner to any Bidder on request at the cost of reproduction and handling, plus postage for mailing (if mailing is requested). Those reports and drawings are not part of the Bidding Documents but the technical data contained therein upon the Bidder is entitled to reasonably rely, as provided in Paragraph SC-5.03 of the Supplementary Conditions are incorporated herein by reference.

5.2. Information and data reflected in the Bidding Documents with respect to underground facilities at or contiguous to the Site are based upon information and data furnished to the Owner and Engineer by the owners of such underground facilities or others, and the Owner does not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

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

5.4. Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and underground facilities) at or contiguous to the Site or otherwise which may affect cost, progress or performance of the Work and which the Bidder deems necessary to determine its Bid for performing the Work in accordance with the time, price and other terms and conditions of the Bidding Documents.

5.5. On request, with a minimum of 2 days' advance notice, Owner will provide each Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Location of any excavation or boring shall be subject to prior approval of Owner and applicable agencies. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.

5.6. It is the responsibility of each Bidder before submitting a Bid to:

5.6.1. Examine and carefully study the Bidding Documents, other related data identified in the Bidding Documents, and any Addenda.

5.6.2. Visit the Site to become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

5.6.3. Become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

5.6.4. Study and carefully correlate the Bidder's observations with the Bidding Documents.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

5.6.5. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in Bidding Documents and confirm that written resolution thereof by Engineer is acceptable to Bidder.

5.7. Submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this article; that without exception the Bid is premised upon performing and furnishing the Work required by Bidding Documents and applying specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by Bidding Documents; that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder; and that Bidding Documents are generally sufficient to indicate and convey understanding of terms and conditions for performing and furnishing the Work.

6. MANDATORY PREBID CONFERENCE

6.1. Prospective bidders are required to attend a pre-bid conference and site visit that will begin at 9:00 a.m. and last until approximately 11:00 a.m. local time on April 25, 2018. The conference will be held at 15941 Agnes Avenue, Oregon City, Oregon 97045 (site). Attendance will be documented through a sign-in sheet prepared by the county representative. Prospective bidders who arrive more than ten (10) minutes after the started time of the meeting shall not be permitted to sign in and will not be permitted to submit a bid. Detailed technical questions may be submitted in writing but they will be answered, if warranted, by addenda later. Oral statements may not be relied upon and will not be binding or legally effective.

7. SITE AND OTHER AREAS

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

8. ENVIRONMENTAL AND NATURAL RESOURCES LAWS AND REGULATIONS

8.1. Bidder's attention is directed to the General Requirements and Supplementary Conditions for ordinances and regulations dealing with the prevention of pollution and preservation of natural resources which may affect the performance of the Work. Bidder shall take such ordinances and regulations into consideration in preparation and submission of its Bid.

9. INTERPRETATIONS AND ADDENDA

9.1. All questions about the technical meaning or technical intent of the Bidding Documents are to be submitted to Engineer in writing only (i.e., mail or email). All questions pertaining to administrative matters are to be submitted to the Owner in writing only (i.e., mail or email) Additions, deletions or revisions to the Bidding Documents considered necessary by Engineer or Owner in response to such questions will be issued by Addenda will be posted on the Owner's website. Questions received less than 7 calendar days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

9.2. Addenda may also be issued to make other additions, deletions or revision to the Bidding Documents.

9.3. Bidders shall acknowledge receipt of all Addenda on the Bid Form in the appropriate space.

10. BID SECURITY

10.1. Each Bid must be accompanied by either 1) a cashier's check or a certified check drawn on a bank authorized to do business in the State of Oregon, or 2) a Bid bond described hereinafter, executed in favor of the Owner, for an amount equal to ten percent (10%) of the total amount Bid as a guarantee that, if awarded the contract, the Bidder will execute the contract and provide a performance bond and payment bond as required. The successful Bidder's check or Bid bond will be retained until the Bidder has entered into a contract satisfactory to Owner and furnished a one hundred percent (100%) performance bond and one hundred percent (100%) payment bond. The Owner reserves the right to hold the Bid security as described in Article 10 hereof. Should the successful Bidder fail to execute and deliver the contract as provided for in Article 20 hereof, including a satisfactory performance bond and payment bond within seven (7) calendar days after the Bid has been accepted by the Owner, then the contract award made to such Bidder may be considered canceled and the Bid security may be forfeited at the option of the Owner. The date of the acceptance of the Bid and the award of the contract as contemplated by the Bidding Documents shall mean the date of acceptance specified in the Notice of Intent to Award.

10.2. Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned after Bid opening. All other Bid securities will be held until the Agreement has been finally executed. They will then be returned to the respective Bidders whose Bids they accompany.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

11. CONTRACT TIMES

11.1. The number of days within which milestones are to be achieved and the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

12. LIQUIDATED DAMAGES

12.1. Provisions for liquidated damages are set forth in the Agreement.

13. SUBCONTRACTORS, SUPPLIERS, AND OTHERS

13.1. Oregon Revised Statutes (“ORS”) 279C.370 requires Bidders for public improvement projects exceeding \$100,000 in Contract Price to submit First-Tier Subcontractor Disclosure Form with Bid, or within 2 working hours of Bid closing. Disclosure form identifies first-tier Subcontractors that will furnish labor or labor and materials equal to 5 percent of Contract Price or \$15,000, whichever is greater, or \$350,000, regardless of percentage of Contract Price. If no Subcontractors are subject to the disclosure requirements, “NONE” shall be indicated on the form to be provided. Disclosure form not submitted with Bid or within 2 working hours of Bid closing will cause Bid to be considered nonresponsive.

13.2. Supplemental Qualification form for Externally Wrapped Prestressed Concrete Tank Contractor shall be submitted by 4:00 p.m. on May 1st to be considered. A list of prequalified contractors will be provided within 48 hours of the submission time.

14. WAGE RATES

14.1. The Work under these Bidding Documents is to be paid for by public funds. This is a public works project subject to the state prevailing rates of wage under ORS 279C.800 to ORS 279C.870. Unless otherwise exempt, Contractor and any Subcontractors must pay workers in each trade or occupation that Contractor or its Subcontractors or other person who is a party to the Contract uses in performing all or a part of the Contract not less than the applicable minimum Oregon prevailing wage rates in accordance with ORS 279C.838 and ORS 279C.840, or the Davis Bacon Act (40 USCA Section 3141 et seq.). The applicable Oregon minimum prevailing wage rates for such workers are contained in the Bureau of Labor and Industries (BOLI) booklet (and any listed amendments to that booklet), which are incorporated herein by reference, apply to the Work authorized under this Agreement and entitled: PREVAILING WAGE RATES for Public Works Contracts in Oregon, January 1, 2018, which can be downloaded at the following web address: http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

- 14.2. Oregon Statutes require that Bids for public work, including those public work projects financed by federal funds and subject to the Davis Bacon Act, shall include a statement by Bidder that it will include in its Agreement the provisions of ORS 279C.840 or 40 USCA Section 3141. When the Bid Form in the Bidding Documents contains a statement of Bidder's declaration of compliance with ORS 279C.840 or 40 USCA Section 3141, the Bidder's signing of the Bid constitutes compliance with this Oregon Statute. If the Bid Form does not contain such statement, each Bidder shall submit with its Bid for the Work, a separately signed statement that it will include the provisions of ORS 279C.840 or 40 USCA Section 3141 in the Agreement.
- 14.3. Owner shall be responsible for paying the fee required by ORS 279C.825(1) to the Commissioner of Bureau of Labor and Industries.
15. PREPARATION OF BID
- 15.1. The Bid shall be submitted on the Bid Forms herein. All blanks on the Bid Form shall be completed by typing or printing with ink and the Bid Form signed in ink. All price information shall be shown in both words and figures where required. The Bid shall be submitted in a sealed which shall be plainly marked in the upper left hand corner with the name and address of the Bidder and shall bear the words "BID FOR" followed by the title of the Bidding Documents for the Work, the name of the Owner, the address where Bids are to be delivered or mailed and the date and hour of the Bids. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.
- 15.1. First-Tier Subcontractor Disclosure Forms must be delivered to the same location for delivery of the Bids within 2 hours of the specified time for receipt of Bids.
- 15.2. SRF forms to be submitted in compliance with SRF requirements.
- 15.2.1. Attachment 3 – List of Contacted Disadvantaged Business Enterprises (DBE).
- 15.2.2. Attachment 10 – Certification of Independent Price Determination.
- 15.2.3. Attachment 11 – Prevailing Wage Agreement (Davis Bacon).
- 15.3. Each Bid must identify whether the Bidder is a resident bidder, as defined by ORS 279A.120, by completing and submitting the Resident/Nonresident Bidder Status Form.
- 15.4. Bidder shall complete the Noncollusion Affidavit and submit it with its Bid.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

15.5. The Bid Form contains a Major Equipment Schedule with alternatives for certain Manufacturers or Suppliers acceptable to Owner. Bidders shall submit a bid price to furnish and install the first listed alternative (Alternative A) in each section to be considered responsive. Bidders may also submit a bid price for one or more of the listed alternatives in each section. Bidder may propose and price an “or-equal” alternative when indicated. Owner will award the contract to the lowest responsive, responsible bidder submitting the lowest Base Bid Amount, which is the sum of Lump Sum Subtotal, Total of Extended Bid Unit Prices, and the Major Equipment Schedule Subtotal. After award of the Contract, Owner will select the alternatives to be furnished and installed based on cost quality and other factors that best serve the interest of the Owner. The final Contract Price will be the sum of the Lump Sum Work and the total cost of the Major Equipment Alternatives selected by Owner.

15.6. The design is based on the first (Alternative A) listed Manufacturer or Supplier for each item. The costs associated with the furnishing and installing each proposed item shall be included in the “Bid Amount” column. If the Owner selected a Bidder-proposed alternative Manufacturer or Supplier for an item other than Alternative A, the Bidder shall furnish and install the equipment for the Amount Bid indicated, including the cost of: 1) any required engineering redesign; 2) any electrical, mechanical, structural modifications to adjacent and interfacing equipment necessary to make the several parts fit together; 3) licensing fee; and 4) additional construction and other costs resulting from the allowed alternative.

15.7. A Bid by a corporation shall be executed in the corporate name by the president or a vice president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.

15.8. A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.

15.9. A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.

15.10. A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.

15.11. All names shall be typed or printed in ink below the signatures.

15.12. The Bid shall contain an acknowledgement of receipt of all Addenda; the numbers of which shall be filled in on the Bid Form.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

15.13. Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

16. EVALUATION OF BIDS

16.1. Owner will evaluate Bids to determine which responsible Bidder has made the lowest responsive Bid. Owner will make this evaluation in accordance with the Bidding Documents and applicable law. Owner may reject a Bid when it is in the public interest to do so, or when Owner finds the Bidder has not demonstrated its responsibility to Owner as required by ORS 279C.375(3)(b) or is not the lowest responsible bidder as that term is used in any applicable Owner's Purchasing Rules and ORS 279A.010(1)(r). Owner may also reject Bids from Bidders declared ineligible under ORS 279C.860, from Bidders listed as not qualified by the State of Oregon Construction Contractors Board, from Bidders that have not met the requirements of ORS 279A.105(1), (2) or (3), and for other circumstances that indicate acceptance of the Bid may impair the integrity of the selection process.

16.2. Owner reserves its right to reject any or all Bids, including without limitation the right to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids, and to reject the Bid of any Bidder if Owner believes that it would not be in the public interest to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner reserves the right to reject all Bids and rebid the Project if it is in the public interest to do so in accordance with ORS 279C.395. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work.

16.3. In evaluating Bids, Owner will consider the qualifications of Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award. Owner shall have the right to accept alternates in any order or combination, unless otherwise provided in the Bidding Documents.

16.4. Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work for which the identity was required. Owner also may consider the operating costs, maintenance requirements, performance data, and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data are required to be submitted prior to the Notice of Award.

16.5. Owner may conduct such investigations as Owner deems necessary to assist in Bid evaluation and to establish responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, and other persons and organizations to execute Work in accordance with the Bidding Documents to Owner's satisfaction within the prescribed time.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

16.6. In determining the lowest responsible Bidder, Owner will for the purpose of awarding the Contract, 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 the Bidder resides.

16.7. If, at the time this Contract is to be awarded, the total of the lowest acceptable Bid exceeds the funds then estimated by Owner as available, Owner may reject all Bids or take such other action as best serves Owner's interests.

16.8. In the event of failure of the Successful Bidder to sign the Agreement and provide acceptable Performance and Payment Bond(s), insurance certificate(s), and other required documents, Owner may award the Contract to the next lowest responsive, responsible Bidder.

17. SUBMISSION OF BID

17.1. The Bid shall be sealed in delivered by the time and to the place stipulated in the Invitation to Bid. It is the Bidder's sole responsibility to see that its Bid is received in proper time and at the proper place.

18. MODIFICATION AND WITHDRAWAL OF BID

18.1. A Bid withdrawn by the Bidder by means of a written request signed by the Bidder or its properly authorized representative. Such written request must be delivered to the place stipulated in the Invitation to Bid for receipt of Bids prior to the scheduled closing time for receipt of Bids.

18.2. If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid as determined by Oregon law, Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

19. AWARD OF CONTRACT

19.1. Award of the Contract, if awarded, will be made to the lowest responsive, responsible Bidder whose Bid complies with the requirements of the Bidding Documents. Unless otherwise specified, any such award will be made within the period stated in the Advertisement to Bid that the Bids are to remain open. Unless otherwise indicated, a single award will be made for all the Bid items in an individual Bid Schedule. In the event the Work is contained in more than one Bid Schedule, Owner will award all Schedules.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

20. SIGNING OF AGREEMENT

20.1. The Owner will provide the successful Bidder with the required number of unsigned counterparts of the Agreement along with the other Contract Documents that are identified in the Agreement as attached thereto. Within seven (7) calendar days thereafter, Successful Bidder shall execute the forms as provided, including a performance bond and a payment bond from a Surety Company licensed to do surety business in the State of Oregon. The executed contract forms shall be delivered to the Owner in the number called for and to the location as instructed by the Owner.

21. RETAINAGE

21.1. Provisions concerning retainage and Contractor's rights to deposit securities in lieu of retainage, if applicable, are set forth in the Agreement.

22. CLARIFICATION OR PROTEST OF THE SOLICITATION DOCUMENT OR SPECIFICATIONS

22.1. Any request for clarification or protest of the solicitation document or specifications must be submitted in the manner provided for in the applicable section of the LCRB Rules to the Procurement Representative referenced in the Notice of Public Improvement Contract Opportunity.

22.2. A protest of the Solicitation Document must be received within seven (7) business days of the issuance of the Bid or within three (3) business days of issuance of an addendum.

22.3. Requests for clarification may be submitted no less than five (5) business days prior to the Bid Closing Date.

23. PROTEST OF INTENT TO AWARD

23.1. Owner will name the apparent successful Bidder in a "Notice of Intent to Award" letter. Identification of the apparent successful Bidder is procedural only and creates no right in the named Bidder to the award of the contract. Competing Bidders will be notified by publication of the Notice of Intent to Award on the Clackamas County Procurement Website of the selection of the apparent successful Bidder(s) and Bidders shall be given seven (7) calendar days from the date on the "Notice of Intent to Award" letter to review the file at the Procurement Division office and file a written protest of award, pursuant to C-049-0450. Any award protest must be in writing and must be delivered by hand delivery or mail to the Procurement Division Director at: Procurement Division, 2051 Kaen Road, Oregon City, OR 97045.

END OF SECTION

**QUALIFICATION FORM FOR EXTERNALLY
WRAPPED PRESTRESSED CONCRETE TANK CONSTRUCTION**

The Owner requires the following statement pertaining to relevant construction experience to be completed and submitted by prospective contractors bidding on this Work.

The following form shall be completely filled out and submitted in accordance with the Advertisement for Bids and Instructions to Bidders. Bids received proposing a subcontractor not prequalified will be considered unresponsive and/or unqualified and will be subject to rejection. Owner will provide a list of all prequalified contractors for the externally wrapped prestressed concrete tank construction within 48 hours of the required submission time for this prequalification form.

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

To qualify for this Project the Tank Subcontractor shall meet the following minimum qualifications:

- A. Shall be fully responsible for the prestressed concrete tank construction.
- B. Shall have successfully completed at least three AWWA D110 Type I externally wrapped prestressed concrete tanks within the last 5 years.
- C. Commit a field superintendent with successful experience relevant to this Project. The field superintendent shall have had the following specific experience:
 1. Field superintendent shall have been the person in charge of at least two externally wrapped prestressed concrete tanks in the last 5 years that have been successfully completed prior to bidding this Project. The completed prestressed concrete tank structures shall have included cast-in-place concrete core walls, exterior wrapped prestressing, vertical prestressing units inside walls, with wall base joint detail similar to that shown for this Project, and concrete floor slabs with contraction, construction and/or control joints similar to those shown for this Project.
 2. The field superintendent may be employed by the Tank Subcontractor or the Prestressing Subcontractor. In either case, the General Contractor shall be responsible for ensuring that the field superintendent is on the Project Site full-time and in responsible charge during all prestressed concrete tank construction activities

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

- D. The Tank Subcontractor shall independently meet all requirements above and may be the same firm as the Prestressing Subcontractor listed below.
- E. Commit a Prestressing Subcontractor who will provide the system meeting the substance of the Specifications and Drawings and whose system has been successfully used on structures of similar size and capacity. The Prestressing Subcontractor shall have at least 10 years' acceptable experience on reservoirs of the size and type contemplated for this Project. Prestressing Subcontractors who are considered prequalified and have the specified equipment to perform the prestressing work are:
 - 1. DN Tanks, Inc., 351 Cypress Lane, El Cajon, CA 92020.
- F. Be capable of providing appropriate bonding and insurance.

**QUALIFICATION FORM FOR EXTERNALLY
WRAPPED PRESTRESSED CONCRETE TANK CONSTRUCTION**

The Owner requires the following statement pertaining to relevant construction experience to be completed and submitted by prospective contractors bidding on this Work.

The following form shall be completely filled out and submitted in accordance with the Advertisement for Bids and Instructions to Bidders. Bids received proposing a subcontractor not prequalified will be considered unresponsive and/or unqualified and will be subject to rejection. Owner will provide a list of all prequalified contractors for the externally wrapped prestressed concrete tank construction within 48 hours of the required submission time for this prequalification form.

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- C. Commit a field superintendent with successful experience relevant to this Project. The field superintendent shall have had the following specific experience:
 1. Field superintendent shall have been the person in charge of at least two externally wrapped prestressed concrete tanks in the last 5 years that have been successfully completed prior to bidding this Project. The completed prestressed concrete tank structures shall have included cast-in-place concrete core walls, exterior wrapped prestressing, vertical prestressing units inside walls, with wall base joint detail similar to that shown for this Project, and concrete floor slabs with contraction, construction and/or control joints similar to those shown for this Project.
 2. The field superintendent may be employed by the Tank Subcontractor or the Prestressing Subcontractor. In either case, the General Contractor shall be responsible for ensuring that the field superintendent is on the Project Site full-time and in responsible charge during all prestressed concrete tank construction activities

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

- D. The Tank Subcontractor shall independently meet all requirements above and may be the same firm as the Prestressing Subcontractor listed below.
- E. Commit a Prestressing Subcontractor who will provide the system meeting the substance of the Specifications and Drawings and whose system has been successfully used on structures of similar size and capacity. The Prestressing Subcontractor shall have at least 10 years' acceptable experience on reservoirs of the size and type contemplated for this Project. Prestressing Subcontractors who are considered prequalified and have the specified equipment to perform the prestressing work are:
 - 1. DN Tanks, Inc., 351 Cypress Lane, El Cajon, CA 92020.
- F. Be capable of providing appropriate bonding and insurance.

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

QUALIFICATION FORM

Submit to:

Clackamas County Water Environment Services
Attn: Ryan Rice

Application for Externally Wrapped Prestressed Concrete Tank Qualification Submitted by:

Name of Organization (General Contractor): Ward-Henshaw Construction Co; Inc.
Type of Organization (Corporation, Partnership, or Individual): Corporation
Address: PO Box 950 / 505 N. Baker Drive Canby, OR 97013

1. What is the name and address of the Tank Subcontractor proposed for this Project?

Ward-Henshaw Construction Co; Inc.

PO Box 950 / 505 N. Baker Drive Canby, OR 97013

2. How many years has this organization been in business under present business name and engaged in construction of the proposed type and size of this tank?

40 Years

3. List the AWWA D110 Type I externally wrapped prestressed concrete tank construction projects the Tank Subcontractor has completed in the last 5 years that are similar in type and size to the work proposed herein. (Provide an attachment if additional space is required.)

Contract Amount	Type and Volume of Tank	When Completed	Name and Address of Owner Contact Person and Phone Number
See Attached			

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

4. Has Tank Subcontractor ever failed to complete any work awarded to them? No.

Is yes, provide Project name, date, and explain reasons for failing to complete work.

5. Name the field superintendent who will be in direct charge of externally wrapped prestressed concrete tank construction if awarded this Contract and state his/her successful experience relevant to this Project in the last 5 years. Indicate the name of the Owner, contact person, phone number, and date for each project listed, if not provided above in Question 3.

A) Jay Osborn*: 1) Garden Home Reservoir; 2) Vilas Water Storage Reservoir

B) Dan Gerritsen*: 1) Division Street Reservoir; 2) Grants Pass Reservoir

C) Wade Hillard*: 1) Waluga Reservoir 2; 2) Thompson Hill Reservoir; 3) Will Crandall Reservoir

* All 3 superintendents are proposed since the schedule of the Digester Construction is unknown. Please see attached project experience listing for each superintendent per question 3.

6. List below the contracts to which the Tank Subcontractor was party, during the previous 10 years which were involved in litigation of any type.

None

7. What is the name and address of the Prestressing Contractor proposed for this Project?

DN Tanks Inc. PO Box 696 / 351 Cypress Lane El Cajon, CA 92020

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

8. If Prestressing Contractor is different from the one(s) indicated above as being prequalified, list a minimum of five structures on which the proposed Prestressing Contractor's system has been used successfully and in a manner meeting the substance of the Specification requirements: (Provide an attachment if additional space is required.)

Name and Address of Owner	Completion Date	Type, Volume, Diameter and Wall Height of Tank
Not Applicable		

9. If Prestressing Contractor is different from the one(s) indicated above as being prequalified, submit with this Qualification Form, the Prestressing Subcontractor's descriptive write-up of the wrapping, the vertical prestressing, and the shotcreting machinery used on structures in above question and proposed for use if awarded this Contract.

The undersigned hereby declares that the foregoing statements are true and correct.

Signed at 11:30 AM this 26th day of April, in the year 2018

By: 

Title: Vice President

Date: April 26, 2018

WARD-HENSHAW CONSTRUCTION QUALIFYING TANK EXPERIENCE OVER LAST 5 YEARS
Note: All Reservoir Projects listed are AWWA D110 Type I Prestressed Concrete Tanks

Name of Project	Tank Size	Project Owner	Location	Construction Cost	Engineer	Date Completed
Division Street 6.0 MG Prestressed Tank & Booster Pump Station Project Mgr. - Al Oest Superintendent - Dan Gerritsen	6.0 MG	Skagit PUD #1 1415 Freeway Drive PO Box 1436 Mount Vernon, WA 98273 (360) 424-7104 Brandt Barnes	Mount Vernon, WA	7,309,541	Murray, Smith & Associates 2707 Colby Avenue Everett, WA 98201 (425) 252-9003 Chris Hiatt	Sep. 2017
Waluga Reservoir No. 2 3.5 MG Prestressed Reservoir Project Mgr. - Al Oest Superintendent. - Wade Hillard Assistant Super - Ed Wilson	3.5MG	Lake Oswego-Tigard Water Partnership 4101 Kruse Way Lake Oswego, OR 97034 (503) 718-2699 Rob Murchison	Lake Oswego, OR	7,309,541	Black & Veatch 5885 Meadows aroad, Suite 700 Lake Oswego, OR 97035 (503) 443-4400 Sean Goris	June 2015
Thompson Hill Zone 4 Reservoir 3.0 MG Prestressed Reservoir Project Mgr. - Michael Eubanks Superintendent - Wade Hillard	3.0MG	City of Kennewick P.O. Box 6108 Kennewick, WA 99336-0108 (509) 585-4301 Gary Deardorff	Kennewick, WA	1,982,331	RH2 Engineering, Inc. 22722 29th Drive SE, Ste 210 Bothell, WA 98021 (425) 951-5452 Paul Cross	Nov. 2014
Garden Home Reservoir 1.75MG Prestressed Reservoir Project Mgr. - Al Oest Superintendent. - Jay Osborn	1.75MG	Tualatin Valley Water District 1850 S.W. 170th Ave Beaverton, OR 97006 (503) 642-1511 Peter Boone	Portland, OR	2,987,422	OBEC Consulting Engineers 920 Country Club Rd, Suite 100B Eugene, OR 97401 (541) 683-6090 Pete Slocum	June 2014
Grants Pass Reservoir No. 3 5.0MG Prestressed Reservoir Project Mgr. - Al Oest Superintendent - Dan Gerritsen	5.0MG	City of Grants Pass 101 NW "A" Street Grants Pass, OR 97526 (541) 450-6113 Joey Wright	Grants Pass, OR	4,763,703	Murray, Smith & Associates 121 SW Salmon, Suite 900 Portland, OR 97204 (503) 225-9010 Brian Ginter	June 2014
Vilas Water Storage Reservoir and Pump Station 2.5MG New Prestressed Reservoir Project Mgr. - Michael Eubanks Superintendent. - Jay Osborn	2.5MG	City of Central Point 140 S Third Street Central Point, OR 97502 (541) 423-1017 Matt Samitore	Central Point, OR	4,867,770	Brown & Caldwell 6500 SW Macadam Ave., Ste 200 Portland, OR 97239 (503) 224-7005 Tom Lebo	March 2013
Will Crandall Reservoir & Pump Station 10.0MG New Prestressed Reservoir Project Mgr. - Al Oest Superintendent - Wade Hillard	10.0MG	City of Hillsboro 150 East Main Street Hillsboro, OR 97123 (503) 615-6708 Tyler Wubbena	Hillsboro, OR	19,492,337	CH2M Hill 2020 SW 4th Ave., 3rd Floor Portland, OR 97209 (503) 235-5000 Brad Phelps	Sep. 2013

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

NOTE TO BIDDER: Use typewriter or ink for completing this Bid Form.

**BID FORM
(STIPULATED PRICE BASIS)**

PROJECT: #2018-19 Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements Project (Project P632162)
BID CLOSING: May 22, 2018, 2:00 p.m., Pacific Time
BID OPENING: May 22, 2018, 4:00 p.m., Pacific Time

1. BID RECIPIENT

1.1. This Bid is submitted to:

Owner: Clackamas County
Procurement Division – Attention George Marlton
Address: 2051 Kaen Road, Suite 497, Oregon City, OR 97045

Project Identification: Tri-City Water Resource Recovery Facility (“WRRF”) Solids Handling Improvements Project (Project P632162)

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

2. BIDDER’S ACKNOWLEDGEMENTS

2.1. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

3. BIDDER’S REPRESENTATIONS

3.1. In submitting this Bid, Bidder represents that:

3.1.1. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

<u>Addendum No.</u>	<u>Addendum Date</u>
1	April 26, 2018

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

Addendum No.	Addendum Date
2	May 3, 2018
3	May 11, 2018
4	May 17, 2018

(Bidder shall insert number of each Addendum received.)

3.1.2. 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, and performance of the Work.

3.1.3. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

3.1.4. Bidder has carefully studied: i) reports of explorations and tests of subsurface conditions at or contiguous to the Site and drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) which have been identified in Paragraph 5.03 of the Supplementary Conditions as containing reliable “technical data.”; and ii) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph 5.06 of the Supplementary Conditions as containing reliable “technical data.”

3.1.5. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder’s safety precautions and programs.

3.1.6. Based on information and observations referred to in paragraph above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) Bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

3.1.7. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.

3.1.8. Bidder has given Engineer written notice of conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.

3.1.9. The Bidding Documents are generally sufficient to indicate and convey understanding of terms and conditions for the performance of the Work for which this Bid is submitted.

3.1.10. Bidder by signing below hereby attests or affirms under penalty of perjury: That I am authorized to act on behalf of the Contractor in this matter, that I have authority and knowledge regarding payment of taxes, and that Contractor is to the best of my knowledge, not in violation of any Oregon tax Laws. For the purposes of this certification, "Oregon Tax Law" means a state tax imposed by ORS 320.005 to 320.150; ORS 403.200 to 403.250; ORS Chapters 1118, 314, 316, 317, 318, 320, 321, 323, the elderly rental assistance program under ORS 310.630 to 310.706; and any local tax law administered by the Oregon Department of Revenue under ORS 305.620.

4. BIDDER'S CERTIFICATION

4.1. Bidder certifies:

4.1.1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization or corporation;

4.1.2. The Undersigned certifies that it has not discriminated against minority, women, or emerging small businesses in obtaining any subcontracts for this project;

4.1.3. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

4.1.4. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

4.1.5. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this paragraph:

4.1.5.1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;

4.1.5.2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish Bid prices at artificial noncompetitive levels, or (c) to deprive Owner of the benefits of free and open competition;

4.1.5.3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, noncompetitive levels; and

4.1.5.4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

4.1.6. Required sales and use taxes are included in the stated Bid prices for the Work unless provision is made herein for the Bidder to separately itemize the estimated amount of sales tax or if Instructions to Bidders state Owner is tax exempt.

4.1.7. Bidder accepts the provisions required by ORS 279C.800 through ORS 279C.870 and the Davis Bacon Act (40 USC 276a) relating to prevailing wage rates and that Bidder shall make applicable restitution to the Oregon Bureau of Labor and Industries Commissioner in accordance with ORS 279C.825.

4.1.8. Neither Bidder nor their Subcontractors are on the Bureau of Labor and Industries list of persons having violated prevailing wage rate laws.

4.1.9. Bidder has not discriminated against minority, women, or emerging small business enterprises in obtaining required subcontracts.

4.1.10. Bidder has established a drug-testing program for employees per ORS 279C.505.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

4.1.11. The successful Bidder hereby certifies that all subcontractors who will perform construction work as described in ORS 701.005(2) were registered with the Construction Contractors Board in accordance with ORS 701.035 to ORS 701.055 at the time the subcontractor(s) made a bid to work under the contract.

4.1.12. The Undersigned further agrees that the Bid Security accompanying the Bid is left in escrow with Clackamas County; that the amount thereof is the measure of liquidated damages which the Owner will sustain by the failure of the Undersigned to execute and deliver the above-named Contract Form, Performance Bond and Payment Bond, each as published, and that if the Undersigned defaults in either executing the Contract Form or providing the Performance Bond and Payment Bond within twenty (20) calendar days after receiving the Contract forms, then the Bid Security shall become the property of the Owner at the Owner's option; but if the Bid is not accepted within thirty (30) calendar days of the time set for the opening of the Bids, or if the Undersigned executes and timely delivers said Contract Form, Performance Bond and Payment Bond, the Bid Security shall be returned.

4.1.13. The successful Bidder hereby certifies that, in compliance with the Worker's Compensation Law of the State of Oregon, its Worker's Compensation Insurance provider is SAIF Corporation, Policy No. 812482, and that Contractor shall submit Certificates of Insurance as required.

4.1.14. Bidder by signing below hereby attests or affirms under penalty of perjury: That I am authorized to act on behalf of the contractor in this matter that I have authority and knowledge regarding payment of taxes, and that Contractor is to the best of my knowledge, not in violation of any Oregon tax Laws. For the purposes of this certification, "Oregon Tax Law" means a state tax imposed by ORS 320.005 to 320.150; ORS 403.200 to 403.250; ORS Chapters 118, 314, 316, 317, 318, 320, 321, 323, the elderly rental assistance program under ORS 310.630 to 310.706; and any local tax law administered by the Oregon Department of Revenue under ORS 305.620.

5. BASIS OF BIDS

5.1. Bidder shall complete the Work in accordance with the Contract Documents for the following price(s):

5.2. Lump Sum Bid Price: \$ 29,124,000.00

5.3. Unit Price Bid Schedule:

5.3.1. Unit prices have been computed in accordance with Paragraph 13.03.C of the General Conditions.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

5.3.2. Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

5.3.3 Unit Price Bid Schedule					
Item No.	Description	Estimated Quantity	Unit	Bid Unit Price	Extended Bid Unit Price
5.3.3.1	Helical Piles per Section 31 63 13	120	FT	\$ 125	\$ 15,000

5.3.3.2 Total of Extended Bid Unit Prices:

Subtotal \$ 15,000.00

5.4. Major Equipment Schedule:

5.4.1. Bidder agrees to accept as full payment for furnishing the items listed, and any Work necessary to install the items, for the unit prices included in the "Bid Column" column for each item.

5.4.2. Additional instructions for the Bidders are as follows:

5.4.2.1. Bidder must provide a Bid Amount for all Item A products, to be considered responsive.

5.4.2.2. The Bid Amount price shall include the number of units in the Bidding Documents and all associated equipment and systems identified in the specification sections listed as the responsibility of the equipment manufacturer.

5.4.2.3. Bidder Proposed Alternative:

5.4.2.3.1. Bidder may propose an "or-equal" alternate by including the Manufacturer's or Supplier's name and model number for items where a blank has been provided.

5.4.2.3.2. Evaluation and selection of alternatives will be made after selection of the Contractor.

5.4.2.3.3. Selection of the alternate to be provided will be made by Owner from those priced by Bidder as best serves the interest of Owner.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

5.4.2.3.4. Include in the Alternative Amount for Bidder-proposed alternates the cost of Work and redesign and construction changes, including, but not limited to, electrical, mechanical, structural, and any other modifications to the Work necessary to make the several parts fit together and perform as specified. In addition to cost changes, please include any potential impacts to schedule as well.

5.4.2.3.5. Any schedule delays caused by Owner's selection of an alternate other than Item A will not constitute grounds for a contract adjustment.

5.4.2.3.6. The Bidder must include the subtotal cost of all the "A" listed items in this Section in the blank space provided.

5.4.3. Major Equipment Schedule			
Section 46 76 36, Dewatered Biosolids Inclined Conveyor System, and Section 46 76 37, Dewatered Biosolids Storage and Loadout System			
Item	Manufacturer or Supplier	Alternative Amount	Bid Amount
A	Jim Myers and Sons, Inc. (JMS)		\$ 1,070,000
B	BioSec Enviro. Inc.	\$ 950,000 ^{1,070,000}	
C	n/a	\$ n/a	
Section 44 46 27, Digester Gas Treatment System			
Item	Manufacturer or Supplier	Alternative Amount	Bid Amount
A	Unison Solutions, Inc.		\$ 924,000
B	n/a	\$ n/a	
C	n/a	\$ n/a	
Section 44 46 30, Cogeneration Engine System			
Item	Manufacturer or Supplier	Alternative Amount	Bid Amount
A	GE Jenbacher		\$ 1,275,000
B	Caterpillar	\$ 1,078,700	
C	n/a	\$ n/a	
Section 46 76 33, Dewatering Centrifuges			

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

5.4.3. Major Equipment Schedule			
Item	Manufacturer or Supplier	Alternative Amount	Bid Amount
A	GEA-Westfalia Separator, Inc.		\$ 765,352-
B	Alfa Laval, Inc.	\$ 926,000-	
C	n/a	\$ n/a	
Section 44 42 56.13, Progressing Cavity Pumps			
Item	Manufacturer or Supplier	Alternative Amount	Bid Amount
A	Moyno		\$ 300,000- 370,000- <i>put</i>
B	Seepex	\$ 311,650-	
C	netz.ch	\$ 242,500-	

5.4.4. Major Equipment Schedule Subtotal (Sum of amounts for Section 46 76 36 and Section 46 76 37, Item A, Section 44 46 27, Item A, Section 44 46 30, Item A, Section 46 76 33, Item A, and Section 44 42.56.13, Item A):

Subtotal: \$ ~~4,404,352.00~~ ^{put} 4,334,352.00

5.5. Base Bid Summary:

5.5.1. Base Bid Summary: Enter amounts from previous Subtotals:

Line Item	Description	Amount
5.2.	Lump Sum Subtotal	\$ 29,124,000-
5.3.3.2	Total of Extended Bid Unit Prices Subtotal	\$ 15,000.00
5.4.4	Major Equipment Schedule Subtotal	\$ 4,334,352.00 4,404,352.00 <i>put</i>

5.5.2. Base Bid (Total of Above): \$ _____

put 29,33,473,352.00
(figures)

Thirty three million three hundred twenty three thousand three hundred sixty-two dollars and 00/100
(words)

The amount in words takes precedence.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

6. TIME OF COMPLETION

6.1. Bidder agrees the Work, and any Milestones specified in Section 01 31 13, Project Coordination, will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates, or within the number of calendar days, indicated in the Agreement.

6.2. Bidder agrees the Work will be substantially complete within 880 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 910 calendar days after the date when the Contract Times commence to run.

6.3. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work, and any specified Milestones, within the Contract Times.

7. ATTACHMENTS TO THIS BID

7.1. The following documents are submitted with and made a condition of this Bid:

7.1.1. Required Bid security in the form of Bid Bond.

7.1.2. Resident/Non-Resident Bidder Status Form.

7.1.3. Forms from CWSRF-Funded Construction Project Contract:

7.1.3.1. Attachment 3 – List of Contacted Disadvantaged Business Enterprises (DBE).

7.1.3.2. Attachment 10 – Certification of Independent Price Determination.

7.1.3.3. Attachment 11 – Prevailing Wage Agreement (Davis Bacon).

7.1.3.4. Fair Share Objectives, Six Good Faith Efforts, Contract Administration and Language.

7.1.4. First Tier Subcontractor Disclosure Form (required within 2 hours of Bid closing).

7.1.5. Noncollusion Affidavit.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

8. DEFINED TERMS

8.1. The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

9. BID SUBMITTAL

9.1. This Bid submitted by:

If Bidder is:

An Individual

Name (typed or printed): n/a

By (signature): _____

Doing business as: _____

A Partnership

Partnership Name: n/a (SEAL)

By: _____
(Signature of general partner – attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: James W. Fowler Co. (SEAL)

State of Incorporation: Oregon

Type (General Business, Professional, Service, Limited Liability): General Business

By: _____
(Signature – attach evidence of authority to sign)

Name (typed or printed): James W. Fowler

Title: President (CORPORATE SEAL)

Attest: _____ John B. Fowler
(Signature of Corporate Secretary)

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

Date of Qualification to do business in Oregon is:

February 3, 1977 _____.

A Joint Venture

Joint Venturer Name: n/a _____ (SEAL)

By: _____

(Signature of joint venture partner – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

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

Bidder's Business Address: James W. Fowler Co. _____

12775 Westview Drive, Dallas, OR 97338

Phone No.: (503) 623-5373 _____ FAX No.: (503) 623-9117 _____

E-mail: pattis@jwfowler.com _____

SUBMITTED on May 24 _____, 2018

Oregon Contractor's License No.: 63701 _____

Contractor's License Class (where applicable): CCB _____

Bidder is an Oregon company as defined in ORS 279A.120.

Yes No

END OF SECTION

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

BID BOND

**PROJECT NAME: #2018-19 TRI-CITY WATER RESOURCE RECOVERY
FACILITY (WRRF) SOLIDS HANDLING IMPROVEMENTS PROJECT
(PROJECT P632162)**

We, James W. Fowler Co., as "Principal,"
(Name of Principal)

and Liberty Mutual Insurance Company, as Massachusetts Corporation,
(Name of Surety)

authorized to transact Surety business in Oregon, as "Surety," hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns to pay unto Water Environment Services ("Obligee") the sum of (\$ _____)

Ten Percent (10%) of the Total Amount of Bid---
dollars.

WHEREAS, the condition of the obligation of this bond is that Principal has submitted its proposal or bid to an agency of the Obligee in response to Obligee's procurement document (No. 2018-19) for the project identified above which proposal or bid is made a part of this bond by reference, and Principal is required to furnish bid security in an amount equal to ten (10%) percent of the total amount of the bid pursuant to the procurement document.

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

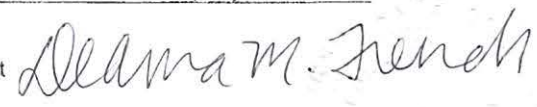
TRI-CITY SOLIDS HANDLING IMPROVEMENTS

IN WITNESS WHEREOF, we have caused this instrument to be executed and sealed by our duly authorized legal representatives this 22nd day of May, 2018.

Principal: James W. Fowler Co.


Surety: Liberty Mutual Insurance Company

By: 

By: Attorney-In-Fact 

James W. Fowler
Signature
President
Official Capacity

Deanna M. French
Name

Attest: 
Corporation Secretary

2233 112th Ave. N.E.
Address

Bellevue WA 98004
City State Zip

(425) 709-3600 (425) 709-7467
Phone Fax

END OF SECTION

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 8016528

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Guy Armfield; John Claeys; Scott Fisher; Deanna M. French; Elizabeth R. Hahn; Roger Kaltenbach; Ronald J. Lange; Andrew P. Larsen; Susan B. Larson; Scott McGilvray; Mindee L. Rankin; Jana M. Roy; Jill A. Wallace

all of the city of Bellevue, state of WA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 21st day of February, 2018.



The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 21st day of February, 2018, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 22nd day of May, 2018.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

I state that James W. Fowler Co.(Name of this Firm) understands and acknowledges that the above representations are material and important, and will be relied on by Water Environment Services and Clackamas County Service District No. 1 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 Water Environment Services and Clackamas County Service District No. 1 of the true facts relating to the submission of Bids for this Project.

James W. Fowler Co.
Name of Company

[Signature] /James W. Fowler, President
Signature/Position

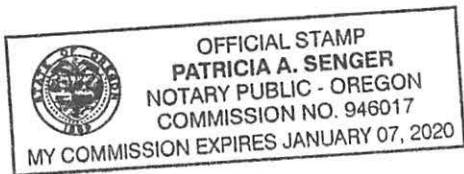
Sworn to and subscribed before me this 24th day of May, 2018, by

Patti Senger

[Signature]

Notary Public for Oregon

This Commission Expires: January 07, 2020



CONSENT RESOLUTION

WHEREAS, the undersigned are all of the Directors of James W. Fowler Co., an Oregon corporation (the "Corporation"); and

WHEREAS, the undersigned wish to take the action as hereinafter set forth pursuant to the Oregon Business Corporation Act; and

WHEREAS, pursuant to Article IV, Section 2 of the Bylaws of the Corporation, the President is empowered to sign, execute and bind the Corporation to contracts in the course of the business of the Corporation; and

WHEREAS, due to the exigencies of operating the business of the Corporation, it is not always possible for the President, James W. Fowler, or one of the officers, John B. Fowler, Executive Vice President/Secretary, and Candace J. Fowler, Treasurer, to evaluate and sign each individual contract which may be of interest or benefit to the Corporation; and

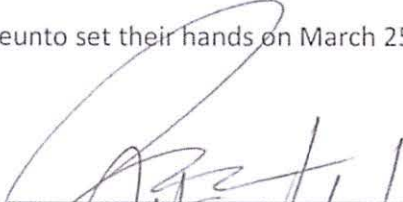
WHEREAS, pursuant to Article IV, Section 6 of the Bylaws of the Corporation, the Board of Directors in its discretion may appoint additional officers or agents of the Corporation and may prescribe the duties thereof; and

WHEREAS, the Directors of the Corporation wish to appoint Wayne Howden the Controller of the Corporation as Assistant Secretary and authorize him to cause the Corporation to enter into contracts in the regular course of business of the Corporation, to prepare and submit bids on behalf of the Corporation and to sign and execute contracts on behalf of the Corporation.

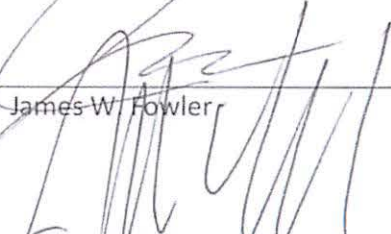
NOW, THEREFORE, the following resolutions are unanimously adopted:

RESOLVED, that in addition to the current officers of the Corporation, namely James W. Fowler, President; John B. Fowler, Executive Vice-President; and Candace J. Fowler, Vice-President and Treasurer, Wayne Howden, Assistant Secretary are each authorized to execute any and all documents for and on behalf of the Corporation, including without limitation bids, contracts, insurance applications, bonding applications, and similar and related documents.

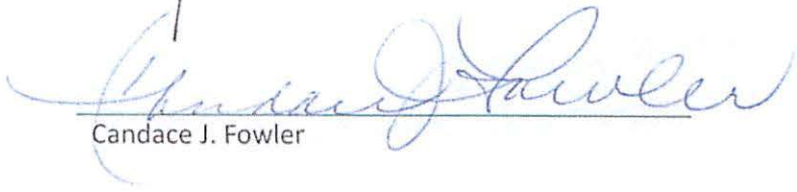
IN WITNESS WHEREOF, the undersigned have hereunto set their hands on March 25, 2014.



James W. Fowler



John B. Fowler



Candace J. Fowler

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

PROJECT NAME: James W. Fowler Co.
 BID #: 2018-19 BID CLOSING: Date: May 24, 2018 Time: 2:00 PM

This form shall be submitted at the location specified in the Advertisement/Invitation to Bid within 2 working hours after the advertised Bid closing time on advertised Bid closing date.

List below the name of each Subcontractor that will be furnishing labor or labor and materials and that is required to be disclosed, the category of work that Subcontractor will be performing, and dollar value of subcontract. Enter "NONE" if there are no Subcontractors that need to be disclosed. (Attach additional sheets if needed.)

	NAME	DOLLAR VALUE	CATEGORY OF WORK
1)	<u>Pacific Foundation</u>	<u>\$ 543,344.78</u>	<u>Secant Pile</u>
2)	<u>Team Electric</u>	<u>\$ 4,065,290.00</u>	<u>Electrical & Instrumentation</u>
3)	<u>HVAC Inc</u>	<u>\$ 1,806,549.00</u>	<u>HVAC</u>
4)	<u>The Rodriguez Corporation</u>	<u>1,128,965.00</u>	<u>Painting / Coating</u>
5)	<u>ABC Roofing</u>	<u>\$ 1,040,020.00</u>	<u>Roofing</u>
6)	<u>Ward-Henshaw Const. Co. Inc.</u>	<u>\$ 2,159,000.00</u>	<u>Prestressed Concrete Tank</u>
7)	_____	_____	_____
8)	_____	_____	_____

Failure to submit this form by the disclosure deadline will result in a nonresponsive Bid. A nonresponsive Bid will not be considered for award.

FORM SUBMITTED BY (BIDDER NAME): James W. Fowler Co.
 CONTACT NAME: Patti Senger PHONE NO.: (503) 623-5373

END OF SECTION



Fair Share Objectives, Six Good-Faith Efforts, Contract Administration and Contract Language

This form must be completed by the loan recipient, prime contractor and any subcontractor who will further subcontract on the Clean Water State Revolving Fund project within the scope of the CWSRF loan. All boxes in this attachment must be initialed and the bottom signed. One completed attachment for the prime contractor must be submitted as part of the bid/proposal to the loan recipient. One completed attachment for each subcontractor who will further subcontract must be submitted before the contract award. A copy of those must be included in the contract copy to DEQ, along with one attachment initialed and signed by the loan recipient.

Fair Share Objectives

The loan recipient accepts the following Fair Share Objectives for the CWSRF-funded project and must employ the six good-faith efforts to achieve these percentages in disadvantaged business enterprises participation:

Supplies: 0.43% MBE 1.28% WBE
Services: 2.58% MBE 4.45% WBE
Equipment: 1.08% MBE 2.69% WBE

MBE/WBE Certification


All Minority Business Enterprises and Woman Business Enterprises must be certified by Oregon's [Office of Minority, Women and Emerging Small Businesses](#) or by the state in which they are located. This office administers the Disadvantaged Business Enterprise, Minority Business Enterprise/Women Business Enterprise, and Emerging Small Business programs.

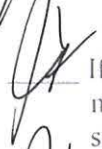
Six Good-Faith Efforts

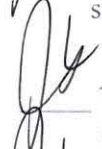
The good-faith efforts are required methods to ensure that all DBEs have the opportunity to compete for procurements funded by the Clean Water State Revolving Fund. The loan recipient and their prime contractor are required to:


1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian tribal, state and local government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they're potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian tribal, state and local government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the federal Small Business Administration, Minority Business Development Agency of the U.S. Department of Commerce, and the state Office of Minority, Women and Emerging Small Business.
6. If the prime contractor awards subcontracts, require the prime contractor to take steps 1 through 5 above.

Contract Administration

 The Loan Recipient must require its prime contractor to employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.

 If a DBE subcontractor fails to complete work under the subcontract for any reason, the Loan Recipient must require the prime contractor to employ the six good faith efforts if soliciting a replacement subcontractor.

 The Loan Recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the Loan Recipient.

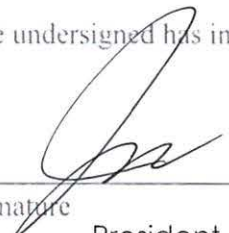
 The Loan Recipient must require written notification from its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

Specific Contract Language

All contracts between the Loan Recipient and prime contractor, and prime contractor and subcontractors must include the following statement required by 40 CFR Part 33:

"The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies."

The undersigned has initialed the items above and understands the resulting responsibility for each item.

 _____ /James W. Fowler _____ May 24, 2018 _____
 Signature _____ Date
 President

 Title James W. Fowler Co. _____

 Company

DEQ will review the bid/proposal package. Failure of the Loan Recipient and its prime contractor to demonstrate a good faith effort to meet the fair share objectives will prevent DEQ concurrence with the contract award. As a result, DEQ will not reimburse the contractor's subsequent payment requests.

Certificate of Independent Price Determination



State of Oregon
Department of
Environmental
Quality

The prime contractor must sign this form and submit it as part of its bid proposal to the Clean Water State Revolving Fund loan recipient. A copy of this signed form must be included in the contract copy between the loan recipient and the selected prime contractor that the loan recipient submits to DEQ. The prime contractor must obtain a signed copy of this form from each subcontractor, and retain them in the prime contractor's contract file.

Bidder's

Name: James W. Fowler Co.

Address: 12775 Westview Drive, Dallas, OR 97338

a. The bid offeror certifies that:

1. The prices in this offer have been arrived at independently without, for the purpose of restricting competition, any consultation, communication or agreement with any other offeror or competitor relating to:
 - i. Those prices
 - ii. Intention to submit an offer
 - iii. Methods or factors used to calculate the prices offered
2. The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law
3. No attempt has been or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

b. Each signature on the offer is considered to be a certification by the signatory that the signatory:

1. Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
2.
 - i. Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above:
 - ii. As an authorized agent, certifies that the principals named below have not participated, and will not participate, in any action contrary to subparagraph (a)(1) through (a)(3) above; and
 - iii. As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.
3. If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

Insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization:

Full Name of Person(s) in the Offeror's Organization	Title	Date
<u>John B. Fowler</u>	<u>Executive Vice President</u>	<u>May 24, 2018</u>
<u>Jack Miller</u>	<u>Chief Estimator</u>	<u>May 24, 2018</u>

Prevailing Wage Agreement



State of Oregon
Department of
Environmental
Quality

The loan recipient, prime contractor and subcontractors all must initial and sign this form. The prime contractor copy must be submitted as part of the bid/proposal to the loan recipient. A copy of this form signed by the loan recipient and the prime contractor must be submitted with the contract copy to DEQ. The prime contractor must obtain a signed copy of this form from each subcontractor and retain them in the prime contractor's contract file.

[Signature] The undersigned understands that this public works project is funded in whole or in part by the Clean Water State Revolving Fund and is subject to the prevailing wage requirements of Oregon's Bureau of Labor and Industry (BOLI) and the requirements of the Davis-Bacon Act.

[Signature] The undersigned agrees that, notwithstanding any other provision of law, all laborers and mechanics employed on the project must be paid wages at rates not less than those prevailing on projects of a similar character in the locality, as determined by the United States Secretary of Labor, or the Commissioner of the Oregon Bureau of Labor and Industries, whichever is higher. ORS 279C.838; OAR 839-025-0035(2)

When a public works project is subject to both the state (BOLI) and federal (Davis-Bacon) prevailing wage rate laws, contractors and subcontractors must pay the higher of either the state or federal prevailing wage rates for the type of work being performed. ORS 279C.838; OAR 839-025-0035(2)

Davis Bacon

[Signature] Davis-Bacon applies to all treatment works construction projects for the entirety of the construction activities financed by a CWSRF loan through the completion of construction, no matter when construction commences.

[Signature] The Loan Agreement includes specific Davis-Bacon terms and conditions contract language that must be passed through to the prime contractor and all subcontractors in their contracts over \$2,000.

[Signature] The Secretary of Labor's determination, regarding the prevailing wages applicable in the state of Oregon, are located at: <http://www.wdol.gov/>. The prevailing wages are those in effect at the time of contract award. Wages obtained through this web link should be printed at the time of contract award and included in procurement documents and all contracts resulting from the procurements.

[Signature] The loan recipient or the prime contractor on behalf of the loan recipient maintains on-going wage information as a requirement of the CWSRF funding of a project subject to Davis-Bacon. The CWSRF program suggests using the wage matrix tool at this link <http://www.deq.state.or.us/wq/loans/constructionForms.htm> and instructions for the wage matrix at this link <http://www.deq.state.or.us/wq/loans/docs/WageMatrixInst.pdf>

[Signature] The loan recipient conducts at least one set of wage interviews with a representative group of workers during the project construction. The loan recipient must conduct additional interviews if there is any reason to suspect a contractor or their subcontractor is at risk for violating wage requirements. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The loan recipient must use Standard Form 1445 or equivalent documentation to memorialize the interviews.

Oregon Bureau of Labor and Industry

BOLI prevailing wage rates apply to projects over \$50,000. Oregon prevailing wage rate regulations require every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the applicable prevailing rate of wage for each trade or occupation, as determined by the commissioner, in which the workers are employed. OAR 839-025-0035.

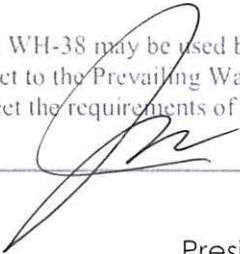
The wage rates identified by the Commissioner of the Oregon BOLI are located at http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx

The prevailing wage rates in effect at the time the bid specifications are first advertised are the BOLI wage rates that apply for the duration of the project. Prevailing wages obtained through the BOLI websites must be included in the bid solicitation and incorporated in all contracts resulting from the procurements.

All contractors and subcontractors shall file, with the Construction Contractors Board, a \$30,000 public works bond with a corporate surety authorized to do business in this state. ORS 279C.836 The bond must provide that the contractor or subcontractor will pay claims ordered by BOLI to workers performing labor upon public works projects. It must be filed before starting work on a contract or subcontract for the project.

Payroll/Certified Statement (form WH-38)

Form WH-38 may be used by contractors for reporting their payroll as required by ORS 279C.845 on public works projects subject to the Prevailing Wage Rate Law. This form has not been officially approved by the USDOL, however it is designed to meet the requirements of the federal Davis-Bacon Act as well. [Prevailing Wage Rate Forms](#).

	/James W. Fowler	May 24, 2018
Signature		Date
President		
Title		
James W. Fowler Co.		
Company		

Prevailing Wage Crosswalk Table

	BOLI	Davis-Bacon
Projects it applies to		all treatment works construction projects for the entirety of the construction activities financed by a CWSRF loan through the completion of construction, no matter when construction commences
Project cost thresholds	projects over \$50,000	contracts and subcontracts over \$2,000
Where to find wage rates	http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx	http://www.wdol.gov/
When wages are in effect	at the time the bid specifications are first advertised	at the time of contract award
Forms	Payroll/Certified Statement (form WH-38) Prevailing Wage Rate Forms .	1. Payroll/Certified Statement (form WH-38) Prevailing Wage Rate Forms 2. DEQ wage matrix form 3. Standard Form 1445 or equivalent documentation to memorialize the interviews.
Bonds	\$30,000 public works bond	

BID #2018-19

Tri-City WRRF Solids Handling Improvements; Mandatory Pre-bid meeting attendance log; April 25, 2018, 9:00 am

No.	Name	Affiliation (name of firm)	Contact phone and email
16	Dick McElligott	JW Fowler	Dickm@jwfowler.com Estimating@jwfowler.com
17	Jim Coskey	JBI	Jimcoskey@jbiwater.com
18	Mike Brye	Camp Creek Electric	Mike@campcreekelectric.com
19	Bob Richardson	Tice Electric Co	Bohr@ticeelectric.com
20	Steven Urdahl	Xylem, Inc.	Steven.urdahl@xyleminc.com
21	Mark Hoover	Slayden Constructors, Inc.	Markh@slayden.com
22	Rocky Pietz	Slayden Constructors, Inc.	Rocky.Pietz@stantec.com
23	Thomas Miller	EC Company	Thomas.Miller@ecpowerslife.com

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

ADDENDUM NO. 1
TO THE CONTRACT DOCUMENTS
for the construction of
Tri-City WRRF Solids Handling Improvements

Date: April 26, 2018
Project No.: 692260

To All Planholders and/or Prospective Bidders:

The following changes, additions, and/or deletions are hereby made a part of the Contract Documents for the construction of Tri-City WRRF Solids Handling Improvements dated April 2018 as fully and completely as if the same were fully set forth therein:

A. PART 1, BIDDING AND CONTRACTING REQUIREMENTS

1. Section 00 21 13, Instructions to Bidders. Page 4, Article 6, Mandatory Prebid Conference. ADD the following sentence to the end of Paragraph 6.1:
 - a. "An additional optional site tour for prospective Bidders will be held on May 3, 2018, 10:00 a.m. to 11:00 a.m. at the Tri-City WRRF, 15941 S. Agnes Avenue, Oregon City, OR 97045. This site visit is non-mandatory and is provided as an additional opportunity for prospective Bidders to tour the project site during the bid period. All Bidders shall have attended the mandatory pre-bid conference as indicated."

All Bidders shall acknowledge receipt and acceptance of this Addendum No. 1 in the Bid Form or by submitting the Addendum with the bid package. Bid Forms submitted without acknowledgment or without this Addendum will be considered in nonconformance.

CH2M HILL

R. Brady Fuller, P.E.
Project Manager

END OF ADDENDUM NO. 1

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

ADDENDUM NO. 2
TO THE CONTRACT DOCUMENTS
for the construction of
Tri-City WRRF Solids Handling Improvements

Date: May 3, 2018
Project No.: 692260

To All Planholders and/or Prospective Bidders:

The following changes, additions, and/or deletions are hereby made a part of the Contract Documents for the construction of Tri-City WRRF Solids Handling Improvements dated April 2018 as fully and completely as if the same were fully set forth therein:

A. BIDDING AND CONTRACTING REQUIREMENTS

1. Section 00 11 13, Invitation to Bid.
 - a. Page 1. In the first paragraph, first sentence, DELETE “15th” and REPLACE with “22nd”. In the last sentence, DELETE “15” and REPLACE with “22”.
 - b. Page 2, Paragraph Prevailing Wage. In the first paragraph, ADD the following after the second sentence:

“Also comply with all the requirements set forth in Appendix E: Davis-Bacon Provision.”
2. Section 00 21 13, Instructions to Bidders. Page 7.
 - a. Article 14 Wage Rates. ADD the following:

“14.4. Contractor must also comply with the requirements set forth in Appendix E: Davis-Bacon Provision.”
 - b. Article 15 Preparation of Bid, Paragraph 15.2. ADD the following:

“15.2.4. Fair Share Objectives, Six Good Faith Efforts, Contract Administration and Language.”
3. Section 00 41 13, Bid Form. DELETE in its entirety and REPLACE as herein attached.

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

ADDENDUM NO. 3
TO THE CONTRACT DOCUMENTS
for the construction of
Tri-City WRRF Solids Handling Improvements

Date: May 11, 2018
Project No.: 692260

To All Planholders and/or Prospective Bidders:

The following changes, additions, and/or deletions are hereby made a part of the Contract Documents for the construction of Tri-City WRRF Solids Handling Improvements dated April 2018 as fully and completely as if the same were fully set forth therein:

A. CHANGES TO PRIOR ADDENDA

1. Addendum No. 2, page 1:
 - a. Item No. A.1, Section 00 11 13, Invitation to Bid, page 1. In the first paragraph, first sentence, DELETE “22nd” and REPLACE with “24th”. In the last sentence, DELETE “22” and REPLACE with “24”.
 - b. Item No. A.3: In Section 00 41 13, Bid Form, page 1, DELETE the Bid Closing date “May 22, 2018” and REPLACE with “May 24, 2018.” DELETE the Bid Opening date “May 22, 208” and REPLACE with “May 24, 2018.”

B. BIDDING AND CONTRACTING REQUIREMENTS

1. Section 00 21 13, Instructions to Bidders.
 - a. Page 6, Article 13 Subcontractors, Suppliers, and Others. ADD the following:

“13.3. The following firms have been prequalified for the externally wrapped prestressed concrete tank construction.

No.	Firm Name	Address, Phone, and email
1	Marion Construction Company	14835 S.E. 82nd Drive Clackamas, OR 97015 (503) 581-1920 info@marionconst.com
2	Ward-Henshaw Construction	505 N. Baker Drive Canby, OR 97013 (503) 266-1986 h20tanks@ward-henshaw.com

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

ADDENDUM NO. 4
TO THE CONTRACT DOCUMENTS
for the construction of
Tri-City WRRF Solids Handling Improvements

Date: May 17, 2018
Project No.: 692260

To All Planholders and/or Prospective Bidders:

The following changes, additions, and/or deletions are hereby made a part of the Contract Documents for the construction of Tri-City WRRF Solids Handling Improvements dated April 2018 as fully and completely as if the same were fully set forth therein:

A. CHANGES TO PRIOR ADDENDA:

1. Addendum No. 2, page 3. Section 01 31 13, Project Coordination.
 - a. Page 2, Article 1.02 Related Work at Site, Paragraph C, Power. DELETE Item No. 2.a in its entirety and replace with the following:

“a. Install metering equipment in new service disconnects.”
 - b. Page 3, Article 1.03 Utility Notification and Coordination. DELETE Paragraph A.4 in its entirety.
 - c. Page 6, Article 1.06 General Work Sequencing Constraints.
 - 1) ADD the following Paragraph B.4.d:

“d. Demolish existing dewatered biosolids cake conveyors and loadout facility.”
 - 2) DELETE Paragraph B.5.c in its entirety.
 - d. Article 1.07 Facility Operations and Work Sequence.
 - 1) Paragraph F, Work Sequence.
 - a) Page 11. ADD Item No. 6.b.3)b):

“b. Demolish existing dewatered biosolids cake conveyors and loadout facility.”
 - b) Page 11. DELETE Item No. 6.b.3)f): (Demolish existing dewatered biosolids cake conveyors and loadout facility).

List of Contacted Disadvantaged Business Enterprises

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State of Oregon
Department of
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Completed by: John B. Fowler, Executive Vice President

Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
3 Diamond Construction, LLC DBE	9339	Ofelia Lara	5037346323	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:53:55 PM Phone: 4/27/2018 1:47:21 PM	Phone 1: May be interested, not sure. Number not available at the moment. Result: Did not respond, did not submit quote
A2 Fabrication, Inc. WBE	2070	Gail Schmidt	5037712000	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:38 PM Phone: 4/27/2018 1:48:35 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Affinity Steel, Inc. WBE	7594	Patricia Evanson	5035775780	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:51 PM Phone: 4/27/2018 1:51:23 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
AFFORDABLE ELECTRIC INC MBE	4027	Jean Wildy Malar	5033056979	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:23 PM Phone: 4/27/2018 1:56:56 PM	Phone 1: No, not submitting a quote for this project. Result: Did not submit quote
AM Contracting LLC WBE	9536	Amanda Hoyt	5037302517	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:16 PM Phone: 4/27/2018 1:59:55 PM 5/11/2018 8:18 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Amanda Result: No, not submitting a quote

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
Andersen Heating, Inc MBE	8561	Art Andersen	5038410742	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:10 PM Phone: 4/27/2018 2:03:40 PM 5/11/2018 8:20 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Mark Result: Requested invitation resent. They will respond if interested.
AZURI CONSTRUCTION, INC. DBE	238	Jose Figueroa	5032898431	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 2:07:24 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Result: Did not respond, did not submit quote
Braun Construction & Design L.L.C. WBE	5786	Jeanie Braun	5036386406	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:09 PM Phone: 4/27/2018 2:09:27 PM 5/11/2018 8:25AM	Phone 1: Re-sent an email to be.braunconstruction@gmail.com. They will take a look at it and respond if interested. Phone 2: Talked to Camille Result: No, not submitting a quote for this project.
By Design Steel Services, LLC WBE	11196	Patrice Siminoe	5037299900	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:44 PM Phone: 4/27/2018 2:10:42 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
C & L Metal Sales, LLC DBE	3255	Cindy Scott	5032888922	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:35 PM Phone: 4/27/2018 2:12:31 PM 5/11/2018 8:32 PM	Phone 1: May be interested, not sure. Estimator out of the office. Please call back. Phone 2: Talked to Cinty Result: They are still deciding whether they are interested in this project.

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
CAROLYNE BRUSH WBE	4149	Carolyne Brush	5039612949	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:23 PM Phone: 4/27/2018 2:14:36 PM 5/11/2018 8:32 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
CASA BONITA LLC DBE	8558	Omar Martinez Barrera	5039564866	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:09:11 PM Phone: 4/27/2018 2:16:12 PM	Phone 1: No, not submitting a quote for this project. Result: Did not submit quote
CASCADE FLOORING, LLC WBE	4121	Tracey Palmer	5036583828	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:10 PM Phone: 4/27/2018 2:17:12 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. This is the wrong phone number. Result: Did not respond, did not submit quote
CBK CONSTRUCTORS, LLC WBE	6079	Christina Beko	5038661305	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:55 PM Phone: 4/27/2018 2:20:01 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Result: Did not respond, did not submit quote
CEARLEY CONSTRUCTION LLC MBE	9582	Jeremy Cearley	5039841147	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:51:04 PM Phone: 4/27/2018 2:20:59 PM 5/11/2018 8:38 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Jeremy Result: No, not submitting a quote for this project.

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
CEJA'S COMMERCIAL INTERIORS, INC. MBE	8667	Jose Ceja Alvarez	5032092343	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:33 PM Phone: 4/27/2018 2:22:45 PM 5/11/2018 8:40 AM	Phone 1: Re-sent an email to the address on record. They will take a look at it and respond if interested. Phone 2: Talked to Estimator Result: No, not submitting a quote for this project.
Centurion Fire Protection, LLC WBE	9680	Jill Barker	5038940563	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:59:58 PM Phone: 4/27/2018 2:26:51 PM 5/11/2018 8:41 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Estimator Result: No, not submitting a quote for this project.
CHE Group, LLC DBE	9307	Heather Jones	5033072132	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:10 PM Phone: 4/27/2018 2:35:10 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Corpac Construction Company WBE	8325	Trisha Cauthorn	5417407929	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:18 PM Phone: 4/27/2018 2:37:24 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Result: Did not respond, did not submit quote
Croteau Electrical Consulting and Design MBE	10071	Scott Croteau	5035500548	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:55:35 PM Phone: 4/27/2018 2:38:56 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

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CUTTER CONSTRUCTION CO INC WBE	4140	Lori Pottratz	5039695116	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:02 PM Phone: 4/27/2018 2:42:28 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Result: Did not respond, did not submit quote
D & F Plumbing, Co. WBE	7402	Sandi Warren	5032820993	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:24 PM Phone: 4/27/2018 2:44:50 PM 5/11/2018 8:55 AM	Phone 1: Re-sent a fax to davidm@d-f-plumbing.com. They will take a look at it and respond if interested. Phone 2: Talked to Randy Result: Re-sent fax to Randy, he will respond if interested.
Dailey's Trucking, Excavating & Paving, LLC WBE	5224	Elizabeth Dailey	5036688105	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:11 PM Phone: 4/27/2018 2:45:53 PM	Phone 1: May be interested, not sure. Number not available at the moment. Result: Did not respond, did not submit quote
Dirt and Aggregate Interchange, Inc. MBE	493	Henry Pelfrey	5036615093	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:23 PM Phone: 4/27/2018 2:46:49 PM	Phone 1: No, not submitting a quote for this project. Result: Did not submit quote
Eddy Excavation, LLC MBE	5970	Troy Eddy	5037098340	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:55:01 PM Phone: 4/27/2018 2:47:27 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Result: Did not respond, did not submit quote

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
ENERGY COMFORT & CONSTRUCTION LLC WBE	5931	Garciela Pepelaskov	5036573434	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:22 PM Phone: 4/27/2018 2:48:52 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Result: Did not respond, did not submit quote
Evergeren Developers llc MBE	10912	Jeremy Tjaden	5036554005	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 2:49:54 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Faison Construction, Inc. DBE	2768	James Faison	5034930684	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:28 PM Phone: 4/27/2018 2:54:49 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Result: Did not respond, did not submit quote
FIRST INSTALLATION REPAIR & SERVICE TODAY, INC. DBE	600	Robert Huckaby	5032888732	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:48 PM Phone: 4/27/2018 2:56:01 PM	Phone 1: No, not submitting a quote for this project. The project is outside of their scope of work. Result: Did not submit quote
Fox Erosion Control and Landscape, Inc. DBE	10599	Jane Marsh	5036548816	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:18 PM Phone: 4/27/2018 2:56:32 PM	Phone 1: May be interested, not sure. Reached voicemail but unable to leave a message. Result: Did not respond, did not submit quote

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
Franklin Kumar Rowlett MBE	6569	Franklin Rowlett	5038877592	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 2:58:11 PM 5/11/2018 10:03 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Estimator Result: No, not submitting a quote for this project.
G&L EXTERIORS, INC. MBE	6311	Gregory Richards	5035729614	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:53 PM Phone: 4/27/2018 2:59:23 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Gibson Door & Millwork, Inc. DBE	646	Bryna Gibson	5037888080	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:47 PM Phone: 4/27/2018 3:01:55 PM	Phone 1: They have not had a chance to review the invitation yet. They will look at it and respond if interested. Result: Did not respond, did not submit quote
Green Deconstruction Services, Inc. WBE	6269	Bonnie Lane	5032364299	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:18 PM Phone: 4/27/2018 3:04:30 PM 5/11/2018 10:10 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Barbara Result: Requested re-send invitation via email, will respond if interested.
Green Depot OR Pacific Coast LLC WBE	9959	Sarah Beatty	7187822991	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:56 PM Phone: 4/27/2018 3:06:11 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

List of Contacted Disadvantaged Business Enterprises

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
Greenlife Construction Inc. MBE	3431	Gilbert Martin	5036588759	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:38 PM Phone: 4/27/2018 3:08:20 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Hal's Construction, Inc. WBE	2315	Doris Hickman	5036564999	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:52 PM Phone: 4/27/2018 3:09:54 PM 5/11/2018 10:20 AM	Phone 1: Re-sent an email to the address on record. They will take a look at it and respond if interested. Phone 2: Talked to Katlyn Result: Provided all the project details, they will submit a quote if interested.
Happy Valley Air Conditioning LLC MBE	7501	Jeff Topkok	5035440713	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:53:35 PM Phone: 4/27/2018 3:12:22 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. This is the wrong phone number. Result: Did not respond, did not submit quote
INTERIOR/EXTERIOR SPECIALIST L.L.C. WBE	5158	Joy Wiberg	5037797829	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:49:42 PM Phone: 4/27/2018 3:14:06 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The voicemail inbox is full. Result: Did not respond, did not submit quote
INTERLAKEN, INC. WBE	4005	Kendall Miller	5036747460	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:19 PM Phone: 4/27/2018 3:17:10 PM	Phone 1: Re-sent an email to andy@interlaken-inc.com. They will take a look at it and respond if interested. Result: Did not respond, did not submit quote

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Completed by: John B. Fowler, Executive Vice President

Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
IRON HORSE EXCAVATION, L.L.C. WBE	7618	June Kalkhoven	5037807124	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:27 PM Phone: 4/27/2018 3:18:01 PM 5/11/2018 10:29 AM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
J M FLOORING INSTALLATIONS, LLC MBE	8003	Jesus Meraz-Felix	5037209864	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:53:45 PM Phone: 4/27/2018 3:18:44 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
J.A CONSTRUCTION LLC MBE	10943	Juan Pedro Aguiar-Navarro	5039898268	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 3:21:11 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Janet Turner Engineering, LLC WBE	10714	Janet Turner	5415100878	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:30 PM Phone: 4/27/2018 3:23:12 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
JEFFREY J. ARRIETA MBE	4719	Jeffrey Arrieta	5032633721	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:59 PM Phone: 4/27/2018 3:24:07 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
JR Concrete Construction, LLC DBE	8673	Tautalano Falepapalangi	5039544237	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:37 PM Phone: 4/27/2018 3:27:18 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The voicemail inbox is full. Result: Did not respond, did not submit quote
K & B Quality Excavating, LLC DBE	9326	Kevin Rariden	5412702083	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:22 PM Phone: 4/27/2018 3:28:23 PM	Phone 1: They have not had a chance to review the invitation yet. They will look at it and respond if interested. Result: Did not respond, did not submit quote
KAPLAN-STEIN INTERIORS LLC DBE	4870	Allan Cowley	5037570612	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:00:30 PM Phone: 4/27/2018 3:29:31 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
KO CONSTRUCTION, LLC MBE	8084	Marco Rojas	5033305533	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:29 PM Phone: 4/27/2018 3:30:40 PM 5/11/2018 10:38 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Estimator Result: No, not submitting a quote for this project.
LAUZON CONTRACTING, LLC WBE	5550	Nancy Lauzon	5034825445	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:52 PM Phone: 4/27/2018 3:32:04 PM	Phone 1: May be interested, not sure. Estimator out of the office. Please call back next week. Result: Did not respond, did not submit quote

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Liberty Steel Erectors, Inc. DBE	123	Gilbert Carreon	5032547346	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:39 PM Phone: 4/27/2018 3:33:49 PM	Phone 1: No, not submitting a quote for this project. Result: Did not respond, did not submit quote
Linda S. Jensen WBE	5065	Linda Jensen	5037537311	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:33 PM Phone: 4/27/2018 3:35:01 PM 5/11/2018 10:41 AM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Phase 2: Talked to Receptionist Result: No, not submitting a quote for this project.
Meshier Supply Co. WBE	2760	Barbara Longaker	5032364148	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:42 PM Phone: 4/27/2018 3:35:59 PM	Phone 1: No, not submitting a quote for this project. Result: Did not submit quote
Milwaukie Floors & More LLC WBE	11224	Donna Kangieser	9712338969	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:35 PM Phone: 4/27/2018 3:37:14 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Result: Did not respond, did not submit quote
MTZ DEMOLITION CONTRACTOR, INC. WBE	8765	Rosa Martinez	5035057781	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:49 PM Phone: 4/27/2018 3:38:27 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

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Munitor Construction LLC MBE	3414	Harley Meservey	5037108933	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:35 PM Phone: 4/27/2018 3:40:09 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Myron Robinson Construction LLC DBE	6082	Myron Robinson	5035164747	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:54:57 PM Phone: 4/27/2018 3:41:06 PM 5/11/2018 11:01 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Estimator Result: No, not submitting a quote for this project.
NORTHWEST INFRASTRUCTURE, LLC MBE	1773	Michael Martin	5032356392	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:52 PM Phone: 4/27/2018 3:42:40 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Omega Metal Manufacturing LLC WBE	9335	Victoria Wriglesworth	5037806607	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:59:26 PM Phone: 4/27/2018 3:45:52 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
O'Neill Construction Group, Inc. MBE	2007	Maurice Rahming	5034936045	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:00 PM Phone: 4/27/2018 3:44:11 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

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Ortiz and Associates, Inc. MBE	1968	Baltazar Ortiz	5036684114	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:09 PM Phone: 4/27/2018 3:48:39 PM 5/11/2018 11:05 AM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
Pacific Northwest Electric Inc. MBE	6287	John Ramirez	5036571188	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:51 PM Phone: 4/27/2018 3:49:46 PM	Phone 1: No, not submitting a quote for this project. Result: Did not submit quote
PACIFIC RIM SERVICE AND CONSTRUCTION COMPANY, INC. MBE	4376	Benjamin Hwee	5032361119	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:40 PM Phone: 4/27/2018 3:50:30 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Pacificmark Construction Corp. MBE	2810	Mark Matthews	5032083355	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:01 PM Phone: 4/27/2018 3:51:37 PM 5/11/2018 11:04 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
PDX DRYWALL, LLC MBE	6223	Tito Romayor	5035938650	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 3:54:11 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

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PIPE TECH, INC. MBE	9950	Duane H. Hickson Jr.	5032346041	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:10 PM Phone: 4/27/2018 3:55:23 PM	Phone 1: May be interested, not sure. Number is invalid. Result: Did not respond, did not submit quote
PLUMBING CONCEPTS INC. MBE	5271	Jesse Zamudio	5036585232	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:35 PM Phone: 4/27/2018 3:56:10 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Result: Did not respond, did not submit quote
PRECISION FIBER, INC. WBE	2460	Angela Church	5039088148	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 3:56:55 PM	Phone 1: They have not had a chance to review the invitation yet. They will look at it and respond if interested. Result: Did not respond, did not submit quote
Presto Homes, Inc. MBE	9057	Jorge Peraza-Carillo	5037190267	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:49:26 PM Phone: 4/27/2018 3:57:32 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Result: Did not respond, did not submit quote
PROFESSIONAL LATH AND PLASTER LLC DBE	4823	Nathaniel Hartley	9252072899	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 3:59:09 PM 5/11/2018 10:59 AM	Phone 1: Re-sent an email to the address on record. They will take a look at it and respond if interested. Phone 2: Talk to Receptionist Result: No, not submitting a quote for this project.

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PROFESSIONAL MINORITY GROUP, INC. WBE	3516	Ramon Martinez	5037615924	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:47:00 PM Phone: 4/27/2018 4:00:11 PM 5/11/2018 10:58 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Receptionist Result: Requested re-send invitation, they will respond if interested.
Pure Commercial Plumbing LLC WBE	7583	Ginger Hessler	5035458007	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:09 PM Phone: 4/27/2018 4:02:24 PM 5/11/2018 10:57 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
R & L Classique Floors, Inc. DBE	2771	Judith Huck	5032556775	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:27 PM Phone: 4/27/2018 4:04:32 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Raimore Construction, LLC MBE	3527	Jeffrey Moreland	5034933533	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:33 PM Phone: 4/27/2018 4:06:19 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
River City NW Mechanical, LLC MBE	10531	Keoni Simpson	5035919950	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 4:09:47 PM	Phone 1: Re-sent an email to ian@rivercitynwmechanical.com. They will take a look at it and respond if interested. Result: Did not respond, did not submit quote

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
RUDMAR, INC. MBE	8756	Rudyard Bocala	5032627032	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:55 PM Phone: 4/27/2018 4:10:49 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Ruffin Enterprises, Inc. WBE	1215	Denise Shaw	5037748090	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:56 PM Phone: 4/27/2018 4:12:06 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Star Flatwork LLC MBE	5664	Manuel Estrella	5034811174	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:54:22 PM Phone: 4/27/2018 4:13:12 PM 5/11/2018 10:49 AM	Phone 1: May be interested, not sure. Unable to connect call due to bad connection. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
T EDGE CONSTRUCTION, INC. WBE	8864	Tammy Edgerly	5037606504	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:22 PM Phone: 4/27/2018 4:14:04 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
TERRA DOLCE CONSULTANTS, INC. WBE	6128	Cynthia Hovind	5035025114	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:16 PM Phone: 4/27/2018 4:14:40 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
The Rodriguez Corporation DBE	1900	Fernando Rodriguez	5032450679	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:52:03 PM Phone: 4/27/2018 4:16:00 PM <i>5/24/2018 1:03pm</i>	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote <i>submitted quote</i>
THE STRATEGIC GROUP, LLC DBE	5306	Joe Tshribi	5034880933	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:14:22 PM Phone: 4/27/2018 4:17:13 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Result: Did not respond, did not submit quote
Valgreen Painting WBE	10973	Eva Arechiga	9712226759	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 4:17:54 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
VERA CONSTRUCTION LLC MBE	9722	Joshua Vera	8058680253	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:58:29 PM Phone: 4/27/2018 4:19:14 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
VIP INDUSTRIAL SUPPLY, LLC MBE	6811	Mikal Shabazz	5037055300	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:59 PM Phone: 4/27/2018 4:20:17 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
W. E. Given Contracting, Inc. WBE	1474	Patricia Given	5036553662	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:50 PM Phone: 4/27/2018 4:21:51 PM 5/11/2018 10:37 AM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
WHOLE BUILDING SOLUTIONS LLC WBE	8410	Christine McKinley	5038883864	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:19 PM Phone: 4/27/2018 4:22:14 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
WILLIAM CREEL CONSTRUCTION INC. WBE	6769	Dana Creel	5034212073	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:56:15 PM Phone: 4/27/2018 4:23:12 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Xavier Environmental Inc. MBE	5610	John Harding	5032363796	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:49 PM Phone: 4/27/2018 4:26:00 PM	Phone 1: No, not submitting a quote for this project. The project is outside of their scope of work. Result: Did not submit quote
Zana Construction Company WBE	7599	Seyon Belai	5036591347	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:37 PM Phone: 4/27/2018 4:27:16 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

PERFORMANCE BOND FORM

Bond No.: _____

Solicitation #: 2018-19

Project Name: Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements Project (Project P632162)

_____ (Surety #1)	Bond Amount No. 1:	\$ _____
_____ (Surety #2)*	Bond Amount No. 2:*	\$ _____
<i>* If using multiple sureties</i>	Total Penal Sum of Bond:	\$ _____

We, _____ as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto Water Environment Services (referred to as "District"), the sum of (Total Penal Sum of Bond) \$ _____ (Provided, that we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety); and

WHEREAS, the Principal has entered into a contract with the District, along with the plans, specifications, terms and conditions of which are contained in the above-referenced Project Contract Documents; and

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Performance Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and all authorized modifications of the Contract which increase the amount of the work, the amount of the Contract, or constitute an authorized extension of the time for performance, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things undertaken by Contractor to be performed under the Contract, upon the terms set forth therein, and within the time prescribed therein, or as extended as provided in the Contract, with or without notice to the Sureties, and shall defend, indemnify, and save harmless the District and Clackamas County and their elected officials, officers, employees and agents, against any direct or indirect damages or claim of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Principal or its subcontractors, and shall in all respects perform said contract according to law, then this obligation is to be void; otherwise, it shall remain in full force and effect for so long as any term of the Contract remains in effect.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

If the District determines that any of the above conditions have not been met, the District may require payment under this bond at its sole and absolute discretion and Surety shall issue prompt payment of the full value of this bond without set-off or dispute or requirement for an opportunity to cure.

Nonpayment of the bond premium will not invalidate this bond nor shall the District, be obligated for the payment of any premiums.

This bond is given and received under authority of Oregon Revised Statutes Chapter 279A, 279B, and 279C and the Clackamas County Local Contractor Review Board Rules, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES.

Dated this _____ day of _____, 20____.

PRINCIPAL: _____

By: _____

Signature

Official Capacity

Attest: _____

Corporation Secretary

SURETY: _____

[Add signatures for each if using multiple bonds]

BY ATTORNEY-IN-FACT:

[Power-of-Attorney must accompany each bond]

Name

Signature

Address

City State Zip

Phone Fax

END OF SECTION

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

PAYMENT BOND FORM

Bond No.: _____

Solicitation: #2018-19

Project Name: Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements Project (Project P632162)

_____ (Surety #1)	Bond Amount No. 1:	\$ _____
_____ (Surety #2)*	Bond Amount No. 2:*	\$ _____
* If using multiple sureties	Total Penal Sum of Bond:	\$ _____

We, _____, as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto Water Environment Services (referred to as "District"), the sum of (Total Penal Sum of Bond) _____ (Provided, that we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety); and

WHEREAS, the Principal has entered into a contract with the District, along with the plans, specifications, terms and conditions of which are contained in above-referenced Project Contract Documents; and

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Payment Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and schedule of contract prices which are set forth in the Contract and any attachments, and all authorized modifications of the Contract which increase the amount of the work, or the cost of the Contract, or constitute authorized extensions of time for performance of the Contract, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things by it undertaken to be performed under said Contract and any duly authorized modifications that are made, upon the terms set forth therein, and within the time prescribed therein, or as extended therein as provided in the Contract, with or without notice to the Sureties, and shall defend, indemnify, and save harmless the District and Clackamas County and their elected officials, officers, employees and agents, against any claim for direct or indirect damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Contractor or its subcontractors, and shall promptly pay all persons supplying labor, materials or both to the Principal or its subcontractors for prosecution of the work provided in the Contract; and shall promptly pay all contributions due the State Industrial Accident Fund and the State Unemployment Compensation Fund

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

from the Principal or its subcontractors in connection with the performance of the Contract; and shall pay over to the Oregon Department of Revenue all sums required to be deducted and retained from the wages of employees of the Principal and its subcontractors pursuant to ORS 316.167, and shall permit no lien nor claim to be filed or prosecuted against the District on account of any labor or materials furnished; and shall do all things required of the Principal by the laws of this State, then this obligation shall be void; otherwise, it shall remain in full force and effect for so long as any term of the Contract remains in effect.

If the District determines that any of the above conditions have not been met, the District may require payment under this bond at its sole and absolute discretion and Surety shall issue prompt payment of the full value of this bond without set-off or dispute or requirement for an opportunity to cure.

Nonpayment of the bond premium will not invalidate this bond nor shall the District be obligated for the payment of any premiums.

This bond is given and received under authority of Oregon Revised Statutes Chapter 279C and the Clackamas County Local Contractor Review Board Rules, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES:

Dated this _____ day of _____, 20__.

PRINCIPAL: _____

By: _____

Signature

Official Capacity

Attest: _____

Corporation Secretary

SURETY: _____

[Add signatures for each if using multiple bonds]

BY ATTORNEY-IN-FACT:

[Power-of-Attorney must accompany each bond]

Name

Signature

Address

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

City State Zip

Phone Fax

END OF SECTION

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
5. *Bidder*—An individual or entity that submits a Bid to Owner.
6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued

on or after the Effective Date of the Contract.

9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C.

- §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 20. *Engineer*—The individual or entity named as such in the Agreement.
 21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
 22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
 23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
 24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
 25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
 26. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
 27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
 28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
 29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
 30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
 31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing

- the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
 33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
 34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
 35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
 36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
 37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
 38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
 39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
 40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
 41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
 42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
 43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
 44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made

available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.

45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. Intent of Certain Terms or Adjectives:
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect

or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. Day:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

E. Furnish, Install, Perform, Provide:

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph

2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic

media or digital format, either directly, or through access to a secure Project website.

- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

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

3.02 *Reference Standards*

- A. Standards Specifications, Codes, Laws and Regulations
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference

standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies:

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract

Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies:

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under

the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

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

Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

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

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

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

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

5.01 *Availability of Lands*

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

- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas:

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

court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

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

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions

with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 Differing Subsurface or Physical Conditions

A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
2. is of such a nature as to require a change in the Drawings or Specifications; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner

and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. Possible Price and Times Adjustments:

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
- b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will

be subject to the provisions of Paragraph 13.03; and,

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

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing

Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
 - C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to

which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. Possible Price and Times Adjustments:

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
2. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and

hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by

an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

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

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

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

party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.

- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
 - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
 - 1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 - 2. claims for damages insured by reasonably available personal injury liability coverage.
 - 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO

commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage
- afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- G. *Additional insureds:* The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance:* If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
1. include at least the specific coverages provided in this Article.

2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

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

policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.

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

6.06 *Waiver of Rights*

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

- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

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

7.02 *Labor; Working Hours*

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

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or

not such items are specifically called for in the Contract Documents.

- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *“Or Equals”*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an “or equal” item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance,

- strength, and design characteristics;
- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may

request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 *Substitutes*

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

- 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
- c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.
- 7.06 *Concerning Subcontractors, Suppliers, and Others*
- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
 - B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
 - C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
 - D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed

acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of

Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.

- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual

knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

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

7.08 *Permits*

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

utility owners for connections for providing permanent service to the Work.

7.09 *Taxes*

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

7.10 *Laws and Regulations*

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

such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

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

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and

replacement of their property or work in progress.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

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

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

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

7.16 *Shop Drawings, Samples, and Other Submittals*

- A. Shop Drawing and Sample Submittal Requirements:

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques,

sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

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

1. Shop Drawings:
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.
2. Samples:
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which

intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.
- E. *Resubmittal Procedures:*
1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
 2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
 3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to

Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

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

into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

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

agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract

Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.

- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

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

work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

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

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such

equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors,

members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER’S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

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

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

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner’s Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10 – ENGINEER’S STATUS DURING CONSTRUCTION

10.01 *Owner’s Representative*

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

10.02 *Visits to Site*

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

10.03 *Project Representative*

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

10.04 *Rejecting Defective Work*

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

10.05 *Shop Drawings, Change Orders and Payments*

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

10.06 *Determinations for Unit Price Work*

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

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

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

10.08 *Limitations on Engineer's Authority and Responsibilities*

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

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

10.09 *Compliance with Safety Program*

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

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

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. Change Orders:
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order

also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.

- b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.
3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor

believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

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

11.03 *Unauthorized Changes in the Work*

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

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

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

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee

plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;

- d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

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

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.

2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

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

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be

submitted to the Claims process set forth in this Article:

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

agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

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

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

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case

the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

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

Contractor is required by the Contract Documents to purchase and maintain.

- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of

Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

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

13.02 Allowances

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

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

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

times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

14.02 *Tests, Inspections, and Approvals*

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

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

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable

prior to Contractor's purchase thereof for incorporation in the Work.

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to

defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose,

or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other

provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. Applications for Payments:

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation

by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or

- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.
- D. Payment Becomes Due:
- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.
- E. Reductions in Payment by Owner:
- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;

- i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

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

permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

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

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that

part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

- 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

- A. Application for Payment:
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
 - 2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;

- c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. Engineer's Review of Application and Acceptance:
- 1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are

necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due*: Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

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

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the

Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. correct the defective repairs to the Site or such other adjacent areas;
 2. correct such defective Work;
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and

warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 Owner May Suspend Work

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

16.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and

- 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

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

16.04 *Contractor May Stop Work or Terminate*

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

amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

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

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

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

18.08 *Headings*

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

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof. The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix “SC” added thereto.

SC-1.01.1.A. Delete and replace the following subsections in Paragraph 1.01.A:

5. *Bidder*: Any individual, partnership, corporation, joint venture, or other combination thereof who submits a Bid to Owner for the Work contemplated, acting directly or through an authorized representative. As used in the Contract Documents, masculine pronouns refer to both masculine and feminine genders.

16. *Contractor*: Person or entity identified as such in the Agreement and the Contractor’s authorized representatives who are referred to throughout the Contract Documents as if singular in number.

20. *Engineer*: Person or entity identified as such in the Agreement and the Engineer’s authorized representatives who are referred to throughout the Contract Documents as if singular in number.

28. *Owner*: The individual, entity, public body or authority identified as such in the Agreement and the Owner’s authorized representatives who are referred to throughout the Contract Documents as if singular in number.

SC-1.01.A. Add the following language at the end of Paragraph 1.01.A.40:

Substantial Completion is further defined in Paragraph 15.03.A below.

SC-1.01.A. Add new paragraphs immediately following Paragraph 1.01.A.48 as follows:

49. *Final Completion*: See Paragraph 15.06.B.1 and SC-14.07.B.1 for definition.

50. *Latent Defect*: A defect in the Work of which the Owner has no knowledge.

51. *Specialist*: The term Specialist refers to a person, partnership, firm, or corporation of established reputation (or if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workers skilled in either (as applicable) manufacturing of fabricated items required by the Contract Documents, or otherwise performing Work required by the Contract Documents. Where the Specifications

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require the installation by a Specialist, that term shall also be deemed to mean either the manufacturer of the items, a person, partnership, firm, or corporation licensed by the manufacturer, or a person, partnership, firm, or corporation who will perform the Work under the manufacturer's direct supervision.

52. *Consultant*: An individual or entity having a direct contract with the Engineer or Engineer's Consultant for performance of Work on the Project.

53. *Award*: The formal acceptance of the Bid by Owner's Board of Directors.

54. *Bid Bond*: The security furnished with a Bid to guarantee that the Bidder will enter into the Contract if Bidder's Bid is accepted by Owner.

55. *Construction Manager*: Person or entity designated by the Owner to provide construction management services for the Project with duties, responsibilities, and limitations of the Engineer, unless stipulated otherwise.

56. *Equipment*:

a) *Construction*: All machinery and equipment, together with the necessary supplies for upkeep and maintenance, including tools and apparatus necessary for the proper construction and acceptable completion of the Work contemplated.

b) *Installation*: All material or articles used in equipping a facility or apparatus required to fulfill a functional design.

57. *Execution*: Field or Site performance, workmanship, installation, erection, application, field fabrication, quality control, and protection of installed products on the Site.

58. *Geotechnical Data Report ("GDR")*: The factual report that collects and presents data regarding actual subsurface conditions at or adjacent to the Site, including Technical Data and other geotechnical data, prepared by or for Owner. The GDR's content may include logs of borings, trenches, and other site investigations, recorded measurements of subsurface water levels, the results of field and laboratory testing, and descriptions of the investigative and testing programs. The GDR does not include an interpretation of the data. If opinions, or interpretive or speculative non-factual comments or statements appear in a document that is labeled a GDR, such opinions, comments, or statements are not operative parts of the GDR and do not have contractual standing. Subject to that exception, the GDR is a Contract Document.

59. *Materials*: All materials incorporated into the Project, including equipment and all other materials consumed or to be consumed in the performance of the Work contemplated.

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60. *Procurement Contractor*: The corporation, company, partnership, firm, or individual who has entered into a contract with Owner outside the scope of these Contract Documents, to furnish materials and equipment for this Project.

61. *Product Data*: Type of Shop Drawing comprised of standard illustrations, schedules, performance charts, instructions, brochures, diagrams, catalog cuts, and other information assembled by or for the Contractor and submitted by the Contractor to illustrate materials or equipment for some portion of the Work.

62. *Products*: Materials, equipment, systems, ship fabrications, mixtures, and source controls.

63. *Solicitation Document*. An Invitation to Bid, Request for Proposals, Request for Quotes, or other written document issued by the Owner that outlines the required Specifications necessary to submit a Bid.

64. *Utility*: Any public or private fixed works for transporting fluids, gases, electricity, signals, or communications.

SC-2.01. Delete Paragraph 2.01.B. and Paragraph 2.01.C. in their entirety and insert the following in their place:

2.01.B. *Evidence of Contractor's Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner copies of the policies of insurance (including all endorsements, and identification of applicable self-insured retentions and deductibles) required to be provided by Contractor in Article 6. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

2.01.C. *Public Works Bond*: Before starting any work on the Project, Contractor and every Subcontractor performing work on the Project must have a public works bond filed with the Construction Contractors Board, as required by ORS 279C.830 and 279C.836, unless exempt under those provisions. Contractor must require that the Subcontractor have a public works bond filed with the Construction Contractors Board before starting work on the Project unless exempt under ORS 279C.836. Contractor shall include copies of both its public works bond and the public works bonds from its Subcontractors in the copies of the bonds required in Paragraph 2.01.A above. See SC-6.01.A for additional requirements related to the public works bond.

SC-2.02. Delete the first sentence in Paragraph 2.02.A in its entirety and replace with the following sentence:

Owner will furnish to Contractor up to four copies of the conformed Contract Documents (Specifications and half size Drawings and two copies of full-size Drawings) incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully executed counterpart of the Agreement) and one copy in electronic portable document format (PDF).

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SC-2.03.A. Before Starting Construction: Add the following to Paragraph 2.03.A:

4. A preliminary schedule of payments showing projected cash flow.

SC-2.03. Add the following to the end of section SC-2.03:

B. Before any Work at the Site is started, Contractor shall prepare and submit a written plan for the Project-specific safety precautions and programs. The safety plan shall identify Contractor's process for ensuring that safety is the highest priority on the project and will be complete with respect to procedures and actions that Contractor intends for Contractor and all others as provided in Paragraphs 7.12.A.1, for Contractor and all others to comply with all applicable Laws and Regulations. The submittal shall include a 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 requirement, and that it will continually review its operations to ensure that safe conditions are provided at all times. Contractor's plan for safety precautions and programs shall have been approved and endorsed by Contractor's designated safety representative required in Paragraph 7.13. Delivery of this plan will in no way reduce or obviate Contractor's obligation to comply with the safety obligations set forth in Section 7.12 of the General Conditions.

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.

SC-2.04. Add the following to the end of Paragraph 2.04.A:

The preconstruction conference will be scheduled within five (5) days of the Notice to Proceed or as otherwise agreed to by the Parties.

SC-2.05. Initial Acceptance of Schedules: Add the following to Paragraph 2.05.A:

4. Contractor's schedule of payments will be acceptable if it provides a reasonable projection of payments in relationship to the Progress Schedule and Schedule of Values.

SC-3.01. Add the following to the end of SC 3.01.A:

Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complimentary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

1. Permits from outside agencies;
2. The Agreement including exhibits, and addenda and any amendments thereto, with those of later date having precedence over those of an earlier date;

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3. Supplementary General Conditions;
4. Standard General Conditions of the Construction Contract, Engineers Joint Contract Documents Committee (EJCDC) 2013;
5. Specifications – Division 01;
6. Specifications – Divisions 02 - 49;
7. Drawings;
8. Design Details: Figure dimensions, and dimensions that can be computed, on plans shall take precedence over scale dimensions. The Drawings with the higher level of detail take precedence over less detailed Drawings.

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 referenced herein.

References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulation of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the Project Site is located on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

SC-3.01. Delete Paragraph 3.01.C in its entirety.

SC-3.01. Amend Paragraph 3.01.E by adding “and Owner” after the first word “Engineer” in the first line.

SC-3.01. Add the following new paragraph immediately after Paragraph 3.01.E:

3.01.F. Sections of Division 01, General Requirements, govern the execution of the Work of all sections of the Specifications.

A. Standards Specifications and Codes

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, or code in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents unless otherwise agreed to in writing by all affected parties. No such provision or instruction shall be effective to assign to Owner,

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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. Owner, Contractor and Engineer shall comply with all applicable laws and regulations at all times.

SC-3.03.A. Amend Paragraph 3.03.A.2 by adding the words “Owner and” just before the word “Engineer” near the end of the first sentence.

SC-3.03.B. Delete Paragraph 3.03.B.1 in its entirety and replace with the following:

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 such provisions of the Contract Documents and the provision of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document).

SC-4.01. Delete the third sentence of Paragraph 4.01.A in its entirety.

SC-4.04. Progress Schedule: Add the following subparagraph to Paragraph 4.04.A immediately after subparagraph 4.04.A.2:

3. If, in the opinion of Engineer, Contractor falls behind the accepted Construction Schedule due to actions or neglect of Contractor or Contractor’s agents, servants, employees, officers, Subcontractors, directors, or any party contracting to perform part or all of the Work or to supply any equipment or materials, Contractor shall take steps, including, but not limited to, increasing the number of personnel, shifts, and/or overtime operations, days of work, and/or amount of construction equipment until such time as the Work is back on schedule. Contractor shall also submit for review no later than the time of submittal of the next request for partial payment, such supplementary schedule or schedules as may be necessary to demonstrate the manner in which the acceptable rate of progress will be regained, all without additional cost to Owner.

SC-5.01. Delete Paragraph 5.01.B in its entirety.

SC-5.01. Add the following Paragraph 5.01.D:

Any work performed in public rights-of-way, in addition to conforming to the Contract Documents, shall be done in accordance with the requirements of the permit issued by the public agency in whose right-of-way the Work is located.

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SC-5.02. Delete Paragraph 5.02.A.2 in its entirety and replace with the following:

If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claims as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Clackamas County and their officers, elected officials, directors, employees, agents, consultants, and subcontractors from and against any such claim, and against all costs, losses and damages arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

SC 5.03: Add the following after Paragraph 5.03.B:

5.03.C. Reports and Drawings: The Supplementary Conditions hereby identify:

5.03.C.1. Those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site (other than any Geotechnical Data Report), and Technical Data contained in such reports. Such reports are as follows:

5.03.C.1.a. Report dated 1982 prepared by CH2M HILL, Inc, entitled *Soils Report, Tri-City Sewage Treatment Plant*. The Technical Data contained in such report upon whose accuracy Contractor may reasonably rely are those indicated in the definition of Technical Data in the General Conditions.

5.03.C.1.b. Report dated 2002 prepared by CH2M HILL, entitled *Tri-City WPCP Liquids Expansion Geotechnical Data Report*. The Technical Data contained in such report upon whose accuracy Contractor may reasonably rely are those indicated in the definition of Technical Data in the General Conditions.

5.03.C.1.c. Report dated 2008 prepared by Shannon and Wilson, Inc., entitled *Geotechnical Data Report Tri-City Water Pollution Control Plant, Interim Expansion, Clackamas County, Oregon. Prepared for MWH Americas, Inc.* The Technical Data contained in such report upon whose accuracy Contractor may reasonably rely are those indicated in the definition of Technical Data in the General Conditions.

5.03.C.1.d. Report dated 2016 prepared by Shannon and Wilson, Inc., entitled *Groundwater Monitoring Program Report, Tri-City Water*

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Resource Recovery Facility, Solids Handling Improvement Project, Clackamas County, Oregon. Prepared for MWH Global, Inc. The Technical Data contained in such report upon whose accuracy Contractor may reasonably rely are those indicated in the definition of Technical Data in the General Conditions.

5.03.C.2. Contractor may download copies of the examined copies of reports identified immediately above that were not included with the Bidding Documents at www.clackamas.us/bids.

5.03.E. Geotechnical Data Report:

5.03.E.1. This Contract contains a Geotechnical Data Report (“GDR”), dated January 2018 prepared by CH2M HILL, Inc., 1100 N.E. Circle Boulevard, Suite 300, Corvallis, OR 97330, entitled *Tri-City Water Resource Recovery Facility Solids Handling Improvements Geotechnical Data Report*.

5.03.E.2. The GDR is incorporated as a Contract Document. The GDR is to be used in conjunction with other Contract Documents, including the Drawings and Specifications.

SC-5.06. Delete Paragraph 5.06.A and Paragraph 5.06.B in their entirety and insert the following in their place:

5.06.A. No reports or drawings related to Hazardous Environmental Conditions are known to Owner.

SC-5.06. Delete Paragraph 5.06.I and 506.J in their entirety and replace with the following:

- I. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs losses and damages arising out of or relating to a Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone whom Contractor is responsible. Nothing in this Paragraph 5.06.I shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Clackamas County and their officers, elected officials, directors, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages arising out of or relating to the failure to control, contain, or remove a Constituent

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of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

SC-6.01.A. Delete the second sentence of Paragraph 6.01.A in its entirety and replace with the following:

Before starting any work on the Project, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Revised Statutes, Chapter 279C.830 and 279C.836, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to start Work. Contractor shall include copies of both its public works bond and the public works bonds from its subcontractors in the copies of the bonds required in Paragraph 2.01.A above.

These bonds shall remain in effect until one year after date of Final Completion of the Project and acceptance by the Owner, except as provided otherwise by Laws or Regulations or by the Contract Documents.

SC-6.01.B. Delete phrase in Paragraph 6.01.B "named in...U.S. Department of Treasury" and substitute "acceptable to the Owner."

SC-6.01.B. Amend Paragraph 6.01.B by adding the following sentence:

The performance bond shall include, in part, provisions to indemnify and hold harmless Owner, and its officers, directors, elected officials, agents and employees.

SC-6.02.A. Delete Paragraph 6.02.A. in its entirety and replace with the following:

A. Contractor shall obtain and maintain insurance as required in this Article 6 in the Supplementary Conditions.

SC-6.02.B. Delete paragraph 6.02.B. in its entirety and replace with the following:

B. As evidence of the insurance coverage required by the Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to execution of the Agreement. The certificate(s) will specify all of the parties who are additional insureds or loss payees for the Agreement, identified in SC-6.02.C. A renewal certificate shall be sent to Owner at least 10 days prior to coverage expiration.

Insurance coverage required under the Agreement shall be obtained from insurance companies or entities acceptable to the Owner and that are eligible to provide such

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insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to conduct an insurance business and issue policies of insurance in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and which are subject to approval by the Owner. All companies that provide policies required under this Contract shall have a rating of not less than A-X in the most current edition of Best's Rating Guide, in addition to any other requirements specified herein. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$50,000 shall be subject to approval by the Owner in writing and shall be a condition precedent to the effectiveness of any Contract.

SC-6.02.C. Supplement Paragraph 6.02.C with the following:

The general liability insurance coverage, automobile liability, umbrella, and pollution liability if required, shall include the Owner (Water Environment Services), Clackamas County and Engineer (CH2M HILL Engineers, Inc.) as additional insureds, but only with respect to the Contractor's activities to be performed under the Contract Documents. The additional-insured endorsement for CGL insurance must be written on ISO Form CG 20 10 (10 01) and CG 20 37 (10 01), or their equivalent, but shall not use either of the following forms: CG 20 10 (10 93) or CG 20 10 (03 94). Proof of insurance must include a copy of the endorsement showing "Water Environment Services and Clackamas County, together with their elected officials, agents, officers, and employees" as scheduled insureds.

If Contractor cannot obtain an insurer to name the Owner and Engineer as additional insureds, Contractor shall obtain at Contractor's expense, and keep in effect during the term of the Contract, Owners and Contractors Protective Liability Insurance, naming the Owner and Engineer as additional insureds with not less than a \$4,000,000 limit per occurrence. This policy must be kept in effect for 36 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to execution of the Agreement.

SC-6.02. Delete all language in Paragraphs 6.02.D, F, and H and replace each with the word "Reserved."

SC-6.02. Add the following new paragraphs in order after Paragraph 6.02.J.

K. 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 District.

L. If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify Owner by

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fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Contractor agrees to stop Work pursuant to the Contract at Contractor's expense, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its institutions, divisions, officers, and employees. Owner shall have the right, but not the obligation, of prohibiting Contractor from entering the Project Site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Contractor agrees that Owner reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to Owner.

M. Contractor may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.

N. All insurance carried by Contractor under the Agreement shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

SC-6.03. Delete Paragraph 6.03.A in its entirety and replace with the following:

A. *Workers' Compensation:* The Contractor is an independent contractor for purposes of the Oregon Workers' Compensation Law, as set forth in ORS Chapter 656 ("Workers' Comp Law") and is solely liable for any Workers' Compensation coverage under this Agreement. All employers, including Contractor, that employ subject workers who work under the Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors. The Contractor will be solely responsible for payment of any local, state or federal taxes required as a result of these Contract Documents.

These Contract Documents are not intended to entitle the Contractor to any benefits generally granted to the District, officers, commissioners, agents or employees. Without limitation, but by way of illustration, the benefits not intended to be extended to the Contractor are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime pay, Social Security, workers' compensation, unemployment

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compensation, or retirement benefits (except so far as benefits are required by law if the Contractor is presently a member of the Public Employees Retirement System).

SC-6.03.B. Delete Paragraph 6.03.B in its entirety and replace with the following:

B. Commercial General Liability: Upon execution of the Agreement, Contractor shall obtain, and keep in effect at Contractor's expense for the entire term of the Agreement, Commercial General Liability Insurance ("CGL") covering bodily injury and property damage in the amount of not less than \$4,000,000 per occurrence and \$5,000,000 in the aggregate in a form satisfactory to Owner. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnities provided under the Agreement (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis written on ISO Form GC 00 01 (12 04 or later) or an equivalent form approved in advance by Owner. The CGL policy shall not exclude coverage for explosion, collapse, and underground ('xcu') hazards. The CGL shall cover work in or near a waterway to protect against liability for bodily injury and property damage which may arise out of the Contractor's operations under this Contract. The CGL shall provide separation of insured language. The Owner may adjust the CGL insurance amounts required under this provision at any time based upon institution specific risk assessments through the issuance of an amendment to the Agreement. The policy or policies obtained by Contractor for purposes of fulfilling the requirements of this section shall be primary insurance with respect to the Owner. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

SC-6.03.D. Delete Paragraph 6.03.D in its entirety and replace it with the following:

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the Agreement, Automobile Liability Insurance covering owned, and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Contractor and its subcontractors shall be responsible for ensuring that all non-owned vehicles maintain adequate Automobile Liability insurance while on Project Site. The Owner may adjust the Automobile Liability insurance amounts required under this provision at any time based upon institution specific risk assessments through the issuance of an amendment to the Agreement.

SC-6.03.E. Delete Paragraph 6.03.E in its entirety and replace with the following language:

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the Contract, Umbrella liability Insurance over and above the general liability, automobile liability and workers' compensation coverage if required by Owner in specified limits at time of requirement.

SC-6.03.F. Replace Paragraph 6.03.F in its entirety with the following language:

F. *Pollution and Asbestos Liability:* Contractor shall obtain, at the Contractor's expense and keep in effect during the term of the Contract, Contractor's Pollution

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Liability insurance covering the Contractor's liability for a third party bodily injury and property damage arising from pollution conditions caused by the Contractor while performing their operations under the Contract.

SC-6.03.I.3. Replace Paragraph 6.03.I.3 in its entirety with:

3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 60 days prior written notice.

SC-6.03.I.4. Replace Paragraph 6.03.I.4 in its entirety with:

4. remain in effect at least as long as is required in this Article and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.

SC-6.04.A. Delete Paragraph 6.04.A in its entirety.

SC-6.05.A. Add the following to the list of items in Paragraph 6.05.A, as numbered items:

14. be subject to a deductible amount of no more than \$50,000 for direct physical loss in any one occurrence, except the earthquake and flood deductible, which shall not exceed 2 percent of each loss or \$50,000, whichever is greater. The deductible shall be paid by the Contractor.

15. include as loss payees Owner, the Contractor and its subcontractors as their interests may appear.

16. include for the benefit of Owner loss of profits and soft cost coverage including, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, plus engineering or other consultants' fees, if not otherwise covered.

17. include by express endorsement coverage of damage to Contractor's equipment.

18. remain in full force and effect through the entire term of the Agreement.

SC-6.05. In Paragraph 6.05.B, replace the words "10 Days" with "60 Days."

SC-6.05. Add the following paragraphs after SC-6.05.F:

G. A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner as loss payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

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H. *Builder's Risk Installation Floater*: For Work other than new construction, Contractor shall obtain and keep in effect during the term of the Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear. Owner may waive this requirement at its sole and absolute discretion.

SC-6.06. Delete Paragraph 6.06.A in its entirety and replace with the following:

All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or their officers, directors, elected officials, employees agents, consultants or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, elected officials, 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 all individuals identified in the Supplementary Conditions as insureds, and the officers, directors, elected officials, 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 and Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

SC-6.06. Delete Paragraph 6.06.B and C in their entirety.

SC-6.07. Delete Paragraph 6.07.A, B and C in their entirety and replace with the following paragraph:

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

SC-7.01. Add the following after the first sentence of Paragraph 7.01.B:

If a replacement is necessary, the replacement shall also be a competent resident superintendent and shall be subject to approval by Owner. The Contractor's superintendent shall be present at the Site at all times while Work is in progress and shall be available by phone for emergencies 24 hours per day, 7 days per week. If at any time the superintendent leaves the Project Site while Work is in progress, Owner and Engineer shall be notified and provided with the name of the Contractor's representative having responsible charge. 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.

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SC-7.02. Add the following language to the end of Paragraph 7.02.B:

Contractor and Subcontractor regular working hours shall be between 7:00 a.m. and 6:00 p.m. on weekdays, Monday through Friday, only. If change to these standard hours is desired, a written request must be placed with Owner and Engineer a minimum of five work days prior to the first day of altered hours. The following holidays are observed by Owner which shall be considered legal holidays.

- New Year's Day (January 1)
- Martin Luther King Jr. Day (third Monday in January)
- President's 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)

SC-7.03. Services, Materials, and Equipment: Add the following paragraphs immediately after Paragraph 7.03.C:

D. Until Substantial Completion of the Work is acknowledged by Owner, Contractor shall have the responsible charge and care of the Work and of materials to be used herein, including materials for which Contractor has received partial payment or materials which have been furnished by Owner, and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution of the Work or not.

E. Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the Work or the materials occasioned by any cause before the Work's completion and acceptance and shall bear the expense thereof. Where necessary to protect the Work or materials from damage, Contractor shall, at Contractor's own expense, provide suitable drainage and erect such temporary structures or rent such structures as are necessary to protect the Work or materials from damage. The suspension of the Work or the granting of an extension of time for any cause whatever shall not relieve Contractor of Contractor's responsibility for the Work and materials as specified herein.

F. When the quality of a material, process, or article is not specifically set forth in the Contract Documents, the best available quality of the material, process, or article shall be provided.

SC-7.04. Amend Paragraph 7.04.A.1 by deleting "in its sole discretion" from the first sentence.

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SC-7.05. Amend Paragraph 7.05.B by deleting the third sentence stating “Engineer will be the sole judge of acceptability.”

SC-7.06. Add the following language at the end of Paragraph 7.06.A:

Contractor shall perform with Contractor’s own organization Work amounting to not less than 25 percent of the combined value of all items of the Work covered by the Contract.

SC-7.06. Add the following new paragraphs immediately after Paragraph 7.06.D:

7.06.D.1. The identity and acceptance of Subcontractors and Suppliers for the following portions of the Work is required in accordance with the requirements of the Instructions to Bidders:

SC-7.06. Amend Paragraph 7.06.I by removing “and Engineer” from the first sentence.

SC-7.06. Add the following new subparagraphs immediately after Paragraph 7.06.O:

P. Contractor shall ensure that any person entering into any subcontract to perform under the Contract is registered with the Secretary of State to do business in the State of Oregon, not prohibited from entering into a public contract by the Oregon Bureau of Labor and Industry, the Construction Contractors Board or Federal Excluded Party listings and is a Responsible Proposer as defined by ORS 279.

Q. Subcontractor Insurance: Unless a special type of insurance or special amount of coverage is required by the Owner for a specific subcontract or type of work, Contractor shall require all Subcontractors to provide and maintain insurance coverages with at least \$1,000,000/claim, \$2,000,000 aggregate for commercial general liability, \$500,000/claim for automobile liability, \$1,000,000/claim for professional liability (if applicable), and statutory limits for workers’ compensation insurance. Contractor shall require certificates of insurance from all Subcontractors as evidence of coverage. Contractor shall provide copies of Subcontractor’s certificates of insurance, if requested by Owner. This condition may be met through utilization of a Contractor Controlled Insurance Program.

SC-7.07. Amend Paragraph 7.07.B by removing “attorneys” from the first sentence.

SC-7.07. Delete Paragraph 7.07.C in its entirety and replace with the following:

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Clackamas County and their officers, directors, elected officials, employees, agents, consultants and subcontractors of from and against all claims, costs, losses, and damages arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work.

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SC-7.08. Add the following new paragraphs immediately after Paragraph 7.08.A:

B. Contractor will be responsible for obtaining all required permits and maintaining compliance with those permits throughout the course of the Work. Owner will pay the cost of obtaining all permits. The Contractor shall be responsible for any penalties or fines that result from Contractor's noncompliance with the terms of the permits. The Contractor will be responsible for compliance with the terms of all permits throughout the performance of the Work.

SC-7.10. Delete Paragraph 7.10.B in its entirety and replace with the following:

B. If Contractor performs any Work or takes any other action knowing or having reason to know that is contrary to Laws and Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner, Clackamas County, and their officers, directors, elected officials, employees, agents, consultants and subcontractors from and against all claims, costs, losses and damages arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

SC-7.10. Add the following new paragraph(s) immediately after Paragraph 7.10.C:

7.10.D. While not intended to be inclusive of all Laws or Regulations for which Contractor may be responsible under Paragraph 7.10, the following Laws or Regulations, as may be amended from time to time, are included as mandated by statute or for the convenience of Contractor:

7.10.D.1. Prevailing Wage Rates:

7.10.D.1.a. Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Pursuant to ORS 279C.830(1)(d), Contractor shall pay workers not less than the specified minimum hourly rate of wage, and shall include that requirements in all subcontracts. Contractor and all subcontractors shall also comply with the provisions of the David-Bacon Act (40 U.S.C. 3141 et seq), and shall pay the higher of either the state or federal prevailing wage rates for the type of work being performed. The Bureau of Labor and Industries ("BOLI") wage rates and requirements set forth in the following BOLI booklet (and any listed amendments to that booklet), which are incorporated herein by reference, apply to the Work authorized under this Agreement:

PREVAILING WAGE RATES for Public Works Contracts in Oregon, January 1, 2018 which can be downloaded at the following web address: http://www.oregon.gov/boli/whd/pwr/pages/pwr_state.aspx

7.10.D.1.b. Owner will pay the Commissioner of the Bureau of Labor and Industries the fee required by ORS 279C.825.

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7.10.D.1.c. Contractor shall provide written notice to all workers of the number of hours per day and days per week such workers may be required to work.

7.10.D.2. Discrimination: Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations, and:

a) In accordance with ORS 279A.110, Contractor will not discriminate against Disadvantaged, Minority, Women, or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in obtaining required subcontracts.

b) Contractor shall maintain, in current and valid form, all licenses and certificates required by the applicable Laws, Regulations or the Contract when performing the work.

7.10.D.3. In accordance with ORS 279C.505, Contractor shall demonstrate to Owner that it has an employee drug testing program is in place prior to commencement and at all times during the performance of the Work.

7.10.D.4. ORS 654.150 applies at the Construction Site. All costs incurred in complying with state statutes requiring sanitation facilities shall be borne by Contractor.

7.10.D.5. Payment by Contractor:

- a. 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 Work. 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.
- b. 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 Work, 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

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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 Documents. The deduction of any such amounts because of claims and the manner herein authorized will not, however, relieve the Contractor or his surety from their 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 Documents.

- c. If the Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a party 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 party 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 percent. The amount of interest may not be waived. Contractor shall incorporate this provision into all subcontracts.
- d. 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 and costs shall be as provided in that statute. Contractor shall incorporate this provision into any subcontract related to this project.
- e. 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.
- f. 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.
- g. The Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier subcontractor, including a materials supplier, for the purpose of performing a construction contract, a payment clause that obligates the Contractor to pay the first-tier subcontractor for

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satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the Contractor by the Owner under such Contractor.

- h. All employers, including Contractor, that employ subject workers who work under the Contract Documents in the State of Oregon shall comply with ORS 656.017 and provide the required Workers Compensation coverage, unless such employees are exempt under ORS 656.126. Contractor shall ensure that each of its subcontracts complies with these requirements.
- i. As a condition to Owner's performance hereunder, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums of which the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

7.10.D.6. *Payroll Certification and Fee Requirements.*

- a. In accordance with ORS 279C.845, the Contractor and every subcontractor shall submit written certified statements to the Owner on the form prescribed by the Commissioner of BOLI, certifying the hourly rate of wage paid each worker which the Contractor or the subcontractor has employed on the Project and further certifying that no worker employed on the Project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract Documents, which certified and statement shall be verified by the oath of the Contractor or the subcontractor that the Contractor or Subcontractor knows the contents of the certified statement, and, that to the Contractor's or subcontractor's best knowledge and belief, the certified statement is true. The certified statements shall set out accurately and completely the payroll costs for the prior week, including the name and address for each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Contractor or subcontractor has employed a worker on the Project shall be submitted once a month, by the fifth (5th) business day of the following month. The Contractor and subcontractor shall preserve the certified statements for a period of ten (10) years from the date of completion of the Work.
- b. Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor, in addition to other retainage, on the Work until the Contractor has filed the certified statements required above. The Owner shall pay the Contractor the amount retained under this subsection within 14 business days after the Contractor files the required certified statements, regardless of whether a subcontractor has failed to file certified statements.

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- c. Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier subcontractor on this Project until the subcontractor has filed with the Owner the certified statements required above. Before paying any amount required under this subsection, the Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within 14 days after the first-tier subcontractor has filed the certified statement, the Contractor shall pay the first-tier subcontractor any amount retained under this subsection.

7.10.D.7 *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. Contractor shall certify that it shall not accept a bid from subcontractors to perform Work unless such subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.021 at the time they submit their bids to the Contractor.

7.10.D.8. Environmental Pollution:

- a. In compliance with ORS 279C.525, lists of federal, state, and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract are listed in the 2015 Oregon Department of Transportation Standard Specifications for Construction, Section 00170.01.
- b. If Contractor is delayed or must undertake additional work by reason of existing regulation or ordinances of agencies not cited herein, or due to enactment of new or the amendment of existing statutes, ordinances or regulations occurring after the submission of the successful Proposal, Owner may grant a time extension, a reasonable adjustment in the Cost of Work by issuance of a Change Order setting forth the additional work that must be undertaken. Such Change Order, if any, shall not invalidate the Agreement and shall, as applicable, increase the Agreement price to compensate Contractor for all costs and expenses incurred, including overhead and profits, as reasonable compensation of any such delay or additional work.

7.10.D.9. In accordance with ORS 279C.510, Contractor shall salvage or recycle construction and demolition debris if feasible and cost effective.

7.10.D.10. Workers employed by Contractor shall not be able to collect for unpaid overtime unless a claim is filed in accordance with ORS 279C.545 with Contractor.

7.10.D.11. Person claiming not being paid in full for supplied labor or materials for performance of the Work has right to file notice of such claim. Notice shall be filed in accordance with ORS 279C.605.

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7.10.D.12. Contractor shall comply with Clackamas County Code.

7.10.D.13. Contractor agrees to comply with the following, as applicable and as may be amended from time to time: i) Title VI and VII of the Civil Rights Act of 1964; ii) Section 503 and 504 of the Rehabilitation Act of 1973; iii) the Health Insurance Portability and Accountability Act of 1996; iv) the Americans with Disabilities Act of 1990; v) Oregon Revised Statutes Chapter 659A; vi) all regulations and administrative rules established pursuant to any applicable laws; and vii) all other applicable requirements of federal, state, county or other local government entity statutes, rules and regulations.

7.10.D.14. The following notice is applicable to Contractors who perform excavation Work: ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0090. You may obtain copies of the rules by calling the center at (877) 668-4001.

7.10.D.15. *Independent Contractor Status:* The service or services performed under the Contract Documents are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee or agent of the Owner as those terms are used in ORS 30.265.

7.10.D.16. *Retirement System Status and Taxes:* Contractor represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under the Agreement. Contractor will not be eligible for any benefits from these payments under the Agreement of federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual. Unless Contractor is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Contractor's federal or state tax obligations.

7.10.D.17. *Government Employment Status:* The Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.

7.10.D.18. *American Iron and Steel Requirement.* The Contractor acknowledges that it understands the goods and services provided in the performance of the Work are being funded with monies made available by the Clean Water State Revolving Fund that has statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to these Contract Documents. The Contractor hereby represents and warrants to and for the benefit of the Owner and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the Project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further

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verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the State. Notwithstanding any other provision of these Contract Documents, any failure to comply with this paragraph by the Contractor shall permit the Owner or State to recover as damages against the Contractor any loss, expense, or cost incurred by the Owner or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Owner). While the Contractor has no direct contractual privity with the State, as a lender to the Owner for the funding of its Project, the Owner and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of the Contract Documents necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

7.10.D.19. Failure to comply with any or all of the requirements of Section 7.10.D shall be a material breach of the Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

SC-7.11. Amend Paragraph 7.11.A by adding “and Owner” after the word “Engineer” in the second and third sentences.

SC-7.12.B. Add the following paragraph immediately after Paragraph 7.12.B:

Contractor shall be aware that permit-required confined spaces exist in or near the Project Site. Entry to these spaces must be accomplished in compliance with the requirements of OAR 166-150-0190 (29 CFR 1910.146). Examples of permit-required confined spaces include but are not limited to the following:

1. Open tanks beyond the handrails including clarifiers, aeration basins, channels, etc.
2. Manholes.
3. Flow control structures which have the potential to contain sewage.
4. Enclosed tanks including digesters, clarifiers, grit basins, chemical tanks, etc.
5. Wet well and dry wells of pump stations.
6. Headworks channels.
7. Electrical vaults.

The hazards associated with these confined spaces may include but are not limited to:

1. Oxygen deficiency.
2. Combustible vapors including methane.
3. Slip hazards.
4. Fall/retrieval hazard.
5. Engulfment hazard.
6. Lockout required of mechanical and electrical devices.

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7. Toxic or hazardous chemicals including hydrogen sulfide and process chemicals.
8. Traffic hazards.
9. Hot work and ignition sources.
10. Potential for rapid changes in working conditions.
11. Painting or coating application activities often pose temporary hazards.

Prior to beginning Work in permit-required confined spaces, Contractor shall provide Owner with a copy of Contractor's permit-required confined space entry plan/program including a copy of the permit forms that will be used by Contractor. Upon request by Contractor, Owner will review with Contractor, Owner's permit-required confined space program and specific procedures Owner would incorporate in spaces entered. Owner will coordinate any of its entries into the same spaces with Contractor. When the permit-required confined space Work is completed, Contractor shall inform Owner, in writing, of any hazards encountered or changes made resulting in different hazards within the space.

SC-7.12. Insert the following Paragraphs 7.12.F and 7.12.G:

F. Contractor shall revise Contractor's plan for safety precautions and programs at appropriate times to reflect changes in construction conditions, the Work, Contractor's means, methods, techniques, sequences and procedures of construction, and the requirements of Paragraph 12.02. Contractor shall disseminate the original plan and revisions to all others indicated in Paragraphs 7.12.A.1 and 12.02.

G. Contractor's plan for safety precautions and programs will not require more stringent safety requirements, training or other qualifications for all others, including those specified in Paragraph 12.02 and their employees, than Contractor sets forth for comparable activity and responsibility of Contractor, Subcontractors and Suppliers and their respective employees.

SC-7.12. Insert the following paragraph as J:

J. Contractor shall prepare, implement, and maintain a safety and health program or plan and submit a Site Specific Safety Plan Certification. See Section 01 31 19, Project Meetings.

SC-7.15. Amend Paragraph 7.15.A by adding the words "and Owner" immediately after the word "Engineer" in the second sentence.

SC-7.17. Add the following new paragraph after Paragraph 7.17.C.8:

9. any acceptance by Owner or any failure to do so.

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SC-7.17. Add the following new paragraph after Paragraph 7.17.D:

E. Contractor shall warrant the Work to be free of defects in materials and workmanship for a period of one year from the date of Substantial Completion by the Owner. The Contractor shall correct defective Work during the warranty period as described in General Conditions.

SC-7.18. Delete Paragraph 7.18.A in its entirety and replace with the following:

A. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under the Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, employees, guests, visitors, invitees and agents.

To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner, Clackamas County, and their elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay; (b) any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this section.

Contractor shall also indemnify and hold harmless Owner for any fines or costs imposed on the Owner by the State of Oregon or the United States for violation of the Owner's National Pollutant Discharge Elimination Permit, where such violations are the result of the Contractor's sole negligence. The Owner will withhold from any payments owed to the Contractor the amount of such fines, and a Change Order shall be issued to reflect any such reduction.

SC-7.18. Amend Paragraph 7.18.B by removing "or Engineer" from the first sentence.

SC-8.02. Add the following new paragraph immediately following Paragraph 8.02.B:

8.02.C. Other work anticipated to be performed at the Site by others that is not related to but coincides with the scheduled performance of the Work under these Contract Documents is described in Section 01 31 13, Project Coordination.

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SC-8.03. Amend Paragraph 8.03.D by deleting both uses of the word “Engineer” from the first sentence.

SC-9.02.A. In Paragraph 9.02.A, delete the words “to whom Contractor makes no reasonable objection.”

SC-9.05.C. Delete Paragraph 9.05.C in its entirety and replace with the following:

- A. Article 5 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site relating to existing surface or subsurface structures at the Site that have been utilized by Engineer in preparing the Contract Documents.

SC-9.11.A. Delete Paragraph 9.11.A in its entirety and replace it with the following:

- A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner’s obligations under the Contract Documents, Owner’s responsibility in respect thereof will be as set forth in the Supplementary Conditions.

SC-10.03. Add the following new paragraphs immediately after Paragraph 10.03.A:

10.03.B. Resident Project Representative (“RPR”) will be furnished by the Engineer. The responsibilities, authority, and limitations of the RPR are limited to those of Engineer in accordance with Paragraph 10.08 and as set forth elsewhere in the Contract Documents and are further limited and described below.

10.03.C. Responsibilities and Authority:

10.03.C.1. Schedules: Review and monitor Progress Schedule, Schedule of Submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.

10.03.C.2. Conferences and Meetings: Conduct or attend meetings with Contractor, such as preconstruction conferences, progress meetings, Work conferences and other Project related meetings.

10.03.C.3. Liaison: (i) Serve as Engineer’s liaison with Contractor, working principally through Contractor’s authorized representative, and assist in understanding the intent of the Contract Documents; (ii) assist Engineer in serving as Owner’s liaison with Contractor when Contractor’s operations affect Owner’s onsite operations; (iii) assist in obtaining from Owner additional details or information when required for proper execution of the Work.

10.03.C.4. Interpretation of Contract Documents: Inform Engineer and Owner when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor technical clarifications and interpretations as issued by

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Engineer, or non-technical clarifications and interpretations of the Contract Documents issued by Owner.

10.03.C.5. Submittals: Receive submittals that are furnished at the Site by Contractor, and notify Engineer of availability for examination. Advise Engineer and Contractor of the commencement of any Work or arrival of materials and equipment at Site, when recognized, requiring a Shop Drawing or Sample if the submittal has not been approved by Engineer.

10.03.C.6. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and provide recommendations to Engineer; transmit to Contractor, in writing decisions as issued by Engineer.

10.03.C.7. Review of Work and Rejection of Defective Work: (i) Conduct onsite observations of the Work in progress to assist Engineer in determining if the Work is, in general, proceeding in accordance with the Contract Documents; (ii) inform Engineer and Contractor whenever RPR believes that any Work is defective; (iii) advise Engineer whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, whenever RPR believes Work should be uncovered for observation, or requires special testing, inspection, or approval; (iv) monitor to ensure that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; (v) observe, record and report to Engineer appropriate details relative to the test procedures and startups; and (vi) accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the Engineer.

10.03.C.8. Inspections, Tests, and System Startups: (i) Verify tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; (ii) observe, record, and report to Engineer appropriate details relative to the test procedures and system startups; and (iii) accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10.03.C.9. Records: (i) Maintain at the Site files for correspondence, conference records, Submittals including Shop Drawings and Samples, reproductions of original Contract Documents including all Addenda, the signed Agreement, Written Amendments, Work Change Directives, Change Orders, Field Orders, additional Drawings issued after the Effective Date of the Agreement, Engineer's written clarifications and interpretations, progress reports, and other Project related documents; (ii) keep a record of pertinent Site conditions, activities, decisions and events.

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10.03.C.10. Reports: (i) Furnish Engineer periodic reports of progress of the Work and of Contractor's compliance with the Progress Schedule and Schedule of Submittals; (ii) consult with Engineer in advance of scheduled major tests, inspections or start of important phases of the Work; and (iii) assist in drafting proposed Change Orders, Work Change Directives, and Field Orders, and obtain backup material from Contractor as appropriate.

10.03.C.11. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

10.03.C.12. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify materials and equipment certificates and operation and maintenance manuals and other data required by Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and ensure these documents have been delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

10.03.13. Substantial Completion: (i) Conduct an inspection in the company of Engineer, Owner, and Contractor and prepare a list of items to be completed or corrected; (ii) submit to Engineer a list of observed items requiring completion or correction.

10.03.14. Final Completion: (i) Conduct final inspection in the company of Engineer, Owner, and Contractor; and (ii) notify Contractor and Engineer in writing of all particulars in which this inspection reveals that the Work is incomplete or defective; and (iii) observe that all items on final list have been completed, corrected, or accepted by Owner and make recommendations to Engineer concerning acceptance.

10.03.D. Limitations of Authority: Resident Project Representative will not:

10.03.D.1. have authority to authorize a deviation from Contract Documents or substitution of materials or equipment, unless authorized by Owner; or

10.03.D.2. exceed the limitations of Engineer's authority as set forth in Contract Documents; or

10.03.D.3. undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's authorized representative; or

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10.03.D.4. advise on, issue directions relative to, or assume control over an aspect of the means, methods, techniques, sequences, or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents; or

10.03.D.5. advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor; or

10.03.D.6. participate in specialized field or laboratory tests or inspections conducted offsite by others, except as specifically authorized by Owner; or

10.03.D.7. accept Shop Drawings or Samples from anyone other than Contractor; or

10.03.D.8. authorize Owner to occupy the Project in whole or in part; or

10.03.D.9 take an action that would affect Owner's obligations related to scope or schedule of the Work.

SC-10.07. Delete the last sentence of Paragraph 10.07.A and replace it with the following:

In rendering such decisions and judgments, Engineer will not show partiality to the Owner or Contractor. If a dispute, matter for interpretation or need for judgment arises that includes allegations against the Engineer, then the Engineer shall not be the party deciding that matter.

SC-10.08. Add the following new paragraph immediately after Paragraph 10.08.E:

10.08.F. Only the Owner has the authority to authorize modifications of the Contract Documents, authorize additional Work, or change the Contract Time.

SC-11.04. Replace 15 percent with 10 percent at the end of Paragraph 11.04.C.2.a).

SC-11.04. Add the following new paragraph immediately after Paragraph 11.04.C:

11.04.D. In the event Contractor submits request for additional compensation as a result of a change or differing Site conditions, or as a result of delays, acceleration, or loss of productivity, Owner reserves right, upon written request, to audit and inspect Contractor's books and records relating to the Project. Upon written request for an audit, Contractor shall make its books and records available within 14 days of request. Owner shall specifically designate identity of auditor. As part of audit, Contractor shall make available its books and records relating to the Project, including but not limited to Bidding Documents, cost reports, payroll records, material invoices, subcontracts, purchase orders, daily timesheets, and daily diaries. Audit shall be limited to those cost items which are sought by Contractor in a change order or claim submission to Owner.

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SC-11.05.B. Add the following to Paragraph 11.05.B:

All requests for time extensions shall be supported by Schedule analysis showing the effect on the entire Project taking into account concurrent Work and the critical path, including float. Partial demonstration of impact on particular operations only will not be acceptable to show the criticality of any event on the Project Schedule as a whole.

SC-11.05. Add the following paragraphs to Paragraph 11.05 immediately following Paragraph 11.05.B:

C. Use of Float:

1. A claim for an adjustment of Contract Times (or Milestones), otherwise allowable under the Contract Documents, shall be granted only when the time lost or gained exceeds the float for the activity at the time of the event giving rise to the claim. Float, the amount of time between the early start date and the late start date, or the early finish date and the late finish date, is jointly owned by both Owner and Contractor whether expressly disclosed or implied in any manner.
2. Contractor shall not use float suppression techniques (including, but not limited to, preferential sequencing caused by late starts of follow-up trades, unreasonably small crews, extended durations, or imposed dates) in information provided to Owner or Engineer.

SC-11.06. Delete the last sentence of Paragraph 11.06.A.1 and replace it with the following:

Engineer will advise Owner regarding the Change proposal.

SC-11.06. Delete Paragraph 11.06.A.2 and 11.06.A.3 in their entirety and replace them with the following:

2. *Owner's Action:* Owner will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Engineer and Contractor. If Owner does not take action on the Change Proposal within 30 days, then Contractor may at any time thereafter submit a letter to Owner indicating that as a result of the inaction on the Change Proposal, it is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
3. *Binding Decision:* Owner's decision will be final and binding upon Contractor, unless Contractor appeals the decision by filing a Claim under Article 12.

SC-11.07. Delete Paragraph 11.07.B in its entirety.

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SC-12.01. Delete Paragraph 12.01.A.1 in its entirety and replace it with the following:

2. Appeals by Contractor of Owner's decisions regarding Change Proposals;

SC-13.01. Delete Paragraph 13.01.B.1 in its entirety and insert the following in its place:

SC-13.01. In Paragraph 13.01.B.1, delete the third sentence and replace with the following language:

1. Labor costs for employees in the direct employ of Contractor in the performance of the Work will be the actual cost for wages in accordance with the Oregon BOLI Prevailing Wage Rates for Public Works Contracts in Oregon (see SC-7.10.D.1.a for specific BOLI publication) for each craft or type of workers performing the Work at the time the Work is done, plus BOLI's established Fringe Rate for employer payments of payroll taxes, worker compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. Labor costs for equipment operators and helpers will be paid only when such costs are not included in the invoice for equipment rental. The labor costs for foremen and superintendents shall be proportioned to all of their assigned Work and only that applicable to extra Work shall be paid.

SC-13.01.B. In Paragraph 13.01.B.4, delete the word "special" and replace with the word "technical," and delete the parenthetical phrase "(including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants)" in its entirety.

SC-13.01. Delete Paragraph 13.01.B.5.c in its entirety and insert the following in its place:

c. Rentals of construction equipment at the rental rate listed for such equipment specified in the current edition of the "Contractor's Equipment Cost Guide" as published by Equipment Watch (www.equipmentwatch.com), telephone number 800/699-3282, or from rate sheets from local rental companies. Such rental rate will be used to compute payments for equipment whether the equipment is under the Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment will be the rate resulting in the least total cost to the Owner for the total period of use. If it is deemed necessary by the Contractor to use the equipment not listed by the references specified herein, an equitable rental rate for the equipment will be established by the Engineer. The Contractor may furnish cost data which might assist the Engineer in the establishment of the rental rate. Payment shall be subject to the following:

- 1) Payment for equipment which is already on the Project Site and which is used in the completion of extra Work will not be allowed;
- 2) All equipment shall, in the opinion of the Engineer, be in good working condition and suitable for the purpose for which the equipment is to be used;

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- 3) Before construction equipment is used on the extra Work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Engineer, in duplicate, a description of the equipment and its identifying number;
- 4) Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least minimum rating recommended by the manufacturer;
- 5) Individual pieces of equipment or tools having a replacement value of \$400 or less, whether or not consumed by use, will be considered to be small tools and no payment will be made therefore; and
- 6) Rental time will not be allowed while equipment is inoperative due to breakdowns.

The rental time to be paid for equipment at the Site will be the time the equipment is in productive operation on the extra Work being performed and, in addition, will include the time required to move the equipment to the location of the extra Work and return it to the original location or to another location; except, that moving time will not be paid if the equipment is used on other than the extra Work, even though located at the Site of the extra Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made for loading and transporting costs when the equipment is used at the Site of the extra Work on other than the extra Work. Rental time will not be allowed while equipment is inoperative due to breakdowns. The rental time of equipment on the Work Site will be computed subject to the following:

- 1) When hourly rates are listed, any part of an hour less than 30 minutes of operation will be considered to be one-half hour of operation, and any part of an hour in excess of 30 minutes will be considered 1 hour of operation;
- 2) When daily rates are listed, any part of a day less than 4 hours operation will be considered to be half-day of operation. When Owner -operated equipment is used to perform extra Work to be paid from on time and materials basis, the Contractor will be paid for the equipment and operator, as set forth in Paragraphs a), b), and c) following:
 - a) Payment for the equipment will be made in accordance with the provisions in Paragraph 13.01.B.5.c above;
 - b) Payment for the cost of labor and subsistence or travel allowance will be made at the rates established in Paragraph SC-13.01.B.1; and

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c) To the direct cost of equipment rental and labor, computed as provided herein, will be added the allowances for equipment rental and labor as provided in Section 00 72 00, General Conditions, Paragraph 13.01.D.

SC-13.01. Add the following language to the end of Paragraph 13.01.B.5.h:

Express and courier services must be approved prior to use.

SC-13.01.E. Add the following to Paragraph 13.01.E:

Supporting data shall include but not be limited to daily submissions of timesheets indicating hours and trades worked, equipment and time equipment was employed, and materials expended. Also see SC-7.10.D.6.

SC-13.03.E. Delete Paragraph 13.03.E in its entirety.

SC-14.02.A. Delete Paragraph 14.02.A in its entirety and replace with the following:

A. Contractor shall notify Engineer 48 hours prior to the expected time for operations requiring inspection and laboratory testing services. Contractor shall cooperate with inspection and testing personnel and furnish samples of materials, design mix, equipment, tools, storage and assistance as requested.

SC-14.02.D.5. Add the following to Paragraph 14.02.D:

Tests required by Contract Documents to be performed by Contractor that require test certificates be submitted to Owner or Engineer for acceptance shall be made by an independent testing laboratory or agency licensed or certified in accordance with Laws and Regulations and applicable state and local statutes. In the event state license or certification is not required, testing laboratories or agencies shall meet the following applicable requirements:

1. "Recommended Requirements for Independent Laboratory Qualification," published by the American Council of Independent Laboratories.
2. Basic requirements of ASTM E329, "Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction" as applicable.
3. Calibrate testing equipment at reasonable intervals by devices of accuracy traceable to either the National Bureau of Standards or accepted values of natural physical constants.

Prior to requesting a certificate of Substantial Completion, and allowing occupancy of facilities, Contractor shall provide an inspection by a state industrial safety representative, by an independent safety inspector certified by the state in the construction type being inspected, or a federal or state (OSHA) representative

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qualified in the construction type being inspected, to determine that the facilities provided are in compliance with the state and federal safety requirements. Signed copies of the inspection reports shall be submitted to the Engineer for Owner's files. Violations or deficiencies noted therein shall be resolved prior to occupancy of the facilities and before final payment will be made.

SC-14.03. Delete Paragraph 14.03.B in its entirety and replace with the following:

B. Owner and Engineer's Authority: Engineer will have the authority to determine whether Work is defective, and will advise Owner, who will determine whether to reject defective work.

SC-14.03. Amend Paragraph 14.03.D by adding "or Owner" after the word Engineer.

SC-15.01. Amend Paragraph 15.01.A by adding the following after the last sentence:

"The Owner will make progress payments in accordance with ORS 279C.570."

SC-15.01. Add the following subparagraph after Paragraph 15.01.B.3:

4. Stored Material and Equipment: Payments for stored materials and equipment shall be based only upon the actual cost of the materials and equipment to Contractor and shall not include any overhead or profit to Contractor. Partial payments will not be made for undelivered materials or equipment.

5. Schedule and Data: During the progress of the Work, each Application for payment shall be accompanied by Contractors updated schedule of operations, or progress report, with Shop Drawings schedules, procurement schedules, and value of materials on hand included in the application and other data specified in Section 01 33 00, Submittal Procedures, or reasonable required by Engineer.

6. Unless otherwise indicated in the Contract Documents, partial payment for equipment shall be as follows:

- a) 5 percent upon final approval of Shop Drawings by Engineer or Owner.
- b) 55 percent upon delivery of goods.
- c) 35 percent upon startup and final acceptance of good by engineer or Owner.
- d) 5 percent upon delivery of O&M Manuals.

SC-15.01. Add the following new Paragraph 15.01.B.4:

Total price for mobilization shall not exceed 1.0 percent of the Contract Price. Total price for demobilization shall not be less than 2.0 percent of the Contract Price.

SC 15.01. Amend Paragraph 15.01.E.1.1 by replacing period with a semicolon and adding "or" to the end of the sentence.

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SC-15.01. Amend Paragraph 15.01.E.1 by adding the following at the end:

- m. Any funds retained pursuant to SC-7.10.D.6, SC-7.18 and SC-15.03.B.

SC-15.01. Add the following new paragraph immediately after Paragraph 15.01.E:

15.01.F. *Subcontractor Payments.* Contractor shall make payments to subcontractors in accordance with SC-7.10.D.

SC-15.03. Amend Paragraph 15.03.A by adding the following:

Substantial Completion is further defined as (i) that degree of completion of the Project's operating facilities or systems sufficient to provide Owner the full time, uninterrupted, and continuous beneficial operation of the Work; (ii) all required functional, performance, and acceptance or startup testing has been successfully demonstrated for all components, devices, equipment, and instrumentation and control to the satisfaction of Engineer in accordance with the requirements of the Specifications; (iii) all inspections required have been completed and identified critical defective Work has been replaced or corrected; and (iv) all appurtenant operations and maintenance features (i.e., hose bibs, drainage systems, etc.) have been installed and are functional.

1. Conditions precedent to Substantial Completion of the Work and Engineer's issuance of a Certificate of Substantial Completion shall include:

- a. Conformance with all training services requirements and deliverables.
- b. Submittal of current record documents to the Owner and Engineer.
- c. Submittals have been received and approved or accepted by Engineer including, but not limited to, the following:
 - i. Approved Shop Drawings;
 - ii. Electrical testing and wiring diagram;
 - iii. Equipment data forms;
 - iv. Manufacturer's certificates of proper installation;
 - v. Factory test reports;
 - vi. Commissioning, testing and startup reports;
 - vii. Final Operations and Maintenance Manuals;
 - viii. Extra materials (spare parts) (as specified).

SC 15.03.B. Add the Following new subparagraph to Paragraph 15.03.B:

- 1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer,

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the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, shall be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off under Article 15.01.E Reductions in payment by Owner against Payments due.

SC-15.06. Add the following new paragraph immediately after Paragraph 15.06.A.2.e:

f. In accordance with ORS 279A.120, when out-of-state Contractor is awarded a Contract, Contractor is required to report to the Department of Revenue the Contract Price, terms of payment, length of Contract, and other information as Department of Revenue may require. Owner will verify Contractor has satisfied this requirement prior to issuing final payment.

SC-16.02. Amend Paragraph 16.02.A by adding the following at the end of the sentence:

“in a manner consistent with ORS 279C.670.”

SC-16.04. Delete GC 16.04 in its entirety.

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

SC-17.02 *Litigation.* Any Claim between Owner and Contractor that arises from or relates to the Contract and that is not resolved through the Claims Review Process shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR, BY EXECUTION OF THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.

SC-18.04. Amend Paragraph 18.04.A by removing the words “nor Engineer” from the second sentence.

SC-18.06. Amend Paragraph 18.06.A by adding the following to the end of the last sentence:

All warranty and indemnification provisions of the Contract, and all of Contractor’s other obligations under the contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract.

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SC-18.07. Delete Paragraph 18.07.A in its entirety and replace with the following:

- A. This Contract is governed by the laws of the State of Oregon without giving effect to the conflict of law provisions thereof.

SC-18.08. Add the following after Paragraph 18.08:

18.09 *General Provisions.*

A. No Third Party Beneficiaries: Owner and Contractor are the only parties to the Contract and are the only parties entitled to enforce its terms. Nothing in the Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of the Contract.

B. Severability: If any provision of the Contract is declared by a court to be unenforceable, illegal, or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

C. Access to Records: Contractor shall keep, at all times on the Project Site, one record copy of the complete Contract Documents, including the Plans, Specifications, addenda, and Change Orders (if any) in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner access thereto. Contractor shall retain and the Owner and its duly authorized representatives shall have access, for a period not less than ten (10) years, to all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor which are pertinent to the Contract, including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Work or the Contract shall be subject to litigation, Contractor shall retain all such records until all litigation is resolved and Contractor shall continue to provide Owner and/or its agents with full access to such records until such time as all litigation is complete and all periods for appeal have expired and full and final satisfaction of any judgment, order or decree is recorded and Owner receives a record copy of documentation from Contractor.

E. Waiver: Failure of the Owner to enforce any provision of the Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of the Contract.

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F. Successors in Interest: The provisions of the Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective permitted successors and assigns.

G. Non-Exclusive Rights and Remedies: Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of the Contract shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

H. Interpretation: The titles of the sections of the Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

I. Debt Limitation: The Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

END OF SECTION