



August 11, 2022

Board of County Commissioners  
Clackamas County

**Approval of Progressive Design-Build Contract between Water Environment Services and Michels Trenchless, a Division of Michels Corporation, for Tri-City Water Resources Recovery Facility Outfall Project. Contract value is \$1,704,547.00. Funding is through Water Environment Services Capital Funds. County General Funds are not involved. – Procurement.**

<b>Purpose/Outcome</b>	Approval of Progressive Design-Build Contract between Water Environment Services and Michels Trenchless, a Division of Michels Corporation, for Tri-City Water Resources Recovery Facility Outfall Project. Contract value is \$1,704,547.00. Funding is through Water Environment Services Capital Funds. County General Funds are not involved. – Procurement.
<b>Dollar Amount and Fiscal Impact</b>	Total Contract Value of \$1,704,547.00.
<b>Funding Source</b>	WES Capital Improvement Funds. County General Funds are not involved.
<b>Duration</b>	Final Completion on or before March 1, 2026.
<b>Previous Board Action/Review</b>	The BCC Public Hearing and Approval of a Resolution #2020-86 for Exemption and Authorization to use the Request for Proposals method to Obtain a Progressive Design Builder for the Tri-City Water Resources Recovery Project on December 17, 2020. This item was presented at Issues on August 9, 2022.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This project supports the WES Strategic Plan goal to provide properly functioning infrastructure that supports healthy streams and reduces flooding, by increasing hydraulic capacity of the new outfall and the diffuser dilution performance as they are important part of the new outfall design.</li> <li>2. This project supports the County Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invest in our natural resources, by increasing capacity from 75 Million Gallons per Day (MGD) to meet the current and future capacity needs for the system.</li> </ol>
<b>Counsel Review</b>	Date of Counsel review: August 2, 2022. Name of County Counsel performing review: Amanda Keller.
<b>Procurement Review</b>	<ol style="list-style-type: none"> <li>1. Was this item reviewed by Procurement? Yes.</li> <li>2. If no, provide brief explanation: N/A.</li> </ol>
<b>Contact Person</b>	Jeff Stallard, WES Civil Engineering Supervisor, 503-278-2311
<b>Contract No.</b>	#6881

**BACKGROUND:**

Clackamas County Water Environment Services (Owner) is seeking a design-builder team (Design-Builder) to design and construct the Tri-City Water Resource Recovery Facility (WRRF) Willamette River Outfall Project. The objective of the project is to increase the WRRF's outfall capacity from its current 75 million gallons per day (MGD) capacity to 162 MGD. The project consists primarily of an underground pipeline connecting to a diffuser in the Willamette River.

The progressive design build process is a two phase process. This initial contract includes the design and pre-construction services required to develop a guaranteed maximum price and facilitate environmental permitting for the construction of the outfall pipeline and diffuser. There will be a future amendment to this contract that will include construction of the outfall and diffuser for the guaranteed maximum cost developed during this design phase of the project.

**PROCUREMENT PROCESS:**

This project was advertised in accordance with ORS 279C.335 and LCRB Rules C-049-0600 on February 10, 2022. Proposals were opened on March 30, 2022. The County received proposals from (3) qualified firms: from Walsh Construction Company II, LLC, Emery & Sons Construction Group, LLC, and Michels Trenchless, a division of Michels Corporation. An evaluation committee of WES personnel and an Oregon City Representative reviewed and scored the proposals. Michels Trenchless, a division of Michels Corporation was determined to be the top scoring proposal. Notice of intent to award was published on May 5, 2022. Upon Contract award, the final Scope of Work and project fee were negotiated and finalized.

**RECOMMENDATION:**

Staff recommends the Board approve the Progressive Design-Build Contract between Water Environment Services and Michels Trenchless, a Division of Michels Corporation, for Tri-City Water Resources Recovery Facility Outfall Project.

Respectfully submitted,



Ron Wierenga, Assistant Director  
Water Environment Services

Attachments: Contract #6881  
Resolution #2020-86

**PROCUREMENT**

**AGREEMENT**  
**BETWEEN OWNER AND DESIGN-BUILDER**  
**FOR PROGRESSIVE DESIGN-BUILD**

**Contract #6881**

THIS AGREEMENT (“Agreement”) is entered into between **Water Environment Services**, an intergovernmental entity formed pursuant to Oregon Revised Statutes Chapter 190 (“**Owner**”) and Michels Trenchless, a Division of Michels Corporation (“**Design-Builder**”).

---

**PROJECT INFORMATION**

Project: Tri-City WRRF Outfall Project P632241

Design-Builder: Michels Trenchless, a Division of Michels Corporation

Owner’s Advisor : Jacobs Engineering Group, Inc.

Engineer: Design-Builder has retained AECOM Technical Services, Inc. (“Engineer”) for the performance of professional engineering services under this Contract.

Authorized Representatives: Owner and Design-Builder each hereby designates a specific individual authorized to act as representative with respect to the performance of responsibilities under this Contract. Such an individual shall have authority to transmit instructions, receive formal notices, receive information, and render decisions relative to this Contract on behalf of the respective party that the individual represents.

1. Owner’s Authorized Representative: Jeff Stallard; 150 Beaver Creek Rd, Oregon City, OR 97045; [jstallard@clackamas.us](mailto:jstallard@clackamas.us); 503-278-2311
2. Design-Builder’s Authorized Representative: Jeffrey Mueller; PO Box 128, 817 Main Street, Brownsville, WI 53006; [jsmuelle@michels.us](mailto:jsmuelle@michels.us); 920-948-2038

**TERMS**

Unless otherwise defined in this Agreement, terms used in this Agreement will have the meanings stated in the General Conditions and Supplementary Conditions.

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder further agree as follows:

**ARTICLE 1 – THE WORK**

- 1.01 *General Description:* Design-Builder shall complete all Work as specified or indicated in the Contract Documents including, but not limited to, the Scope of Work attached hereto as Exhibit A (“Scope of Work”) and incorporated herein. The Work is generally described as the design and construction of the following: A pipeline, approximately 90 inches in diameter and a mile in length, carrying effluent, flowing by gravity from the Tri-City Water Resource Recovery Facility (“WRRF”) to the Willamette River. The Project includes construction only of the pipeline in or under the

river and terminating with diffusers extending from the bottom of the river. The in-river pipeline and diffuser will be designed by the Owner's Advisor and is delineated in the Conceptual Design Drawings.

1.02 *Work Stages:*

- A. *Phase 1 - Preliminary Stage:* As set forth in more detail in the Scope of Work, Design-Builder shall perform the following services in Phase 1: Study and Report services; drafting of Preliminary Technical Documents; preparation of Construction Drawings and Construction Specification up to sixty (60) percent completion; and Construction Planning services as identified in the Scope of Work (including preparation of Component Guaranteed Maximum Price proposals or a single Guaranteed Maximum Price proposal).
- B. *Phase 2 - Completion Stage:* If Owner and Design-Builder decide to advance to the Completion Stage through the adoption of a Guaranteed Maximum Price amendment, entered into pursuant to the General Conditions and Supplemental Conditions, then Design-Builder shall perform the following services in Phase 2: Completion of Construction Drawings and Construction Specifications, based on the Preliminary Technical Documents; Construction; Start-up, Testing, and Commissioning; and Correction Phase services.

**ARTICLE 2 – CONTRACT TIMES**

2.01 *Time of the Essence*

- A. All time limits for Design-Builder's attainment of Milestones, Substantial Completion, and completion and readiness for final payment, as stated in the Contract, are of the essence of the Contract.

2.02 *Contract Times: Phase 1 - Preliminary Stage*

- A. Design-Builder shall review and provide input into the project narratives currently provided in the federal and state permit applications on or before October 1, 2022, to ensure timely permit approvals for construction.

2.03 *Contract Times: Phase 2 - Completion Stage*

- A. The Work will be substantially completed on or before December 1, 2025.
- B. The Work will be completed and ready for final payment on or before March 1, 2026.
- C. The Contract will not expire until the completion of the Work, unless otherwise terminated by the parties in accordance with the terms of the Contract Documents.

2.04 *Liquidated Damages;*

- A. *Construction:* Design-Builder and Owner recognize that time is of the essence as stated in Paragraph 2.01 and that Owner will suffer financial and other losses if the Work is not completed within the times specified in this Article 2, as such may be revised in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving, in a lawsuit or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design-Builder agree that as liquidated damages for delay (but not as a penalty):
  - 1. *Substantial Completion:* Design-Builder shall pay Owner \$2000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 2.03.B for Substantial Completion, until the Work is substantially complete.

2. *Final Completion*: After Substantial Completion, if Design-Builder shall neglect, refuse, or complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment as required in the Supplemental Conditions, within the dates specified in Paragraph 2.03 above, then Design-Builder shall pay Owner \$1700 for each day that expires after such until the Work is completed and ready for final payment.

**ARTICLE 3 – CONTRACT PRICE**

3.01 *Phase 1 Price*

- A. The Phase 1 Price means that portion of the Contract Price established for Design-Builder’s completion of the Phase 1 Work.
- B. For performance of the Phase 1 Work, the Owner agrees to pay the Design-Builder an amount not to exceed one million seven hundred four thousand five hundred and forty-seven dollars (\$1,704,547.00).

3.02 *Phase 2 Price*

- A. The Phase 2 Price means that portion of the Contract Price established as compensation for the Phase 2 Work.
- B. The Phase 2 Price will be set in accordance with the terms of the applicable sections of the General Conditions and the Supplemental Conditions including, but not limited to, Article 12, through the adoption of a Guaranteed Maximum Price amendment.

3.03 *Fee and Price Table*

PRICING COMPONENTS	PHASE 1	PHASE 2	TOTAL
A. Design Price (Lump Sum)	\$1,166,194.00		
B. Pre-Construction Price (Lump Sum)	\$538,353.00		\$
C. Design Builder Fee Percentage		12.1%	
D. General Conditions Fee Percentage		10%	
E. Cost of Construction		\$	\$

**ARTICLE 4 – PAYMENT; INTEREST**

4.01 *Payments*

- A. All payments made under the Contract will be in accordance with the Contract Documents including, but not limited to, Article 14 of the Supplemental Conditions.

4.02 *Interest Rate*

- A. All undisputed amounts shall bear interest on the terms and at the rate stated in Oregon Revised Statutes 279C.570, as amended.

## **ARTICLE 5 – INSURANCE AND BONDS**

### **5.01 Insurance**

- A. Design-Builder and Owner shall obtain and maintain insurance as required by the General Conditions and Supplementary Conditions.

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

- A. Design-Builder shall provide bonds in accordance with the requirements of Section 6.01 of the General Conditions and Supplemental Conditions.

## **ARTICLE 6 – DESIGN-BUILDER’S REPRESENTATIONS**

### **6.01 Representations**

- A. Design-Builder makes the following representations for Owner’s reliance:
  - 1. Design-Builder has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - 2. Design-Builder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Design-Builder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. Design-Builder has carefully studied all: (a) reports of explorations and tests of subsurface conditions at or adjacent to the Site, and all drawings of physical conditions relating to existing surface or subsurface structures at the Site, if any, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings, and (b) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings.
  - 5. Design-Builder has considered the information known to Design-Builder itself, and to Construction Subcontractors and Project Design Professionals that Design-Builder has selected as of the Effective Date; information commonly known to design professionals, design-builders, and contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings (if any) identified in the Contract Documents or otherwise made available to Design-Builder, 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 Design-Builder; and (3) Design-Builder’s safety precautions and programs.
  - 6. Based on the information and observations referred to in the preceding paragraph, Design-Builder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary prior to entry into the Contract at the Contract Price, subject to the Contract Times.

7. Design-Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
8. Design-Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the Contract Documents, and the written response from Owner is acceptable to Design-Builder.
9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
10. Design-Builder's entry into this Contract constitutes an incontrovertible representation by Design-Builder that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 7 – ACCOUNTING RECORDS**

### **7.01** *Maintaining and Preserving Cost Records*

- A. Design-Builder shall keep such full and detailed accounts of materials incorporated and labor, services, and equipment utilized for the Work as may be necessary for proper financial management under this Agreement. Subject to prior written notice, Owner shall be afforded reasonable access during normal business hours to all Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to cost-based or time-based compensation or reimbursement of any type or description, including but not limited to direct labor hours, standard rate hours, reimbursable expenses, change order pricing, and the Cost of the Work (if applicable). Design-Builder shall preserve all such documents for a period of six years after the final payment by Owner, or longer as may be otherwise required under the Contract Documents.

## **ARTICLE 8 – CONTRACT DOCUMENTS**

### **8.01** *Contents*

- A. The Contract Documents consist of the following:
  1. This Agreement.
  2. Scope of Work, attached hereto as Exhibit A.
  3. EJCDC D-700 Standard General Conditions of the Contract between Owner and Design-Builder ("General Conditions").
  4. Supplementary Conditions, attached hereto as Exhibit B.
  5. Conceptual Documents (Informational Only; Not Attached):
    - a. Tri City WRRF Conceptual Design Report (Jacobs; 2021)
    - b. Tri City WRRF Outfall Geotechnical Data Report (Jacobs; 2021)
    - c. Tri City Outfall Permitting Approach (Jacobs 2021)
  6. Addenda.
  7. Design-Builder's Proposal. (Not Attached)
  8. Proposal Amendment.

9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
  - a. Component Guaranteed Maximum Price Proposal(s).
  - b. Guaranteed Maximum Price Proposal.
  - c. Performance Bond (in the form provided by the Owner).
  - d. Payment Bond (in the form provided by the Owner).
  - e. Other Bonds.
  - f. Change Orders.
  - g. Record Drawings and Record Specifications
- B. The documents listed in Paragraph 8.01.A are attached to this Agreement and incorporated herein, except as expressly noted otherwise above or added by the parties at a later date through an amendment in accordance with the terms of the Contract Documents.
- C. There are no Contract Documents other than those listed above in this Article 8.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

#### **ARTICLE 9 – MISCELLANEOUS**

##### 9.01 *Terms*

- A. Unless otherwise defined in this Agreement, terms used in this Agreement will have the meanings stated in the General Conditions and Supplementary Conditions.

##### 9.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, the Design-Builder shall not assign any rights under or interests in the Contract without the written consent of the Owner, which shall not be unreasonably withheld.

##### 9.03 *Successors and Assigns*

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

##### 9.04 *Severability*

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

##### 9.05 *Design-Builder's Certifications*

- A. Design-Builder certifies that it has not engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 9.05:



1. "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the bidding process or in the Contract execution;
2. "Fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "Collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

*\*Signature Page Follows\**

IN WITNESS WHEREOF, Owner and Design-Builder have signed this Agreement.

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

OWNER:

DESIGN-BUILDER:

\_\_\_\_\_

Michels Trenchless, a Division of Michels Corporation

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

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

Title: \_\_\_\_\_

Title: Senior Vice President

Attest: \_\_\_\_\_

Attest:  \_\_\_\_\_

Title: \_\_\_\_\_

Title: Associate General Counsel

Address for giving notices:

Address for giving notices:

\_\_\_\_\_

Michels Trenchless, a Division of Michels Corporation

Attn: Steven Kenny

817 Main St., PO Box 128, Brownsville WI

Email: skenny@michels.us

License No.: Contractor No. 114278 State No., Cert of Authority #111870-85

(where applicable)

**EXHIBIT A – Scope of Work**

---

See Attached

# Exhibit A

## Design-Builder Scope of Work

### Background

Clackamas County Water Environment Services (Owner) is seeking a design-builder team (Design-Builder) to design and construct the Tri-City Water Resource Recovery Facility (WRRF) Willamette River Outfall Project. The objective of the project is to increase the WRRF's outfall capacity from its current 75 million gallons per day (mgd) capacity to 162 mgd. The project consists primarily of an underground pipeline connecting to a diffuser in the Willamette River. The Design-Builder will be required to provide complete Design and Construction Services as outlined in the contract documents and further defined in the following scope of work.

### Assumptions

The following key assumptions were used when determining the scope of the work:

1. The design will be based on standards and codes in effect on the effective date of the authorization to proceed for this Contract.
2. Project will be delivered using a Progressive Design Build delivery methodology.
3. Meetings will be held with all agencies having jurisdiction (AHJ) for this project and will be documented by Design-Builder to capture code and standard requirements.
4. Design-Builder will submit minutes from each workshop not later than 48 hours following each respective workshop. The Owner's review comments will be received by the Design-Builder within 5 working days from any corresponding design review workshop. Written responses to the comments will be provided by the Design-Builder. Owner will furnish required information, examine deliverables submitted by Design-Builder, and render decisions and approvals in a timely manner.
5. The Design-Builder will use the 49 Division format master specifications.
6. Owner will provide Division 0 specifications including EJCDC General Conditions and Supplementary Conditions and Design-Builder will provide Division 1 and technical specifications for project use with Owner review and comment.
7. Where deliverable documents or submittals are identified, hereinafter, five (5) hard copies of the deliverable will be provided in addition to electronic version in Adobe Acrobat Portable Document Format (PDF) and original Microsoft Word format.
8. Drawings (11-inch by 17-inch) in PDF will be provided for each Owner internal review.
9. The Design-Builder's standard CAD software (AutoCAD) will be used to produce the drawings, in conformance with the Owner's CAD Standards.
10. Meetings and workshops will be held at the Tri-City WRRF or the Development Services Building, unless noted otherwise.

### Owner-Provided Services

Owner-provided services are as follows:

1. Owner will provide to Design-Builder all known data in Owner's possession relating to Design-Builder's services on the project.
2. Owner will make its facilities accessible to Design-Builder as required for Design-Builder's performance of its services.
3. Owner will provide one hundred (100) percent design documents and specifications for the 150-foot diffuser section of the outfall pipeline. The Design-Builder will work with the Owner to assist in coordinating the design to ensure compatibility with the outfall pipeline.
4. Owner will provide all federal, state, and local environmental related permitting as identified in the project permitting matrix (see *Tri-City WRRF Outfall Permitting Approval Strategy Technical Memorandum (Jacobs, 2021)*). Construction related permits listed in Section III. 2. C. of this document will be the responsibility of the Design-Builder.

### Scope of Design-Builder Services

The Design-Builder shall be required to provide complete services for general items and Phases 1 and 2 as described below and to furnish all labor, materials, and equipment necessary and reasonable to complete the Work in accordance with the terms of the Contract.

The Design-Builder shall complete this work in two (2) Phases: Phase 1, Preliminary Phase, includes thirty (30) and sixty (60) percent design, preconstruction services, construction related permitting, and development of a Guaranteed Maximum Price (GMP) proposal. Phase 2, Completion Phase, includes ninety (90) percent and final design, remaining construction permitting from Phase 1, construction and commissioning services.

The Design-Builder shall maintain a team that is experienced and technically proficient to work collaboratively with Owner's staff, other consultants, and stakeholders. The Design-Builder, in undertaking the execution of all or any part of the Services and Work, is required to perform, construct, and complete the same in a thorough, satisfactory, and skillful manner in accordance with the provisions of the Contract.

#### I. General Items

Services provided in the General Items shall be provided for both Phase 1 and Phase 2 of the project.

##### A. Project Management

###### 1. Progress Meetings and Updates

- a. The person designated as the Design-Builder's Project Manager shall attend all of the meetings described below. Meetings, in addition to those describe below, may be required for special purposes or other Contract requirements.

###### i. Scheduling Conference/Phase Initiation Meeting

- A. A scheduling conference is required in both Phase 1, Preliminary Stage, and Phase 2, Completion Stage, of the project.
- B. Attendees: Owner's project staff, the Design-Builder's Project Manager, Superintendent, the engineer and major sub-consultants, and other concerned parties shall each be represented at the conference by persons familiar with, and authorized to, conclude matters relating to the work.
- C. Minutes: The Design-Builder shall prepare and distribute draft and final meeting minutes.

- ii. Design and Construction Progress Meetings
    - A. Owner will schedule regular Design and Construction Progress Meetings to determine the progress of the Work. These meetings will start within 2 weeks from the date of the Phase 1 Notice to Proceed and will occur as agreed upon between Owner and Design-Builder. Progress Meetings will be held at a minimum of every two (2) weeks.
    - B. Minutes: The Design-Builder will prepare and distribute draft and final meeting minutes.
  - iii. Design-Builder Requested Meetings
    - A. For Design-Builder requested meetings, the Design-Builder shall provide the Owner a minimum of 2 weeks' notice in advance, where possible.
    - B. The Design-Builder shall provide the agenda and meeting materials to attendees a minimum of 48 hours in advance of the meeting.
    - C. The Design-Builder will record and distribute draft meeting minutes within 48 hours of meeting, and final meeting minutes.
2. Project Management and Coordination
- a. Coordination Responsibilities: The Design-Builder shall coordinate all design and construction operations included in the Contract to ensure efficient and orderly development and installation of each part of the Work. The Design-Builder shall also coordinate construction operations that depend on each other for proper installation, connection, and operation. It is the ongoing responsibility of the Design-Builder to adequately manage and adhere to the project budgets and to submit deliverables to the Owner on time and in accordance with the Contract requirements. The Design-Builder's coordination responsibilities shall include but are not limited to:
    - i. Make adequate scheduling and manage design activities to ensure that the design milestones are met by the Design-Builder's design team.
    - ii. Prepare and issue trade bids to obtain early design assist input from Subcontractors (when applicable).
    - iii. Schedule and manage the coordination requirements included in different sections. The Design-Builder shall not delegate responsibility for project coordination to any Subcontractor.
    - iv. Coordinate the documentation and permitting process with Owner.
    - v. Schedule and manage all pre-construction activities.
    - vi. Schedule and manage the submittal process.
    - vii. Prepare and manage the Safety Plan.
    - viii. Schedule construction operations in the sequence required to obtain the best results where installation of one part of the work depends on installation of other components, before or after its own installation.

- ix. Coordinate the installation of all components to ensure maximum performance and allow access for required maintenance, service, and repair, including mechanical and electrical.
- x. Resolve actual or potential conflicts between Subcontractors concerning coordination, interference, and sequencing.
- xi. Ensure that anchorage, blocking, joining, and other detailing are provided.
- xii. Coordinate the documentation requirements with the Code and Permit Requirements.
- xiii. Implement all systems integration and commissioning for compliance with contractual and permitting requirements.

b. Coordination with Owner

- i. The Design-Builder shall notify Owner in writing a minimum of 30 days in advance of any construction activity that will be outside the contract limits, which would interfere with Owner’s daily operations or impact adjacent land owners. Utility interruptions (shutdowns or connections) required at a minimum 30 days advance written notice.
- ii. Observation of work by Owner shall not be interpreted as relieving the Design-Builder from responsibility for coordination, superintendence, scheduling, and direction of the work.
- iii. Coordinate with Owner to ensure that Work on the project site, access to and from the project site, and the general conduct of operations is maintained in a safe and efficient manner, and that disruption and inconvenience to existing facilities and property including the Owner’s and adjacent, is minimized.

3. Project Procedures Manual

- a. The Design-Builder shall develop a manual of the project-specific procedures that will be implemented by the Design-Builder to manage and control the work. At a minimum the contents of the manual will include the following:
  - i. Project directory.
  - ii. Project organization chart.
  - iii. Mobilization and demobilization plan.
  - iv. Project management and administration.
  - v. Schedule management.
  - vi. Management reporting.
  - vii. Pay request preparation and submittal.
  - viii. Recordkeeping and document control.
  - ix. Change management.
  - x. Coordination of requests for information and submittals.
  - xi. Project logistics management.
  - xii. Project site security.

- xiii. Project health and safety.
- xiv. Hazard communication program
- xv. Emergency response procedures.
- xvi. Attachment of all other plans required by the contract documents and the scope of work and other project requirements.

#### 4. Work Management System

- a. Document Management: Design-Builder will maintain and coordinate all pertinent electronic design files and documents including all Computer-Aided Design and Drafting (CADD) files related to the project. Electronic files submitted shall use a naming convention approved by the Owner and described in the Project Procedures Manual.
- b. Project Communication and Information System: The Owner intends to utilize an electronic project management system. The Design-Builder will be required to provide submittals and coordinate with Owner to establish streamlined procedures and workflows for documenting, sharing, and controlling project information utilizing the Owner's system. At a minimum, the following information will need to be submitted to the Owner as applicable:
  - i. Meeting and workshops agendas, presentation, and notes.
  - ii. Action items, issues, decision logs, and tracking.
  - iii. Budget and schedule tracking.
  - iv. Risk tracking and mitigation.
  - v. Document submittals and transmittals.
  - vi. QA/QC documentation including comments, responses, and confirmations.
  - vii. Applications for payment and monthly reports.
  - viii. Review comments.
  - ix. Construction clarifications (Requests for Information) and responses
  - x. Construction change directives.
  - xi. Construction change order requests.
  - xii. Construction observation reports.
  - xiii. Operation and maintenance manuals.
  - xiv. Performance testing and commissioning reports.
  - xv. Documentation of project-related communication if needed.

#### 5. Quality Management

- a. The Design-Builder shall adopt a Quality Control program to accomplish the work. As the cornerstone of the Quality Control Program, the Design-Builder shall develop, submit, implement and maintain an effective Quality Control Plan that details the methods, procedures, and resources that will be engaged to control the quality of



the work during the design, preconstruction, and construction phases as required to ensure conformance to the Contract.

- b. The Quality Control Plan shall be divided into a Design Quality Control Plan and a Construction Quality Control Plan. The requirements for these plans are as follows:
  - i. Within thirty (30) days of Phase 1 Notice to Proceed, the Design-Builder shall develop and submit to Owner a Design & Preconstruction Quality Control Plan specifically for this project. The Design & Preconstruction Quality Control Plan shall be comprehensive and include specifically or by reference incorporation of Quality Control Plans by each major design consultant, supplier, and subcontractor.
  - ii. The Design & Preconstruction Quality Control Plan shall include, but not be limited to:
    - A. An organization chart showing responsibilities for Design & Preconstruction services and quality control checks.
    - B. Project Design & Preconstruction quality assurance measures that will be used to:
      - 1) Document that quality control methods, procedures, and resources identified in the Design & Preconstruction Quality Control Plan are being utilized and effective.
      - 2) Evaluate the overall quality of the products being produced.
      - 3) Identify deficiencies and take corrective action as warranted.
      - 4) Ensure that quality control checks shall be conducted by a qualified independent person who is familiar with the specific areas of review but not directly associated with the design or development of the project.
      - 5) Provide a communications plan outlining the protocol for all communication related to the Design & Preconstruction Quality Control Plan.
  - iii. Prior to the start of construction, the Design-Builder shall develop and submit to Owner, a Construction Quality Control Plan specifically for this project. The Construction Quality Control Plan shall be comprehensive and include quality requirements for all materials and completed construction required by this Contract to conform to Contract plans, technical specifications, and other requirements, whether manufactured by the Design-Builder, or procured from Subcontractors or vendors. The Construction Quality Control Plan shall be effective for control of all work performed under this Contract and shall specifically include methods, procedures and resources, surveillances and tests required by the technical specifications, in addition to other requirements of the Contract to establish an effective level of quality control.
    - A. The Construction Quality Control Plan shall be submitted to Owner for review and acceptance at least thirty (30) days before onsite activities are scheduled to begin. The Quality Control Plan shall be organized to address, at a minimum, the following items:

- 1) Quality control organization and staffing levels for positions expected to be utilized during the construction phase for both design and construction quality.
- 2) Construction Quality Control Inspection procedures that detail minimum qualifications and experience of personnel, applicable recognized standards, and frequency of inspection.
- 3) Approved project schedule.
- 4) Approved submittals schedule.
- 5) Controls to ensure that only the "Approved for Construction" construction documents are utilized in the work. This should include provisions for removing superseded versions from the work area, except where explicitly and prominently marked "Void-For Information Only" such as to retain annotated installation data.
- 6) Identification of all quality control activities, tests and inspection, including offsite source inspection and tests, or design quality control activities that the Design-Builder will perform to ensure conformance to the approved design and Contract Documents.
- 7) Plans and procedures for receiving, inspecting and accepting material and equipment. These shall include examination of physical condition and compliance with purchasing requirements, including marking for class type and grade, and conformance of approved submittals.
- 8) The Design-Builder is encouraged to add any additional elements to the Construction Quality Control Plan that it deems necessary to adequately control all production and/or construction processes required by this Contract.

B. Quality Control Organization: The Design-Builder Quality Control Program shall be implemented by the establishment of a separate quality control organization. Resumes for personnel shall be included in the Quality Control Program Plan submittal for approval by Owner.

#### 6. Schedule Development and Update

- a. The Design-Builder shall prepare and provide updates to the Design Schedule and as required in SC-18 Scheduling of the Work.

#### 7. Risk Management Collaboration

- a. The Design-Builder shall work collaboratively with the Owner's staff to incorporate risk management into the project. The Design-Builder shall prepare a risk register and provide updates in collaboration with the Owner according to the following:
  - i. Develop and maintain a risk register acceptable to the Owner.
  - ii. The risk register shall include the following, at a minimum:
    - A. Risk identification.
    - B. Activity or activities affected (tied to schedule activities).
    - C. Risk description including qualitative categorization of risk.

- D. Estimated/calculated percent likelihood that risk may occur.
  - E. Phase of project that risk could impact.
  - F. Potential schedule impact should risk occur.
  - G. Potential cost impact should risk occur.
  - H. Potential health & safety impacts should risk occur.
  - I. Risk trigger.
  - J. Risk owner.
  - K. Risk management strategy (transfer, mitigate, accept, exploit).
  - L. Risk mitigation strategy.
  - M. Post-mitigation schedule, cost, and health/safety impact.
  - iii. Update risk register at least monthly, and submit as part of monthly progress reports.
  - iv. Facilitate bi-monthly meetings to review the risk register elements and their mitigated risk level with the Owner.
8. Design-Builder Submittals
- a. Reports
    - i. The Owner will review draft reports. Owner will consolidate review comments and provide comments to the Design-Builder.
    - ii. Design-Builder shall review comments and record responses and/or actions required to resolve items in the comments within seven (7) days of receiving comments. Comments requiring further discussion or work to resolve shall be brought to the attention of the Owner.
  - b. Drawings and Specifications
    - i. Intermediate design (thirty (30), sixty (60), ninety (90) percent design) submittal
      - A. Provide five (5) paper copies and an electronic copy in PDF of drawings and specifications. Specifications shall be in 49 Section Format.
      - B. All paper copies of drawings shall be half-size (11" by 17").
      - C. Owner will review draft submittal. Owner will consolidate review comments from Owner staff and provide comments to the Design-Builder.
      - D. Design-Builder shall review comments and record responses and/or actions required to resolve items in the comments within seven (7) calendar days of receiving comments. Comments requiring further discussion or work to resolve shall be brought to the attention of the Owner.
    - ii. Final Design Submittal
      - A. The final design submittal shall include drawings and specifications for construction.
      - B. Provide one (1) paper copy with original Professional Engineer seals and signatures.

- C. Provide five (5) additional paper copies and an electronic copy of the final submittal in PDF, with final drawing files in Auto CAD format and specifications in Word format.
- D. The original copy and two (2) paper copies of drawings shall be full-sized (22" by 34") and remaining copies shall be half-size (11" by 17").

9. Subcontractor Procurement

10. The following applies to the procurement of Trade Subcontractors for the performance of work inclusive of design assistance and construction. It does not apply to Subcontractors solely providing professional services.
- a. The Design-Builder shall conduct Subcontractor or supplier procurement utilizing an "open book" transparent approach. The Owner reserves the right to observe the receipt of all Subcontractor bids and the Design-Builder's subsequent bid analysis including scope leveling activities.
  - b. If Possible, the Design-Builder shall secure the commitment to bid on each Work Package from a minimum of three (3) bidders for each trade, unless Design-Builder elects to self-perform that work as permitted herein. The Design-Builder shall invite Owner to all pre-bid conferences, outreach events, bid openings and scope interviews on the Work Packages.
  - c. If the Design-Builder does not obtain a minimum of three (3) bids, it must provide a narrative as to why awarding a work package on the basis of less than three (3) bids is in the Owner's best interests.
  - d. The Design-Builder shall have the right to prequalify potential bidders if approved by Owner.
  - e. The Design-Builder shall be required to self-perform no less than 30 percent of the construction work on cost basis.

11. Deliverables

- a. The following are the major deliverables required under the General Items.
  - i. Project Procedures Manual.
  - ii. Quality Control Plan.
  - iii. Risk Register.

II. Phase 1: Thirty (30) and Sixty (60) Percent Design and Pre-Construction Services

A. Project Initiation

1. The Design-Builder shall schedule and facilitate a Project Initiation Meeting with the Owner within fourteen (14) calendar days following written authorization to proceed. At the meeting, review the draft Project Procedures Manual and discuss project goals, objectives, and critical success factors. Prepare agenda and submit to the Owner no later than seven (7) calendar days before meeting (with draft project procedures manual).

2. The Design-Builder shall implement a design process that is collaborative and provide the Owner with continuous access to the developing design. The Design-Builder shall review options and concepts with the Owner and incorporate Owner directions that are consistent with the project design criteria.
3. The Design-Builder shall not begin any Design Development, until the Quality Control Plan for Design has been approved by Owner.

B. Design Services

1. Thirty (30) Percent Design

- a. Design-Builder shall develop the design to a thirty (30) percent completion level:
  - i. The thirty (30) percent complete design submittal shall include drawings and specifications (as listed below in this paragraph) and an updated Design-Builder's cost estimate submittal.
  - ii. For the thirty (30) percent complete design submittal, Design-Builder shall:
    - A. Submit the documents for review by Owner.
    - B. Schedule and facilitate a review meeting with the Owner to present the documents and an overview of the updated cost model and project schedule.
    - C. Respond to the Owner review comments.
  - iii. The Design-Builder is responsible for verifying subsurface conditions. The Design-Builder shall review existing project information including survey data, utility information, geotechnical data, and environmental reports; identify any additional survey, subsurface information, utility potholing or other field work that will be required for design and construction purposes; and prepare associated plan to obtain remaining information. Any subsurface investigation must be completed early enough in the project to ensure there is no project delay due to the need to redesign.
  - iv. The thirty (30) percent complete design shall, as appropriate, contain topographical site survey; geotechnical investigations] determination of the number] sequencing of construction packages; project layout and features; preliminary design of project features, maintenance holes, and tie-ins; permanent and temporary easement locations with staging area needs and draft easement documents; design calculations; preparation of documents to support permitting; preparation of preliminary plans and specifications outline; and quality management review with documentation.
  - v. For the tunneled segment, the Design-Builder shall:
    - A. Prepare initial plans and layout drawings for each shaft and portal locations and confirm the required work area limits, number of shafts, location, depth, width, construction by segment, or with use of curved tunnel.
    - B. Obtain confirmation of Oregon Department of Transportation (ODOT) right-of-way crossing requirements to determine acceptable tunneling methods and pipe/initial support materials and provide tunnel support requirements, calculations, and details for selected tunneled installation.

- C. Confirm approvals by ODOT to work within the ODOT I-205 interchange/clover leaf area and by City of Oregon City to work within Jon Storm Park.
  - D. Identify how “potential gas from Rossman landfill” will be addressed during shaft construction and tunneling.
  - E. Prepare settlement calculations, related impacts, mitigation measures, and monitoring plan.
  - F. Provide a construction strategy for each critical tunnel construction related issue to address at a minimum sequencing of tunnel related operations, Jon Storm Park access and portal construction, Jon Storm Park restoration, shaft site access and construction and restoration, restoration to any ODOT property and material storage.
  - G. Include detailed tunneling schedule with duration of activities in the construction schedule prepared in the project management task.
- vi. For the open cut segment, the Design-Builder shall provide the method and associated details for addressing construction and long-term outfall pipe support that addresses the potential for long-term settlement of the outfall pipe associated with Rossman Landfill. The Design-Builder shall address protection and continued operation of existing major utilities along Agnes road.
  - vii. For the in-water construction, the Design-Builder shall define staging needs and work approach for in-water work to define construction overlap and interfacing approach with ODOT’s I-205 widening project. The Design Builder shall incorporate outfall diffuser design for 150-foot diffuser segment in plan and profile drawings using CAD and PDF files provided by Owner (designed by others).
  - viii. For any excavation within Jon Storm Park, the Design Builder shall identify limits of construction needed to work within the park and work with the Owner to obtain required approvals. The Design Builder shall prepare a conceptual plan and profile for restoring the park and concealing the new pipe in support of Jon Storm Park work approvals.
- b. The Design-Builder shall develop sixty (60) percent drawings to the following level of completion, at a minimum:
    - i. Cover Sheets (90% complete).
    - ii. General Drawings:
      - A. Index of Drawings (60% complete).
      - B. General Legends and Notes (60% complete).
      - C. Suggested Construction Sequences (60% complete).
      - D. Drawing symbols, numbering & tagging conventions, symbols, and abbreviations (60% complete).
    - iii. Drawings:
      - A. Civil notes (60% complete).

- B. Topographic survey (100% complete).
- C. Overall Plan view (60% complete).
- D. Erosion control drawings (30% complete).
- E. Details (30% complete). Details shall provide sufficient information to establish construction impacts and restoration needs for permitting documents. Details should include trench cross sections for open cut on land and in water, pipe support requirements for open cut work, tunnel work shaft and portal details, shoreline and other disturbed areas restoration details, staging area locations, and layout details.
- F. Pipeline (30% complete). Details shall include:
  - 1) General project scope and background references.
  - 2) Plan and profile of pipeline horizontal and vertical alignment including shaft and portal locations with ordinary high water elevation.
  - 3) Trench and work shaft excavation support.
  - 4) Pipeline materials for construction.
  - 5) Basis of pipe design, design standards, pipe supports, internal pressures, external loads, cut and cover methods, cover depth, trench details including width, embedment class, and backfill requirements.
  - 6) Crossings including utilities, streets, highways, and river. For ODOT crossings, define and confirm approach meets ODOT requirements.
  - 7) Utility relocates plans and details.
  - 8) Corrosion and cathodic protection requirements as applicable.
  - 9) Pipeline appurtenances types and locations, including maintenance holes and connection to existing lines or structures and future connections.
  - 10) Structural details for mixing box accommodating the TC WRRF future expansion.
  - 11) Surface Restoration Plans shall identify restoration needs for shoreline area, ODOT clover leaf area, and all other areas impacted by construction.
  - 12) Local and state regulatory and jurisdictional agency's requirements, including permitting requirements.
  - 13) Surveying services, including horizontal (North American Datum of 1983 Oregon State Plane) and vertical (North American Vertical Datum of 1988) controls.
  - 14) Permanent/temporary easement and right-of-way requirements.
- c. Specifications: the thirty (30) percent specifications shall be developed to the following approximate levels of completion, at a minimum:
  - i. Prepare complete list of all specifications for the planned work.

- ii. Identify any modifications required to Owner's General Conditions and/or Design and Construction standards.
  - iii. Prepare draft pipe specifications.
  - iv. Prepare draft tunnel specifications to include but not be limited to Tunnel Boring Machine (TBM) Tunneling, Shaft and Portal Construction, Geotechnical Instrumentation and Monitoring, Contact and Backfill Grouting, Carrier Pipe Installation, Fill and Backfill, and Control of Water.
- d. Geotechnical Baseline Report (GBR): the Design-Builder shall prepare and submit a draft GBR with the thirty (30) percent design submittal, building from the Geotechnical Data Report (GDR) (Jacobs, 2020) and any supplemental information obtained by the Design-Builder. The draft GBR shall be prepared to establish the geotechnical conditions of the pipeline for the purposes of design, development of costs, and construction of the planned work. The GBR shall address shafts, portals, underground utilities, the diffuser, and other structures. The GBR shall be prepared in general accordance with *Geotechnical Baseline Reports for Underground Construction: Suggested Guidelines* (American Society of Civil Engineers [ASCE], 2007).
- e. Basis of Design Report (BDR): The Design-Builder shall prepare and deliver a Basis of Design Report (BDR) that builds on the Conceptual Design Report (Jacobs, 2021) and documents decisions made during the thirty (30) percent design development. The BDR shall contain geotechnical site investigation results; alternative evaluations and recommendations; design criteria development; project feature design development; engineering analyses to support designs, including TBM, launch and receiving shaft, and portal requirements; identification of regulatory and City requirements; and quality management reviews. The BDR shall include descriptions and supporting evidence of any deviations from the project design requirements. The Design-Builder shall:
- i. Review the project requirements and consult with the Owner as appropriate to further clarify requirements for the project including the Owner's budget, and available owner-furnished information.
  - ii. Evaluate the project reference documents, including but not limited to the design criteria requirements, and, after consultation with the Owner, recommend to the Owner any modifications to such documents which in Design-Builder's judgment would benefit the project.
  - iii. Document hydraulic flow calculation showing minimum flow capacities are achieved as detailed in the design criteria requirements based on recommended pipeline materials and dimensions and prepare calculations documenting pipe external loads and cover depth, trench width, and backfill requirements.
  - iv. Provide documentation of the evaluation of trenchless installation methods and seismic resiliency considerations.
  - v. Include dimensional drawings to adequately depict the conceptual-level design of the work.
  - vi. Provide final recommendation that considers impacts to the environment, feasibility of construction, stakeholder impacts, cost of construction, and schedule.



- f. Commissioning (preliminary)
    - i. The Design-Builder shall develop a draft Commissioning Plan outline and draft organizational chart for the commissioning team (using placeholders for subcontractor commissioning team members) in cooperation with the Owner. The Commissioning Plan shall include detailed descriptions of the commissioning process, commissioning team roles and responsibilities, tests, and demonstrations, all test forms, training process and schedule for performing commissioning activities.
  - g. Acceptance Testing
    - i. The Design-Builder shall develop acceptance testing specifications for the project in cooperation with the Owner. The specifications shall include the development of an acceptance testing plan detailing the test data and expected results required to implement acceptance test scenarios designed to demonstrate that the project performs as required.
    - ii. The acceptance testing specifications will be included with the 30% document submittals for Owner review.
    - iii. The Design-Builder will be required to implement the acceptance testing in accordance with the plan and specifications prior to Owner acceptance of the Work.
  - h. Cost Estimate
    - i. Design-Builder shall submit thirty (30) percent Cost Estimate in accordance with the cost component framework.
2. Sixty (60) Percent Design
- a. After review by the Owner of the thirty (30) percent complete design, Design-Builder shall further develop the design to a completion level of sixty (60) percent inclusive of addressing all Owner comments on the 30% documents.
  - b. The sixty (60) percent design shall contain final project layout, detailed design of project features and facilities, detailed drawings and specifications, design calculations, and quality management reviews.
  - c. The sixty (60) percent complete design submittal shall include:
    - i. Drawings and specifications (as listed below in this paragraph).
    - ii. Update of Design-Builder's cost estimate submittal.
    - iii. Update of the Design-Builder's construction schedule including tunneling schedule with duration of activities.
    - iv. Update of Construction Strategy including in-water work approach with ODOT construction projects and approach to Jon Storm Park construction and ODOT crossings (cased vs. uncased [one or two pass] and material, direct jack or casing plus pipe install) requiring permitting resolution.
    - v. Permanent and Construction Easements: Design-Builder shall provide all documentation, figures, and survey work required to legally describe and obtain all easements for the project. Such work includes but is not limited to the

creation of all maps and figures showing location of all existing and proposed easements including supporting legal descriptions and metes and bounds survey location prepared in accordance with Owner's standardized easement form. Owner will negotiate easements directly with property owners. Design-Builder shall provide a supportive role.

- d. For the sixty (60) percent complete design submittal, Design-Builder shall:
  - i. Submit the documents for review and approval by the Owner.
  - ii. Schedule and facilitate a review meeting with the Owner to present the documents and an overview of the updated cost model and project schedule.
  - iii. Respond to the Owner review comments.
  - iv. Hold a workshop to discuss the Owner comments and Design-Builder's responses.
- e. The sixty (60) percent drawings shall be updated from the thirty (30) percent design and developed to the following approximate levels of completion, at a minimum:
  - i. Cover Sheets (90% complete).
  - ii. General Drawings:
    - A. Index of Drawings (90% complete).
    - B. General Legends and Notes (90% complete).
    - C. Suggested Construction Sequences (90% complete).
    - D. Drawing symbols, numbering & tagging conventions, symbols, and abbreviations (90% complete).
  - iii. Drawings:
    - A. Civil notes (90% complete).
    - B. Topographic survey (100% complete).
    - C. Site plan (90% complete).
    - D. Pipeline appurtenances types and locations, including maintenance holes and connection to existing lines or structures and future connections. Utility crossings and relocations, surface restoration, and erosion control drawings (60% complete).
    - E. Civil details (60% complete).
    - F. Structural details for mixing box accommodating the TC WRRF future expansion. (60% complete).
    - G. Pipeline drawings (60% complete).
- f. Specifications: the sixty (60) percent specifications shall not make any generalized blanket references to the Owner's Standards and Specifications, or other State or National standards. If any sections of these Standards and Specifications are to be included by reference, the specifications shall cite specific chapters and/or paragraphs of the reference standards. The sixty (60) percent specifications shall be developed to the following approximate levels of completion, at a minimum:

- i. Table of contents (100% complete).
  - ii. Design-Builder standard specifications for procurements (100% complete).
  - iii. Structural specifications (90% complete).
  - iv. Piping specifications (90% complete).
  - v. Trenchless Installation (90% complete) shall include but not be limited to; TBM Tunneling, Shaft and Portal Construction, Geotechnical Instrumentation and Monitoring, Contact and Backfill Grouting, Carrier Pipe Material & Placement, Fill and Backfill, and Control of Water.
  - vi. Balance of specifications (60% complete).
- g. Design Review Workshops: Design-Builder shall conduct a series of design review and coordination workshops with Owner staff. Meetings shall be conducted with small focus groups concentrating on specific areas of the project to review the design progress of specific sections or elements. The intent is to develop consensus on layouts, configurations, and features of the project as the design refinement efforts progress. A minimum of three (3) half-day workshops shall be included in Phase 1 Services.
  - h. GBR: Design-Builder shall update the draft GBR prepared during thirty (30) percent design with new information developed during the sixty (60) percent design in general accordance with *Geotechnical Baseline Reports for Construction: Suggested Guidelines* (ASCE, 2007). The GBR shall establish the geotechnical conditions of the entire length of the pipeline to include open cut and tunneled construction on land and in the river for the purposes of design, development of costs, and construction of the project facilities, underground utilities, and structures.
  - i. Commissioning (preliminary): The Design-Builder shall develop a final Commissioning Plan outline and provide a detailed organizational chart for the commissioning team (using placeholders for unselected Subcontractor commissioning team members) in cooperation with the Owner. The commissioning plan shall include detailed descriptions of the commissioning process, commissioning team roles and responsibilities, tests, and demonstrations, all test forms, training process and schedule for performing commissioning activities.

### C. Pre-Construction Services

- 1. The services provided by the Design-Builder shall be provided in a collaborative project team environment. The Design-Builder's construction personnel are expected to be engaged in the project design and construction document development process working collaboratively with the Design-Builder's design team and the Owner. The Design-Builder shall collaborate, advise, assist, estimate, schedule, and provide recommendations to members of the project team on the design's constructability, design impacts on construction means and methods, and other factors that could potentially reduce the costs of construction during the design phase of the project.
- 2. Cost Control During Design
  - a. Within forty-five (45) days of Phase 1 Notice to Proceed, the Design-Builder shall develop a cost model/cost component framework by which the initial budget

validation and all future cost estimates are presented. A Design to Budget of \$45 million has been established at this time. The Design-Builder shall use its experience, knowledge, and industry information from other similar projects and Subcontractors to develop the cost model/cost component framework. The final format is subject to Owner's approval.

- b. At a minimum the framework will include the following:
    - i. A line-item breakdown using the Construction Specialties Installations (CSI) MasterFormat® classification system for presenting the estimated construction costs including the Design-Builders General Conditions/General Requirements and Temporary Site Services/Field Services.
    - ii. A breakdown of contingency estimates as follows:
      - A. Cost Escalation (percentage to the midpoint of construction)
      - B. Design Development Contingency
      - C. Design-Builder's Contingency
    - iii. Design/Engineering Services Broken Down by Phase
    - iv. Design-Builder's Preconstruction Services
    - v. Permit Fees
    - vi. Testing/Inspection Fees
    - vii. Bonds, Insurance, and Taxes
    - viii. Design-Builder's Fee on the Cost of Work
  - c. The Design-Builder shall be responsible for updating the project construction cost estimate throughout the development of the design at the Owner's request.
  - d. The Design-Builder shall increase the level of cost estimate detail as the project progresses as mutually agreed upon by Owner and Design-Builder. At a minimum, full estimates will be presented at the thirty (30) and sixty (60) percent design milestones.
  - e. Owner may retain a cost team throughout the project to provide independent verification and/or review of Design-Builder's estimates.
3. Within forty-five (45) days after NTP, the Design Builder will validate the Design to Budget using the Cost Component Framework.
  4. Value Management Services (Constructability Review, etc.)
    - a. The Design-Builder will evaluate opportunities to improve maintainability and sustainability and reduce lifecycle costs and energy use.
    - b. As part of the constructability review, the Design-Builder shall prepare a list of possible value engineering items, discuss these with the Owner, and agree on which items will receive more detailed analysis. When requested, the Design-Builder shall perform more detailed analysis of the selected items to include analysis of alternative methods, systems, materials, and equipment of designs feasible to complete the construction at the lowest reasonable construction cost while achieving the Owner's project objectives.

## 5. Preconstruction Evaluation Report

- a. The Design-Builder shall provide the Owner with a Preconstruction Packaging Evaluation Report. The report shall include:
  - i. A budget cost estimate for the project and each Trade Package option considered as a basis for bid and GMP or Component GMP (CGMP evaluation).
  - ii. Preliminary Construction Schedule.
  - iii. Design-Builder's constructability recommendations including construction phasing and traffic control.
  - iv. Any identified opportunities for increased efficiency and/or innovation.
  - v. Material recommendations and risks due to inflation or supply.
  - vi. Design options review, including a comparison of the risks and benefits of the different design element types and their construction.
  - vii. Development of a Construction Packaging plan, including long lead procurement items.
  - viii. Any issues that, in the opinion of the Design-Builder, should be considered in the planning, management, or execution of the project to maintain budget, schedule, scope, and quality objectives.
  - ix. Subcontractor Procurement Plan.
- b. The initial Report shall be submitted no later than the completion of the thirty (30%) percent design submittal or when the Design-Builder develops its initial packaging strategy, whichever comes first. Report updates shall be submitted monthly at least one week prior to the monthly meeting or one (1) week prior to Work Packages released for bid.

## D. Permitting Support

1. The Design-Builder shall develop an Environmental Compliance Plan for all environmental and construction permits as listed in the permitting matrix (see *Tri-City WRRF Outfall Permitting Approval Strategy Technical Memorandum (Jacobs 2021)*). This plan shall:
  - a. Cover activities occurring during project execution, including a schedule for construction permit development, application submittal, and anticipated agency review and approval timelines.
  - b. Identify permits or and permit conditions or permitting activities that will require information and/or coordination with the Owner.
  - c. Identify permits and permit conditions that are influential to critical path elements for the delivery of the design or construction.
  - d. Be submitted for review by the Owner with the 30% design deliverables. The Design-Builder shall submit a draft and final plan addressing Owner comments.
2. The Design-Builder shall provide information pertaining to description of construction approach, impacts, restoration, and material excavation calculations with supporting

figures to support Owner prepared applications of federal, state and local permit applications not listed above.

E. GMP or CGMP Proposal

1. The Design-Builder shall prepare a GMP Proposal for the project no later than the sixty (60) percent design phase. The Owner may authorize the Design-Builder to proceed with early work packages. If early packages are issued, the Design-Builder shall follow the GMP process.
2. The Design-Builder shall establish the GMP or CGMP for the complete project or for the component packages. The Design-Builder shall deliver to the Owner a GMP or CGMP proposal, with a detailed estimate, which will be reviewed by the Owner before being approved. Each GMP or CGMP proposal shall include the following sections:
  - a. Section One: Summary of Work, including a list of all documents which form the basis for the proposal.
  - b. Section Two: GMP or CGMP Price Summary with Line-Item Schedule of Values.
  - c. Section Three: Scope Clarifications and Assumptions.
  - d. Section Four: Procurement Plan.
  - e. Section Five: GMP or CGMP Construction Schedule, including scheduled Substantial and Final Completion Dates upon which the proposal is based
  - f. Section Six: Analysis of impact on the Total Construction Budget and Project Schedule.
  - g. Section Seven: Construction Permitting Plan.
  - h. Section Eight: Risk Plan and basis for proposed Contingency.
  - i. Section Nine: Construction Work Plan.
  - j. Section Ten: Commissioning and Acceptance Plan.
  - k. A schedule of allowances, if any, including descriptions, limitations, and values in tabular form.
  - l. A schedule of values using the CSI MasterFormat® organized according to anticipated bid packages and inclusive of quantities, unit prices, and cost extensions.
3. The Design-Builder shall submit its proposed GMP or CGMP to Owner. Owner will meet with the Design-Builder to review and analyze the GMP or CGMP proposal and, negotiate a GMP or CGMP. The GMP Proposal pricing will remain valid for 90-days following submittal.
4. If Owner rejects the GMP or CGMP proposal, the GMP or CGMP proposal shall be deemed withdrawn and of no effect. In such event, Owner and the Design-Builder shall meet and confer as to how the project or work package(s) will proceed, with Owner having the following options:
  - a. Owner and Design-Builder may suggest modifications to the GMP or CGMP proposal and the Design-Builder shall submit a revised GMP or CGMP proposal and the approval process will recommence; or

- b. Owner may remove the work package from the scope and Owner may procure and construct the work packages(s) independently of this Contract.

F. Completion of Phase 1 Services

- 1. The Design-Builder's Phase 1 Services will be considered complete on the date when the sixty (60) percent complete design and GMP Proposal has been approved by the Owner, and the Owner has provided written authorization to execute the Design-Builder for Phase 2 Services.

G. Deliverables

- 1. The following are the major deliverables for Phase 1 Services:
  - a. Thirty (30)% design and specifications
  - b. Sixty (60)% design and specifications
  - c. Cost Model/Cost Component Framework
  - d. Preconstruction Evaluation Report
  - e. GMP Proposal

III. Phase 2 (Construction) Services

A. Quality Control Plan

- 1. The Design-Builder shall not begin any construction, until the Quality Control Plan for Construction has been approved by Owner.

B. Design Services

1. Ninety (90) Percent Design

- a. The Design-Builder shall develop and refine design to ninety (90) percent level and resolve outstanding design coordination with project stakeholders and outstanding permitting related design questions.
- b. The Design-Builder shall facilitate a half-day workshop with the Owner to review ninety (90) percent design updates.
- c. The Design-Builder shall prepare a Final GBR incorporating changes discussed and agreed upon with the Owner.
- d. The Design-Builder shall prepare ninety (90) percent design drawings and specifications from the sixty (60) percent design package and incorporate available comments from Owner and permitting agencies for approvals of all necessary permits.
- e. Design-Builder shall submit three (3) half-sized (11" x 17") paper copies of drawings and an electronic copy in PDF of design documents to the Owner.

2. One Hundred (100) Percent/Issued for Construction

- a. The Design-Builder shall incorporate Owner review comments on ninety (90) percent design and comments from permitting agencies for approvals of all necessary permits and prepare final design documents.

- b. Final design submittal (Construction Documents) shall include final design of the project and all associated layouts, features, structures, and details, final design calculations, final drawings and specifications, and quality management reviews. Drawings and specifications for construction and shall be signed by Professional Engineers licenses in the State of Oregon.
    - c. Design-Builder shall submit one (1) original copy, three (3) additional paper copies, and an electronic copy in PDF of signed and sealed final design documents to the Owner. The original copy and one (1) paper copy of drawings shall be full-size (22" x 34") and remaining paper copies shall be half-sized (11" x 17").
  - 3. Commissioning Plan
    - a. The Design-Builder shall prepare a final commissioning plan and final commissioning organizational chart for the commissioning team.
  - 4. Construction Administration Services
    - a. The Design-Builder shall provide engineering services during the construction, including, but not limited to review of shop drawings and construction documents, and preparation of work change directive request.
    - b. The Design-Builder shall provide other necessary professional services to perform the project in accordance with requirements of the Contract.
    - c. The Design-Builder shall provide all construction documentation to the Owner.
- C. Permitting
  - 1. The Design-Builder shall prepare construction related permit applications and develop supporting documentation required in accordance with the applicable regulations for the construction permits. The Design-Builder shall coordinate with regulatory agencies during permitting process for all construction related permits. Construction related permits may include but are not limited to (see Tri-City WRRF *Outfall Permitting Approval Strategy Technical Memorandum* (Jacobs 2021)):
    - a. National Pollutant Discharge Elimination System Construction Stormwater Discharge 1200-C Permit (Oregon Department of Environmental Quality)
    - b. Scientific Collection (Oregon Department of Fish and Wildlife)
    - c. Waterway Marker (Oregon State Marine Board)
    - d. Utility Permit (ODOT)
    - e. Permit to Occupy or Perform Operations on a State Highway (ODOT)
    - f. Marine Safety Zone (U.S. Coast Guard)
    - g. Temporary Buoy Plan (U.S. Coast Guard)
    - h. Private Aid to Navigation (PATON) (U.S. Coast Guard)
  - 2. The Design-Builder shall coordinate with the Owner information required relative to all applicable project permits.
  - 3. The Owner will pay permit fees directly to governmental agencies.
- D. Construction Services



1. Upon the Owner's written authorization of final complete either component or full project design documents for construction, the Design-Builder shall commence construction of the project.
2. The Design-Builder shall construct the diffuser per the design and specifications provided by the Owner. Design-Builder will follow the Contract requirements for subcontractor procurement or self-performance for the diffuser construction.
3. The Design-Builder shall provide all necessary construction supervision, construction equipment, labor, materials, tools, and subcontracted items to complete the construction of the project in accordance with the Contract documents.
4. The Design-Builder shall give all notices and comply with all laws and ordinances that govern the proper performance of the work.
5. Design-Builder shall provide written monthly reports to the Owner on the progress of the work. Reports shall include a system of cost reporting for the work, and also include regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the work.
6. Design-Builder shall provide services of commissioning and performance testing for the project in compliance with the commissioning plan with the Owner in attendance:
  - a. Design-Builder shall provide written notices to the Owner no later than thirty (30) days prior to testing and commissioning for the Owner staff to witness testing and commissioning.
  - b. Design-Builder shall prepare and submit the testing certificates and commissioning reports to the Owner for approval.

#### E. Completion and Warranties

1. The Design-Builder shall secure required certificates of inspection, testing, or approval and deliver them to the Owner.
2. Design-Builder shall collect all written warranties and deliver them to the Owner.
3. The Design-Builder will deliver an inventory of all items purchased by Owner under the project. The Design-Builder will be required to assist the Owner in populating its asset management spreadsheet documenting all new assets provided under the Contract.
4. The Design-Builder will deliver all maintenance manuals to the Owner in digital and written format.

#### F. As-Built Documentation

1. Design-Builder shall prepare record drawings from as-built survey, marked-up prints, drawings and/or other documents that incorporate all changes in the work made during the construction phase.
2. The Design-Builder shall submit as-built drawings and specifications for Owner's review and approval.

#### G. Deliverables

1. The following are the major deliverables for Phase 2 Services:
  - a. Ninety (90)% design and specifications

- b. One hundred (100)% design and specifications
- c. Completion of Construction
- d. As-built documents
- e. Maintenance manuals

#### H. Diversity Equity and Inclusion

The Owner will develop a plan during Phase 1 Services to encourage hiring of underrepresented groups as apprentices and creating and maintaining a welcoming worksite. The plan will include hiring goals and tracking requirements. In addition, representatives from the Design-Builder will be required to participate in regular (assume monthly) meetings during construction of the Project at which project stakeholder representatives will convene to discuss and monitor work site culture by addressing issues that may arise and create opportunities for improvement when required.

#### I. General Conditions

1. Design-Builder shall be responsible for all Construction General Conditions, as well as the performance of the related obligations identified in this exhibit.
2. The Construction General Conditions shall be the sole reimbursement for all costs and expenses associated with providing the Construction General Conditions, regardless of whether such work is provided directly by the Design-Builder or by subcontract or vendor agreement.
3. The Construction General Conditions Costs is to be based on an estimated project cost of \$45 Million and a 24-month construction schedule and is to be inclusive of both project site and home office costs required to execute the requirements for the project. General Conditions are defined as the items and resources needed for project completion that will not be part of the finished product. These include labor and materials related but not limited to, site management, project management, material handling, trash removal. General Conditions include, but are not limited to:
  - a. Supervisory and Administrative Personnel
    - i. Time of all Design-Builder's supervisory and administrative personnel engaged in the on-site performance of work, including but not limited to the Project Manager, Construction Manager, Superintendent(s), and those responsible for managing and implementing Design-Builder's scheduling, cost estimating, cost control, and billing functions, including subcontractor and material procurement, management, and administration
    - ii. Time of Design-Builder's supervisory and administrative personnel engaged off of the Project site to support the work, including visits to suppliers and manufacturing locations, attendance at workshops travel, and other activities required for the coordination, production, or transportation of material or equipment necessary for the work
    - iii. Time of Design-Builder's supervisory and administrative personnel engaged in SBE/MBE/WBE participation, coordination, and management (As required by contract)

- iv. Time of Design-Builder's personnel stationed at the Design-Builder's principal or branch offices and performing the work
  - v. Vehicles, travel, accommodations, and meals for the Design-Builder's personnel necessarily and directly incurred in connection with the performance of the work
- b. All work associated with establishing, operating, and demobilizing Design-Builder's field office, including, but not limited to:
- i. Field office mobilization and demobilization
  - ii. Office trailer rental
  - iii. Office furniture and equipment
  - iv. Office janitorial
  - v. Office supplies
  - vi. Office computers, software, and maintenance
  - vii. Office telephones, telephone and internet services, and all job site communication for the Project document reproduction services (off-site or custom)
  - viii. Copy machines, fax machines, printers, scanner, and paper shredders
  - ix. Postage, courier, and express delivery
  - x. Accounting and data processing costs
  - xi. Jobsite radios/cellular phones
  - xii. Job travel, including fuel and vehicle
  - xiii. Scheduling expenses
  - xiv. Job meeting expenses
  - xv. Project redline drawings
  - xvi. Record drawings and specifications
  - xvii. Project preconstruction and progress photos
  - xviii. All copying of documents and record drawings (whether on- or off-site)
- c. Construction Supplies and Support Areas
- i. Temporary parking and laydown areas both on- or off-site, including rental areas
  - ii. Site security fencing and systems
  - iii. Storage facilities, both on- and off-site, whether owned or rented
  - iv. Surveying equipment and supplies
  - v. Project specific signage
  - vi. Reference manuals

- d. Temporary Amenities and Utilities (including hook-up, metering, and consumption costs)
  - i. Drinking water
  - ii. Temporary toilets
  - iii. Temporary water distribution and meters
  - iv. Temporary fire protection
  - v. Temporary power
  - vi. Temporary and emergency lighting
  - vii. Temporary construction facilities and services
  - viii. Temporary heat and ventilation

---

---

**WATER ENVIRONMENT SERVICES  
TRI-CITY WRRF OUTFALL PROJECT  
SUPPLEMENTARY CONDITIONS**

These Supplementary Conditions amend or supplement the EJCDC D-700 Standard General Conditions of the Contract Between Owner and Design-Builder as indicated below. All provisions of the General Conditions 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. The Owner reserves the right to add additional conditions relevant to Phase 2 as it deems necessary. Any additional requirements will be communicated prior to the development of bid documents by the Design-Builder.

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

15. *Contract Documents*: The documents identified in Section 8.01 of the Agreement.
18. *Design-Builder*: Person or entity identified as such in the Agreement and the Design-Builder’s authorized representatives who are referred to throughout the Contract Documents as if singular in number.
30. *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. May also be identified as District.
31. *Owner’s Consultant*: An individual or entity with which the Owner has contracted to furnish services (typically including planning, preparation of Conceptual Documents, and advisory services) to Owner with respect to the Project, and which is identified as such in the Agreement. May also be identified as Owner’s Advisor.
34. *Design Professional Subconsultants*: The Engineer and any other independent entities or individuals, or employees of Design-Builder, engaged by Design-Builder or a Construction Subcontractor to provide Design Professional Services with respect to a portion of the Work.

**SC-1.01.A.** Add the following language at the end of Paragraph 1.01.A.46:

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; (iv) all appurtenant operations and maintenance features (i.e., hose bibs, drainage systems, etc.) have been installed and are functional; and (v) all requirements of Article 14.01.G have been satisfied

**SC-1.01.A.** Add new paragraphs immediately following Paragraph 1.01.A.54 as follows:

55. *Award*: The formal acceptance of the proposer’s technical and price proposal as presenting the best value to the Owner.
56. *Contingency*: An uncommitted value included in the project cost estimates and carried into the Guaranteed Maximum Price (“GMP”) covering certain costs which cannot be determined at the time the estimates and/or GMP are developed. The term “Contingency” includes three separate categories “Design Development Contingency”, “Escalation Contingency”, and “Design-Builder’s Contingency”. Any use of contingency by Design-Builder requires Owner’s prior written authorization.
57. *Contractor Potential Change Notice (CPCN)*: A notice Provided by the Design Builder proposing a change in any requirement of this Contract.
58. *Design Builder’s Fee Percentage*: The Design-Builder’s Fee Percentage at the percentage identified as the Design Builder Fee Percentage in the Agreement. The Design Builder’s Fee Percentage includes the following items, which shall not be charged as a Cost of the Work: 1) all profit and overhead of the Design-Builder for this Project; 2) all regional and home office overhead expenses, including labor and materials, phone, facsimile, postage, internet service, and other incidental office expenses attributed to Work on this project; and 3) all other direct and indirect costs incurred by the Design-Builder that are not otherwise specifically identified in the Cost of the Work.
59. *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.
60. *Execution*: Field or Site performance, workmanship, installation, erection, application, field fabrication, quality control, and protection of installed products on the Site.
61. *Final Completion*: Final Completion is defined as when all Work in accordance with the Contract Documents and the Owner has accepted the Work.

62. *Float*: The number of days an activity can be delayed beyond its scheduled completion without delaying a succeeding or related activity or restricting the schedule of a preceding activity in the construction schedule.
63. *General Conditions Fee Percentage*: The Design-Builder's markup at the percentage identified as the General Conditions Fee Percentage in the Agreement and further clarified in Exhibit A – Design-Builder Scope of Work.
64. *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.
65. *Guaranteed Maximum Price*: A total not-to-exceed amount offered and guaranteed by the Design-Builder for complete performance of the Work of the Contract.
66. *Latent Defect*: A defect in the Work of which the Owner has no knowledge.
67. *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.
68. *Owner 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.
69. *Phase 1 or Phase 1 Services*: Services provided by the Design-Builder that include development of the design and permitting to a stated degree of completion and a guaranteed maximum price ("GMP") proposal.
70. *Phase 2 or Phase 2 Services*: Services provided by the Design-Builder that include design completion as well as construction and post construction activities.
71. *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.
72. *Product Date*: Type of Shop Drawing comprised of standard illustrations, schedules, performance charts, instructions, brochures, diagrams, catalog cuts,



and other information assembled by or for the Design-Builder and submitted by the Design-Builder to illustrate materials or equipment for some portion of the Work.

73. *Products*: Materials, equipment, systems, ship fabrications, mixtures, and source controls.
74. *Project Manager*: The person in overall charge of the planning and execution of the project.
75. *Self Performed*. “Self Performed” means any work performed by Design-Builder or any entity sharing common ownership or control with Design-Builder.
76. *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.
77. *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 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.
78. *Utility*: Any public or private fixed works for transporting fluids, gases, electricity, signals, or communications.
79. *Work Breakdown Structure*: A deliverable oriented hierarchical decomposition of the work to be executed by the project team.

**SC-2.01.** Delete Paragraph 2.01.B. in its entirety and insert the following in its place:

- B. *Evidence of Design-Builder’s Insurance*: Within ten (10) days of receipt of a fully executed Agreement by Design Builder, and prior to commencing any Work thereunder, Design-Builder shall 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 Design- Builder in Article 6. Design-Builder may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

**SC-2.04.** Delete Paragraph 2.04 in its entirety. See SC-18 Scheduling of the Work

**SC-2.06.A** Delete Paragraph 2.06A and replace with the following:

- A. Within 14 days of Notice to Proceed, Design-Builder will arrange a Project Initiation meeting attended by Owner and Design-Builder and others as appropriate to establish a working understanding among the parties as to the work, project goals, critical success factors and to discuss the schedules referred to in Paragraph SC-18 Scheduling of the work and other matters.

**SC-2.07.** Delete this Article in its entirety. See SC-14 Payment and SC-18 Scheduling of the Work.

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

In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

- a. Permits from outside agencies;
- b. Amendments to the Contract Documents and addenda, with those of later date having precedence over those of an earlier date;
- c. The Agreement including all exhibits;
- d. Supplementary General Conditions;
- e. Standard General Conditions of the Construction Contract, Engineers Joint Contract Documents Committee (EJCDC) 2013;
- f. Specifications – Division 01;
- g. Specifications – Divisions 02 - 49;
- h. Drawings;
- i. 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.

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.

Change Orders, Work Change Directives, Field Orders, Owner’s Advisor written interpretation and clarifications and Notice to Proceed, in precedence listed, will take precedence over all other Contract Document components referenced herein.

**SC-3.04.** Delete Paragraph 3.04.A.1 in its entirety.

**SC-3.04.** Delete the term “for cause” and add the following language to the end in Paragraph 3.04.A.4:

At the Owner’s sole discretion, the Design-Builder will assign all Design Professional Subcontracts to the Owner for completion of the design. The subcontracted design professionals agree to this assignment as a condition of their subcontract.

**SC-3.04.** Delete Paragraph 3.04.A.5.

**SC-4.02.** Delete Paragraph 4.02A and replace with the following:

- A. Design-Builder shall start to perform the Work as of the Effective Date of the Contract. Unless otherwise approved by the Owner, no construction shall be done at the Site prior to the Effective Date of any component GMP or GMP Contract Amendments.

**SC-4.03.** Delete this Article in its entirety. See SC-18 Scheduling of the Work.

**SC-4.04.** Add the following sentence to the end of Paragraph 4.04.A.

Any request for adjustment in Contract Times or Contract Price shall follow notification requirements of paragraph 4.04.G.

**SC-4.04.** Delete Paragraph 4.04.G and replace with the following:

- G. If the Design-Builder seeks an adjustment in Contract Price or Contract Times under this paragraph, Design-Builder shall submit the documentation required under Article 11 of the General Conditions. Both Parties agree to negotiate any adjustments to Contract Price or Contract Times in good faith. For any adjustments to the Contract Price exceeding the fund appropriated for the Project, Owner will seek appropriation of additional funds. However, if additional funds are not appropriated for any reason, then the Parties will work together to address any shortfall through reasonable methods including, but not limited to, value engineering or design modifications. If the Parties are unable to resolve a shortfall, either Party may terminate the Contract by providing 7 days written notice to the other Party and such termination shall be considered a termination for Owner's convenience pursuant to Article 15.03.

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

- 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.

**SC-5.02.** Delete Paragraphs 5.02.A.2 and 5.02.A.3 in their entirety and replace with the following:

- 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 Design-Builder or those for which Design-Builder is responsible, Design-Builder 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 claims, and against all costs (including attorney fees), losses and damages arising out of or relating to any claims or actions, legal or equitable, brought by any such owner or occupant against Owner or any other party indemnified hereunder to the extent caused by, or based upon, Design-Builder's performance of the Work, or because of other actions, omissions or conduct of the Design- Builder, any of Design-Builder's subcontractors, or anyone else whom the Design-Builder has a right to control. For any settlement in which the Design-Builder may seek to recover any costs or attribute any costs to the Owner, the Design-Builder shall give the Owner the opportunity to review and approve the terms of the settlement prior to Design-Builder entering an agreement with any party. Design-Builder's failure to provide Owner the opportunity to review the terms of a settlement prior to execution of a settlement agreement shall bar the Design-Builder from seeking to recover any costs associated with the settlement from the Owner.

**SC-5.05.** In Paragraph 5.05.C, replace "30 days" with "10 days".

**SC-5.06.** Add the following to the end of Paragraph 5.06.B:

Any landfill debris, governed by an agreement between Owner and Oregon Department of Environmental Quality, which is disturbed by the Design-Builder or anyone whom the Design-Builder has a right to control is the responsibility of the Design-Builder.

**SC-5.06.** Delete Paragraphs 5.06.G and 5.06.H in their entirety, and replace with the following:

G. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, Owner shall indemnify and Design-Builder, and its officers, directors, members, partners, employees, agents, consultants and contractors from and against all claims, costs (including attorney fees), losses and damages arising out of or relating to a Hazardous Environmental Condition that (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) does not result from a Constituent of Concern brought to the Site by Design-Builder or by anyone for whom the Design-Builder is responsible.. Nothing in this Paragraph 5.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Design-Builder 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 (including attorneys fees), losses, and damages arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Design-Builder, any of Design-Builder's subcontractors, or anyone else whom the Design-Builder has a right to control. Nothing in this Paragraph 5.06.H shall obligate Design-Builder 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 Design-Builder shall file with the Oregon 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 Design-Builder shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Oregon 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. Design-Builder 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.B above.

As part of the Work under Phase 1 and Phase 2 of the project, the Design-Builder shall furnish a performance bond and a payment bond, initially in an amount equal to the Phase 1 and then, if applicable, updated to reflect the Phase 1 and Phase 2 Price, as duly established and modified under this Contract, as security for the faithful performance and payment of Design-Builder's obligations under Phase 2, including the preparation and completion of design and related personal services specified in the Contract. Design-Builder shall provide the performance and payment bonds upon execution of any contract or amendment establishing the Guaranteed Maximum Price. If any early work amendment is authorized, the Design-Builder shall provide bonds equal to the value of construction services authorized by the early work amendment in advance of the guaranteed maximum price amendment. All applicable bonds must be provided to Owner before construction starts. Bond forms furnished by the Owner and notarized by Design-Builder's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents or authorized in writing by the

Owner. Design-Builder shall also furnish such other bonds as are required by other specific provisions of the Contract.

These bonds shall remain in effect until one year after date of Final Completion of the Project and acceptance by the Owner, or until the completion of the correction period specified in Paragraph 14.08, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents.

**SC-6.01.B.** Add the following phrase to the end of the first sentence in Paragraph 6.01.B:

“, or such sureties otherwise acceptable to the Owner.”

**SC-6.01.B.** Add the following to the end of Paragraph 6.01.B:

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:

SUPPLEMENTARY CONDITIONS

- A. Design-Builder shall obtain and maintain insurance as required in this Article 6 and 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 Design-Builder 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 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 Design-Builder 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.** Add the following to the end of Paragraph 6.02.C:

The general liability insurance coverage, automobile liability, umbrella, and pollution liability if required, shall include the Owner (Water Environment Services), Clackamas County and Owner's Advisor (Jacobs Engineering, Inc.) as additional insureds, but only with respect to the Design-Builder'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 Design-Builder cannot obtain an insurer to name the Owner and Engineer as additional insureds, Design-Builder shall obtain at Design-Builder's expense, and keep in effect during the term of the Contract, Owners and Design-Builders 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, Design-Builder shall furnish the actual policy to Owner prior to execution of the Agreement.

**SC-6.02.G.** Delete Paragraph 6.02.G in its entirety.

**SC-6.02.** Add new paragraphs immediately following Paragraph 6.02.M as follows:

- N. Compliance: Failure of the Design-Builder 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.
- O. If the Design-Builder 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, Design-Builder agrees to notify Owner 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 Design-Builder agrees to stop Work pursuant to the Contract at Design-Builder'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 Design-Builder from entering the Project Site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Design-Builder agrees that Owner reserves the right to withhold payment to Design-Builder until evidence of reinstated or replacement coverage is provided to Owner.
- P. Design-Builder 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.
- Q. All insurance carried by Design-Builder under the Agreement shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

**SC-6.03A.** Delete Paragraph 6.03.A in its entirety and replace with the following:

- A. *Workers' Compensation:* The Design-Builder 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 Design-Builder, 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 \$1,000,000 per accident for bodily injury or disease. Design-Builders who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Design-Builder certifies so in writing. Design-Builder shall ensure that each of its Subcontractors complies with these requirements. The Design-Builder

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 Design-Builder or its Subcontractors. The Design-Builder will be solely responsible for payment of any local, state or federal taxes required as a result of these Contract Documents.

**SC-6.03.B.** Delete Paragraphs 6.03.B, 6.03.C, and 6.03.D in their entirety and replace with the following:

- B. *Commercial General Liability:* Upon execution of the Agreement, Design-Builder shall obtain, and keep in effect at Design-Builder'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 Design-Builder'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 Design-Builder 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 Owner shall be excess and shall not contribute to it.

**SC-6.03.E.** Delete Paragraph 6.03.E in its entirety and replace it with the following:

- E. Design-Builder shall obtain, at Design-Builder'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. Design-Builder shall provide proof of insurance of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Design-Builder 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.F.** Delete Paragraph 6.03.F in its entirety and replace with the following:

- F. Design-Builder shall obtain, at Design-Builder's expense, and keep in effect during the term of the Contract, a \$10,000,000 umbrella liability insurance over and above the Commercial General Liability, Automobile Liability and Workers' Compensation coverage.



**SC-6.03.G.** Delete and replace Paragraph 6.03.G in its entirety with the following:

G. *Pollution and Asbestos Liability*: Design-Builder shall obtain, at the Design-Builder's expense and keep in effect during the term of the Contract, Design-Builder's Pollution Liability insurance for \$2,000,000 covering the Design-Builder's liability for a third party bodily injury and property damage arising from pollution conditions caused by the Design-Builder while performing their operations under the Contract.

**SC-6.03.H.** Add the following to the end of Paragraph 6.03.H:

Design-Builder will list Water Environment Services and Clackamas County as additional insureds on all insurance policies required to be provided under this Contract.

**SC-6.03.I.** Add the following to the end of Paragraph 6.03.I.1:

Design-Builder shall obtain professional liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.

**SC-6.03.J.3.** Delete Paragraph 6.03.J.3 in its entirety and replace with the following:

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.J.4.** Delete Paragraph 6.03.J.4 in its entirety and replace with the following:

4. Remain in effect at least as long as is required in this Article and at all times thereafter when Design-Builder 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, or longer as may be otherwise required by the Contract Documents.

**SC-6.03.K.** Add the following new paragraph 6.03.K as follows:

K. *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, Design-Builder 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. Design-Builder shall require certificates of insurance from all Subcontractors as evidence of coverage. Design-Builder shall provide copies of Subcontractor's certificates of insurance, if requested by Owner. This condition may be met through utilization of a Design-Builder Controlled Insurance Program.

**SC-6.05.A.** Add new paragraphs immediately following Paragraph 6.05.A.13, as follows:

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 Design-Builder in the event of any covered loss.
15. Include as loss payees Owner, the Design-Builder 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 Design-Builder's equipment.
18. Remain in full force and effect through the entire term of the Contract.

**SC-6.05B.** In Paragraph 6.05.B, replace the words "10 Days" with "60 Days."

**SC-6.05C.** Add the following to the end of paragraph 6.05C

; provided, the Owner shall be responsible for any deductible cost to the extent any damage or loss is caused by the negligent or intentional act or omission of the Owner, the Owner's Consultant, officers, employees, agents or anyone for whom the Owner is responsible.

**SC-6.05.** Add new paragraphs immediately following SC-6.05.G as follows:

- H. 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 Design-Builder shall pay Subcontractors their just shares of insurance proceeds received by the Design-Builder, 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 negotiate and settle a loss with insurers.
- I. *Builder's Risk Installation Floater:* For Work other than new construction, Design-Builder shall obtain and keep in effect during the term of the Contract, a Builder's Risk Installation Floater for coverage of the Design-Builder'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 Design-Builder and its Subcontractors as their interests may appear. Owner may waive this requirement at its sole and absolute discretion.

**SC-6.06A.** Delete Paragraph 6.06.A in its entirety and replace with the following:

- 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 their officers, directors, elected officials, employees

agents, consultants or Subcontractors. Owner and Design-Builder 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 Design-Builder as trustee or fiduciary, or otherwise payable under any policy so issued.

**SC-6.06.** Delete Paragraphs 6.06.B and 6.06C in their entirety.

**SC-6.07.** Delete Paragraphs 6.07.A, 6.07B and 6.07C 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-7.01B.** Delete Paragraph 7.01.B in its entirety and replace with the following:

- B. The standard of care for all Design Professional Services performed or furnished by Design-Builder under this Contract will be in accordance with the standard of professional skill and care required for a project of similar size, location, scope, and complexity, during the time in which the Design Professional Services are provided.

**SC-7.03B.** Add the following after the first sentence of Paragraph 7.03.B:

If a replacement is necessary, the replacement shall also be a competent resident superintendent and shall be subject to prior approval by Owner. The Design-Builder'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 during Phase 2 work. If at any time the superintendent leaves the Project Site while Work is in progress, Owner shall be notified and provided with the name of the Design-Builder's representative having responsible charge. The superintendent will be Design-Builder's representative at the Site and shall have authority to act on behalf of Design-Builder. All communications given to or received from the superintendent shall be binding on Design-Builder.

**SC-7.03C.** Add new paragraph immediately following Paragraph 7.03.B as follows:

- C. If a replacement project manager is necessary, the replacement shall also be a competent project manager and shall be subject to approval by Owner.

**SC-7.04.B.** Delete Paragraph 7.04.B in its entirety and replace with the following:

B. Design-Builder and Subcontractor regular working hours shall be between 7:00 a.m. and 6:00 p.m. on weekdays, Monday through Friday, only. If a change to these standard hours is desired, a written request must be placed with Owner and Owner's Advisor a minimum of five work days prior to the first day of altered hours. Design-Builder shall comply with all applicable requirements of ORS 279C.540. The following holidays are observed by Owner which shall be considered legal holidays, Design-Builder must submit in writing for approval prior to working on the holiday's listed below and ensure observance of the holidays is consistent with ORS 279C.540:

1. New Year's Day (January 1)
2. Martin Luther King Jr. Day (third Monday in January)
3. President's Day (third Monday in February)
4. Memorial Day (last Monday in May)
5. Juneteenth (June 19)
6. Independence Day (July 4)
7. Labor Day (first Monday in September)
8. Veteran's Day (November 11)
9. Thanksgiving Day (fourth Thursday in November)
10. Christmas Day (December 25)

**SC-7.05.** Add new paragraphs immediately following Paragraph 7.05.C as follows:

- D. Until Substantial Completion of the Work is acknowledged by Owner, Design-Builder shall have the responsible charge and care of the Work and of materials to be used herein, including materials for which Design-Builder 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. Design-Builder 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, Design-Builder shall, at Design-Builder'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 Design-Builder of Design-Builder'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-7.06.** Delete Paragraph 7.06.C in its entirety.

**SC-7.07.** Add new paragraphs immediately following Paragraph 7.07.K as follows:

- L. Design-Builder 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 Oregon Construction Contractors Board or Federal Excluded Party listings; and is a Responsible Proposer as defined by ORS 279C.
- M. Design-Builder shall Self Perform, Work amounting to a minimum of 35 percent of the combined value of all items of the Work covered by the Contract.

**SC-7.08.** Delete Paragraphs 7.08.B and 7.08.C in their entirety and replace with the following:

- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, Owner shall indemnify and hold harmless Design-Builder, and its officers, employees, agents from and against all claims, costs (including attorney fees), 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 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, Design-Builder 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 (including attorney fees), 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 or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

**SC-7.09.** Add new paragraph immediately following Paragraph 7.09.B as follows:

- C. With the exception of specific permits to be obtained by the Owner, Design-Builder will be responsible for obtaining all required construction permits and maintaining compliance with those permits throughout the course of the Work. (See *Tri-City WRRF Outfall Permitting Approval Strategy Technical Memorandum (Jacobs, 2021)*). Owner will pay the cost of obtaining permits. The Design-Builder shall be responsible for any penalties or fines that result from Design-Builder's noncompliance with the terms of any and all permits.

**SC-7.11.** Delete Paragraph 7.11.B in its entirety and replace with the following:

- B. If Design-Builder performs any Work or takes any other action knowing or having reason to know that is contrary to Laws and Regulations, Design-Builder 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 (including attorney fees), losses and damages arising out of or relating to such Work or other action.

**SC-7.11.** Add new paragraphs immediately following Paragraph 7.11.C as follows:

D. While not intended to be inclusive of all Laws or Regulations for which Design-Builder may be responsible under Paragraph 7.11, the following Laws or Regulations, as may be amended from time to time, are included as mandated by statute or for Design-Builder's ease of reference:

1. Prevailing Wage Rates:

a. Design-Builder shall comply fully with the provisions of ORS 279C.800 through 279C.870. Pursuant to ORS 279C.830(1)(d), Design-Builder shall pay workers not less than the specified minimum hourly rate of wage, and shall include that requirements in all subcontracts. Design-Builder and all Subcontractors shall also comply with the provisions of the Davis-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:

1) Prevailing Wage Rates for Public Works Contracts in Oregon, January 1, 2022 can be downloaded at the following web address:

[http://www.oregon.gov/boli/whd/pwr/pages/pwr\\_state.aspx](http://www.oregon.gov/boli/whd/pwr/pages/pwr_state.aspx)

b. Owner will pay the fee required by ORS 279C.825 to the Commissioner of the Bureau of Labor and Industries.

c. Design-Builder 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.

2. Discrimination: Design-Builder 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, Design-Builder will not discriminate against Disadvantaged, Minority, Women, or Emerging Small Business enterprises, or a business enterprise that is owned or controlled by or that employs a disabled veteran, in obtaining required subcontracts.

b. Design-Builder shall maintain, in current and valid form, all licenses and certificates required by the applicable Laws and Regulations or the Contract when performing the Work.

3. In accordance with ORS 279C.505, Design-Builder shall demonstrate to Owner that it has an employee drug testing program in place prior to commencement and at all times during the performance of the Work.
4. ORS 654.150 applies at the Construction Site. All costs incurred in complying with state statutes requiring sanitation facilities shall be borne by Design-Builder.
5. Payment by Design-Builder:
  - a. The Design-Builder 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 Design-Builder or his Subcontractor with labor, services, materials, supplies, or provisions for the prosecution of the work provided for in the contract. Design-Builder shall pay all contributions or amounts due the Industrial Accident Fund from such Design-Builder or Subcontractor incurred in the performance of the Work. The Design-Builder 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 Design-Builder shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - b. In the event the Design-Builder 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 Design-Builder or for a Subcontractor, then and in such event, the Owner may withhold the amount of such claim by the person or persons furnishing such labor, services, materials, supplies, or provisions and deduct the amount of from funds due or to become due to the Design-Builder 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 Design-Builder or his surety from their obligation with respect to any unpaid claims. Sums withheld for the purposes named herein will be paid to the Design-Builder 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 Design-Builder by reason of the Contract Documents.
  - c. If the Design-Builder 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 Design-Builder, the Design-Builder 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 Design-Builder 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 Design-Builder, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived. Design-Builder shall incorporate this provision into all subcontracts.

- d. If the Design-Builder 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 Oregon Construction Design-Builder'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. Design-Builder 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 Design-Builder or the surety from any obligation with respect to any unpaid claims.
- f. Design-Builder shall pay Subcontractor for satisfactory performance within ten days out of such amounts paid to Design-Builder by Owner, and shall at all times comply with ORS 279C.580, which is incorporated herein by reference.
- g. The Design-Builder shall include in each subcontract for property or services entered into by the Design-Builder and a first-tier Subcontractor, including a materials supplier, for the purpose of performing a construction contract, a payment clause that obligates the Design-Builder to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the Design-Builder by the Owner under such Design-Builder.
- h. All employers, including Design-Builder, 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. Design-Builder shall ensure that each of its subcontracts complies with these requirements.
- i. As a condition to Owner's performance hereunder, Design-Builder 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 Design-Builder, of all sums of which the Design-Builder agrees to pay for the services and all moneys and sums that the Design-Builder collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.



6. Payroll Certification and Fee Requirements:
  - a. In accordance with ORS 279C.845, the Design-Builder 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 Design-Builder 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, and which certified statement shall be verified by the oath of the Design-Builder or the Subcontractor that the Design-Builder or Subcontractor knows the contents of the certified statement, and, that to the Design-Builder'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 Design-Builder 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 Design-Builder 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 Design-Builder, in addition to other retainage, on the Work until the Design-Builder has filed the certified statements required above. The Owner shall pay the Design-Builder the amount retained under this subsection within 14 business days after the Design-Builder files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.
  - c. Pursuant to ORS 279C.845(8), the Design-Builder 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 Design-Builder 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 Design-Builder shall pay the first-tier Subcontractor any amount retained under this subsection.
7. Subcontracts: Design-Builder 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. Design-Builder shall certify that it shall not accept a bid from Subcontractors to perform Work unless such Subcontractors are registered with the Oregon Construction Contractors Board in accordance with

ORS 701.021 at the time they submit their bids to the Design-Builder.

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 2021 Oregon Department of Transportation Standard Specifications for Construction, Section 00170.01.
- b. If Design-Builder 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 Contract Price 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 Design-Builder for all costs and expenses incurred, including overhead and profits, as reasonable compensation of any such delay or additional work.

9. In accordance with ORS 279C.510, Design-Builder shall salvage or recycle construction and demolition debris if feasible and cost effective.

10. Design Builder shall comply with all requirements of ORS 279C.520 regarding hours worked.

11. Workers employed by Design-Builder shall not be able to collect for unpaid overtime unless a claim is filed in accordance with ORS 279C.545 with Design-Builder.

12. A 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.

13. Design-Builder shall comply with the Clackamas County Code and Water Environment Services' Rules and Regulations.

14. Design-Builder 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.

15. The following notice is applicable to Design-Builders 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.

16. Independent Contractor Status: The service or services performed under the Contract Documents are those of an independent contractor as defined in ORS 670.600. Design-Builder represents and warrants that it is not an officer, employee or agent of the Owner as those terms are used in ORS 30.265.
17. Retirement System Status and Taxes: Design-Builder 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. Design-Builder 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 Design-Builder is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Design-Builder's federal or state tax obligations.
18. Government Employment Status: The Design-Builder represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Design-Builder from holding another contract with the Federal Government.
19. Tax Compliance: The Design-Builder shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Design-Builder represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle Owner to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
20. Failure to comply with any or all of the requirements of Section 7.11.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 Design-Builder.

**SC-7.12.** Amend Paragraph 7.12.A by replacing the third sentence with the following:

“The Record Documents, as annotated, will be available to Owner for reference and review, at a minimum these documents will be reviewed monthly along with the pay applications.”

**SC-7.13.** Add new paragraphs immediately following Paragraph 7.13.G as follows:

H. Design-Builder 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.
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, Design-Builder shall provide Owner with a copy of Design-Builder's permit-required confined space entry plan/program including a copy of the permit forms that will be used by Design-Builder. Upon request by Design-Builder, Owner will review with Design-Builder, 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 Design-Builder. When the permit-required confined space Work is completed, Design-Builder shall inform Owner, in writing, of any hazards encountered or changes made resulting in different hazards within the space.

I. Design-Builder shall revise Design-Builder's plan for safety precautions and programs at appropriate times to reflect changes in construction conditions, the Work,

Design-Builder's means, methods, techniques, sequences and procedures of construction, and the requirements of Paragraph 12.02. Design-Builder shall disseminate the original plan and revisions to all others indicated in Paragraphs 7.12.A.1 and 12.02.

- J. Design-Builder'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 Design-Builder sets forth for comparable activity and responsibility of Design-Builder, Subcontractors and Suppliers and their respective employees.
- K. Design-Builder shall prepare, implement, and maintain a safety and health program or plan and submit a Site Specific Safety Plan Certification.
- L. 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 Design-Builder's process for ensuring that safety is the highest priority on the Project and will be complete with respect to procedures and actions that Design-Builder intends for Design-Builder and all others, as provided in Paragraphs 7.13, and as required by all applicable Laws and Regulations. The submittal shall include a statement that the Design-Builder 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. Design-Builder's plan for safety precautions and programs shall have been approved and endorsed by Design-Builder's designated safety representative required in Paragraph 7.14. Delivery of this plan will in no way reduce or obviate Design-Builder's obligation to comply with the safety obligations set forth in Section 7.13 of the General Conditions.

**SC-7.18.** Add new paragraph immediately following Paragraph 7.18.C as follows:

- D. Design-Builder shall warrant the Construction 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 Design-Builder shall correct defective Construction during the warranty period as described in General Conditions.

**SC-7.19.** Delete Paragraph 7.19.A and replace with:

To the fullest extent permitted by law, Design-Builder shall indemnify and defend the Owner, Clackamas County, and their elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all third-party liabilities, damages (including attorney fees), losses, claims, expenses, demands and actions of any nature whatsoever arising out of or related to: (a) bodily injury, sickness, disease, or death, or property damage or destruction (other than to the Work itself), including the loss of use resulting therefrom, but only to the extent arising out of or resulting from the negligent or willful acts or omissions of the Design-Builder, any of Design-Builder's subcontractors, or anyone else whom Design-Builder has the right to control, in performing under this Contract; (b) a violation of any applicable law, regulation, ordinance, license, authorization, or permit, including, but not limited to, the Owner's National Pollutant

Discharge Elimination System Permit, where such violations are a result of the Design-Builder's negligent or willful acts or omissions; and (c) any lien filed upon the Project or bond claim in connection with the Work for which Design-Builder has received full payment. 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.

Design-Builder's indemnification and defense obligations under this paragraph 7.19 exclude indemnification or defense for damages arising out of death or bodily injury to persons, or damage to property, to the extent such damages are caused in whole or in part by the negligence of the Indemnitees.

Notwithstanding the duty to defend provided for under this paragraph 7.19, the Design-Builder shall have no duty to defend the Owner from third-party claims arising out of or resulting from the Design-Builder's professional errors or omissions in performing the Design Professional Services.

**SC-8.01.** Add the following phrase to the end of the first sentence in Paragraph 8.01B:

and Owner's Advisor.

**SC-9.02.** Delete Paragraph 9.02.B and replace with the following:

- A. If the Supplementary Conditions do not identify the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors, or if the information is not provided to Design-Builder prior to the initiation of the additional work, Owner shall have sole authority and responsibility for such coordination.

**SC-10.05.** Add new paragraphs immediately following Paragraph 10.05.A as follows:

- B. Resident Project Representative ("RPR") will be furnished by the Owner's Advisor. The responsibilities, authority, and limitations of the RPR activities as set forth elsewhere in the Contract Documents and are further limited and described below.

Responsibilities and Authority:

1. Schedules: Review and monitor Progress Schedule, Schedule of Submittals, and Schedule of Values prepared by Design-Builder and consult with Design-Builder concerning acceptability.
2. Conferences and Meetings: Conduct or attend meetings with Design-Builder, such as preconstruction conferences, progress meetings, Work conferences and other Project related meetings.
3. Liaison: (i) Serve as Owner's liaison with Design-Builder, working principally with Design-Builder's authorized representative, and assist in understanding the intent of the Contract Documents, (ii) assist Design-Builder in serving as Owner's liaison with Design-Builder when Design-

Builder'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.

4. Interpretation of Contract Documents: Inform Design-Builder and Owner when clarifications and interpretations of the Contract Documents are needed and transmit to Design-Builder technical clarifications and interpretations as issued by Owner, or non-technical clarifications and interpretations of the Contract Documents issued by Owner.
5. Submittals: Receive submittals that are furnished at the Site by Design-Builder, and notify Owner of availability for examination.
6. Review of Work and Rejection of Defective Work: (i) Conduct onsite observations of the Work in progress to assist Owner in determining if the Work is, in general, proceeding in accordance with the Contract Documents; (ii) inform Owner and Design-Builder whenever RPR believes that any Work is defective; (iii) advise Owner 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 Design-Builder maintains adequate records thereof; (v) observe, record and report to Owner 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 Owner.
7. 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 Design-Builder maintains adequate records thereof; (ii) observe, record, and report to Owner 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 Owner.
8. Records: In addition to records required by the design builder, (i) Maintain an independent set of 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, Design-Builder's written clarifications and interpretations, progress reports, and other Project related documents; (ii) keep a record of pertinent Site conditions, activities, decisions and events.
9. Reports: (i) Furnish Owner periodic reports of progress of the Work and of Design-Builder's compliance with the Progress Schedule and Schedule of

Submittals; (ii) consult with Design-Builder 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 obtain backup material from Design-Builder as appropriate.

10. Payment Requests: Review Applications for Payment with Design-Builder for compliance with the established procedure for their submission and forward with recommendations to Owner, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
11. 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 Design-Builder are applicable to the items actually installed and in accordance with the Contract Documents, and ensure these documents have been delivered to Owner for review prior to payment for that part of the Work.
12. Substantial Completion: (i) Conduct an inspection in the company of Owner, and Design-Builder and prepare a list of items to be completed or corrected; (ii) submit to Owner a list of observed items requiring completion or correction.
13. Final Completion: (i) Conduct final inspection in the company of Owner, and Design-Builder; and (ii) notify Design-Builder and Owner 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.

C. Limitations of Authority: Resident Project Representative will not:

1. have authority to authorize a deviation from Contract Documents or substitution of materials or equipment, unless authorized by Owner;
2. exceed the limitations of the Owner's Advisor authority as set forth in Contract Documents;
3. undertake any of the responsibilities of Design-Builder, Subcontractors, Suppliers, or Design-Builder's authorized representative;
4. advise on, issue directions relative to, or assume control over an aspect of the means, methods, techniques, sequences, or procedures of Design-Builder's work unless such advice or directions are specifically required by the Contract Documents;
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 Design-Builder;
6. participate in specialized field or laboratory tests or inspections conducted offsite by others, except as specifically authorized by Owner;



7. authorize Owner to occupy the Project in whole or in part;
8. take an action that would affect Owner's obligations related to scope or schedule of the Work; or
9. authorize modifications of the Contract Documents, authorize additional Work, or change the Contract Time.

**SC-11.01.** Delete Paragraph 11.01.B in its entirety and replace with the following:

B. Either Owner or Design-Builder may propose or request a change. The Design-Builder shall give the Owner prompt written notice through submittal of a Contractor Potential Change Notice (CPCN) should the Design-Builder:

1. Receive any instructions, interpretations, or directives which it believes are at variance with the Contract Documents or will impact the Contract Schedule; or
2. Encounter a differing Project Site Condition; or,
3. Be delayed in performing the Work; or,
4. Become aware of any other matter or circumstance which the Design-Builder believes might require a change in the Contract Documents, Work completion time, or Contract pricing.

C. All CPCNs shall be dated, numbered uniquely and sequentially, and shall describe the action or event which the Design-Builder believes will merit the issuance of a Change Order. The Design-Builder shall provide an estimate of the adjustment in the Work Completion Times and Contract Price which it believes is appropriate.

D. Time Requirements

With respect to orders, instructions, directives, interpretations, determinations, Project Site conditions, delays, or other issues in the Contract Documents, a CPCN shall be submitted as soon as possible and before the Design-Builder disturbs or acts on any perceived changed conditions, and in no event more than seven (7) working days after the events giving rise to the Design-Builder claim were reasonably received or discovered. Design-Builder shall submit supporting documentation sufficient to allow the Owner to evaluate the events and actions in question within thirty (30) of the event.

E. Determination by Owner

The Owner will evaluate the CPCN for merit. If merit is denied, the Owner will issue a directive to that effect. If merit is granted the Owner will issue a Work Change Directive and direct the Design-Builder to issue a Change Order request to proceed with changes, or other instructions as necessary. The Owner will respond in writing to each CPCN within thirty (30) days of the event or action in question. If Owner Fails to respond within such time, Design-Builder may, at its option, consider such failure a denial by the Owner and proceed accordingly.

F. Submittal Requirements and Waiver of Claims

1. If the Design-Builder does not submit a CPCN within the time required above, any action by the Design-Builder related to such order, direction, instruction interpretation, determination or other matter, including delays or differing Project Site conditions, shall not be considered a change to the Work and the Design-Builder waives any claim for an adjustment to the Contract Price or the Contract Times.
2. If a CPCN is denied by Owner, in whole or in part, any claim for an increase in the Contract Price or Contract Times arising out of the act or event described in the CPCN is waived unless the Design-Builder files a claim in accordance with Article 12 by providing written notification to the Owner within fourteen (14) days of receipt of the Owner's decision.

G. Change Order Request

The Design-Builder shall, within twenty-one (21) days after receiving a Work Change Directive, provide the Owner with a complete and itemized Change Request which sets out as specifically as practicable the requested adjustments to the Contract Price, Contract Times, or other Contract provisions. The Change Order request shall utilize the same numbering system as the CPCN and reference the Work Change Directive or any other pertinent document in order to ensure that all documents will be easily associated with one another. The change proposal shall also contain a detailed explanation, citing all applicable provisions in the Contract Documents, which support the CPCN. The change proposal shall be in such a form and have sufficient details as to clearly indicate separate cost breakdowns for labor by craft, materials by item, supervision, tools, equipment rental, other items and expenditures, markup and bonds. If the Design-Builder does not submit its itemized Change Order request within the time described above or within such extension which the Owner, in its discretion may have granted in writing, the Design-Builder waives any claim for an adjustment to the Contract Price or Contract Times arising out of the act or event giving rise to or necessitating a CPCN and Change Order request.

**SC-11.04.** Delete Paragraph 11.04.A in its entirety and replace with the following:

- A. To the extent a change, whether proposed by Design-Builder or Owner, ordered by Owner, or set forth in a proposed Change Order or in a Work Change Directive, involves the design (as set forth in the Construction Drawings, Construction Specifications, or otherwise) or other engineering or technical matters, such changes must be signed and sealed by the applicable Project Design Professional.

**SC-11.05.C.2.** Delete Paragraph 11.05.C.2 in its entirety and replace with the following:

2. The value of any Work covered by a Change Order or of any adjustment in the Contract Price will be determined in accordance with SC-12 Article 12.01 Cost of Work.

**SC-11.05.C.3.** Delete Paragraph 11.05.C.3 in its entirety.

**SC-11.05.D.** Delete Paragraph 11.05.D in its entirety and replace with the following:

- D. Design-Builder's Fee: The Design-Builder's fee for overhead and profit on change orders (additive or deductive) shall be equal to the Design-Builders Fee Percentage and/or the General Conditions Fee Percentage as percentages stated in the Agreement.

**SC-11.05.** Add new paragraphs immediately following Paragraph 11.05.D as follows:

- E. In the event Design-Builder 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 Design-Builder's books and records relating to the Project. Upon written request for an audit, Design-Builder shall make its books and records available within 14 days of request. Owner shall specifically designate the identity of the auditor. As part of audit, Design-Builder 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 Design-Builder in a change order or claim submission to Owner.
- F. Owner will review each Change Proposal and, within 30 days after receipt of the Design-Builder'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's Advisor and Design-Builder. If Owner does not take action on the Change Proposal within 30 days, then Design-Builder 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.
- G. Owner's decision will be final and binding upon Design-Builder, unless Design-Builder appeals the decision by filing a Claim under Article 12.

**SC-11.06.B.** Add the following to the end of Paragraph 11.06.B:

All requests for time extensions shall comply with the requirements of Article 18.

**SC-11.07.** Delete Paragraph 11.07.B in its entirety.

**SC-12.** Delete Article 12 in its entirety and replace with the following:

## **ARTICLE 12 - COST OF THE WORK**

12.01 The Cost of Work shall be in accordance with one of the following methods:

A. *Lump Sum:*

- 1. The Work will be priced pursuant to Owner-approved Schedule of Values. The

Schedule of Values will be built upon a Work Breakdown Structure (“WBS”) as required by the Contract Documents and approved by Owner. The Schedule of Values shall correlate with the cost loaded schedule of activities as required by the Contract Documents.

2. Lump Sum Adjustments shall be based upon agreement between Owner and the Design-Builder on the cost of the changed work. Markup for overhead, profit, and bonding shall be used to establish Lump Sum Agreements. Pricing guidelines under Cost Reimbursable/Time and Material work may be used to establish Lump Sum Agreements at the rates specified in SC-12.01.D.

3. *Schedule of Values:*

- a. Schedule of Values work includes the preparing and submitting of updated copies of the Schedule of Values if the Schedule of Values is affected by change orders or GMP revisions.
- b. This Schedule of Values shall be consistent with the cost-loaded schedule required by the Contract Documents.
- c. Schedule of Stored Materials:
  1. Schedule of Stored Materials, if required, is a detailed cost breakdown for materials which will be temporarily stored prior to their being installed, and for which the Design-Builder may seek partial payments.
  2. The cost of Stored Material is the net cost of the product, the cost of delivery and unloading at the storage site, the cost of sales taxes and all discounts.
- d. The Design-Builder shall identify items in the Schedule of Values and Schedule of Material Stored with the Specification Section numbers, Specification Section title, and the bid item number used for the Schedule of Prices and Quantities.
- e. The Design-Builder shall, upon request by Owner, support values given with data which will substantiate the correctness of the values.
- f. Breakdown of the items used in the Schedule of Values shall include the following:
  - 1) Delivery cost of product with taxes paid.
  - 2) Total installation cost, with overhead and profit.
  - 3) Breakdown costs of the lump sum with a list of products and major operations, by trade, for which the Design-Builder seeks to receive progress payments for that bid Item.
  - 4) Where applicable, breakdown costs of the lump sum for Design Services by design consultant for which the Design-Builder seeks to receive progress payments.
  - 5) Where applicable, Breakdown costs of the lump sum for Phase 1 design assist services by trade for which the Design-

Builder seeks to receive progress payments.

- g. Review and Resubmittal: If review by Owner indicates that changes to the Schedule of Values are required, the Design-Builder shall revise and resubmit said schedule.
- h. Total price for mobilization shall not exceed 1.0 percent of the GMP and demobilization shall not be less than 2.0 percent of the GMP

B. Cost Reimbursable/Time and Material Work:

1. The term Cost of the Work shall mean costs reasonably and actually incurred by Design-Builder in the proper performance of the Work.

2. The Cost Reimbursable/Time and Material work shall include:

a. Direct Costs – Labor:

- 1) Labor costs include actual paid wages of field construction workers (including necessary overtime as approved by Owner) incurred for the Work. Wages paid must meet the hourly rates requirements established by regulation and in accordance with prevailing wage requirements in Paragraph 7.11.D.1 of the Supplemental Conditions. Labor is to include up to working general foremen, who are directly assigned to the changed/extra work. Employees identified as superintendents or are non-working general foreman shall not be charged as labor on changed/extra work. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
- 2) No Design-Builder personnel stationed at the Design-Builder's home or branch office shall be charged to the Cost of Work without the prior written approval of Owner. All non-field office based Design-Builder support personnel who will provide service and advice from time-to-time throughout the Contract will be considered to be covered by the Fee portion of the GMP total and markup portion of changes, unless there is prior written approval by Owner.
- 3) Design Professional staff (Engineers) directly involved in developing the design and construction documents and approved by Owner may be charged to the Cost of the Work.
- 4) Labor costs include costs paid or incurred by the Design-Builder for payroll taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided such costs are based on wages and salaries included in the cost of work. Labor rates for hourly

employees will be based on a standard 2080 hour work week. Incentive compensation is not an allowable labor cost. Copies of certified payrolls may be required by Owner.

b. Direct Costs - Materials and Equipment:

- 1) Actual costs, including transportation of materials and equipment incorporated or to be incorporated into the construction. Owner has the right to confirm that costs submitted do not exceed fair market value and are reasonable. If Owner determines the costs exceed fair market value and are not reasonable, Owner is obligated to pay only fair market value. Unused excess materials, if any, shall be handed over to Owner at the completion of the Work. Owner shall not pay for unreasonable quantities of excess materials. No payment will be made for materials and equipment not incorporated in the Work, unless specifically authorized by Owner.
- 2) Actual costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Design-Builder at the Project Site. Owner has the right to confirm that costs submitted do not exceed fair market value and are reasonable. If Owner determines the costs exceed fair market value and are not reasonable, Owner is obligated to pay only fair market value. Items not fully consumed during the performance of the Work shall be returned to Owner, unless directed otherwise.
- 3) Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Design-Builder at the Project Site, whether rented from the Design-Builder or others, and costs of transportation. Installation, minor repairs and replacements, dismantling and removal thereof. Provisions regarding rental of the Design-Builder's equipment or equipment rented from third parties are as outlined in the following paragraphs:
  - (a) Proposed rental rates and related fair market values for Design-Builder-owned (affiliate owned, subsidiary owned or related party owned) equipment with a rental rate of more than \$1,000.00 (total) over the estimated term of the rental and/or rental period over 12 months shall not exceed 80 percent of the Rental Blue Book and shall be submitted to and approved in advance and in writing by Owner. Owner may request that this rental approval request include the current hours or mileage reading from the equipment, the projected usage of each piece of equipment and purchase price of that equipment new. With this information, the Design-Builder may also be requested to perform a lease versus purchase analysis before a decision is made by Owner. The rental rates are subject to audit and

adjustment by Owner at any time and in Owner's sole discretion. The Design-Builder will provide a cost analysis for leased versus purchased vehicles for all vehicles charged to the project under the Design-Builder's General Conditions. The Owner, at its sole discretion will determine lease versus purchase options. All vehicles purchased under this Contract will become the property of the Owner at the completion of the project.

- (b) Rental charges for equipment which is not owned by Design-Builder or any of its affiliates, subsidiaries, or other related parties and is rented from third parties for use in proper completion of the Work will be reimbursed at actual costs as long as the rental rates do not exceed those prevailing in the Portland area. For equipment with a rental rate of more than one thousand dollars (\$1,000.00) (total) over the estimated term of the rental and/or over twelve months (12), the Design-Builder may be requested to provide documentation (a lease vs. purchase analysis) to justify the reason for renting the equipment rather than purchasing it. Any lease/purchase arrangements must have advance concurrence from Owner before entering into such an arrangement and/or charging lease/purchase rental charges as a reimbursable job cost.
- (c) All costs incurred for minor maintenance and repairs shall be reimbursed at actual costs. Such costs include routine and preventative maintenance, minor repairs and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine, and the cost of such repairs shall not be reimbursable under the Contract.
- (d) Rental equipment shall be paid for on an hourly, daily, weekly, monthly or standby rate (or some combination) whichever arrangement is in Owner's best interest. Owner may agree to establish a Fair Market Rate for Design-Builder items in lieu of actual cost. Such agreements to use a Fair Market Rate must be approved in advance by Owner.
- (e) All losses resulting from lost, damaged or stolen tools and equipment (including rental equipment) shall be the sole responsibility of the Design-Builder, and the cost of such losses shall not be reimbursable under the Contract.
- (f) The Design-Builder shall maintain a detailed inventory for all equipment worth one thousand dollars (\$1,000.00) or more when put into service on this Contract. This inventory shall be submitted to Owner upon request. For

each non-rental piece of equipment, the inventory should contain: original purchase price or acquisition cost, acquisition date, mileage or hour reading at acquisition and disposition, and final disposition. At the completion of the Contract, the Design-Builder shall transfer possession of any remaining job- owned equipment to Owner. Or, at Owner's option, the Design-Builder may keep any such equipment for an appropriate credit to job cost, which will be mutually agreed to by Owner and the Design-Builder.

(g) Normal and reasonable cost to set up the field office during Pre- Construction. However, for changes this on-going cost is included in the markup for overhead on Change Orders.

c. Other Miscellaneous Reimbursable Costs may include:

- 1) That portion directly attributable to this Contract of premiums for required insurance and bonds. All premiums for any insurance and bonds required by the Contract shall reflect the net actual costs to the Design-Builder after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, etc.
- 2) Sales or similar taxes imposed by a governmental authority, which are related to the Work and the Design-Builder's responsibility.
- 3) Fees and assessments for permits, licenses and inspections which the Design-Builder is required to pay according to the Contract.
- 4) Fees for testing laboratories for tests required by the Contract to be performed by or on behalf of the Design-Builder.
- 5) Other necessary and reasonable costs incurred in the performance of the Work, if and only to the extent Design-Builder has obtained prior written approval from Owner.
- 6) Cash discounts obtained on payments made by the Design-Builder shall accrue to Owner and shall be credited as a deduction from the Cost of the Work.
- 7) Travel expenses shall not exceed Owner travel policies. Travel expenses shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at:  
<https://www.clackamas.us/finance/terms.html>.

3. Costs not to be reimbursed include, but are not limited to:

- a. Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.
- b. Except as noted previously, costs due to the fault or negligence of the Design-Builder's, Subcontractors, anyone directly or indirectly



employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied and making good damage to property not forming part of the Work. Owner may consider reimbursement for the cost of work-in-place damaged by others when the Design-Builder cannot determine who caused the damage provided the Design-Builder took adequate measures to protect the Work and determine who damaged the Work. The Design-Builder is required in such cases to fully and convincingly investigate and document its efforts to determine the responsibility for and cost of the damage before requesting consideration from Owner to use the Contingency. Design-Builder shall immediately commence with the repair of such damaged work without waiting for and regardless of any Owner approval to use Contingency.

- c. Any liquidated damages, fines, judgments or similar expenses incurred by the Design-Builder.
- d. Any Warranty issues or call backs.
- e. Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections above.
- f. Overhead and general expenses, except as provided for in Section above hereof, or which may be recoverable for changes to the Work.
- g. If the parties have agreed on a Guaranteed Maximum Price, costs that would cause the Guaranteed Maximum Price, as adjusted in accordance with the Contract Documents, to be exceeded.
- h. Overtime wages paid to salaried personnel shall not be paid by Owner.
- i. Employees identified as superintendents or are non-working general foremen shall not be charged as labor on changed/extra work.

C. Pricing of Owner-Approved Allowance Work:

1. All price estimates, and for scopes of work requested by Owner for each allowance item of work, shall be provided to and approved by Owner prior to the Design-Builder being paid for the work. The Design-Builder shall provide price quotes within twenty-one (21) days of receipt of request by Owner. Similar to all other Change Requests, a mutually agreeable extension depending on complexity and other pricing workload, may be allowable.
2. Price estimates shall be provided in a format that clearly itemizes all labor quantities and labor rates, material quantities and material rates, equipment costs, general conditions and fee to perform the work of the Allowance. Any work performed by Subcontractors to the Design-Builder shall also be itemized as above. Price quotes shall be obtained from Owner-selected Subcontractors and/or vendors by the Design-Builder in a format that clearly itemizes all labor quantities and labor rates, material quantities and material rates, equipment costs, general

conditions and fee to perform the Allowance scope of work. Any work performed by Subcontractors to Owner selected Subcontractor and/or Vendor shall also be itemized as above.

D. Markups for Changes:

1. Design-Builder's Overhead and Profit:
  - a. Design-Builder's markup for change work will be in accordance with SC-11.05.D.
2. Subcontractor, Supplier, or Sub-Subcontractor Overhead and Profit: Design-Builder's markup for Subcontractor, Supplier, or Subcontractor change work will be in accordance with SC-11.05.D.
3. Bonding Markup:
  - a. The bonding markup shall be the actual cost for additional bonding for the Design-Builder.
  - b. No bonding markup will be applied to Allowance items of work.
4. No Markups for overhead and profit nor for bonding shall be allowed for changes to work covered by a Unit Price Adjustment.

**SC-13.01.** Add new paragraphs immediately following Paragraph 13.01.A as follows:

- B. Design-Builder shall notify Owner 48 hours prior to the expected time for operations requiring inspection and laboratory testing services. Design-Builder shall cooperate with inspection and testing personnel and furnish samples of materials, design mix, equipment, tools, storage and assistance as requested.

**SC-13.02.** Add new paragraphs immediately following Paragraph 13.02.I as follows:

- J. The Design-Builder will work collaborative with the Owner to develop an acceptance specification and test plan. The plan will detail the test data and expected results required to implement acceptance test scenarios.
- K. Tests required by Contract Documents to be performed by Design-Builder that require test certificates be submitted to Owner 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.
4. Prior to requesting a certificate of Substantial Completion, and allowing occupancy of facilities, Design-Builder 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 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 Owner 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-13.03.** Delete Paragraph 13.03.

**SC-13.04.** Delete Paragraph 13.04.B in its entirety and replace with the following:

- B. Owner and Owner's Advisor: Owner, who may rely on advice from Owner's Advisor, will have the authority to determine whether Work is defective, and will determine whether to reject defective work. Owner shall give Design-Builder timely written notice of all defective work of which Owner has actual knowledge. Owner may reject, accept, or correct defective Construction.

**SC-14.** Delete Article 14 in its entirety and replace with the following.

## **ARTICLE - 14. PAYMENT PROCEDURES**

### 14.01 Payment Procedures

- A. Summary: This Section includes Contract progress payments on Cost Reimbursable Price, Lump Sum Price and for final payment.
- B. Scope of Payment:
  1. The Design-Builder shall receive and accept compensation provided for in the Contract as full payment for furnishing, all professional services and materials, for performing all Work under the Contract Documents in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof, subject to the provisions of this Contract.
  2. The term Fair Market Value used in this section shall mean the estimated price a reasonable purchaser would pay.
  3. Payment Approval: Where prior written approval of Owner is required as a condition of the payment of costs by this Contract, Design-Builder must submit a written description of the reason for the costs, the number of man hours (if any)

and the hourly rate, an estimate of the non-labor costs, plus either competitive pricing or proof of Fair Market Value supporting the non-labor costs exceeding \$100 for an individual item (e.g. airfare, special tools, etc.), along with an identification of the source of funds to be used or a Contractor Change Request.

4. Payment of the Design-Builder's Fee.

- i. The Design-Builder's Fee Percentage and/or General Conditions Fee Percentage shall be included in each Application for Payment in an amount equal to the percentage, as proposed by the Design- Builder and included in the Contract, of the sum of the Cost of the Work including the General Conditions Costs submitted in the Application for Payment not to exceed the value allowed by the GMP revisions/change orders.
- ii. The Design-Builder may charge its normal overhead and profit percentage for self-performed work. The Design-Builder may not add the Design Builder Fee or General Conditions Fee to the Cost of Work for self-performed Work.

5. Payment for Phase 1 Services and Phase 2 Services: Payment for services rendered under this Contract can be on a lump sum or cost reimbursable basis as defined by the Contract Documents and as outlined in the sections below. The Owner will make progress payments in accordance with ORS 279C.570 and Article 12.

C. Cost Reimbursable:

1. Reimbursable Cost of Work to be compensated for under a cost reimbursable basis method shall be priced and supported as outlined in the pricing provision of the Contract's General Conditions and Supplemental Conditions. Cost Reimbursable Work will be paid pursuant to Owner approval of acceptable backup for costs incurred. Acceptable backup for these costs include, but are not limited to timesheets, certified labor reports, materials and equipment receipts, and service receipts and shall be submitted with the applications for payment.
2. Time and Material work shall be priced as outlined in the pricing provisions of the Contract's General Conditions for Cost Reimbursable. The same requirements outlined above, for reimbursable cost of work apply to Time and Material work.
3. Any payment by Owner to Design-Builder shall be based upon documentation of actual work accomplished and based upon the established schedule of values.

D. Lump Sum:

1. A cost breakdown of the Contract Lump Sum Value shall be submitted to Owner for review and approval within thirty (30) Days after the Notice to Proceed. The approved cost breakdown schedule (Schedule of Values) will be the basis for determining the value of the monthly progress payment. The total value of all construction activities (including mobilization and demobilization) shall equal the total construction Contract Lump Sum Value.

2. Lump Sum Work will be paid pursuant to Owner approved Schedule of Values. The Schedule of Values will be built upon a Work Breakdown Structure (WBS) as required by the Contract Documents and approved by Owner.
3. Allowances: The Design-Builder will be paid for Allowance items on the basis of the aforementioned Scope of Payment subsection of the General Conditions and Supplemental Conditions addressing Payment on either a cost reimbursable or lump sum basis. The Design-Builder's mark-up shall be all-inclusive of supervision and coordination of the Subcontractor's work and no additional compensation shall be allowed. Work designated to be paid for out of an Allowance shall not be considered a change for the purposes of granting Work Completion Time Extensions to the critical path of the job. Any and all unused portions of the stipulated Allowances amounts will not be paid to the Design-Builder and shall be deducted from the contract value at the completion of the Project via a deductive GMP revision/change order.

E. Contingency:

1. Design-Builder contingency amount may be included as a specified amount in the GMP. It is further understood and agreed that such contingency funds are to be used for costs to complete work considered to be within the original scope of work, including issued Change Orders, but which exceed the established estimated costs. Use of contingency funds is for work which could have been reasonably anticipated based upon the information available at the time the cost estimate was established. Use of contingency funds is for following:
  - a. Those items that were included in the drawings and specifications that Contractor missed in proposing the GMP.
  - b. Those items that were included in the proposal drawings and specifications that the Contractor underpriced in proposing the GMP.
  - c. Schedule acceleration or schedule mitigation as required to meet Contract Milestones, or as deemed necessary by the Contractor to improve the Project schedule when required.
  - d. Increased general conditions or general requirements costs. This may include items such as additional temporary fence moves, increased costs for temporary protection of installed work, increased costs for weather protection, increased staffing for general conditions, etc.
  - e. To cover higher costs for replacing a Subcontractor which are not covered by Subcontractor default insurance or surety.
  - f. Other items not outlined above, if approved in advance in writing by Owner.
2. All contingency fund charges must have Owner's advance written approval before being transferred to a line item. All remaining funds in the Contractor's Contingency upon completion shall revert to Owner.

F. Retention:

1. Five percent (5%) of each progress payment during Phase 2 work will be retained until the Contract Work or GMP Work Package has been completed and accepted by Owner per the Contract Documents. The Owner shall place amounts deducted as retainage in an interest-bearing escrow account in accordance with ORS279C.570. Interest on the retainage amount accrues from the date the payment request is approved until the date the retainage is paid to the Design-Builder to which it is due. See SC-7.11.D.6 for additional requirements. The Design-Builder shall execute such documentation and instructions with respect to the interest-bearing escrow account as the Owner may require to protect its interests, including but not limited to a provision that no funds may be paid from the account to anyone without the Owner's advance written authorization.
2. Early Release of Retention: The Design-Builder may request early release of retention for Subcontractors who have fully completed their work on a GMP Work Package. After a Subcontractor completes its entire Scope of Work for an individual GMP and fulfills all of its obligations as set forth in the Contract Documents, and upon the Design-Builder providing Owner the necessary lien waivers and waives of all claims rights relative to said Subcontractor's Work, the Design-Builder may submit a written request for release of retention for said Subcontractor. The Design-Builder shall also provide written confirmation and certify that its Subcontractor has successfully completed their work under its subcontract for the specific GMP. Owner will review such requests for release of retention and verify completion of all punch list work attributed to said Subcontractor. After review and approval of the written request for release of retention by Owner, the Design-Builder may include in its regular monthly billing the amount of retention to be released. Owner shall hold all retention other than the Early Released Retention until final payment is made in accordance with the Contract Document.
3. In no event may the combination of early releases of retention and retention reduction allow the total retention at any time to be less than two and a half percent (2.5%) of the total amount paid to Design-Builder unless the Project is accepted as substantially complete by Owner.
4. In the event of a dispute between Owner and the Design-Builder, or for any of the reasons set forth in the Project Requirements, Owner may withhold one hundred and fifty percent (150%) of the disputed amount. All or a portion of the monies withheld will be released upon satisfactory resolution.

G. Substantial Completion:

1. Conditions precedent to Substantial Completion of the Work and Owner'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.

- c. Owner assumes partial occupancy or beneficial use of the improvements.
- d. Submittals have been received and approved or accepted by Owner including, but not limited to, the following:
  - 1) Approved Shop Drawings;
  - 2) Electrical testing and wiring diagram;
  - 3) Equipment Inventory Template, blank template provided by owner;
  - 4) Manufacturer's certificates of proper installation;
  - 5) Factory test reports;
  - 6) Commissioning, testing and startup reports;
  - 7) Final Operations and Maintenance Manuals;
  - 8) Extra materials (spare parts) (as specified).

H. Final Payment:

1. Final Completion and Payment. Upon receipt of written notice that the Work is ready for Final Inspection and Final Acceptance, Owner will promptly make such inspection and, when Owner finds the Work acceptable and fully performed under this Contract and in compliance with the Scope of Work of the Contract, including all regulatory agencies, licensing and permitting authorities requirements Owner will issue a Notice of Completion and Acceptance of Public Works Project.
2. Subsequent to Final Acceptance as detailed in the Contract Documents including all regulatory agencies, licensing and permitting authority's requirements the Design-Builder shall provide a proposed Final Payment request, segregated as to Contract item and Contract Change Order work.
3. Owner will review the proposed Final Payment request and, after deducting all previous payments and all amounts to be deducted, withheld, and/or retained under the provisions of the ORS 279C.550 – ORS 279C.570, shall create the Final Payment request. All Progress Payments shall be subject to correction in the Final Payment.
4. If no liens, stop notices, or claims have been filed against the Design-Builder after sixty (60) days from the filing of Notice of Completion and acceptance of Public Works Project, Owner will approve for payment the entire sum due, including the release of any retention.
5. The Final Payment shall not become due until the Design-Builder submits the following to Owner:
  - a. Satisfactory evidence to Owner that all payrolls, bills for materials and

- equipment and other indebtedness connected with the Work have been paid or otherwise satisfied; and
- b. If required by Owner, other data establishing payment satisfaction of all such obligations such as receipts, releases and waivers of all liens arising out of the Contract, to the extent and in such form as may be reasonably designated by Owner and all Contract terms and conditions have been met.
  - c. If, after Substantial Completion of the Work of the Contract as approved by all regulatory agencies, licensing and permitting authorities, and Owner, Final Completion thereof is materially delayed by a force majeure or by the issuance of Change Orders affecting Contract Completion, Owner may, at its option and in its sole discretion, upon application by the Design-Builder and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Project Requirements, and if bonds have been furnished as required by the Contract, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed shall be submitted by the Design-Builder to Owner prior to certification of such payment. Such payment shall be made for the balance due under the terms and conditions covering Final Payment, except that it shall not constitute a waiver of claims.
  - d. The acceptance of Final Payment shall constitute a waiver of all claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of the Final Application for Payment.
  - e. Notwithstanding any other provision contained herein or in the Contract, neither Substantial Completion nor Final Acceptance and Final Payment shall occur until final and complete written approval of the Work has been obtained from Owner, unless such approval is being withheld for items not related to the Design-Builder's Work.
  - f. The savings between the total GMP and the final Cost of Work will revert to Owner.
6. Within fifteen (15) Calendar Days after the Final Payment request is returned to the Design-Builder, the Design-Builder shall submit to Owner a written approval of said request or a written statement of exceptions. The Design-Builder's statement of exceptions shall be in sufficient detail for Owner to ascertain the basis and amount of the exceptions. Failure to provide the detail shall be sufficient cause for denial of the exceptions. Any claim of the Design-Builder or the Design-Builder's Subcontractors or suppliers with respect to the performance or breach of the Contract or any alterations thereof (except for payment of the balance of the Contract price as set forth in the Final Payment request) not specifically set forth in the statement of exceptions, is waived by the Design-Builder. If the Design-Builder fails to file a statement of exceptions within the



time allowed, Owner will infer acceptance of the final Progress Payment request as submitted to the Design-Builder.

7. Effect of Final Payment to Terminate Liability: Except as stated in Design-Builder's statement of exceptions noted hereinabove, as to specifically described, disputed claims, in separately stated amounts, payment and Design-Builder's acceptance of the final amount due under the Contract shall release Owner, and Owner's elected officials, employees, agents, and their duly authorized representatives from all claims or liability on account of work performed under the Contract. The acceptance of Final Payment shall constitute a waiver of all claims by the Design-Builder. Except as stated in Design-Builder's statement of exceptions noted hereinabove, as to specifically described, disputed claims, in separately stated amounts neither final payment nor termination nor any other disposition of the Contract, however, shall operate to release or limit Design-Builder's continuing obligations under the Contract Documents, for example and without limitation, indemnities, warranties, insurance coverage, which shall continue unless expressly discontinued in a writing signed by Owner and signed as approved as to form by the Owner.

I. Application for Payment:

1. By the 25th of each month, the Design-Builder shall submit to Owner an itemized Application for Payment in a form acceptable to Owner, for Work completed in accordance with the terms of the Contract for the GMP. Such application shall be supported by appropriate data as required including but not limited to timesheets, certified labor reports, receipts, and/or documentation of actual work accomplished based upon the established schedule of values. The Design-Builder's failure to promptly submit a monthly estimated Application for Payment in accordance with the Contract Documents may cause the monthly payment to be deferred.
2. Each month, Owner will make an approximate measurement of the Work performed to the closure date and as basis for making monthly payments. When the Work has been satisfactorily completed, Owner will determine the quantity of work performed and prepare the final estimate.
3. Upon agreement between the Design-Builder and Owner on the quantity of work completed in accordance with the Contract Documents, the Design-Builder shall by the 1st of the month submit a revised Application for Payment with agreed upon amounts, including Design-Builder's General Conditions amounts.
4. Upon receipt of revised application, Owner will provide Design-Builder the "Contract Payment Request Form" for execution and processing of monthly payment. Design-Builder failure to sign a Contract Payment Request promptly may cause the payment to be delayed or deferred.
5. The Design-Builder warrants all Work subject to a payment application meets the requirements of the Contract Documents and that title to all work covered by an Application for Payment will pass to Owner no later than the time of payment.

6. The Design-Builder further warrants that, upon submittal of an Application for Payment, all work for which Payment has been previously issued and payments received from Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

7. Applications for Payment shall include the following:

- a. Unconditional releases of lien in the statutory form for all Subcontractors and suppliers, through the prior payment application; and if Design-Builder is unable to do so for any Subcontractor or supplier, Design-Builder shall provide a written explanation of the reasons.
- b. Actual invoices for materials and equipment must be submitted with the Application for Payment (for cost reimbursable contracts).
  - 1) Unless otherwise provided in the Contract Documents, up to eighty percent (80%) of the invoiced amount may be paid on account of materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work. The remaining twenty percent (20%) may be billed when the materials and/or equipment are installed or used.
  - 2) Payment will not be made for any materials or equipment unless each individual piece of the material or equipment becomes a permanent part of the Work or the material or equipment is required by the Contract Documents or is specifically manufactured for the Project and could not be readily utilized or diverted to another job. Actual invoices for materials and equipment must be submitted with the Application for Payment.
- c. If approved in advance in writing by Owner, payment may similarly be made for materials and equipment suitably stored off the Project Site at a location agreed upon in writing. Offsite storage areas must be approved by Owner, and if in excess of a 50-mile radius must be accompanied by an Off-site Storage Agreement approved by Owner. Payment for materials and equipment stored on or off the Project Site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest and shall include the costs of applicable insurance, storage and transportation to the Project Site for such materials and equipment stored off the Project Site.

J. Decisions to Withhold Payment:

1. Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect Owner due to Owner's determination, in Owner's sole

discretion, that the Work has not progressed to the point indicated in the Application for Payment or that the quality of work is not in accordance with the Contract Documents. Owner may also withhold a payment because of subsequently discovered evidence which may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect Owner from loss for which the Design-Builder is responsible.

2. Applications for Payment may not include requests for payment for Changes in the Work which have been authorized by Change Directives but are not yet included in an executed Change Orders.
  3. Payment will not be made for materials wasted or disposed of in a manner not called for under the Contract. This includes rejected material not unloaded from vehicles, material rejected after it has been placed, and material placed outside of the Plan lines. No compensation will be allowed for disposing of rejected or excess material.
- K. Owner may back charge, deny a Progress Payment request, and/or withhold money from any Progress Payment to:
1. Cover any unpaid claims filed pursuant to ORS 279C.515;
  2. Protect Owner's interests;
  3. Pay any fines levied against the Work by Owner or other entities;
  4. Owner may also deny a Progress Payment request and/or withhold money, or modify any previous Progress Payment, as necessary to protect Owner from loss due to or affecting enforcement of:
    - a. Defective work not remedied;
    - b. Stop notices filed;
    - c. Failure of the Design-Builder to make payments properly to Subcontractors for labor, materials, or equipment;
    - d. Failure of the Design-Builder to supply unconditional progress payment releases from all Subcontractors and suppliers through the period covered by Owner's most recent progress payment;
    - e. Evidence that the Work cannot be completed for the unpaid balance of the Contract sum;
    - f. Evidence that the Work will not be completed within the Work Completion Time;
    - g. Damage to Owner or another contractor;
    - h. Failure to carry out the Work in accordance with the Contract;
    - i. Failure to keep current as-built records at the Project Site;
    - j. Unpaid amounts owed to Owner for fees and charges for services or permits, assessments for damage to Owner's property, or use of Owner

- facilities and services;
- k. Failure to comply with the prevailing wage rate requirements as specified;
  - l. Failure to comply with the requirements regarding Project Schedule;
  - m. Errors due to any cause that may be discovered in any previous progress payment;
  - n. Written request from Design-Builder's surety to withhold payment(s);
  - o. Any violation or non-compliance with Design-Builder's legal responsibilities including withholds for wages adjustments in accordance with Oregon law and any fines incurred by Owner as a result of the Design-Builder's actions.
5. When, under the provisions of the Contract, Owner charges any sum of money against the Design-Builder, Owner will deduct and retain the amount of such charge from a Progress or Final Payment. If, on completion or termination of the Contract, sums due the Design-Builder are insufficient to pay Owner charges against the Design-Builder, Owner has the right to back charge the balance from the Design-Builder or the Design-Builder's surety.
6. Whenever immediate action is required to prevent injury, death, or property damage, and precautions which are the Design-Builder's responsibility that have not been taken and are not reasonably expected to be taken, Owner may, after reasonable attempt to notify the Design-Builder, cause such precautions to be taken and shall charge the cost thereof against the Design-Builder, and may deduct such costs from amounts otherwise due the Design-Builder. Any such action by Owner shall not be construed as relieving the Design-Builder or its surety of any liability.
7. When the reasons for withholding payment are removed, payment will be made for amounts previously withheld.
8. The payment of a Progress Payment or the acceptance thereof by the Design-Builder does not constitute acceptance of any portion of the Work and does not reduce the Design-Builder's liability to replace unsatisfactory work, material, or equipment. An inadvertence or error in an approved Progress Payment request will not release the Design-Builder or the Design-Builder's surety from damages arising from the Work covered by the approved payment request or from enforcement of every provision of the Contract. Owner has the right to correct any error made in any Progress Payment.
9. Design-Builder shall promptly pay, when due, any and all amounts payable for labor, equipment and material furnished in the performance of this Contract so as to prevent or make unnecessary the filing of any claim, lien, stop notices, or notice to withhold, as provided under and by virtue of the applicable provisions of the ORS 279C.515.

**SC-15.02.** Amend Paragraph 15.02.A by adding the following at the end of the sentence:

“in a manner consistent with ORS 279C.660.”

**SC-15.03.** Delete Paragraph 15.03.A.3 in its entirety.

**SC-15.04.** Delete Paragraph 15.04 in its entirety and replace with:

**SC-15.04.** Failure to Agree on GMP

1. If the parties are unable to reach an agreement on the GMP proposal within the time limit for acceptance specified in the GMP proposal, as may be extended by the mutual agreement of the parties, the proposal shall be deemed withdrawn and of no effect. In such an event, the Owner and Design-Builder shall meet and confer as to how the Project will proceed, with the Owner having the following options:
  - a. The Owner may declare the Proposal development completed and authorize Design-Builder to continue to advance the final design of the Project as an amendment to the Contract or as an Additional Service, as applicable; or
  - b. The Owner may terminate the relationship with Design-Builder and proceed to exercise its available options to perform the final design and construction with parties other than Design-Builder. Upon termination the Design-Builder shall turn over all previous work products to the Owner, prior to final payment for Phase 1 Services.
  - c. At the Owner’s sole discretion, the Design-Builder will assign the design subconsultants to the Owner for completion of the final design. The Design-Builder and all design subconsultants agree to the assignment as a condition of the Contract.

**SC-16.01.** Add the following to the end of Paragraph 16.01.D:

- 
5. In the event that a party is at risk of suffering irreparable harm, the party may seek immediate relief using any and all means available to it, including, but not limited to, injunctive relief.

**SC-16.01.** Delete Paragraph 16.01.E and replace with the following.

- E. Litigation: Any Claim between Owner and Design-Builder that arises from or relates to the Contract and that is not resolved through the Claims Review Process or mediation 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. DESIGN-BUILDER, BY EXECUTION OF THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.

**SC-17.02.** Delete Paragraph 17.02.A in its entirety and replace with the following:

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

**SC-17.06.** Add the following to the end of Paragraph 17.06.A:

All warranty and indemnification provisions of the Contract, and all of Design-Builder'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.

**SC-17.07.** Delete Paragraph 17.07.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-17.08.** Add new Article immediately following Paragraph 17.08 as follows:

17.09 General Provisions.

- A. No Third Party Beneficiaries: Owner and Design-Builder 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: Design-Builder 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 Submittals, Product Data, Samples and similar submittals, and shall at all times give the Owner access thereto. Design-Builder 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 Design-Builder 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, Design-Builder shall retain all such records until all litigation is resolved and Design-Builder 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 Design-Builder.
- D. 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.
  - E. 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.
  - F. 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.
  - G. No Attorney Fees: In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

**SC-18** Scheduling of the Work

Add the following after Paragraph 17.09

**ARTICLE 18 - SCHEDULING OF THE WORK**

18.01 Scheduling Of The Work

- A. The scheduling and execution of the Work in accordance with the Contract Documents are the responsibility of the Design-Builder. Schedules shall represent a practical plan to complete the Work within the Final Completion time and shall convey the Design-Builder's intent in the manner of prosecution and progress of the Work. Schedules shall be created using scheduling software appropriate for the Work, subject to acceptance by Owner. Design-Builder shall cooperate with Owner in the development of the Contract Schedule and updated Contract Schedules. Design-Builder shall plan and schedule all of its Work based on the assumption that Owner will exercise its option for future phase(s) of Work. After Owner exercises its option(s) for future phase(s), the Design-Builder shall modify its Contract Schedule.

- B. The submittal of schedules shall be understood to be the Design-Builder's representation that the schedule meets the requirements of the Contract Documents and that the Work will be executed in the sequence and duration indicated in the schedule. Design-Builder shall plan, develop, supervise, control, and coordinate the performance of the Work so that its progress and the sequence and timing of Work will permit its completion within the Contract Time, any Contract milestones and any Contract phases.
- C. The Design-Builder shall develop its required Contract schedules for review and approval by Owner based on the scheduling project requirements and consistent with the Scope of Work and Phasing Project Requirements. Design-Builder shall execute the Work in the sequence indicated on the current approved schedule to permit Owner to schedule its resources, inspections, consultants, and any other work accordingly.
- D. If a Contract Schedule showing the Work completed in less than the Contract Time is accepted, Design-Builder shall not be entitled to extensions of the Contract Time for Excusable Delays or Compensable Delays or to adjustments of the Contract Sum for Compensable Delays until such delays extend the Final Completion of the Work beyond the expiration of the Contract Time.
- E. Design-Builder shall submit an initial Contract Schedule and updated Contract Schedules to Owner in the form and within the time limits required by the Contract Documents, or, if no such time period is specified, within a reasonable period of time. Owner will determine acceptability of the Contract Schedule and updated Contract Schedules within the time limits required by the Contract Documents, or if no such time period is specified, within a reasonable period of time. If Owner deems the Contract Schedule or updated Contract Schedule unacceptable, it shall specify in writing to Design-Builder the basis for its objection.
- F. The Contract Schedule and updated Contract Schedules shall represent a practical plan to complete the Work within the Contract Time. Schedules showing the Work completed in less than the Contract Time as reflected in the preliminary schedule may be acceptable if judged by Owner to be practical. Schedules showing the Work completed beyond the Contract Time may be submitted under the following circumstances:
  - 1. If accompanied by a Change Order seeking an adjustment of the Contract Time consistent with the requirements of the Contract Documents for Adjustment of the Contract Time for Delay; or
  - 2. If the Contract Time has passed, or if it is a practical impossibility to complete the Work within the Contract Time, then the updated Contract Schedule shall show completion at the earliest practical date.
  - 3. Owner will perform a timely review of the updated Contract Schedule or Fragnet Schedule submitted by Design-Builder. If Owner determines that additional supporting data are necessary to fully evaluate the updated Contract Schedule or Fragnet Schedule, Owner will request such additional supporting data in writing. Such data shall be furnished no later than 10 days after the date of such request. Owner will render a decision promptly and in any case within 10 days after the



later of the receipt of the updated Contract Schedule or Fragnet Schedule or the deadline for furnishing such additional supporting data. Failure of Owner to render a decision by the applicable deadline will be deemed a decision denying approval of the updated Contract Schedule or Fragnet Schedule. Acceptance of any schedule showing completion beyond the Contract Time by Owner shall not change the Contract Time and is without prejudice to any right of Owner. The Contract Time, not the Contract Schedule, shall control in the determination of liquidated damages payable by Design-Builder under the General Conditions and in the determination of any delay and extension of time as allowed by the Contract.

- G. The Design-Builder shall involve and coordinate with all Subcontractors, third parties, and material suppliers in the development and updating of schedules. In preparing the Preliminary Contract Schedule, the Contract Schedule, and updated Contract Schedules, Design-Builder shall obtain such information and data from Subcontractors as may be required to develop a reasonable and appropriate schedule for performance of the work and shall provide such information and data to Owner upon request. Owner will furnish Design-Builder with schedule information necessary for any work or other activities to be performed by Owner for inclusion in the Contract Schedule. Such inclusion will be reviewed and accepted by Owner in writing. Any necessary adjustments will be provided to the Design-Builder in writing for evaluation and incorporation.
- H. Use of Float suppression techniques such as preferential sequencing or logic, special lead/lag logic restraints and extended activity durations will be cause for rejection of schedule submittal.
- I. The Construction Scheduler is required to have first-hand knowledge of the Work from on-site periodic job walks and shall attend all meetings pertaining to scheduling and progress of Work, including weekly jobsite meeting as requested by Owner.
- J. Subcontractor Documentation: The Design-Builder shall:
  - 1. For all Subcontracts that exceed \$250,000, submit with the baseline schedule, a statement on Subcontractor's letterhead, certifying that Subcontractor has reviewed and concurs with the baseline schedule and that Subcontractor's related schedule has been reasonably incorporated, including activity duration.
  - 2. Submit with the baseline schedule all Subcontractor schedules utilized in the development of the baseline schedule.
- K. General Schedule Requirements:
  - 1. The scheduling method to be used shall be a Critical Path Method schedule in the form of an activity on node Precedence Diagram Network (PDN) with capabilities of identifying the critical path. The principles and definitions of the terms used herein shall be as set forth in the Associated General Contractors of America ("AGC") publication "Construction Planning and Scheduling," latest edition. To the extent there are any conflicts between the AGC publication and the Contract Documents, the Contract Documents shall govern.
  - 2. The Schedule shall include but not be limited to Design coordination, review time

design options during Basis of Design Development, Document review and approval by project stakeholders and Regulatory Agencies as applicable, engineering, procurement, the Design-Builder's submittals and their forecast approval dates, fabrication, shipment and deliveries of material and equipment (by the Design-Builder and by others) Phasing and work on temporary facilities, all on-site activities including quality control, testing, inspection, commissioning, training and the turnover of final reports, Operations and Maintenance Manuals and as-built drawings shall be included as well.

3. The Design-Builder shall use the electronic scheduling software system acceptable to the Owner, and a hardware system commensurate with the size of the Project. This shall be referred to as the Scheduling System. The system shall be capable of handling, processing, printing, and plotting data to satisfy all requirements of these Contract Documents. The Design-Builder shall maintain the Scheduling System, the schedule, and the scheduling staff on Site or at a location approved by Owner. All schedules submitted by the Design-Builder or its Subcontractors or suppliers of any tier shall be digital format.
4. Schedule Submittals: Owner will review and return the Design-Builder's schedule submittal and deliverables with a written response according to the following timeframes from the date of receipt from the Design-Builder.
  - a. Preliminary Phase 1 Schedule to be submitted by Design-Builder within twenty-one (21) days of Phase 1 Notice to Proceed (NTP).
  - b. Baseline Project Schedule for the remaining of Phase 1 and CPM Level 2 Schedule for Entire Project to be submitted by Design-Builder within thirty (30) days of the Design to Budget milestone.
  - c. Preliminary Schedule for Complete Project submitted within fifteen (15) days of the 30 percent Documents submittal.
  - d. Baseline Project Schedule for Complete Project shall be submitted within fifteen (15) days of phase 2 NTP.
  - e. Monthly Schedule Update: Updates will be submitted monthly.
  - f. Weekly Four-week Look-ahead schedule: Submitted by Design-Builder weekly for information and comments during Weekly Project "Progress and Coordination" and "Logistics" meetings.
5. If the Design-Builder does not agree with Owner's comments, the Design-Builder shall provide an itemized written notice of disagreement within five (5) Calendar Days from the receipt of Owner's comments. Resolution of any of Owner's comments with which the Design-Builder disagrees will occur in a meeting held for that purpose.
6. Coordination: Design-Builder to coordinate preparation and processing of schedules and reports with performance of Contract activities including but not limited to design, BIM, permitting, coordination, engineering, construction, phasing, inspection testing, commissioning, training and startup activities with scheduling and reporting of separate contractors.

- a. Coordinate Project Schedule with the Cost Breakdown, list of subcontracts, Submittals Schedule, progress reports, Applications for Payment, and other required schedules and reports.
- b. Secure time commitments for performing critical elements of the Work from parties involved.
- c. Coordinate each activity in the network with other activities and schedule them in proper sequence.

7. Quality Assurance: The Design-Builder's Scheduling team shall have the proven experience in CPM scheduling and reporting, and the capability of producing CPM reports and diagrams within 48 hours of Owner's request.

L. Design-Builder's Lead Construction Scheduler And Scheduling Team

1. The Design-Builder shall employ or retain the services of a Lead Construction Scheduler – an individual who is part of the Design-Builder's management staff to develop and maintain the Project construction schedule. The Lead Construction Scheduler shall have at least Ten (10) years of verifiable experience as the person primarily responsible for preparing and maintaining detailed Project schedules for projects of the same or similar size and nature as this Project. The Design-Builder shall submit the Construction Scheduler's background information to Owner within ten (10) calendar days after the Notice of Award date and at least seven (7) days prior to the Pre- Construction Scheduling Conference.

M. Baseline Schedule Requirements:

1. For each phase, the Design-Builder shall prepare and submit to Owner a preliminary schedule as indicated in the Project Requirements, with the intent to develop the schedule into a baseline project schedule and submit to Owner. The Design-Builder will use the Preliminary Schedule as the basis for preparing the Baseline Schedule and the requirements regarding baseline schedule and baseline schedule submittal shall apply to the preliminary schedule. Activities shown at the summary level in the Preliminary Contract Schedule shall be detailed in the Baseline Schedule. Refer to the General Conditions for schedule requirements on payment applications.
2. Include weekly workforce projections and monthly cash flow analysis for the duration of the Work based on indicated activities.
3. The Design-Builder shall provide a written narrative accompanying the electronic version of the Design-Builder's Preliminary Schedule submission. This narrative shall explain the Design-Builder's approach for meeting all milestones and project completion dates for Phase 1. The Design-Builder shall include management staffing, non-manual and manual labor for engineering and design. It shall also include a clear description of the critical path activities from beginning to end and describe anticipated staffing requirements, production rates, equipment and software requirements and anticipated problems of major activities along the critical path.

4. A list of activities, showing the early and late start and finishes, duration, total float responsibility code, and predecessor and successor relationship, sorted by early start. Show dependencies and logic between activities so that the effect of progress (or lack of progress) on related activities and the overall schedule can be monitored.
5. Activity durations shall be the total number of actual calendar days required to perform that activity.
6. The first activity in the Baseline Schedule shall represent the Notice to Proceed as a milestone and the data date of the Baseline Schedule shall be the Contract “Notice to Proceed” date. No progress shall be shown in the baseline schedule.
7. Include at least one (1) predecessor and one (1) successor for each activity excluding the project start and finish milestones.
8. Define one calendar to include the holidays identified in Paragraph 7.04B above. No activity shall be performed on these days without written approval by Owner.
9. The Baseline Schedule shall not contain any negative total float.
10. The Critical Path and number of critical activities shall be no more than thirty percent (30%) of the total activities in the Design-Builder’s Baseline Project Schedule unless approved by Owner.
11. The Project’s Critical Path, for the purpose of acceptance of all schedule submittals shall be determined by the longest path analysis.
12. The Baseline Schedule shall take into consideration potential construction delays due to weather. The Design-Builder shall confirm in the accompanying narrative that the non-work weather days have been included in the baseline schedule submittal. The application of these non-work or adverse weather days will be as follows below:
  - a. Any unused non-work or adverse weather days at the end of a year or the end of the project will be shown as available float to the interim or substantial completion milestones. If the project is delayed and there remains unused non-work or adverse weather days, these remaining non-work or adverse weather days may be used as needed.
  - b. All approved non-work or adverse weather days are to be granted as excusable and non-compensable.
    - a. The timeframe for third party (Oregon Department of Transportation, Oregon City, or other property owners adjacent to the alignment) submittal review should be identified in the Design-Builder’s Baseline Project Schedule. Third party reviews may require additional time beyond the standard review period allowed for Owner Review. If necessary, additional time will be given to third parties. The Design-Builder shall allow thirty (30) calendar days for review by these parties

and any Party which is not under the control of Owner.

N. Baseline Schedule Submittals:

1. The Design-Builder shall submit their Baseline Project Schedule to Owner, to the owner provided electronic document control system (ProCore or similar) of all schedule files and reports.

O. Four Week Look Ahead Schedule:

1. The Contactor will develop a Four Week Look-Ahead schedule to be submitted by the Design-Builder on a weekly basis at the weekly progress meeting.
  - a. The Four Week Look-Ahead Schedule shall reflect the progress achieved in the previous week and forecast four weeks of planned progress
  - b. Creation of a Four Week Look-Ahead schedule is mandatory for discussion during the weekly progress and project logistics meetings. The Design-Builder shall be prepared to discuss any changes to the completion dates as related to the Current (CPM) schedule. Discussion of activity delays and mitigation of any delays to project completion milestones will be mandatory. Four Week Look-Ahead schedules generated during a given month shall be used for updating the Monthly (CPM) Schedule Update every month.

P. Monthly Schedule Updates (Critical Path Method):

1. Monthly Schedule Update Review:

- a. No later than the 25th of each month, the Design-Builder and Owner shall meet to agree on the progress of the Work performed and the Design-Builder shall update the Schedule accordingly. The Design-Builder shall incorporate and submit the approved progress percent complete into the Schedule. Upon review and verification of the progress percent completed, the Design-Builder shall submit their monthly invoice with the updated schedule.

2. Monthly Schedule Update Submittals.

- a. The Design-Builder shall submit the Monthly Schedule Update on or before the first (1st) day of each month. Following the Design-Builder's submittal of the Monthly Schedule Update, the Design-Builder and Owner will meet to discuss the Monthly Schedule Update and Reports. The Design-Builder's Monthly Schedule Update will consist of an editable electronic Schedule file uploaded to the owner provided electronic document control system, a written narrative and various schedule reports as listed below.
- b. Late submittal of the Monthly Schedule Update shall be cause for withholding the Progress pay application until such time that the Design-Builder submits a Contract compliant Monthly Schedule Update.

Q. Recovery Schedule:

1. A Recovery Schedule is required along with the submission of a monthly Progress Schedule Update if the monthly Progress Schedule Update shows a delay of more than two (2) weeks to the Contract Milestones. The Recovery Schedule will be a separate submittal from the monthly Progress Schedule Update. The separate submittal may be waived by Owner if it has been determined that the current schedule is acceptable and/or only minor changes in the current schedule are necessary.

R. Time Impact Analysis (TIA):

1. The Design-Builder shall submit a detailed Time Impact Analysis (TIA) to support any request for time extensions. Basis for evaluation of any time extension shall be made with the use of the Current schedule or the current schedule accepted for the time period in review. The Current schedule is the latest Owner accepted schedule and must contain all corrections requested by Owner. A Current Schedule that was accepted as noted cannot be used unless all items noted have been addressed. The Design-Builder shall provide justification for the time extension in a Change Request. This request shall include a narrative explaining the analysis. This TIA will be supported by fragnets created to demonstrate the effect of specific delays to the Current Schedule Critical Path as they occur. Each fragnet will consist of a sequence of the new activities and/or network revisions that are proposed to be added to the existing Schedule to illustrate the effect and method for incorporating actual delays as they are encountered. Additional formatting changes and level of detail provided as explanation of the proposed impacts may be requested from the Design-Builder by Owner. The Design-Builder must comply with all additional information requested.

S. Time Extensions:

1. If the Design-Builder is granted an extension for the time of completion of any milestone or Contract completion date under the provisions of the Contract, the determination of the total number of calendar days of time extension will be based upon Owner's analysis of the Schedule, and upon all data relevant to the extension including the Design-Builder's Time Impact Analysis. Such data shall be incorporated in the next monthly update of the Schedule.

T. As-Built Schedule:

- a. As-built Schedule and Documentation.
- b. Prior to final release of retention, and after all Contract work items are completed, the Design-Builder shall submit an "as-built" Contract Schedule (Schedule Data Disks, Reports, and Plots) showing actual start and finish dates and actual logic used for all work items and milestones, and actual expenditures of man-hours and costs.
- c. Provide a DVD of Schedule files with five (5) copies of reports, charts and narratives identified.
- d. The Design-Builder shall support the "As-Built Schedule" and "Final

Schedule Report” with a letter on the Company letter head that confirms all information in the As-Built Schedule is truthful and accurate pertaining to start and finish dates, as-built logic, cost and resource loading and final schedule report. The accompanying letter shall be signed by an officer of the Company.

**SC-19.** Insert the following at the end of SC-18:

## **ARTICLE 19 – SUBCONTRACTING**

### 19.01 Subcontracting

- A. The Design-Builder recognizes and accepts that the trade work Subcontractor and supplier selection and contracting procedures specified herein are intended to promote pricing or buyout of the Work in a fair and reasonable manner and to maintain fair and open competition. As such, all Work, except for services which are a part of the Design-Builder’s self-performance, shall be procured based upon competitive bids awarded to the lowest responsive and responsible bidder, as defined below.
- B. The Design-Builder shall develop lists of possible bidders to solicit bids for the Work Package(s). The Design-Builder shall conduct an outreach effort to attract broad interest among qualified bidders. It shall be the responsibility of the Design-Builder to contact potential bidders to develop a sufficient pool of bidders.
- C. If the Design-Builder is proposing to use a prequalification process, the Design-Builder shall provide pre-bid Subcontractor prequalification criteria to Owner for review. Prequalification criteria will be submitted in writing to Owner for its review prior to use. Owner will confirm that such prequalification criteria are fair and reasonable.
- D. The procurement of tunneling and marine construction trade partners must be made utilizing a qualification-based selection process.
- E. Owner may request notification of its prequalification selections, before notifying any Subcontractor of those selections.
- F. To the extent possible, the Design-Builder shall secure the commitment to bid on each Work Package from a minimum of three (3) bidders for each trade, unless Design-Builder elects to self-perform that work as permitted herein. The Design-Builder shall invite Owner to all pre-bid conferences, outreach events, bid openings and scope interviews on the Work Packages.
- G. The Design-Builder shall respond to bid questions and issue addenda as necessary during the bid periods and at pre-bid conferences, preconstruction conferences and walk-throughs. When needed, the Design-Builder shall consult with Owner to address the questions and addenda.
- H. In the event that Design-Builder obtains fewer than three bids, it shall provide Owner with a written justification of its efforts to obtain competition and, if it believes that it should proceed to award the subcontract with fewer than three (3) bidders, the justification therefore. No award shall be made where there are fewer than three (3) bidders without Owner's concurrence. Any sole source award must be issued

consistently with ORS 279B.075. Design-Builder should be aware that approval of award may be delayed when less than three (3) bids are obtained.

- I. OWNER shall be given reasonable and sufficient notice of bid openings for all subcontracts. Design-Builder shall submit to Owner a written copy of cost estimated budget for that Work package/subcontract's bid opening two (2) days before opening. Bid openings are to be held with Owner present.
- J. Upon receipt of bids:
  1. The Design-Builder shall record all bids received and provide recording sheets to Owner staff during the bid opening that include contractors budget/estimate for the work, the list of bidders, and any specific bid requirements that would deem a bidder non-responsive. The bids will be tabulated in a pre-approved format which allows for comparison of each GMP budgeted line item for review by the Design-Builder and Owner. The report shall also indicate all bids received and compare the lowest responsible, responsive bids with the cost estimate for that Work Package. Bidders should be discouraged from including clarifications and assumptions as these items may render the bidder nonresponsive to the scope requirements.
  2. The Design-Builder shall analyze the bid results for potential error, the spread of bid amounts, review the apparent low bids for responsiveness, responsibility and compliance with the Work Package. Scoping meetings with the Subcontractors are allowed to determine if the bidders understood the scope of work. However, Owner reserves the right to be present if such meeting takes place.
  3. Responsibility is defined as a bidder who has demonstrated that they understand the Scope of Work and have the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the applicable Work.



4. All non-responsive and non-responsible bids shall be rejected, and the reasons therefore documented and provided to Owner.
- K. Award shall be made to the responsive and responsible bidder that provides the best value. Design-Builder will notify Owner in writing of the selected Subcontractor, prior to awarding any subcontract. Design-Builder must allow time for the Subcontractor approval process.
- L. Before making award to a Subcontractor or material supplier, the Design-Builder shall obtain a letter of concurrence from Owner. This letter concurs that the Design-Builder has followed the procurement procedure.
- M. All subcontracts will be between the Design-Builder and the Subcontractors. Subcontracts should be written to protect Owner from impacts and claims arising from the work. A copy of every subcontract shall be furnished to Owner at least five (5) calendar days prior to execution of the subcontract by Design-Builder. The Design-Builder shall be responsible to Owner for the acts and omissions of its agents and employees, suppliers, Subcontractors performing work under a contract with the Design-Builder, and of its lower tier Subcontractors, agents or employees. The Design-Builder shall require each Subcontractor to be bound to the Design-Builder by the terms of the Contract Documents, and to assume toward the Design-Builder all applicable obligations and responsibilities which the Design-Builder, by these Documents, assumes toward Owner. The contract shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the Subcontractors that the subcontracting thereof will not prejudice such rights. Where appropriate, the Design-Builder shall require each Subcontractor to enter into similar contracts with their Subcontractors. The Design-Builder shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents and the Design-Builder's Summary Schedule, to which the Subcontractor shall similarly make copies of such Contract Documents available to their sub-Subcontractors. Each Subcontractor will be bound by this Special Condition. Subcontractors also shall be provided access to all RFI's, Schedule Updates, and any other information that arises during the performance of the work. No subcontract or purchase order shall bind or purport to bind Owner. Each subcontract or purchase order shall provide, without requiring the prior consent of the relevant Subcontractor or supplier, for assignment and delegation of such subcontract or purchase order by Design-Builder to Owner in the event of a Design-Builder Event of Default. If Owner elects to assume by assignment any subcontract or purchase order as described in this section, then Design-Builder shall enter into reasonable assignment documentation requested by Owner which may be required to effect such assignment.
- N. The Design-Builder shall make no substitution for any Subcontractor, person or entity previously selected without the prior written concurrence of Owner.

**SC-20** Insert the following at the end of Article 19 Subcontracting:

## **ARTICLE 20 - SELF-PERFORM WORK**

### 20.01 Self-Perform Work

- A. For all self-performed work the Design-Builder shall provide a written Self-Performed proposal to Owner for review and approval. The Self-Performed proposal shall contain the following information:
1. A detailed description of the scope of work to be Self-Performed;
  2. A detailed explanation of the effect of the Self-Performance on the Project; including but not limited to cost savings, schedule savings, benefits to the Project and risks associated with the decision to allow or disallow the Self Performance;
  3. A detailed component GMP (cGMP) cost breakdown (schedule of values) including, supervisory personnel, labor, materials (units and quantity), general requirements and coordination, and all other costs required to complete the Work.
    - a. Design fees for deliverables identified in the Scope of Work will not be allowed. Design fees are included in the Fixed Design Fee submitted as part of the Design-Builder's proposal.
    - b. The Design-Builder may charge an overhead and profit percentage consistent with values it normally charges for self-performed work. The Design-Builder's Fee shall not be added to any self-performed work.
- B. Payment application for work complete will be per Supplementary Conditions Article 14 Payment Procedures.
- C. Owner may retain third party consultants to review the Design-Builder's detailed cost breakdown for market realism. Owner will identify a third party cost consultant to review the Design-Builder's cost. The third party's assessment of cost will take priority in determining any cost disputes.
- D. Terms of the cGMP Self-Performed Work are as follows:
1. Any cost or schedule impacts to the project solely caused by the Design-Builder in the performance of the Self-Performed scope shall be borne by the Design-Builder and shall not be eligible for reimbursement.
  2. Component GMP price for Self-Performed General Conditions will be paid in accordance with the approved Schedule of Values.
  3. Any proposed Change Orders to the self-performed CGMP scope will be in accordance with General and Supplementary Conditions.

**END OF SECTION**



## License Agreement

### Before you use this EJCDC document:

1. **Read this License Agreement in its entirety.** As purchaser, you agree to comply with and are bound by the License Agreement's terms, conditions, and instructions when you use the attached EJCDC document. **Commencement of use of the attached document indicates your acceptance of these terms, conditions, and instructions.** If you do not agree to them, you should promptly return the materials to the vendor.
2. **This License Agreement applies to the attached document only. Other licensing terms and instructions may apply to other EJCDC documents.**
3. The Engineers Joint Contract Documents Committee ("EJCDC") provides **EJCDC Design and Construction Related Documents (including but not limited to the EJCDC document that is attached, and all other documents in the EJCDC Construction Series, Engineering Series, Design-Build Series, Remediation Series, Procurement Series, and Narrative Series)** and licenses their use worldwide. You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from **EJCDC Design and Construction Related Documents**.
4. You acknowledge that you understand that the text of the **EJCDC Design and Construction Related Documents** has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You further acknowledge that EJCDC documents are protected by the copyright laws of the United States.
5. Make sure that you have the correct word processing software for the attached EJCDC document, which is distributed in Microsoft Word (.doc) format.
6. EJCDC allows the end user wide discretion in using and editing the attached document, subject to the provisions of the License Agreement. You are advised, however, that EJCDC documents contain

numeric and other cross-references, and that changes to one part of the document may affect other parts. It is solely your responsibility to assure the adequacy and consistency of the final document for your purposes.

### How to Use This Document:

1. Although EJCDC has made reasonable efforts to achieve uniformity of formatting, some document controls (e.g., bold, underline, font size, indentation, numbering, pagination, table of contents) may be affected by software versioning and translators, user settings, changes during editing, and other factors, and may require user intervention to restore intended format and appearance.
2. The term "Standard EJCDC Text" for the attached document generally refers to all text prepared by EJCDC in the main body of the document, and does not include covers, logos, footers, instructions, license agreement, copyright notices, Notes to Users, or text options. The content of document exhibits (if any) is not Standard EJCDC Text for this purpose.
2. If you do not alter the Standard EJCDC Text of the attached document, you may use it as published, with all EJCDC logos, footers, and copyright notices retained.
3. If you modify the Standard EJCDC Text of the attached document, you must follow the following instructions that address if, when, and how to show the changes to other parties.
4. During the drafting or negotiating process for the document, it is important that the two contracting parties are both aware of any changes that have been made to the Standard EJCDC Text. Thus if a draft of the document purports to be or appears to be an EJCDC document, the user must plainly show all changes to the Standard EJCDC Text, using "Track Changes" (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.

5. As between contracting parties, once the document is ready to be finalized (and if applicable executed by the contracting parties), it is no longer necessary to continue to show changes to the Standard EJCDC Text. The parties may produce a final version of the document in a format in which all changes are accepted, and the document at that point does not need to include any "Track Changes," redline/strikeout, highlighting, or other indication of additions and deletions to the Standard EJCDC Text.
6. If the attached document is revised or altered and then presented to others (such as potential bidders, grant agencies, lenders, or sureties) as an EJCDC document, then the changes to the Standard EJCDC Text must be shown, or the third parties must receive access to a version that shows the changes.
7. The attached EJCDC document may contain "Notes to User," bracketed comments, or prompts that provide instructions for filling in project-specific information, selecting the appropriate clause from a list of options, or making additions or deletions, or that give background information regarding a particular provision. The user may (and in most cases should) delete these notes, comments, and prompts during the drafting process. Deletion of such notes, comments, and prompts is not subject to the License Agreement requirement that additions or deletions to Standard EJCDC Text be shown clearly, and therefore does not need to be shown with "Track Changes," redline/strikeout, highlighting, or other means of indicating changes, at any point in the drafting process.
8. The attached EJCDC document may contain exhibits that are to be used to set out project-specific provisions, such as scope of services, compensation, and insurance requirements. These exhibits are meant to be revised, supplemented, and altered by the user, or discarded if not applicable to the specific project. The text of the various exhibits is not considered Standard EJCDC Text and is not subject to the License Agreement requirement that additions or deletions to the Standard EJCDC Text be shown clearly, and therefore does not need to be shown with "Track Changes," redline/strikeout, highlighting, or other means of indicating changes, at any point in the drafting process.
9. In a few instances the EJCDC Notes to User will instruct the user of a document to choose one of two or more text options in the main body of the document. In such cases the options that are not selected should be discarded or deleted, and not included in the final version of the document. Such discarding or deletion of text options is not subject to the License Agreement requirement that additions or deletions to Standard EJCDC Text be shown clearly, and therefore does not need to be shown with highlighting, redline/strikeout, or other means of tracking changes, at any point in the drafting process. Note, however, that the text that is selected (which in this scenario is in the main body of the document and not in an exhibit) is Standard EJCDC Text, and any revision or alteration of the text that is selected is subject to the License Agreement requirement that additions or deletions to Standard EJCDC Text be shown clearly.
10. The License Agreement typically is removed when a document is being prepared for use on a specific project. Such removal is not subject to the License Agreement requirement that additions or deletions to Standard EJCDC Text be shown clearly, and therefore does not need to be shown with highlighting, redline/strikeout, or other means of tracking changes, at any point in the drafting process. The terms of the License Agreement remain in effect regardless of whether it has been removed or remains attached to the document.
11. When a document is being prepared for use on a specific project, some users remove the EJCDC front cover page, and the "inside front cover page" containing specific information regarding the EJCDC sponsoring organizations. Such removal is not subject to the License Agreement requirement that additions or deletions to Standard EJCDC Text be shown clearly, and therefore does not need to be shown with highlighting, redline/strikeout, or other means of tracking changes, at any point in the drafting process.
12. As purchaser of the attached document, you may choose to use it as the basis or platform for creating purchaser's own custom version. In such case you must remove all EJCDC logos, footers, and other items that might create the false impression that the document remains an EJCDC standard document, and the requirements regarding the need to show additions and deletions to the Standard EJCDC Text no longer apply. Note, however, that the copyright requirements of the License Agreement continue to apply.
13. A purchaser may choose to select clauses or sections of the attached document for inclusion in other non-EJCDC documents. When this occurs, do not use any EJCDC logos, footers, or other items that would imply that the receiving document is an EJCDC document. Note, however, that the copyright requirements of the License Agreement continue to apply.

**Limited License:**

As purchaser, you have a limited nonexclusive license to:

1. Use the attached EJCDC document on any number of machines owned, leased, or rented by your company or organization.
2. Use the attached EJCDC document for bona fide contractual and project purposes. Such purposes expressly include controlled distribution to bona fide bidders and proposers, either through direct transmittal in printed or electronic format or posting on a website or other electronic distribution point to which access is limited to bona fide bidders and proposers or others having direct interest in the contract or project.
3. Copy the attached EJCDC document into any machine-readable or printed form for backup or modification purposes in support of your use of the document.

**You further agree:**

1. To comply with all terms, conditions, and instructions in this License Agreement.
2. That all proprietary and intellectual property rights in the attached EJCDC document and all other **EJCDC Design and Construction Related Documents** are and shall remain the property of EJCDC and its sponsoring organizations.
3. To include the appropriate EJCDC copyright notice (selected from the versions below) on any copy, modified or finalized version, or portion of the attached EJCDC document. For this document, at a minimum one of the following EJCDC copyright notices must appear in a prominent location:

**If the standard EJCDC text is not altered, then use the copyright that is already stated in the published document:**

- Copyright © [EJCDC document date] National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers. All rights reserved.

If the standard EJCDC text has been altered, or if only portions of the EJCDC document have been used, then use the following copyright notice:

- **This document is a MODIFIED version of EJCDC® Z-xxx, Copyright © 20xx by the National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers, or is based in part on excerpts**

**from copyrighted EJCDC documents. Those portions of the text that originated in copyrighted EJCDC documents remain subject to the copyright.**

4. To not use, copy, modify, or transfer the attached EJCDC document or any other **EJCDC Design and Construction Related Documents**, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of the attached EJCDC document, or any other **EJCDC Design and Construction Related Document**, in printed or machine-readable format for resale, and any resale of this document in any format, are expressly prohibited. **Making the attached EJCDC document or any other EJCDC Design and Construction Related Document, in whole or in part, available or accessible on an uncontrolled, public-access website or other uncontrolled electronic distribution point—in any format whatever, whether with or without watermarks, as a Microsoft Word document or in portable document format (PDF)—is expressly prohibited.**
5. As an EJCDC limited licensee you may seek advance written permission from the EJCDC Copyright Administrator to use the attached EJCDC document for educational purposes, subject to terms and conditions to be established by the Copyright Administrator for the specific educational use.

**Term:**

**This license is effective for three years after date of purchase, or six years after the last day of the year of issuance for the attached document (shown in the copyright notice), whichever occurs later, and shall terminate at that time, unless earlier terminated as provided herein, or unless EJCDC extends the term of this license to you, in writing, or publishes on the ejcdc.org website or the websites of the National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers, an applicable extension of the term of license for a certain period of time for bona fide contractual and project or other authorized uses. You agree upon termination to destroy the attached **EJCDC Design and Construction Related Document** along with all copies, modifications and merged portions in any form (except those copies already in actual project or contract use, or maintained in files or records of completed projects).**

**EJCDC reserves the right during the term of this agreement to provide access to the purchased document through alternative means, based on improvements or changes in technology, or to transition the document to secure document platforms or other formats, while maintaining user's access privileges.**

EJCDC from time to time publishes new, updated editions of the **EJCDC Design and Construction Related Documents**. EJCDC highly recommends the use of the most current editions of its documents. EJCDC may, at its sole discretion, withdraw from authorized use any document that has been subsequently updated and for which the license has expired.

You may terminate the license at any time by destroying the attached EJCDC document together with all copies, modifications and merged portions in any form (except those copies already in actual project or contract use, or maintained in files or records of completed projects). It will also terminate upon conditions set forth elsewhere in this License Agreement or if you fail to comply with any term or condition of this License Agreement.

#### **Limited Warranty:**

If EJCDC has distributed this document on a compact disc, then EJCDC warrants the CD on which this document is furnished to be free from physical defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

**There is no other warranty of any kind, either express or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. You may also have other rights which vary from state to state.**

EJCDC does not warrant that the functions contained in **EJCDC Design and Construction Related Documents** will meet your requirements or that the operation of **EJCDC Design and Construction Related Documents** will be uninterrupted or error free.

#### **Limitations of Remedies:**

EJCDC's entire liability and your exclusive remedy shall be:

1. the replacement of the CD (if any) distributed by EJCDC, containing this document, provided such CD does not meet EJCDC's "Limited Warranty" and is returned to EJCDC's selling agent with a copy of your receipt, or
2. if EJCDC's selling agent is unable to deliver a replacement CD which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

As purchaser, you assume full responsibility for determining the suitability of this document to your purposes, and for the application and use of this document for contract or project purposes. To the fullest extent permitted by law, in no event will EJCDC, its sponsoring organizations, its committee members, attorneys, consultants, authorized vendors, or advisors, or their respective staff members, employees, agents, or contractors, be liable to you or any other party for any damages, including any lost profits, lost savings, contractual liabilities, disappointed commercial expectations, economic loss, or other direct, incidental, or consequential damages arising out of the content, unenforceability, insufficiency, inadequacy, use or inability to use the attached EJCDC document or any other **EJCDC Design and Construction Related Documents**, even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so portions of the above limitation or exclusion may not apply to you.

#### **General:**

You may not sublicense, assign, or transfer this license except as expressly provided in this License Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void. **If you transfer or purport to transfer such rights, duties, or obligations to another party, your license is automatically terminated.**

This License Agreement shall be governed by the laws of the State of Virginia. If you have any questions concerning this License Agreement, or any requests or inquiries regarding the EJCDC copyright, you may contact EJCDC by writing to:

EJCDC Copyright Administrator  
c/o National Society of Professional Engineers  
1420 King Street  
Alexandria, VA 22314  
Phone: (703) 684-2845  
Fax: (703) 836-4875  
e-mail: [aschwartz@nspe.org](mailto:aschwartz@nspe.org)

You acknowledge that you have read this License Agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the License Agreement and supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this License Agreement.

---

Information regarding the content of the attached EJDC document and other **EJDC Design and Construction Related Documents** may be obtained at [ejcdc.org](http://ejcdc.org) or from the following EJDC sponsoring organizations:

National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, D.C. 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

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

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

## STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with one of the three Agreements between Owner and Design-BUILDER (EJCDC® D-512, D-520, and D-525, 2016 Editions). Their provisions are interrelated and a change in one may necessitate a change in the others. The comments and instructions contained in the Guide to Use of EJCDC Design-Build Documents (EJCDC® D-001, 2016 Edition) are also carefully interrelated with the wording of these General Conditions.



Copyright © 2016:

National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

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

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

The copyright for this document is owned jointly by the three sponsoring organizations listed above. The National Society of Professional Engineers is the Copyright Administrator for the EJCDC documents; please direct all inquiries regarding EJCDC copyrights to NSPE.

NOTE: EJCDC publications may be purchased at [www.ejcdc.org](http://www.ejcdc.org), or from any of the sponsoring organizations above.

**STANDARD GENERAL CONDITIONS OF THE  
CONTRACT BETWEEN OWNER AND DESIGN-BUILDER**

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE 1 – DEFINITIONS AND TERMINOLOGY .....	1
1.01 Defined Terms.....	1
1.02 Terminology .....	6
ARTICLE 2 – PRELIMINARY MATTERS.....	7
2.01 Delivery of Bonds and Evidence of Insurance.....	7
2.02 Copies of Documents .....	7
2.03 Conceptual Documents.....	7
2.04 Before Starting the Work .....	8
2.05 Authorized Representatives.....	8
2.06 Initial Conference .....	8
2.07 Review of Schedules .....	8
2.08 Electronic Transmittals .....	9
ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE .....	9
3.01 Contract Documents .....	9
3.02 Reference Standards.....	10
3.03 Resolving Discrepancies.....	10
3.04 Ownership and Reuse of Documents.....	10
ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK .....	11
4.01 Commencement of Contract Times.....	11
4.02 Starting the Work.....	11
4.03 Progress Schedule .....	11
4.04 Delays in Design-Builder’s Progress .....	11
ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS .....	12
5.01 Availability of Lands .....	12
5.02 Use of Site and Other Areas.....	13
5.03 Reference Points .....	13
5.04 Differing Site Conditions .....	14
5.05 Underground Facilities.....	14

5.06	Hazardous Environmental Conditions at Site .....	16
ARTICLE 6 – BONDS AND INSURANCE.....		17
6.01	Performance, Payment, and Other Bonds.....	17
6.02	Insurance—General Provisions.....	18
6.03	Design-Builder’s Insurance.....	20
6.04	Owner’s Liability Insurance.....	23
6.05	Property Insurance.....	23
6.06	Waiver of Rights.....	25
6.07	Receipt and Application of Property Insurance Proceeds .....	26
ARTICLE 7 – DESIGN-BUILDER’S RESPONSIBILITIES.....		26
7.01	Design Professional Services.....	26
7.02	Construction.....	26
7.03	Supervision and Superintendence of Construction .....	27
7.04	Labor; Working Hours .....	27
7.05	Services, Materials, and Equipment .....	27
7.06	“Or Equals” and Substitutions.....	27
7.07	Concerning Project Design Professionals, Construction Subcontractors, Suppliers, and Others .....	28
7.08	Patent Fees and Royalties .....	29
7.09	Permits and Utility Charges.....	30
7.10	Taxes .....	30
7.11	Laws and Regulations.....	30
7.12	Record Documents.....	31
7.13	Safety and Protection .....	31
7.14	Safety Representative .....	32
7.15	Hazard Communication Programs .....	32
7.16	Emergencies.....	32
7.17	Post-Construction Phase.....	32
7.18	Design-Builder’s General Warranty and Guarantee .....	33
7.19	Indemnification.....	33
ARTICLE 8 – SUBMITTALS.....		34
8.01	Design-Builder’s Preparation of Submittals.....	34
8.02	Owner’s Review of Submittals.....	35

ARTICLE 9 – OTHER CONSTRUCTION .....	36
9.01 Other Work .....	36
9.02 Coordination .....	37
9.03 Legal Relationships.....	37
ARTICLE 10 – OWNER’S RESPONSIBILITIES .....	38
10.01 General.....	38
10.02 Insurance.....	40
10.03 Limitations on Owner’s Responsibilities .....	40
10.04 Undisclosed Hazardous Environmental Condition.....	40
10.05 Owner’s Site Representative.....	40
10.06 Owner’s Consultants and Managers.....	40
10.07 Safety Programs .....	40
10.08 Permits and Approvals.....	41
ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK.....	41
11.01 Amending and Supplementing Contract Documents .....	41
11.02 Authorized Changes in the Work .....	41
11.03 Unauthorized Changes in the Work.....	41
11.04 Changes Involving the Design .....	42
11.05 Change of Contract Price .....	42
11.06 Change of Contract Times.....	43
11.07 Execution of Change Orders .....	43
11.08 Notice to Sureties.....	44
ARTICLE 12 – COST OF THE WORK ADJUSTMENTS; UNIT PRICE WORK.....	44
12.01 Cost of the Work .....	44
12.02 Unit Price Work.....	47
ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION.....	47
13.01 Access to Construction.....	47
13.02 Tests, Inspections, and Approvals.....	47
13.03 Uncovering Construction .....	48
13.04 Defective Construction .....	49
13.05 Owner May Correct Defective Construction.....	49
13.06 Costs.....	49

13.07	Owner’s Acceptance of Defective Construction .....	50
13.08	Owner May Stop Construction .....	50
ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION.....		50
14.01	Progress Payments.....	50
14.02	Design-Builder’s Warranty of Title.....	52
14.03	Substantial Completion.....	52
14.04	Partial Use or Occupancy .....	53
14.05	Final Inspection .....	54
14.06	Final Payment.....	54
14.07	Waiver of Claims .....	55
14.08	Correction Period .....	55
ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION .....		56
15.01	Owner May Suspend Work .....	56
15.02	Owner May Terminate for Cause.....	56
15.03	Owner May Terminate for Convenience .....	57
15.04	Design-Builder May Stop Work or Terminate.....	57
ARTICLE 16 – DISPUTES.....		57
16.01	Methods and Procedures.....	57
ARTICLE 17 – MISCELLANEOUS .....		58
17.01	Giving Notice.....	58
17.02	Computation of Times .....	58
17.03	Cumulative Remedies .....	59
17.04	Limitation of Damages .....	59
17.05	No Waiver .....	59
17.06	Survival of Obligations .....	59
17.07	Controlling Law .....	59
17.08	Headings.....	59

# STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*: Written or graphic instruments issued by Owner prior to the opening of Proposals which clarify, correct, or change the Request for Qualifications, Request for Proposals, or the proposed Contract Documents, including the Conceptual Documents.
  2. *Agreement*: The written instrument, executed by Owner and Design-Builder, that sets forth the Contract Price and Contract Times, identifies the parties, and designates the specific items that are Contract Documents.
  3. *Application for Payment*: The form which is to be used by Design-Builder 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. *Authorized Representative*: The individual designated by a party to represent it with respect to this Contract, as indicated in the Agreement.
  5. *Change Order*: A document which is signed by Design-Builder 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.
  6. *Claim*: A demand or assertion by Owner or Design-Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A request or proposal for a Change Order is not a Claim.
  7. *Conceptual Documents*: The documents prepared by or for the Owner to describe the Work to be performed, issued to Proposers during the design-builder selection process, and expressly identified in the Agreement.
  8. *Constituent of Concern*: Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other Laws or Regulations regulating,

relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction*: The part of the Work that consists generally of making physical improvements at the Site, and is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work (including any correction of defective Construction), and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents and Construction Drawings and Construction Specifications, as duly modified.
10. *Construction Drawings*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or specific portions of the Construction, and consisting of drawings, diagrams, illustrations, schedules, and other data that graphically show the scope, extent, and character of the Construction (or specific portions of the Construction) to be performed by or for Design-Builder. Construction Drawings are not Contract Documents.
11. *Construction Specifications*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or a specific portion of the Construction, and consisting of written requirements for materials, equipment, systems, standards, workmanship, and administrative procedures as applied to the Construction (or a specific portion of the Construction). Construction Specifications are not Contract Documents.
12. *Construction Subcontract*: A written agreement between Design-Builder and a Construction Subcontractor for provision of all or a portion of the Construction, and any delegated Design Professional Services.
13. *Construction Subcontractor*: An individual or entity (other than a Supplier) having a direct contract with Design-Builder or with any other Construction Subcontractor for the performance of a part of the Construction, and any delegated Design Professional Services.
14. *Contract*: The entire and integrated written agreement between Owner and Design-Builder concerning the Work.
15. *Contract Documents*: Those items so designated in the Agreement, and which together comprise the Contract.
16. *Contract Price*: The money that Owner has agreed to pay Design-Builder for completion of the Work in accordance with the Contract Documents.
17. *Contract Times*: The numbers of days or the dates stated in the Agreement to (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
18. *Design-Builder*: The individual or entity with which Owner has contracted for performance of the Work, as designated in the Agreement.
19. *Design Professional Services*: That part of the Work comprised of the furnishing of engineering, surveying, architecture, and other design services, and including but not limited to providing research, analysis, and conclusions regarding engineering and related matters; exercising professional judgment with respect to technical issues; the preparation of plans, reports, calculations, models, schematics, drawings, specifications,

Design Submittals, the Construction Drawings, Construction Specifications, and other instruments of service; other services included in the Contract Documents and required to be performed by or under the responsible charge of licensed design professionals; and the review of shop drawings, observation of construction, response to requests for information or interpretation, analysis of the technical aspects of Change Orders, and other engineering and related professional services provided by or for licensed design professionals during Construction.

20. *Design Agreement*: A written agreement between Design-Builder and a design firm or entity for provision of Design Professional Services.
21. *Design Submittal*: A Submittal that pursuant to Laws and Regulations or this Contract must be prepared by or under the supervision of a licensed engineer or other licensed design professional, including drawings, specifications, Construction Drawings, Construction Specifications, and revisions to such documents (but not including Record Documents).
22. *Effective Date of the Contract*: The date indicated in the Agreement on which the Contract becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
23. *Engineer*: The Project Design Professional identified as Engineer in the Agreement, and engaged by Design-Builder to provide engineering and related professional services under a Design Agreement.
24. *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.
25. *Laws and Regulations; Laws or Regulations*: Any and all applicable laws, statutes, rules, regulations, ordinances, binding resolutions, codes, decrees, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*: Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*: A principal event in the performance of the Work that the Contract requires Design-Builder to achieve by an intermediate completion date or by a time prior to Substantial Completion of Construction.
28. *Notice of Award*: The written notice by Owner to a Proposer stating that Owner will enter into the design-build contract with the Proposer.
29. *Notice to Proceed*: A written notice by Owner to Design-Builder fixing the date on which the Contract Times will commence to run and on which Design-Builder shall start to perform the Work.
30. *Owner*: The individual or entity with which Design-Builder has contracted regarding the Work, and which has agreed to pay Design-Builder for the performance of the Work, pursuant to the terms of the Contract.



31. *Owner's Consultant*: An individual or entity with which the Owner has contracted to furnish services (typically including planning, preparation of Conceptual Documents, and advisory services) to Owner with respect to the Project, and which is identified as such in the Agreement.
32. *Owner's Site Representative*: A representative of Owner at the Site, as indicated in Paragraph 10.05.
33. *Project*: The total undertaking to be accomplished for Owner by engineers, consultants, Design-Builder, subcontractors, and others, including planning, study, design, construction, testing, start-up, and commissioning, and of which the Work to be performed under the Contract Documents is a part.
34. *Project Design Professionals*: The Engineer and any other independent entities or individuals, or employees of Design-Builder, engaged by Design-Builder or a Construction Subcontractor to provide Design Professional Services with respect to a portion of the Work.
35. *Proposal*: The documents submitted by Design-Builder in response to the Request for Proposals, setting forth technical concepts, proposed prices, and other conditions for the Work to be performed, and stating any proposed revisions, modifications, clarifications, exceptions, or supplements to the proposed Contract Documents.
36. *Proposal Amendment*: A Contract Document that is prepared after submittal of Design-Builder's Proposal; identifies mutually agreed revisions, modifications, exceptions, supplements, and clarifications to the Proposal or proposed Contract Documents; and is executed by Owner and Design-Builder.
37. *Proposer*: An entity that submits a Statement of Qualifications or Proposal to Owner.
38. *Record Documents*: The record copy of all Construction Drawings, Construction Specifications, Addenda, Change Orders, Work Change Directives, and approved Submittals maintained by Design-Builder at the Site, including any annotations to such documents made by Design-Builder during Construction.
39. *Record Drawings and Record Specifications*: Documents depicting the completed Project, or a specific portion of the completed Project, based on or comprised of the Record Documents delivered to Owner by Design-Builder at the completion of the Construction.
40. *Request for Proposals*: The document prepared by or for Owner specifying and describing Owner's objectives, the procedures to be followed in preparing and submitting a Proposal, and the process for evaluating Proposals and awarding a contract.
41. *Request for Qualifications*: The document prepared by or for Owner requesting that Proposers submit a Statement of Qualifications with respect to their candidacy for selection as Design-Builder.
42. *Schedule of Values*: A schedule, prepared and maintained by Design-Builder, allocating portions of the Contract Price to various portions of the Work, and used as the basis for reviewing Design-Builder's Applications for Payment.

43. *Site*: Lands or areas indicated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of Design-Builder.
44. *Statement of Qualifications*: The document submitted by a Proposer in response to the Request for Qualifications, including any completed forms, attachments, and exhibits.
45. *Submittal*: A written or graphic document, prepared by or for Design-Builder, which the Contract Documents require the Design-Builder to submit to the Owner. Submittals may include reports, preliminary drawings and specifications, cost estimates, proposed Construction Drawings and Construction Specifications, progress schedules, cash flow projections, Schedules of Values, shop drawings, product data, samples, delegated designs, certifications, proposed modifications to the Construction Drawings and Construction Specifications, results of tests and evaluations, results of source quality control testing and inspections, results of field or Site quality control testing and evaluations, sustainable design information, information on special procedures, operations and maintenance data, sustainable design closeout information, record documents, records of spare parts and extra stock materials, and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner or not, are not Contract Documents. Claims, notices, Change Orders, Applications for Payment, and requests for information/interpretation are not Submittals.
46. *Substantial Completion*: The time at which the Construction (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction (or the 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 Construction refer to Substantial Completion thereof.
47. *Supplementary Conditions*: The part of the Contract Documents which amends or supplements these General Conditions.
48. *Supplier*: A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Design-Builder or with any Construction Subcontractor to furnish materials or equipment to be incorporated in the Work by Design-Builder or a Construction Subcontractor, and any lessor of rental equipment used by Design-Builder or a Construction Subcontractor during Construction at the Site.
49. *Technical Data*: Data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding (a) subsurface conditions at the Site, (b) physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), or (c) environmental conditions at the Site, that are set forth in any geotechnical or environmental report prepared for the Project and relied upon by Design-Builder in agreeing to a price (either stipulated, or a Guaranteed Maximum Price) that includes Construction.
50. *Underground Facilities*: All underground lines, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems, including but not limited to those that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light,

heat, gases, oil, crude products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, fire or police signal systems, or traffic or other control systems; and any encasements containing such facilities or systems.

51. *Underground Facilities Data*: Information and data shown or indicated in the Contract Documents or otherwise provided to Design-Builder by Owner with respect to existing Underground Facilities at or adjacent to the Site.
52. *Unit Price Work*: Work to be paid for on the basis of unit prices.
53. *Work*: The entire design and construction or the various separately identifiable parts thereof required to be performed or furnished by Design-Builder under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents and all labor, services, and documentation necessary to produce such Design Professional Services and Construction; furnishing, installing, and incorporating all materials and equipment into such Construction; and related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
54. *Work Change Directive*: A written directive to Design-Builder, issued on or after the Effective Date of the Contract, signed by Owner, ordering an addition, deletion or revision in the Work.

#### 1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B are not defined terms that require initial capital letters, but when used in the Contract Documents have the indicated meanings.
- B. *Intent of Certain Terms or Adjectives*:
  1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
  2. The word “defective,” when modifying the word “Construction” refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner’s final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.
  3. 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.
  4. 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 or equipment complete and ready for intended use.

5. 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.
6. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design-Builder, “provide” is implied.
7. 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 that meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Bonds and Evidence of Insurance***

- A. *Bonds*: When Design-Builder delivers the executed Agreements to Owner, Design-Builder shall also deliver to Owner such Bonds as Design-Builder may be required to furnish in accordance with Paragraph 6.01.A.
- B. *Evidence of Insurance*: Before any Work is started, Design-Builder and Owner shall each deliver to the other those certificates of insurance that Design-Builder and Owner respectively are required to purchase and maintain in accordance with Article 6.

### **2.02 *Copies of Documents***

- A. Owner shall furnish to Design-Builder 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. Owner shall make such original printed record version of the Contract available to Design-Builder for review.

### **2.03 *Conceptual Documents***

- A. *Design-Builder’s Review of Conceptual Documents*:
  1. Design-Builder acknowledges that the Conceptual Documents furnished by Owner are preliminary and incomplete, and subject to stated limitations and reservations.
  2. Design-Builder shall carefully review, analyze, and verify the contents and suitability of the Conceptual Documents before proceeding with the Work (including but not limited to the Design Professional Services).
  3. Design-Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy that Design-Builder may discover in the Conceptual Documents, whether during such review or at any later point.
  4. Upon receipt of a report from Design-Builder that there is a conflict, error, ambiguity, or discrepancy in the Conceptual Documents, Owner shall either provide a written interpretation, clarification, or correction to Design-Builder, or authorize Design-Builder to correct or resolve the issue under a Change Order providing an equitable adjustment in Contract Times or Contract Price, or both.

5. Design-Builder shall not proceed with any Work affected by a reported conflict, error, ambiguity, or discrepancy in the Conceptual Documents until the issue is resolved.
- B. Owner shall not be responsible for any deficiency in the Conceptual Documents that Design-Builder does not discover or report to Owner.
- C. Subject to the foregoing review and reporting obligations, Design-Builder may use the Conceptual Documents as a partial basis for performing or furnishing Design Professional Services, including the preparation of Design Submittals such as the Construction Drawings and Construction Specifications, but despite any such use of the Conceptual Documents the Design-Builder nonetheless shall be responsible to Owner for the quality and soundness of the Design Professional Services.

#### 2.04 *Before Starting the Work*

- A. *Preliminary Schedules:* Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design-Builder shall submit the following to Owner for Owner's timely review:
  1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  2. A preliminary schedule of Submittals (including Design Submittals) which will list each required Submittal and the times for submitting, reviewing, and processing each Submittal;
  3. A preliminary Schedule of Values for all of the Work which will include 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; and
  4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

#### 2.05 *Authorized Representatives*

- A. The Authorized Representative for each party has been designated in the Agreement. A party may change its Authorized Representative at any time by giving notice to the other party of the name, mailing and delivery addresses, e-mail address, and telephone numbers of the new Authorized Representative.

#### 2.06 *Initial Conference*

- A. Within 20 days after the Contract Times start to run, Design-Builder will arrange a conference attended by Owner and Design-Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in Paragraph 2.04.A, procedures for handling Submittals, processing Applications for Payment, maintaining required records, and other matters.

#### 2.07 *Review of Schedules*

- A. Not less than 10 days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design-Builder will arrange a conference attended by Design-Builder, Owner, and others as appropriate to review and discuss the

schedules submitted in accordance with Paragraph 2.04.A. Design-Builder shall have an additional 10 days after the conference to make corrections and adjustments and to complete and resubmit the schedules for Owner's acceptance. No progress payment shall be made to Design-Builder until Design-Builder submits schedules that comply with the following requirements:

1. Design-Builder's progress schedule shall provide an orderly progression of the Work to completion within any specified Milestones and the Contract Times.
2. Design-Builder's schedule of Submittals shall provide a workable arrangement for submitting, reviewing, and processing Submittals in accordance with Article 8.
3. Design-Builder's Schedule of Values shall provide a reasonable allocation of the Contract Price to component parts of the Work.

#### 2.08 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner and Design-Builder may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to 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 and Design-Builder shall jointly develop such protocols.
- C. Unless expressly stated otherwise elsewhere in this Contract, Design-Builder shall not be obligated to furnish documents (including but not limited to Construction Drawings, Construction Specifications, or Record Drawings and Record Specifications) to Owner in any executable, native-file format.
- D. 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, AMENDING, REUSE**

#### 3.01 *Contract Documents*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents to require the design and construction of a functionally complete project (or part thereof).
- C. Design-Builder shall prepare or furnish Construction Drawings and Construction Specifications that are in accord with the Contract Documents and that describe a functionally complete Project (or part thereof) to be constructed in accordance with such Construction Drawings and Construction Specifications, as duly modified.
- D. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
- E. Design-Builder will furnish or perform all labor, documentation, services (including professional services), materials, and equipment that may reasonably be inferred from the

Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called, for at no additional cost to Owner.

### 3.02 *Reference Standards*

#### A. *Standards, Specifications, Codes, Laws or Regulations:*

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, Design-Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner or its officers, directors, members, partners, employees, agents, consultants, or subcontractors any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Resolving Discrepancies*

- A. If there is a discrepancy between (1) the Conceptual Documents or other Contract Documents issued with the Request for Qualifications or Request for Proposals and (2) the Proposal, the Proposal will control.
- B. If there is a discrepancy between (1) the Conceptual Documents, other Contract Documents issued with the Request for Qualifications or Request for Proposals, or the Proposal and (2) the Proposal Amendment, the Proposal Amendment will control.
- C. If there is a discrepancy between (1) the Contract Documents and (2) the Construction Drawings and Construction Specifications, the Contract Documents will control unless Design-Builder gave notice of the discrepancy in a Submittal, and Owner approved the Submittal, pursuant to the provisions of Article 8.

### 3.04 *Ownership and Reuse of Documents*

- A. All documents prepared for or furnished to Owner by Design-Builder pursuant to this Contract (including but not limited to Design Submittals) are instruments of service. With respect to such documents:
  1. Design-Builder shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in the documents.
  2. During the course of the Project, Design-Builder will provide copies of Design Submittals to Owner for purposes of review and comment. Owner may retain copies of such documents for its records.
  3. Owner may use its copy of the Record Drawings and Record Specifications for Owner's purposes in operating and maintaining the constructed facilities.
  4. Upon Owner's termination of this Contract for cause pursuant to Paragraph 15.02, Owner shall receive a limited, non-exclusive license to use any completed Design Submittals in continuing the Project, subject to the limitations in this Paragraph 3.04.

5. The documents prepared or furnished by Design-Builder under this Contract, regardless of ownership, transfer, license, completion status, or termination of the Contract, are for Design-Builder's use, and are not intended or represented to be suitable for use on the Project by Owner or any party other than Design-Builder, or for reuse by Owner or others on extensions of the Project or on any other project, except as otherwise stated in this Contract. Any use or reuse by Owner or others on Owner's behalf will be at Owner's sole risk, and without liability or legal exposure to Design-Builder, the Project Design Professionals, or their subconsultants, and Owner shall indemnify and hold harmless Design-Builder, the Project Design Professionals, and their subconsultants from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from any such use or reuse.

#### **ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

##### **4.01 *Commencement of Contract Times***

- A. The Contract Times will commence to run on the Effective Date of the Contract.

##### **4.02 *Starting the Work***

- A. Design-Builder shall start to perform the Work as of the Effective Date of the Contract. No Construction shall be done at the Site prior to the Effective Date of the Contract.

##### **4.03 *Progress Schedule***

- A. Owner may rely on the progress schedule established in accordance with Paragraph 2.04, as duly adjusted, in planning and conducting ongoing operations and other work at the Site.
- B. Design-Builder shall adhere to the progress schedule established in accordance with Paragraph 2.04 as it may be adjusted from time to time, as provided below:
  1. Design-Builder shall submit to Owner proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Owner shall accept such adjustments provided that Owner, in planning and conducting ongoing operations and other work at the Site, has not reasonably relied on the schedule element that is proposed to be adjusted. If Owner has so relied, then Owner and Design-Builder shall promptly meet and seek a resolution that addresses the objectives of both parties, or adjust the Contract Price.
  2. Design-Builder shall submit proposed adjustments in the progress schedule that will change the Contract Times (including Milestones) in accordance with the requirements of Paragraph 11.06. Such adjustments may only be made by a Change Order.
- C. *Continuing the Work:* Design-Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Design-Builder and Owner may otherwise agree in writing.

##### **4.04 *Delays in Design-Builder's Progress***

- A. If Owner or anyone for whom Owner is responsible delays, disrupts, or interferes with the performance or progress of the Work, then Design-Builder shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.



- B. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference within the control of Design-Builder. Delay, disruption, and interference attributable to and within the control of a Project Design Professional, Construction Subcontractor, or Supplier shall be deemed to be delays within the control of Design-Builder.
- C. If Design-Builder's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Design-Builder, and those for which they are responsible, then Design-Builder shall be entitled to an equitable adjustment in Contract Times. Design-Builder's entitlement to such an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design-Builder'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 9); 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 9.03 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. Design-Builder 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 Design-Builder.
- G. If Design-Builder seeks an adjustment in Contract Price or Contract Times under this paragraph, Design-Builder shall submit a request for a Change Order to Owner within 30 days of the commencement of the delaying, disrupting, or interfering event.

**ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

**5.01 Availability of Lands**

- A. Owner shall furnish the Site. Owner shall notify Design-Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Design-Builder will have to comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Design-Builder with a current statement of record legal title and legal description of the lands upon which the

Construction is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws or Regulations.

- C. Design-Builder 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. Design-Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of Work, Design-Builder shall promptly settle with such other party by negotiation, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law.
3. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's consultants, and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design-Builder's performance of the Construction.

B. *Removal of Debris:* During the performance of the Construction, Design-Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. *Cleaning:* Prior to Substantial Completion, Design-Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design-Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

## 5.03 *Reference Points*

- A. Design-Builder shall be responsible for laying out the Work and shall protect and preserve reference points and property monuments established by Owner, and shall make no changes or relocations of such reference points or monuments without the prior written approval of Owner. Design-Builder shall report to Owner 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.

5.04 *Differing Site Conditions*

- A. Design-Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site (whether discovered during investigation of the Site or during Construction) which differ materially from those indicated in the Contract Documents, or in any Technical Data, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.
- B. Owner will investigate the Site conditions promptly after receiving the notice. Design-Builder shall supplement the notice by promptly submitting to Owner any additional information regarding schedule and cost impacts, and a specific request for a Change Order. Owner shall then make a determination regarding the site condition and the impact, if any, on Contract Price and Contract Times. If the conditions do materially so differ and cause an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11.
- C. No request by Design-Builder for an equitable adjustment under this Paragraph 5.04 shall be allowed unless Design-Builder has given the written notice required.
- D. The provisions of this Paragraph 5.04 are not intended to apply to a Hazardous Environmental Condition or Underground Facility uncovered or revealed at the Site.

5.05 *Underground Facilities*

- A. *Procedure for Identifying Underground Facilities:* Promptly after the Effective Date of the Contract, Design-Builder shall review the Underground Facilities Data furnished by Owner and use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as a basis for establishing a procedure ("Underground Facilities Procedure") for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site. Design-Builder shall establish and use the Underground Facilities Procedure to aid in the provision of Design Professional Services and the performance of Construction, and to reduce and manage risks associated with Underground Facilities. Such Underground Facilities Procedure shall take into account the Site and the nature of the Project.
  - 1. The Underground Facilities Procedure shall include a plan to keep Underground Facilities information current as Design-Builder proceeds with the provision of Design Professional Services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.
  - 2. To manage the potential impact of design changes on Underground Facilities, Design-Builder shall modify or reapply the Underground Facilities Procedure as the design progresses and changes.

- B. *Design-Builder's Responsibilities:* Unless otherwise expressly provided in the Contract, Design-Builder shall have full responsibility for the following; and, subject to the provisions of Paragraphs 5.05.C, D, and E, the cost of all of the following will be included in the Contract Price:
1. Establishing and executing the Underground Facilities Procedure referred to in Paragraph 5.05.A, including updating, modification, and reapplication duties;
  2. Coordinating the Work with the owners (including Owner) of such Underground Facilities, during the provision of Design Professional Services and Construction;
  3. Verifying the actual location of specific Underground Facilities through exposure, as needed for the Design Professional Services;
  4. Complying with applicable state and local utility damage prevention Laws and Regulations during Construction; and
  5. The safety and protection of all existing Underground Facilities at the Site, and repairing any damage to such Underground Facilities resulting from the Construction, subject to the provisions of Paragraph 5.05.D.
- C. *Results of Design-Builder's Execution of Underground Facilities Procedure:* If, during the execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, the Design-Builder identifies an Underground Facility that was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, causing an increase or decrease in the Design-Builder's cost of, or the time required for, providing Design Professional Services or performing the Construction, then Design-Builder shall submit to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the identification of the Underground Facility in question.
- D. *Underground Facility Found During Construction:* If Design-Builder believes that an Underground Facility that is uncovered, exposed, or revealed at the Site during Construction was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and also that such Underground Facility was not identified or mapped with reasonable accuracy despite Design-Builder's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, then Design-Builder shall promptly give written notice to Owner, and supplement the notice by submitting to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the uncovering or revealing of the Underground Facility in question.
1. *Owner's Review:* Owner will investigate the Underground Facility found during Construction promptly after receiving the notice. If Owner concurs with Design-Builder that the Underground Facility that is uncovered, exposed, or revealed at the Site was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and further was not identified or mapped with reasonable accuracy despite Design-Builder's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, causing an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the actual location, then an equitable adjustment shall be made under this clause and the Contract Price or Times

modified in writing by Change Order in accordance with Article 11. If Owner does not concur with Design-Builder, then Owner shall so indicate in writing, with a specific explanation of the reason for non-concurrence.

2. No request by Design-Builder for an equitable adjustment under Paragraph 5.05.D shall be allowed unless Design-Builder has given the written notice required.
- E. *Inadequate Establishment or Execution of Underground Facilities Procedure:* If Design-Builder does not establish an Underground Facilities Procedure that is (1) adequate for the Site and the nature of the Project and (2) consistent with the guidelines set forth in ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," or Design-Builder does not adequately execute a duly established Underground Facilities Procedure, then Design-Builder shall bear all costs associated with the presence of an Underground Facility that was not identified or located with reasonable accuracy, including but not limited to delay, redesign, relocation, and increased Construction costs, if such Underground Facility would have been identified and located with reasonable accuracy by an adequate and properly executed Underground Facilities Procedure that was consistent with ASCE 38.

#### 5.06 *Hazardous Environmental Conditions at Site*

- A. *Reliance by Design-Builder on Technical Data Authorized:* Design-Builder may rely on the accuracy of the Technical Data with respect to environmental conditions at the Site.
- B. Design-Builder 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.
- C. Design-Builder shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Design-Builder, Project Design Professionals, Construction Subcontractors, Suppliers, or anyone else for whom Design-Builder 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.
- D. If Design-Builder encounters, uncovers, or reveals a Hazardous Environmental Condition (whether during Site investigation or during Construction) whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Design-Builder or anyone for whom Design-Builder is responsible creates a Hazardous Environmental Condition, then Design-Builder 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 7.16); and (3) notify Owner (and promptly thereafter confirm such notice in writing). Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take corrective action, if any, and take such actions as are necessary to permit Owner to timely obtain required permits and provide Design-Builder the written notice required by Paragraph 5.06.E. If Design-Builder or anyone for whom Design-Builder 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.

- E. Design-Builder 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 Design-Builder 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.
- F. If after receipt of such written notice Design-Builder 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 the portion of the Work that is in the area affected by such condition shall 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 9.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Design-Builder, Project Design Professionals, Construction Subcontractors, 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 Contract Documents or the Technical Data, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner 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 the Design-Builder's failure to control, contain, or remove a Constituent of Concern brought to the Site by Design-Builder or by anyone for whom Design-Builder is responsible, or to a Hazardous Environmental Condition created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.H shall obligate Design-Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

## **ARTICLE 6 – BONDS AND INSURANCE**

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

- A. Design-Builder 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 Design-Builder'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 14.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other specific provisions of the Contract. Design-Builder 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. Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder has failed to obtain a required bond, Owner may exclude the Design-Builder from the Site and exercise Owner’s termination rights under Article 15.
- F. Upon request to either Owner or Design-Builder from any Construction Subcontractor, Project Design Professional, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, the recipient of the request shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Design-Builder 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 Design-Builder 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. All insurance required by the Contract to be purchased and maintained by Design-Builder shall be primary and without contribution by insurance maintained by Owner.
- D. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly permitted in the Supplementary Conditions.
- E. Design-Builder shall require (a) its Construction Subcontractors and Engineer (and any other Project Design Professional that is an independent individual or entity) to purchase and maintain commercial general liability, automobile liability, workers’ compensation,

employer's liability, professional liability (as applicable), and umbrella or excess liability insurance, and (b) its Construction Subcontractors to purchase and maintain contractor's pollution liability insurance. All such required insurance shall meet the same requirements for the applicable category of insurance established in this Contract for Design-Builder, unless otherwise indicated in the Supplementary Conditions.

- F. Design-Builder shall deliver to Owner, with copies to each additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Design-Builder has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Design-Builder shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if permitted) and deductibles, and evidence of insurance required to be purchased and maintained by Design-Builder's Construction Subcontractors, Engineer, and any other Project Design Professional that is an independent individual or entity. Design-Builder may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- G. Owner shall deliver to Design-Builder, with copies to each 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 Design-Builder 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.
- H. Failure of Owner or Design-Builder to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Design-Builder 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.
- I. 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.
- J. If Design-Builder has failed to obtain and maintain required insurance, Owner may exclude the Design-Builder from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.
- K. 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.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design-Builder or Design-Builder's interests.



- M. The insurance and insurance limits required herein shall not be deemed as a limitation on Design-Builder's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Design-Builder's Insurance*

- A. *Workers' Compensation and Employer's Liability*: Design-Builder 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 Design-Builder'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*: Design-Builder shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Design-Builder, on an occurrence basis, against:
1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design-Builder'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*: Design-Builder'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. Design-Builder 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 Design-Builder's contractual indemnity obligations in Paragraph 7.19.
  3. Broad form property damage coverage.
  4. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  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). If Design-Builder demonstrates to Owner that the specified ISO endorsements are not commercially available, then Design-Builder may satisfy this requirement by providing equivalent endorsements.

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. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, shall not include any of the following:
1. Any modification of the standard definition of "insured contract."
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs.
  4. Any exclusion of coverage relating to earth movement.
  5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability.
  6. Any limitation or exclusion based on the nature of Design-Builder's work.
  7. Any professional liability exclusion broader in effect than ISO form CG 22 79 07 98.
- E. *Automobile liability:* Design-Builder 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.
- F. *Umbrella or excess liability:* Design-Builder 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 be procured on a "follow the form" basis as to each and every one of the underlying policies. Design-Builder may meet the combined limits of insurance (underlying policy plus applicable umbrella or excess) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy that follows the form of the underlying policy, as specified herein.
- G. *Contractor's pollution liability insurance:* Design-Builder 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 Design-Builder's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- H. *Additional insureds:* The Design-Builder's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and any individuals or entities identified as required additional insureds 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. Design-Builder shall obtain all necessary endorsements to support these requirements.

I. *Professional liability insurance:*

1. Design-Builder shall be responsible for purchasing and maintaining 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 Design-Builder is legally liable.
2. If in the performance of this Contract any Design Professional Services, or other professional engineering or similar services, are to be performed by an independent design professional, under direct contract to Design-Builder or at any lower contractual tier, then Design-Builder shall be responsible for assuring that such independent design professional purchases and maintains 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 independent design professional is legally liable.
3. If a Construction Subcontractor at any tier will provide or furnish design, engineering, or other similar professional services under this Contract, as the result of a delegation of professional design responsibilities or otherwise, then Design-Builder shall assure that such Construction Subcontractor purchases and maintains 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.
4. Any professional liability insurance required under this Contract shall be maintained throughout the duration of the Contract and for a minimum of three years after Substantial Completion. For each claims-made professional liability policy furnished and maintained to satisfy the requirements of this Paragraph 6.03.I, the retroactive date on the policy shall pre-date the commencement of furnishing services on the Project.

J. *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 coverage 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 Design-Builder. Within 3 days of receipt of any such written notice, Design-Builder shall provide a copy of the notice to Owner and each other insured under the policy.
4. Remain in effect at least until final payment and Design-Builder's departure from the Site (and longer if expressly required elsewhere in this Contract), and at all times thereafter when Design-Builder may be correcting, removing, or replacing defective Construction as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
5. Provide applicable protection from claims that may arise out of or result from the performance of the Work, whether such performance is by Design-Builder, a Project

Design Professional, any Construction Subcontractor or Supplier, or anyone directly or indirectly retained by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

#### 6.04 *Owner's Liability Insurance*

- A. In addition to the liability insurance required to be provided by Design-Builder, the Owner, at Owner's option and expense, may purchase and maintain Owner's own liability insurance to protect Owner against claims which may arise with respect to the Project.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Design-Builder, and Design-Builder cannot rely upon Owner's liability policies for any of Design-Builder's obligations to the Owner or third parties.

#### 6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Design-Builder shall purchase and maintain builder's risk insurance upon the Construction 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 Design-Builder as named insureds, and all Construction 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 Construction, 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 Design-Builder.
  - 3. Cover, as insured property, at least the following: (a) the Construction (including but not limited to all buildings, structures, foundations, excavations, underground property, pilings, underground pipes, flues, drains, wiring, cables, and the like) and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into the Construction, 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 Construction but which are intended to provide working access to the Site, or to the

Construction, or which are intended to provide temporary support for the Construction, including scaffolding, form work, fences, shoring, lighting, cribbing, 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 Construction by Owner, such that those portions of the Construction that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
  8. Provide for the waiver of claims and waiver of the insurer's subrogation rights, as set forth in Paragraph 6.06.
  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 Construction by Owner, until the Construction 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 3 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 Construction prior to Substantial Completion of all the Work as provided in Paragraph 14.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Design-BUILDER) 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 Construction that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Construction not yet occupied or used by Owner shall remain covered by the builder's risk insurance.

- E. *Additional Insurance*: If Design-Builder 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 Design-Builder'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 Design-Builder, a Construction Subcontractor, or an employee of Design-Builder or a Construction 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.
- G. *Loss of Use and Delay in Start-up*: Unless otherwise expressly stated elsewhere in this Contract, the Owner is responsible, at its option, for purchase and maintenance of insurance to protect Owner against the loss of use or delays in start-up caused by property damage.

#### 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 any Project Design Professional or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Design-Builder 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 Construction; and, in addition, waive all such rights against the Project Design Professionals, their consultants, all Construction 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 Design-Builder as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Design-Builder, the Project Design Professionals, and the Construction Subcontractors, 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 Construction 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 14.04, after Substantial Completion pursuant to Paragraph 14.03, or after final payment pursuant to Paragraph 14.06.
- 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 the insured is

allowed to waive the insurer's rights of subrogation against Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, in a written contract executed prior to the loss, damage, or consequential loss.

- D. Design-Builder shall be responsible for assuring that each Construction Subcontract contains provisions whereby the Construction Subcontractor waives all rights against Owner, Design-Builder, all individuals or entities identified in the Supplementary Conditions as insureds, the Project Design Professionals, 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 Project.

#### 6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property 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 maintain such funds in a segregated account, and 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 Construction shall be repaired or replaced, the money so received applied on account thereof, and the Construction and the cost thereof covered by Change Order, if needed.

### **ARTICLE 7 – DESIGN-BUILDER'S RESPONSIBILITIES**

#### 7.01 *Design Professional Services*

- A. Design-Builder shall provide the Design Professional Services needed to successfully perform and complete the Work required under this Contract.
- B. *Standard of Care:* The standard of care for all Design Professional Services performed or furnished by Design-Builder under this Contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

#### 7.02 *Construction*

- A. Design-Builder shall perform and furnish the Construction pursuant to the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified.

- B. Design-Builder shall keep Owner advised as to the progress of the Construction.

7.03 *Supervision and Superintendence of Construction*

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

7.04 *Labor; Working Hours*

- A. Design-Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design-Builder 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 indicated in the Contract Documents, and in the absence of any Laws or Regulations to the contrary, Design-Builder may perform the Construction on legal holidays, during any or all hours of the day, and on any or all days of the week, at Design-Builder's sole discretion.

7.05 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Design-Builder shall furnish or cause to be furnished and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified by Owner or in the Construction Drawings or Construction Specifications, and unless specified otherwise shall be new and of good quality. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Design-Builder 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 provided in the Contract Documents.

7.06 *"Or Equals" and Substitutions*

- A. If 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, then during the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may request that Owner authorize the use of other items of material or equipment, or items from other proposed suppliers, by including the proposed items in the proposed Construction Drawings or Construction Specifications, with required notice to Owner that the Submittal contains a variation from the Contract Documents. Owner in its



sole discretion may approve the use of the item if Owner determines that the item is functionally equal to that named and sufficiently similar so that no change in related Work will be required, taking into consideration whether the item:

1. Is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
  2. 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. Has a proven record of performance and availability of responsive service; and
  4. Is not objectionable.
- B. *Effect of Owner's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The 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.
- C. *Substitutes:* During the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may propose a substitute to an item of material or equipment that is required to be furnished by the Contract Documents. Any such proposal shall be made in a transmittal to Owner that is separate from and independent of any Design Submittals. The proposal shall describe the advantages, disadvantages, and changes in Contract Price or Contract Time associated with the proposed substitute. Approval of the proposed substitute shall be at Owner's sole discretion. If approved, the substitute item shall be incorporated in the Construction Drawings and Construction Specifications.
- D. *Design Professional Review:* Before Design-Builder transmits its proposal to Owner, the Project Design Professional that designed the portion of the Work affected by the proposed "or equal" or substitute shall review and approve the proposal.
- E. *Construction Drawings and Construction Specifications:* "Or equal" or substitute proposals with respect to items of material or equipment that are required in the Construction Drawings and Construction Specifications shall be considered proposed modifications of the Construction Drawings and Construction Specifications, and shall be governed by the provisions of Paragraph 8.02.H.

7.07 *Concerning Project Design Professionals, Construction Subcontractors, Suppliers, and Others*

- A. Design-Builder may retain Project Design Professionals, Construction Subcontractors, and Suppliers for the performance of parts of the Work. Such Project Design Professionals, Construction Subcontractors, and Suppliers must be acceptable to Owner.
- B. Design-Builder shall retain specific Project Design Professionals, Construction Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required to do so by the Contract Documents (including but not limited to the Proposal Amendment) as of the Effective Date.
- C. Prior to entry into any binding Design Agreement, Construction Subcontract, or purchase order, Design-Builder shall submit to Owner the identity of the proposed Project Design Professional, Construction Subcontractor, or Supplier (unless Owner has already deemed such proposed contractual party acceptable, during the bidding process or otherwise). Such

proposed contractual party shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

- D. Owner may require the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work solely on the basis of substantive, reasonable objection after due investigation. Design-Builder shall submit an acceptable replacement for the rejected Project Design Professional, Construction Subcontractor, Supplier, or other entity.
- E. If Owner requires the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work, then Design-Builder shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement.
- F. No acceptance by Owner of Engineer or of any Project Design Professional, Construction Subcontractor, Supplier, or other 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.
- G. Design-Builder shall be fully responsible to Owner for all acts and omissions of the Project Design Professionals, Construction Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work, just as Design-Builder is responsible for Design-Builder's own acts and omissions.
- H. Design-Builder shall be solely responsible for scheduling and coordinating the services and work of the Project Design Professionals, Construction Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- I. Design-Builder shall restrict all Project Design Professionals, Construction Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating directly with Owner, except in case of an emergency or a matter involving public health, safety, or welfare, or as otherwise expressly allowed herein.
- J. Owner may furnish to any Project Design Professional, Construction Subcontractor, or Supplier, to the extent practicable, information about amounts paid to Design-Builder on account of Work performed for Design-Builder by the requesting party.
- K. Nothing in the Contract Documents:
  - 1. Shall create for the benefit of any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity any contractual relationship between Owner and such third-party individual or entity; nor
  - 2. Shall create any obligation on the part of Owner to pay or to see to the payment of any money due any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity except as may otherwise be required by Laws and Regulations.

#### 7.08 *Patent Fees and Royalties*

- A. Design-Builder 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 Conceptual

Documents or other Contract Documents for use in the performance of the Construction, and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then Owner has disclosed the existence of such rights to Design-Builder in the Conceptual Documents or other Contract Documents.

- B. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner and Owner's Consultant, and the officers, directors, partners, employees or agents, and other consultants 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 resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device, except those required by the Contract Documents.
- C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design-Builder and its officers, directors, members, partners, employees or agents, Project Design Professionals, Construction Subcontractors, and Suppliers 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 resulting from 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 required by the Contract Documents, but not identified by Owner as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

#### 7.09 *Permits and Utility Charges*

- A. The Contract Documents allocate responsibility for obtaining and paying for specified permits, licenses, certificates of occupancy, and approvals of governmental authorities having jurisdiction over the Work. Each party shall assist the other, when necessary, in obtaining such permits, licenses, certificates, and approvals.
- B. Design-Builder shall pay all charges of utility owners for temporary service to the Work. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work, and for capital costs related thereto.

#### 7.10 *Taxes*

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

#### 7.11 *Laws and Regulations*

- A. Design-Builder shall give all notices required by and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design-Builder's compliance with any Laws or Regulations.
- B. If Design-Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design-Builder shall bear all claims, costs, losses, and damages

(including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

- C. Changes in Laws or Regulations that occur after the date on which the Design-Builder committed to the Contract Price (whether by negotiation or making an offer or proposal) and affect the cost or time of performance shall be the subject of an equitable change in Contract Price or Contract Times.

#### 7.12 *Record Documents*

- A. Design-Builder shall maintain the Record Documents in good order, in a safe place at the Site. Design-Builder shall annotate the Record Documents to show all changes and clarifications made (whether in the field or otherwise) during performance of Construction. The Record Documents, as annotated, will be available to Owner for reference. Upon completion of the Construction, Design-Builder shall deliver the Record Documents, as annotated, to Owner.
- B. After receipt and review of the Record Documents from Design-Builder upon completion of Construction, the Owner may comment on any possible inaccuracies. After Owner and Design-Builder collaboratively address any such comments, the Record Documents shall be deemed to be Record Drawings and Record Specifications.
- C. The Record Drawings and Record Specifications are Contract Documents, and are binding upon Design-Builder with respect to its obligations to comply with the Contract Documents, including but not limited to correction period responsibilities and warranty obligations.

#### 7.13 *Safety and Protection*

- A. Design-Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Construction 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. Design-Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. All persons on the Site or who may be affected by the Work;
  - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation, or replacement in the course of Construction.
- B. Design-Builder shall comply with 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. Design-Builder 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. Design-Builder 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. Design-Builder shall inform Owner of the specific requirements of Design-Builder's safety program with which Owner and its employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.13.A.2 or 7.13.A.3 caused, directly or indirectly, in whole or in part, by Design-Builder, any Construction 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 Design-Builder.
- F. Design-Builder's duties and responsibilities for safety and for protection of the Construction shall continue until such time as all the Work is completed, Owner has issued a notice to Design-Builder in accordance with Paragraph 14.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion), and Design-Builder has left the Site.
- G. Design-Builder's duties and responsibilities for safety and protection shall resume whenever Design-Builder or any Construction Subcontractor, Supplier, or other representative returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Safety Representative*

- A. Design-Builder 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.

7.15 *Hazard Communication Programs*

- A. Design-Builder shall be responsible for coordinating any exchange of 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.

7.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design-Builder is obligated to act to prevent threatened damage, injury or loss. Design-Builder shall give Owner prompt written notice if Design-Builder 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 a change in the Contract Documents is required because of the action taken by Design-Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.17 *Post-Construction Phase*

- A. Design-Builder shall:
  1. Provide assistance in connection with the start-up and testing of any equipment or system.
  2. Assist Owner in training staff to operate and maintain the Work.

7.18 *Design-Builder's General Warranty and Guarantee*

- A. Design-Builder warrants and guarantees to Owner that Design-Builder will perform and complete the Construction as required by the Contract Documents, and that all Construction will be in accordance with the Contract Documents, the Construction Drawings, and the Construction Specifications (as duly modified in accordance with the Contract), and will not be defective.
- B. Design-Builder's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. Abuse, modification or improper maintenance or operation by persons other than Design-Builder, Construction Subcontractors, or Suppliers or any other individual for whom Design-Builder is responsible; or
  - 2. Normal wear and tear under normal usage.
- C. None of the following will constitute an acceptance by Owner of Work that is not in accordance with the Contract Documents or a release of Design-Builder's obligation to perform the Work in accordance with the Contract Documents, unless expressly stated otherwise in writing:
  - 1. Observations by Owner;
  - 2. The making of any progress or final payment;
  - 3. The issuance of a certificate of Substantial Completion;
  - 4. Use or occupancy of the Work or any part thereof by Owner;
  - 5. Any review and approval of a Submittal;
  - 6. Any inspection, test, or approval by others; or
  - 7. Any correction of defective Construction by Owner.

7.19 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's Consultant, and their officers, directors, members, partners, employees, agents, consultants, and subcontractors, from losses, damages, and judgments (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 from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to damage 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 Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
- B. In any and all claims or actions against Owner, Owner's Consultant, 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 Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, any individual or entity directly or indirectly employed or retained 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 7.19.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 Design-Builder, a Project Design Professional, or any Construction Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Design-Builder under Paragraph 7.19.A shall not extend to the liability of Owner's Consultant, other consultants or design professionals of Owner, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

## **ARTICLE 8 – SUBMITTALS**

### **8.01 *Design-Builder's Preparation of Submittals***

- A. Design Submittals shall be prepared by Project Design Professionals, on behalf of Design-Builder.
- B. The appropriate Project Design Professional shall review and approve each Submittal (including but not limited to all Design Submittals), other than those Submittals not involving technical or engineering matters, before Design-Builder's transmittal of such Submittal to Owner. Such review and approval shall account for the following, as appropriate:
  - 1. That any items covered by such Submittal will, after installation or incorporation in the Construction, comply with the information and requirements in the Contract Documents and the Construction Drawings and Construction Specifications, as duly modified, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified.
  - 2. That if the Submittal includes any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, or any proposed variation from the requirements of such documents, such proposed modification or variation is acceptable based on the standards of the engineering profession (or other applicable design profession), and if implemented will be supported by signing or sealing by a licensed design professional, as necessary.
- C. Before Design-Builder's transmittal of a Submittal to Owner, the Design-Builder shall, as applicable:
  - 1. Review and coordinate the Submittal with other Submittals and with the requirements of the Work, the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified;
  - 2. Determine and verify all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal, and confirm that the Submittal is complete with respect to all related data included in the Submittal;
  - 3. Determine and verify the suitability of proposed materials and equipment with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation; and

4. Determine and verify all information relative to Design-Builder's responsibilities for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.
- D. Design-Builder shall give Owner specific written notice of any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, and any variations that a Submittal may have from the requirements of the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified. This notice shall be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Submittal in drawing form, by a specific notation made on the drawing itself.
- E. Each Submittal shall bear a stamp or specific written certification by Design-Builder that it has satisfied its obligations under the Contract Documents with respect to preparation of the Submittal, and that Design-Builder approves the Submittal.
- F. All Submittals must be acceptable based on compliance with form and content requirements of the Contract Documents. Design-Builder shall submit Design Submittals for Owner's review and approval. Other Submittals shall not require express approval, except as indicated in the Supplementary Conditions or elsewhere in the Contract Documents.

#### 8.02 *Owner's Review of Submittals*

- A. Owner will review all Submittals, and may comment on any Submittal. Any response to a Submittal by Owner shall be in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.07, and the provisions of the Contract Documents.
- B. For those Submittals requiring Owner's review and approval, Owner's response will be in writing and will indicate either that Owner approves the Submittal or rejects the Submittal. Owner may also include comments regarding the approved or rejected Submittal. For those Submittals that do not require approval, the Submittal shall be deemed acceptable to Owner unless Owner responds with a timely objection or adverse comment.
- C. Unless a specific provision of the Contract Documents expressly provides otherwise, Owner's review of a Submittal will be to determine if the Submittal complies with and is consistent with the Contract Documents. If Owner concludes that a Submittal requiring approval complies with and is consistent with the Contract Documents, the Owner shall approve such Submittal.
- D. Owner's approval, rejection, or acceptance of a Submittal will not extend to the means, methods, techniques, sequences, or procedures of Construction, or to safety precautions or programs incident thereto.
- E. Owner's review, comments, approval, rejection, or acceptance of Submittals shall not relieve Design-Builder from responsibility for (1) performance of the Work in accordance with the Contract Documents, (2) the scheduling and progress of the Work, (3) the means, methods, sequences, techniques, and procedures of Construction, and safety precautions and programs incident thereto, or (4) any variation from the requirements of the Contract Documents, unless Design-Builder has in a separate written communication at the time of submission called Owner's attention to each such variation, and Owner has given written approval of each such variation; nor shall Owner's review, comments, approval, rejection, or acceptance of a Submittal impose any such responsibility on Owner.



- F. Construction tasks and expenditures by Design-Builder prior to Owner's review and approval or acceptance of any Submittal will be at the sole risk of Design-Builder.
- G. In reviewing, approving, rejecting, accepting, or commenting on any Design Submittal, Owner does not assume responsibility for the design, for any deficiencies in the Design Submittal or in the Design Professional Services by which they were prepared, or for constructability, cost, or schedule problems that may arise in connection with the Design Submittal.
- H. The parties acknowledge that Design-Builder's design responsibilities continue after commencement of Construction. During the course of Construction, the Design-Builder may propose modifications to the Construction Drawings and Construction Specifications. Owner shall approve such proposed modifications if (1) they comply with and are consistent with the Contract Documents, (2) Design-Builder has demonstrated that the modification is minor in character, or will not be detrimental to the quality and function of the Work, (3) the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters, and (4) Owner has not relied on the previously-approved Construction Drawings and Construction Specifications, such that the proposed modification would be detrimental to the Owner's interests. At its option, Owner may also approve more substantial or divergent proposed modifications, provided that the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters.

## **ARTICLE 9 – OTHER CONSTRUCTION**

### **9.01 *Other Work***

- A. In addition to and apart from the Work to be performed and furnished by Design-Builder under the Contract Documents, the Owner may perform other construction work at or adjacent to the Site during the course of the Project. 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 Design-Builder written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work at or adjacent to the Site, Owner shall provide such information to Design-Builder.
- C. Design-Builder shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and to Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Design-Builder shall do all cutting, fitting, and patching of the Construction that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Design-Builder shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Builder may cut or alter others' work with the written consent of Owner and the others whose work will be affected.

- D. If the proper execution or results of any part of the Construction depends upon work performed by others under this Article 9, Design-Builder shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of the Construction. Design-Builder's failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Construction, except for latent defects and deficiencies in such other work.

#### 9.02 *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 Design-Builder 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. If the Supplementary Conditions do not identify the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors, Owner shall have sole authority and responsibility for such coordination.

#### 9.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Construction or to the property of Design-Builder or the Construction Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Construction, through actions or inaction, then Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. 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 Design-Builder in the Contract Documents, and any provisions in Laws or Regulations concerning utility action or inaction, or related remedies. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Design-Builder assigning to Owner all Design-Builder'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. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.
- B. Design-Builder 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 Design-Builder 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 Design-Builder, and assign to such other contractor or utility owner the Owner's contractual

rights against Design-Builder 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, Design-Builder 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 Design-Builder'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 Design-Builder.
- D. If Design-Builder 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 Design-Builder's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Design-Builder'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 Design-Builder or Owner, then Design-Builder 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 its officers, directors, members, partners, employees, agents, consultants and subcontractors 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 10 – OWNER'S RESPONSIBILITIES**

### **10.01 General**

- A. Owner shall do the following in a timely manner so as not to delay the services of Design-Builder:
  - 1. If requested in writing by Design-Builder, furnish reasonable evidence satisfactory to Design-Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design-Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days' notice to the Owner;
  - 2. Make payments to Design-Builder promptly when they are due, as provided in Paragraph 14.01 and 14.06;
  - 3. Furnish the Site as set forth in Paragraph 5.01; arrange for safe access to and make all provisions for Design-Builder to enter upon public and private property as may reasonably be required for Design-Builder to perform Work under the Contract.
  - 4. Furnish to Design-Builder, as required for performance of the Work, the following, all of which Design-Builder may use and rely upon in performing services under this Agreement:
    - a. Environmental assessment and impact statements;
    - b. Property, boundary, easement, right-of-way, and other special engineering surveys or data;

- c. Property descriptions;
  - d. Zoning, deed, and other land use restrictions;
  - e. Utility and topographic mapping and surveys;
  - f. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; any information or data known to Owner concerning underground facilities at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data;
  - g. Any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site;
  - h. Engineering surveys to establish reference points which in Owner's judgment are necessary to enable Design-Builder to proceed with the Work;
  - i. Assistance to Design-Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project; and
  - j. Permits, licenses, and approvals of government authorities that the Contract Documents expressly require Owner to obtain.
5. Provide information known to Owner relating to the presence of materials and substances at the Site that could create a Hazardous Environmental Condition.
- B. If an obligation ascribed to Owner in Paragraph 10.01.A is expressly assigned to Design-Builder, in the description of the Work or elsewhere in the Contract Documents, then such express assignment to Design-Builder shall supersede the provision in Paragraph 10.01.A.
- C. Recognizing and acknowledging that Design-Builder's services and expertise do not include the following services, Owner shall furnish or obtain, as required for the Project:
- a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  - b. Legal services with regard to issues pertaining to the Project as Owner requires, or Design-Builder reasonably requests.
  - c. Such auditing services as Owner requires to review cost submittals or ascertain how or for what purpose Design-Builder has used the money paid.
- D. Examine all studies, reports, alternate solutions, sketches, drawings, specifications, proposals, Submittals (including Design Submittals), and other documents presented by Design-Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination), and if a decision is required with respect to any such document, render such decision in writing pursuant to any specific schedule, or if no specific schedule pertains, within a reasonable time after receipt of the document.

10.02 *Insurance*

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

10.03 *Limitations on Owner's Responsibilities*

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

10.04 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility with respect to undisclosed Hazardous Environmental Conditions uncovered or revealed at the Site is set forth in Paragraph 5.06.

10.05 *Owner's Site Representative*

- A. Owner may furnish an Owner's Site Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Owner's Site Representative and assistants will be as provided in the Supplementary Conditions.

10.06 *Owner's Consultants and Managers*

- A. Owner's Consultant, if any, is identified in the Agreement.
- B. Owner shall advise Design-Builder of the identity and scope of services of any other independent consultants or managers retained by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, constructability review, program management, project management, or contract administration.
- C. Neither Owner's Consultant, Owner's Site Representative, nor any other consultant or manager retained by Owner, has any duties, responsibilities, or authorities with respect to Design-Builder, unless expressly provided in this Contract. Owner's Consultant and such other consultants and managers shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work; and will not be responsible for Design-Builder's failure to perform the Work in accordance with the Contract Documents.

10.07 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Design-Builder's safety programs of which Owner has been informed pursuant to Paragraph 7.13.D.
- B. Owner shall inform Design-Builder of any specific requirements of safety or security programs that are applicable to Design-Builder while at the Site.

10.08 *Permits and Approvals*

- A. Owner shall obtain reviews, approvals, certificates, and permits from governmental authorities having jurisdiction over the Project as indicated in the Contract Documents.

**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 or a Work Change Directive.
  - 1. *Change Orders*: 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.
  - 2. *Work Change Directives*: The Work modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order. When a Work Change Directive is issued, the parties will promptly meet to attempt to negotiate the Work Change Directive's effect, if any, on the Contract Times and Contract Price. The effect, if any, on Contract Times and Contract Price, together with the Work Change Directive's addition, deletion, or revision to the Work, will be set forth in a subsequently issued Change Order.
- B. Either Owner or Design-Builder may propose or request a Change Order. With respect to certain events, this Contract may indicate specific times in which such requests or proposals must be submitted to the other party. With respect to all other events, the request or proposal shall be submitted to the other party within 30 days of the event giving rise to the request or proposal.

11.02 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, and notwithstanding any other provision of the Contract, Owner may, at any time or from time to time, order or authorize additions, deletions, or revisions in the Work within the general scope of the Contract. Such changes may be accomplished by a Change Order, if Owner and Design-Builder 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, Design-Builder 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 Design-Builder to undertake work that Design-Builder reasonably concludes cannot be performed in a manner consistent with Design-Builder's safety or professional obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Design-Builder 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 duly amended, except in the case of an emergency as provided in Paragraph 7.16, or in the case of uncovering Construction as provided in Paragraph 13.03.A.3.

#### 11.04 *Changes Involving the Design*

- A. To the extent a change, whether proposed by Design-Builder or Owner, ordered by Owner, or set forth in a proposed Change Order or in a Work Change Directive, involves the design (as set forth in the Construction Drawings, Construction Specifications, or otherwise) or other engineering or technical matters, such changes must be reviewed and approved by the applicable Project Design Professional. The review and approval may occur at the time the change occurs, or as part of Design-Builder's provision of Professional Design Services in response to the change.

#### 11.05 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim regarding an adjustment in the Contract Price shall be presented by written notice to the other party in accordance with Paragraph 16.01.
- B. If the Contract Price is based on Cost of the Work, then the provisions in the Agreement regarding Cost of the Work and changes in the Design-Builder's fee, Contract Price, Guaranteed Maximum Price, and Guaranteed Maximum Fee, apply.
- C. The value of any Work covered by a Change Order or of any adjustment in the Contract Price will be determined as follows:
  - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.02); or
  - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.05.D); or
  - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents, and agreement to a lump sum is not reached under Paragraph 11.05.C.2, then on the basis of the Cost of the Work for price adjustments (determined as provided in the Cost of the Work provisions in the Agreement, if applicable, or in Paragraph 12.01), plus a Design-Builder's Fee for overhead and profit (determined as provided in Paragraph 11.05.D).
- D. *Design-Builder's Fee:* The Design-Builder's fee for overhead and profit on Change Orders 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 12.01.B.1.a. and 12.01.B.2, the Design-Builder's fee shall be 15 percent;
    - b. For costs incurred under Paragraph 12.01.B.3, 12.01.B.4, 12.01.B.5, and 12.01.B.6, the Design-Builder's fee shall be 5 percent;
    - c. With respect to Construction Subcontracts, 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 this Contract is that the Design-Builder's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraph 12.01 by the subcontractor that

actually performs the Work, at whatever tier, and (2) with respect to Design-Builder itself, and to any Construction Subcontractors of a tier higher than that of the Construction Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Construction 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 Construction Subcontractor that actually performs the Work;

- d. With respect to Design Agreements, the Engineer or other invoicing Project Design Professional under a Design Agreement may add a fee of 5 percent to an invoice from a lower tier design entity , and Design-Builder may add a fee of 5 percent to an invoice from Engineer or other invoicing Project Design Professional; Owner shall not be responsible for any other mark-up at any tier (other than those incorporated in a factor, multiplier, hourly rate, or stipulated sum from the entity performing the subject Design Professional Services);
- e. No fee will be payable on the basis of costs itemized in Paragraph 12.01.B.7 or 12.01.C;
- f. The amount of credit to be allowed by Design-Builder 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 Design-Builder's fee by an amount equal to 5 percent of such net decrease; and
- g. When both additions and credits are involved in any one change, the adjustment in Design-Builder's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.05.D.2.a through 11.05.D.2.e., inclusive.

#### 11.06 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim regarding an adjustment of the Contract Times shall be presented by written notice to the other party pursuant to Paragraph 16.01.
- B. Design-Builder's entitlement to an adjustment of the Contract Times under this Contract is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.

#### 11.07 *Execution of Change Orders*

- A. Owner and Design-Builder 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 Design-Builder 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 correction of defective Work under Paragraph 13.05 or Owner's acceptance of defective Work under Paragraph 13.07, or (c) agreed to by the



parties (all subject to the need for review and approval by the applicable Project Design Professional pursuant to Paragraph 11.04); and

4. Changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Article 16.
- B. If Owner or Design-Builder 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 *Notice to Sureties*

- A. If notice 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) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design-Builder's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

### **ARTICLE 12 – COST OF THE WORK ADJUSTMENTS; UNIT PRICE WORK**

#### 12.01 *Cost of the Work*

- A. *Costs of the Work Adjustment:* When the price of Work covered by a Change Order or an adjustment in Contract Price is to be determined on the basis of Cost of the Work, the Cost of the Work adjustment means the sum of all costs necessarily incurred and paid by Design-Builder in the proper performance of the specific portion of the Work. The costs to be reimbursed to Design-Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the adjustment. If the Agreement contains Cost of the Work provisions, such provisions shall govern in determining the Cost of the Work for Change Order or adjustment purposes. If the Agreement does not contain Cost of the Work provisions, then the provisions in Paragraph 12.01 shall apply.
- B. *Costs Included:* The Cost of the Work adjustment does not include any of the costs itemized in Paragraph 12.01.C, and shall include only the following items with respect to the subject Work:
1. Payroll costs for employees in the direct employ of Design-Builder in the performance of the subject Work, under schedules of job classifications agreed upon by Owner and Design-Builder in advance of such performance.
    - a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the subject Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. The expenses of performing the subject Work outside the hours or days permitted by this Contract shall be included in the above to the extent such performance of Work is authorized by Owner.
    - b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services as employees of Design-Builder.

For purposes of this Paragraph 12.01.B.1.b, Design-Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, as designated in the Agreement, for services in the performance of the subject Work.

2. Cost of all materials and equipment furnished and incorporated in the subject Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design-Builder unless Owner deposits funds with Design-Builder 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 Design-Builder shall make provisions so that they may be obtained.
3. Cost of permits obtained by Design-Builder.
4. Payments made by Design-Builder to Construction Subcontractors for subject Work performed or furnished by such Construction Subcontractors. If any subcontract provides that the Construction Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Construction Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design-Builder's Cost of the Work and fee.
5. Payments made by Design-Builder for Design Professional Services provided or furnished with respect to the subject Work under a Design Agreement.
6. Costs of special consultants (not including Project Design Professionals), including but not limited to testing laboratories, attorneys, and accountants, retained for services specifically related to the subject Work.
7. Supplemental costs including the following items:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Design-Builder'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 that remain the property of Design-Builder.
  - c. Rentals of all construction or engineering equipment and machinery, and their parts, whether rented from Design-Builder or from others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal of such equipment, machinery, and parts. All such costs shall be in accordance with the terms of such rental agreements. The rental of any such equipment, machinery, or parts shall cease when its use is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the subject Work, and for which Design-Builder is liable, imposed by Laws or Regulations.
  - e. Deposits lost for causes other than negligence of Design-Builder, any Construction 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, damages, and related expenses caused by damage to the subject Work not compensated by insurance or otherwise, sustained by Design-Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design-Builder, any Construction 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 Design-Builder's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site, as applicable to the subject Work.
  - h. Minor expenses such as long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - i. Cost of premiums for all Bonds and insurance Design-Builder 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 Design-Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Design-Builder whether at the Site or in Design-Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1, all of which are to be considered administrative costs covered by the Design-Builder's fee.
  - 2. Expenses of Design-Builder's principal and branch offices other than Design-Builder's office at the Site.
  - 3. Any part of Design-Builder's capital expenses, including interest on Design-Builder's capital employed for the subject Work and charges against Design-Builder for delinquent payments.
  - 4. Costs due to the negligence of Design-Builder, any Construction Subcontractor, Engineer or other Project Design Professionals, 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 12.01.B.
- D. *Design-Builder's Fee:* When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design-Builder's fee shall be determined as set forth in Paragraph 11.05.D.
- E. *Documentation:* Whenever the cost of any Work is to be determined pursuant to Paragraph 12.01.B and 12.01.C, Design-Builder will establish and maintain cost records in accordance

with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

#### 12.02 *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 of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design-Builder will be made by Owner.
- B. If Design-Builder's compensation is based on Cost of the Work, this Contract will not include compensation under unit prices unless expressly stated otherwise.
- C. Each unit price will be deemed to include an amount considered by Design-Builder to be adequate to cover Design-Builder's overhead and profit for each separately identified item.
- D. Design-Builder or Owner may seek an adjustment in the Contract Price if:
  - 1. The quantity of any item of Unit Price Work performed by Design-Builder differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
  - 2. Such an adjustment would not duplicate, and is coordinated with, any other related adjustments of Contract Price; and
  - 3. Design-Builder has incurred additional expense, or less expense, as a result of the variation in quantity.

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

#### 13.01 *Access to Construction*

- A. Owner, Owner's Consultant, Owner's Site Representative, and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder's Site safety procedures and programs so that they may comply therewith as applicable.

#### 13.02 *Tests, Inspections, and Approvals*

- A. Design-Builder 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. By Laws and Regulations, unless the Contract Documents or Laws and Regulations expressly allocate responsibility for a specific inspection or test to Owner;
  - 3. To attain Owner's acceptance of materials or equipment to be incorporated in the Construction;

4. By manufacturers of equipment furnished under the Contract Documents;
  5. To meet the requirements of the Construction Drawings and Construction Specifications;
  6. For testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Construction; and
  7. For acceptance of materials, mix designs, or equipment submitted for approval prior to Design-Builder's purchase thereof for incorporation in the Construction.
- B. Owner shall be responsible for arranging, obtaining, and paying for all inspections and tests expressly required by the Contract Documents or Laws and Regulations to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Construction shall be governed by the provisions of Paragraph 13.03.
  - C. All inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Design-Builder.
  - D. If the Contract Documents require the Construction (or part thereof) to be approved by Owner or another designated individual or entity, then Design-Builder shall assume full responsibility for arranging and obtaining such approvals.
  - E. Design-Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, and approvals.
  - F. Design-Builder shall give Owner timely notice of readiness of the Construction (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
  - G. Each party shall provide the other with copies of any certificates of inspection or approval obtained with respect to tests and inspections.
  - H. Both parties may rely on the results of inspections and tests, performed pursuant to this paragraph and the governing provisions of the Contract Documents, Laws and Regulations, and the Construction Drawings and Construction Specifications.
  - I. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design-Builder without written concurrence of Owner, then Contractor shall, if requested by Owner, uncover such Construction for observation. Such uncovering shall be at Design-Builder's expense unless Design-Builder has given Owner timely notice of Design-Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

### 13.03 *Uncovering Construction*

- A. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, then Design-Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection, or testing, as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material, and equipment.
  1. If the Construction had been covered contrary to the written request of Owner or a requirement of the Contract Documents, then uncovering it for Owner's observation and re-covering it shall be at Design-Builder's expense, regardless of whether it is defective.

2. If it is found that the covered Construction is defective, Design-Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement, re-covering, or reconstruction (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price.
3. If the covered Construction is not found to be defective, Design-Builder shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, re-covering, and reconstruction, subject to the provisions of Paragraph 13.03.A.1.

#### 13.04 *Defective Construction*

- A. It is Design-Builder's obligation to assure that the Construction is not defective.
- B. Owner shall give Design-Builder prompt written notice of all defective Construction of which Owner has actual knowledge. Owner may reject, accept, or correct defective Construction.
- C. Promptly after receipt of written notice of defective Construction, unless Owner expressly indicates that it will accept the defective Construction, Design-Builder shall correct all such defective Construction, whether or not fabricated, installed, or completed; or, if Owner has rejected the defective Construction, remove it from the Project and replace it with Construction that is not defective.
- D. When correcting defective Construction, Design-Builder shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Construction.

#### 13.05 *Owner May Correct Defective Construction*

- A. If Design-Builder fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction, or if Design-Builder fails to perform the Construction in accordance with the Contract Documents, or if Design-Builder fails to comply with any other provision of the Contract Documents, Owner may, after 7 days' written notice to Design-Builder, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.05 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design-Builder from all or part of the Site, take possession of all or part of the Construction, and suspend Design-Builder's services related thereto, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere. Design-Builder shall allow Owner, Owner's Consultant, Owner's Site Representative, and Owner's other representatives, agents, employees, and contractors, access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

#### 13.06 *Costs*

- A. Design-Builder shall bear all costs arising out of or relating to the correction, removal, or replacement of defective Construction, including but not limited to repair of adjacent Work or property; delay costs and impacts; fees and charges of engineers, architects, attorneys, and other professionals; and all court, arbitration, or other dispute resolution costs.

- B. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising its rights and remedies arising from defective Construction under this Article will be charged against Design-Builder, by set-off against payment or otherwise.
- C. Design-Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to defective Construction.

13.07 *Owner's Acceptance of Defective Construction*

- A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. If such acceptance is proposed prior to final payment, it shall be subject to confirmation by the applicable Project Design Professional that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety. Design-Builder shall pay 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) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted.

13.08 *Owner May Stop Construction*

- A. If Construction is defective, or Design-Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design-Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design-Builder or any other party.

**ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION**

14.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.04 will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.
- B. *Application for Progress Payment:* On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design-Builder shall submit to Owner for review an Application for Payment filled out and signed by Design-Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as 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 and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.

C. *Payment of Obligations:*

1. Beginning with the second Application for Payment, each Application shall include an affidavit of Design-Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design-Builder's legitimate obligations associated with prior Applications for Payment.
2. If Design-Builder contends that it has withheld payment of underlying obligations for good cause, then Design-Builder shall inform Owner of the identity of the entity from which Design-Builder has withheld payment, the amount of the withholding, and the reason for the withholding.

D. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

E. *Review of Applications:*

1. Owner will, within 10 days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design-Builder indicating in writing its reasons for refusing to accept the Application.

F. Not more than 10 days after accepting such Application the amount will become due and when due will be paid by Owner to Design-Builder.

1. If Owner should fail to pay Design-Builder at the time the payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that he will stop the Work within 7 days after receipt of the notice by Owner, and after such 7-day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.
2. Payments due but unpaid shall bear interest at the rate specified in the Agreement.
3. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

G. *Reduction in or Refusal to Make Payment:*

1. Owner may impose a set-off against the whole or any part of any such payment, or nullify any previous payment because of subsequently discovered evidence or the results of subsequent inspections or tests, to the extent that is reasonably necessary to protect Owner from loss because:
  - a. Claims have been made against Owner on account of Design-Builder's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Design-Builder's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from breach of warranty, workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;



- b. Design-Builder 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. Design-Builder 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 Design-Builder 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 Construction is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Construction in accordance with Paragraph 13.05, or has accepted defective Construction pursuant to Paragraph 13.07;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event that would constitute a default by Design-Builder and therefore justify a termination for cause has occurred;
  - j. Liquidated damages, special damages, or performance damages have accrued under the Contract Documents as a result of Design-Builder's failure to achieve Milestones, Substantial Completion, final completion of the Work, or performance requirements, as applicable;
  - k. Liens have been filed in connection with the Work, except where Design-Builder has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens; or
  - l. There are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, Owner will give Design-Builder immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Design-Builder any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Design-Builder the amount so withheld, or any adjustment thereto agreed to by Owner and Design-Builder, if Design-Builder remedies the reasons for such action. The reduction imposed shall be binding on Design-Builder unless it duly presents a written notice of Claim contesting the reduction.

#### 14.02 *Design-Builder's Warranty of Title*

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

#### 14.03 *Substantial Completion*

- A. When Design-Builder considers the Work ready for its intended use Design-Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design-Builder as incomplete) and request that Owner issue a certificate of

Substantial Completion. Promptly thereafter, Owner and Design-Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor.

- B. If Owner considers the Work substantially complete:
  - 1. Owner and Design-Builder 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 Design-Builder 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.
  - 2. Owner will prepare and deliver to Design-Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. Owner shall attach to the certificate a punch list of items to be completed or corrected before final payment.
- C. After Substantial Completion the Design-Builder shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Design-Builder may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- D. Owner shall have the right to exclude Design-Builder from the Site after the date of Substantial Completion subject to allowing Design-Builder reasonable access to remove its property and complete or correct items on the punch list.

#### 14.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (1) has specifically been identified in the Contract Documents, or (2) Owner and Design-Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design-Builder's performance of the remainder of the Construction, subject to the following:
  - 1. Owner at any time may request Design-Builder in writing to permit Owner to use or occupy any such part of the Construction that Owner believes to be ready for its intended use and substantially complete. If Design-Builder agrees that such part of the Work is substantially complete, Design-Builder and Owner will follow the procedures of Paragraph 14.03 for that part of the Construction.
  - 2. Design-Builder at any time may notify Owner in writing that Design-Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner and Design-Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 14.03 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 of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 6.05 regarding property insurance.

#### 14.05 *Final Inspection*

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

#### 14.06 *Final Payment*

##### A. *Application for Payment:*

1. After Design-Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, and Record Documents, Design-Builder may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (unless 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 Design-Builder 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 such releases or waivers of Liens specified in Paragraph 14.06.A.2, and as approved by Owner, Design-Builder may furnish receipts or releases in full and an affidavit of Design-Builder 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 in any way might result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Project Design Professional, Construction Subcontractor, or Supplier fails to furnish such a release or receipt in full, Design-Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

- B. *Final Payment and Acceptance:* If Owner is satisfied that the Work has been completed and Design-Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within 10 days after receipt of the final Application for Payment, give written notice to Design-Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design-Builder, indicating in writing the reasons for refusing to process final payment, in

which case Design-Builder shall make the necessary corrections and resubmit the Application.

- C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment.
- D. *Payment Becomes Due*: The amount will become due and will be paid by Owner to Design-Builder 30 days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability.

#### 14.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Design-Builder. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.05, from Design-Builder's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from unresolved disputes or Claims presented by Owner, or from Design-Builder's continuing obligations under the Contract.
- B. The acceptance of final payment by Design-Builder will constitute a waiver by Design-Builder of all claims and rights against Owner other than those pending matters that have been duly submitted to dispute resolution under the provisions of Article 16.

#### 14.08 *Correction Period*

- A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design-Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (1) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (2) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design-Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design-Builder.
- B. 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 Conceptual Documents.
- C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, or removed or replaced, under this Paragraph 14.08, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

## ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

### 15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Design-Builder, which will fix the date on which Work will be resumed. Design-Builder shall resume the Work on the date so fixed. Design-Builder 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.

### 15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events justifies termination for cause:
  - 1. Design-Builder'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 as duly adjusted).
  - 2. Design-Builder's disregard of Laws or Regulations of any public body having jurisdiction.
  - 3. Design-Builder's violation in any substantial way of provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, Owner may, after giving Design-Builder (and the surety, if any) 7 days' written notice, terminate the services of Design-Builder, take possession of any completed Design Submittals prepared by or for Design-Builder (subject to the limited license and indemnification provisions of Paragraph 3.04), exclude Design-Builder from the Site, take possession of the Work, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design-Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (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) such excess will be paid to Design-Builder. If such costs, losses and damages exceed such unpaid balance, Design-Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be 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.
- C. Notwithstanding Paragraph 15.02.B, Design-Builder's services will not be terminated if Design-Builder begins, within 7 days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Design-Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design-Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design-Builder by Owner will not release Design-Builder from liability.

### 15.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Design-Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design-Builder shall be paid (without duplication of any items) for:
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  - 3. Amounts paid in settlement of terminated contracts with Project Design Professionals, Construction Subcontractors, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with such terminated contracts); and
  - 4. Reasonable expenses directly attributable to termination.
- B. Design-Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

### 15.04 *Design-Builder May Stop Work or Terminate*

- A. If, through no act or fault of Design-Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, Owner fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay Design-Builder any sum finally determined to be due, then Design-Builder may, upon 7 days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.A. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design-Builder any sum finally determined to be due, Design-Builder may upon 7 days' written notice to Owner stop the Work until payment is made of all such amounts due Design-Builder, including interest thereon. The provisions of this paragraph are not intended to preclude Design-Builder from obtaining an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design-Builder's stopping Work as permitted by this paragraph.

## **ARTICLE 16 – DISPUTES**

### 16.01 *Methods and Procedures*

- A. *Notice of Claim:* If Owner and Design-Builder are not in agreement regarding a proposed or requested Change Order, other proposed adjustment of Contract Price or Contract Times, a Work Change Directive issued by Owner, or any other relief proposed or requested under the Contract, then either party may provide written notice of a Claim to the other party. Such notice of Claim shall be given within 90 days of: the proposal or request for a Change Order; such other proposed adjustment of Contract Price or Contract Times; the issuance of the Work Change Directive; or the proposal or request for other relief under the Contract.

The notice of Claim shall be given within the 90 days regardless of whether the other party has responded to such proposal, request, or issuance, and regardless of whether discussions or negotiations are in progress; provided, however, that the parties may extend the time to give such notice of Claim by mutual written agreement. The notice of Claim shall include a statement of position, specification of the remedy sought, and supporting documentation.

- B. *Response:* Within 30 days of the date of notice of Claim, the receiving party shall respond with a written statement of position and any supporting documentation.
- C. *Direct Negotiations:* Owner and Design-Builder agree to directly negotiate all Claims between them in good faith for a period of 60 days from the date of notice of Claim.
- D. *Mediation:* If direct negotiations are unsuccessful in resolving a Claim, then Owner and Design-Builder shall submit the unsettled Claim to mediation by a mutually agreeable mediator or mediation service. Owner and Design-Builder agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days.
  - 1. The fees and expenses, including filing fees, of the mediator and any mediation service shall be shared equally by Owner and Design-Builder.
  - 2. The mediation shall be held in the locality where the Project is located, unless another location is mutually agreed upon by the parties.
  - 3. A settlement (if any) resulting from such mediation will be specifically enforceable under the prevailing law, by any court having jurisdiction.
  - 4. Participation in the mediation process in good faith is a condition precedent to commencing final or binding dispute resolution.
- E. If mediation is unsuccessful in resolving a Claim, then within 120 days of the completion of the mediation (1) the parties may mutually agree to a binding dispute resolution process of their choice, or (2) the claimant may give notice to the other that the claimant will seek to have the dispute resolved by a binding dispute resolution method established in this Contract, or if no such method has been established, by a court of competent jurisdiction. Failure by claimant to give such notice in a timely manner shall result in a waiver of the Claim.

## **ARTICLE 17 – MISCELLANEOUS**

### **17.01 *Giving Notice***

- A. Whenever any provision of the Contract Documents requires the giving of written notice to the other party to this Contract, it will be deemed to have been validly given if delivered to the Authorized Representative of the other party:
  - 1. In person, by a commercial courier service or otherwise; or
  - 2. By registered or certified mail, postage prepaid; or
  - 3. By e-mail, with the words “Formal Notice” or similar in the e-mail’s subject line.

### **17.02 *Computation of Times***

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any

such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

**17.03** *Cumulative Remedies*

- A. Unless expressly stated otherwise in this Contract, 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, or waiver of, any rights and remedies available to any or all of them which are otherwise imposed or available by:
  - 1. Laws or Regulations; or
  - 2. Any special warranty or guarantee; or
  - 3. Other provisions of the Contract.
- B. The provisions of Paragraph 17.03.A will be as effective as if repeated specifically in the Contract in connection with each particular duty, obligation, right and remedy to which they apply.

**17.04** *Limitation of Damages*

- A. With respect to this Contract and any and all Claims and other matters at issue, Owner shall not be liable to Design-Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Builder on or in connection with any other project or anticipated project.

**17.05** *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.

**17.06** *Survival of Obligations*

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

**17.07** *Controlling Law*

- A. The Contract Documents will be construed in accordance with the law of the place of the Project.

**17.08** *Headings*

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





Gregory L. Geist  
Director

Public Hearing and Approval of a Resolution for Exemption and Authorization to use the Request for Proposals Method to Obtain a Progressive Design Builder for the Tri-City WRRF Outfall Project

<b>Purpose/Outcomes</b>	Public Hearing before the Board of County Commissioners, acting as the governing body of Water Environment Services, for the Proposed Exemption and Authorization to use the Request for Proposals procurement method to obtain a Progressive Design Builder for the Tri-City WRRF Outfall Project.
<b>Dollar Amount and Fiscal Impact</b>	This action does not have a financial impact; however, the total construction cost is estimated to be between \$21-\$25 million.
<b>Funding Source</b>	WES capital funds. No general funds involved.
<b>Duration</b>	If the Resolution is approved, WES will proceed with procurement of a contract with an Owners Representative in early Spring 2021 and a Progressive Design Builder in the Summer of 2021. The Project is expected to be complete by the end of 2024.
<b>Previous Board Action</b>	The Board has previously approved a contract with Jacobs Engineer Contract for preliminary design work (BCC Agenda Item 051619 VI 1), and an amendment to that contract in April 2020.
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• This project supports the WES Strategic Plan goal to provide properly functioning infrastructure that supports healthy streams and reduces flooding.</li> <li>• 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.</li> </ul>
<b>Counsel Review</b>	Amanda Keller, 12/8/2020
<b>Contact Person</b>	Jeff Stallard, Project Manager 503-742-4694 Lynne Chicoine, Capital Program Manager 503-742-4559 George Marilton, County Procurement Officer 503-742-5442

**BACKGROUND**

Water Environment Services ("WES") is requesting an exemption from the traditional competitive procurement process and authorization to use the Request for Proposals procurement method to obtain a Progressive Design Builder ("PDB") for the Tri-City Water Resource Recovery Facility Outfall Project ("Project").

Oregon law requires all public improvement projects to be procured by competitive bid, with the default project delivery method being design-bid-build, unless the Local Contract Review Board

("LCRB"), which in this case is Clackamas County Board of County Commissioners, acting in its capacity as the governing body of Water Environment Services ("Board"), grants an exemption. In order to grant an exemption, the Board must hold a hearing, with notice published 14 days prior, and adopt a resolution making certain findings about the exemption as required by ORS 279C.335 and the Clackamas County Local Contract Review Board Rules ("LCRB Rules") Section C-049-0600.

Clackamas County Procurement placed a Public Notice and copy of the draft findings on the Oregon Procurement Information Network ("ORPIN") on December 1, 2020, and with the Business Tribune online edition on December 2, 2020 and its print version on December 4, 2020, which included the date and time of a Public Hearing to take place before the Board.

### The Project

The Tri-City Water Resource Recovery Facility ("WRRF"), which is owned and operated by WES, discharges treated effluent from the facility through an existing 72-inch to 84-inch diameter outfall pipeline to the Willamette River. The peak flow into the Tri-City WRRF is approaching the outfall's rated hydraulic capacity of 75 million gallons per day ("mgd"). In January of 2019, WES completed the Sanitary Sewer Master Plan for which a dynamic model was developed to evaluate the current and future capacity needs for the system. The model identified a need to increase the outfall capacity at the Tri City WRRF to 180 mgd to meet build-out conditions.

Following an evaluation of alternatives, a 90-inch diameter outfall pipe is proposed to convey treated flow from the Tri City WRRF along Old Agnes Avenue and the I-205 right-of-way. Trenchless construction will be utilized to construct the outfall from a pit at the I-205 interchange with Hwy 99E to the Willamette River and back toward the main street round-a-bout.

Selection of the Progressive Design Build ("PDB") contractor is anticipated in 2021, with scheduled project completion in 2024. The construction cost is estimated to be between \$21- 25 million. This estimate does not include design or permitting, and is fully funded as part of the WES Capital Improvement Plan.

Under the PDB project delivery method, the PDB contractor performs both design and construction using an integrated team, usually with a consulting engineer. For the Tri-City Outfall project, the team, in close coordination with the WES project team, will develop the project approach, design, construction plan, schedule, staffing and pricing to successfully deliver the project. This model will bring the builder into the project at a relatively early point in the design process to lend their expertise in the design phase and mitigate risk associated with construction challenges. Having these activities occur during the design phase can benefit the Owner through lower construction costs, faster project completion, better project understanding, and closer relationships between Owner and PDB contractor.

Under the PDB process, rather than selecting a general contractor solely on a cost competitive basis, the PDB contractor is retained using a Request for Proposals ("RFP") process, which is based on a number of criteria, including qualifications and experience. Once a PDB contractor is selected, an initial project budget is established, which includes both the value of the technical scope of work using the construction contractor's real-time pricing data, and the value of the project risk profile, as mutually agreed with the Owner. The open book nature of the pricing process allows the project contingencies to be visible throughout the design and construction process, providing an opportunity for eliminating unrealized risk-related contingencies as the work moves forward.

As the project design progresses, the PDB contractor is expected to provide a guaranteed maximum price ("GMP"), which is negotiated at a predetermined point during design. This GMP provides the upper limit of the project construction costs, and allows the Owner to budget the value of the expected maximum construction cost. If the GMP is accepted by the Owner, the PDB contractor is then awarded the project and acts as the general contractor to perform the work. If the GMP is not accepted by the Owner, the PDB process includes an "off-ramp," in which the Owner could direct the PDB contractor to complete the construction documents and then competitively bid the project's construction phase, similar to the traditional DBB approach.

For WES to use this alternative project delivery method, the Board must first grant an exemption from standard requirements.

Grant of Exemption

In accordance with ORS Chapter 279.335 and LCRB Rules Section C-049-0600, an exemption generally requires the Board to adopt a resolution making the following two findings ("Findings"):

1. That the exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public improvement contracts.
2. That the exemption will result in substantial cost savings and other substantial benefits to the agency.

The resolution and Findings developed by WES staff addressing these two factors are attached hereto, and demonstrate that the exemption is not likely to encourage favoritism or diminish competition for public improvement contracts, and will result in substantial cost savings and other substantial benefits to the agency and the public.

**RECOMMENDATION:**

Staff respectfully recommends the Board of County Commissioners, acting as the governing body of Water Environment Services, take the following actions:

Approve the Resolution Granting Exemption from Competitive Bidding for the Tri-City Outfall Project By Means of a Progressive Design Builder and Authorizing Selection by Request for Proposals.

Respectfully submitted,

Greg Geist  
Director, WES

Placed on the Dec 17, 2020 Agenda by the Procurement Division.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

A RESOLUTION GRANTING EXEMPTION FROM  
COMPETITIVE BIDDING FOR THE TRI-CITY OUTFALL  
PROJECT BY MEANS OF A PROGRESSIVE DESIGN BUILDER  
AND AUTHORIZING SELECTION BY REQUEST FOR  
PROPOSALS

RESOLUTION NO.

2020-86

WHEREAS, the Clackamas County Board of County Commissioners ("Board"), acting as the governing body of Water Environment Services ("WES"), is the local contract review board for WES pursuant to ORS 279A.060;

WHEREAS, the Board has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C; and

WHEREAS, ORS 279C.335 provides a process for exempting certain contracts from competitive bidding and authorizes the selection of a contractor through the request for proposal ("RFP") process; and

WHEREAS, draft findings, attached hereto as Exhibit A and incorporated herein ("Findings"), addressing competition, operational, budget and financial data, public benefits, value engineering, specialized expertise required, market conditions, technical complexity, public safety and funding sources recommended by WES were available 14 days in advance of the public hearing on this Resolution as related to the Tri-City WRRF Outfall Project ("Project"); and

WHEREAS, the Findings also highlight the public benefits of using the Progressive Design Build method of contracting for the Project;

WHEREAS, the Board has reviewed the Findings and is satisfied with the supporting information and materials that have been provided to justify the application of the exemption and the use of the RFP process in its place;

NOW THEREFORE, BE IT RESOLVED BY BOARD OF WATER ENVIRONMENT SERVICES THAT:

1. The Board adopts the Findings, as set forth in Exhibit A to this Resolution, and makes the following additional findings:
  - a. The exemption from competitive bidding will promote competition and will not encourage favoritism, because the contractor will be chosen by a competitive RFP process and a significant portion of the construction work may be performed by subcontractors chosen by competitive bidding.
  - b. The exemption from competitive bidding is likely to result in substantial cost savings and other substantial benefits to WES and to the public, for the reasons set forth in the adopted Findings.
2. The Board authorizes Water Environment Services staff to proceed with the procurement of Progressive Design Builder services for the Project using the Request for Proposals process in accordance with the Attorney General Model Rules under ORS 279A.065(3).

ADOPTED this 17 day of December, 2020

WATER ENVIRONMENT SERVICES:

Chair

Recording Secretary

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

**EXHIBIT A  
TRI-CITY WRRF OUTFALL PROJECT  
FINDINGS IN SUPPORT OF USE OF REQUEST FOR PROPOSALS  
AND ALTERNATIVE CONTRACTING METHODS**

These Findings are for the approval of the use of an alternative contracting method so that Water Environment Services (“WES”) may utilize the request for proposals (“RFP”) competitive process to retain a construction contractor to use the Progressive Design-Build project delivery method for the Tri City Water Resource Recovery Facility Outfall Project (“Project”).

**A. Alternative Contracting Exemption under Oregon Law**

Oregon law requires all public improvement projects to be procured by competitive bid, with the default project delivery method being design-bid-build, unless the Local Contract Review Board (“LCRB”), which in this case is Clackamas County Board of County Commissioners, acting as the governing body of Water Environment Services (“Board”), grants an exemption. In accordance with the Clackamas County Local Contract Review Board Rules (“LCRB Rules”) Section C-049-0600 and ORS 279C.335, an exemption generally requires the Board make two findings:

1. That the exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public improvement contracts.
2. That the exemption will result in substantial cost savings and other substantial benefits to the agency.

For public improvement projects, ORS 279C.335 provides that the agency desiring an exemption from competitive bidding must justify through a findings report information concerning the following fourteen items:

- a. How many persons are available to bid;
- b. The construction budget and the projected operating costs for the completed public improvement;
- c. Public benefits that may result from granting the exemption;
- d. Whether value engineering techniques may decrease the cost of the public improvement;
- e. The cost and availability of specialized expertise that is necessary for the public improvement;
- f. Any likely increases in public safety;
- g. Whether granting the exemption may reduce risks to the contracting agency, the state agency, or the public that are related to the public improvement;
- h. Whether granting the exemption will affect the sources of funding for the public improvement;
- i. Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
- j. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;
- k. Whether the public improvement involves new construction or renovates or remodels an existing structure;
- l. Whether the public improvement will be occupied or unoccupied during construction;
- m. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
- n. Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

As described in this findings report, it is recommended that the Tri City Water Resource Recovery Facility Outfall Project be delivered through the Progressive Design-Build method, subject to the LCRB Rules and the County’s procurement process.

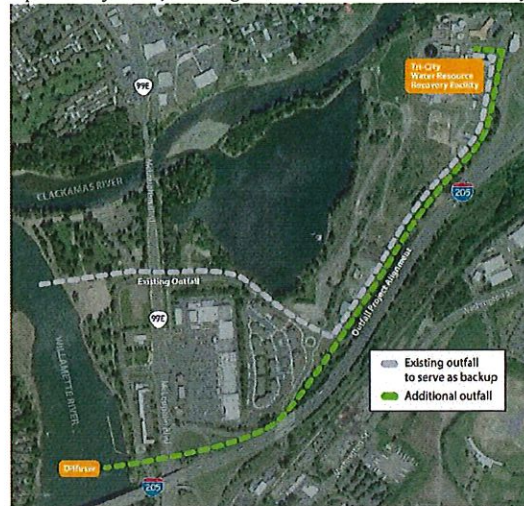
**B. Background Information**

## BEFORE THE BOARD OF COUNTY COMMISSIONERS OF CLACKAMAS COUNTY, STATE OF OREGON

The Tri-City Water Resource Recovery Facility (“WRRF”), which is owned and operated by WES, discharges treated effluent from the facility through an existing 72-inch to 84-inch diameter outfall pipeline to the Willamette River. The outfall is currently approaching its rated hydraulic capacity of 75 million gallons per day (“mgd”). In January of 2019, WES completed the Sanitary Sewer Master Plan for which a dynamic model was developed to evaluate the current and future capacity needs for the system. The model identified a need to increase the wet weather outfall capacity at the Tri City WRRF to 180 mgd to meet build-out conditions.

Following an evaluation of alternatives, a 90-inch diameter outfall pipe is proposed to convey treated flow from the Tri City WRRF along Old Agnes Avenue and the I-205 right-of-way, to a receiving pit near Hwy 99E in Oregon City. Trenchless construction will be utilized to construct the outfall from the receiving pit at the I-205 interchange to the Willamette River and back toward the main street round-a-bout. See Figure 1 for the proposed outfall alignment.

Selection of the Progressive Design Build contractor is anticipated in 2021, with scheduled project completion in 2024. The total construction cost is estimated to be between \$21- 25 million. This estimate does not include design or permitting, and is fully funded as part of the WES Capital Improvement Plan.



*Figure 1. Proposed TC WRRF Outfall Route*

### C. Progressive Design-Build

The traditional project delivery method that public agencies use for municipal improvements is Design-Bid-Build (“DBB”). Under this approach, an Owner contracts separately with a consulting engineer and a contractor. The consulting engineer would develop a fully detailed package of contract documents that are issued for competitive bidding by prospective contractors. The agency would then contract with the lowest cost, responsible bidder for construction of the project.

Over the last twenty years, municipal organizations have begun to successfully deliver alternative methods of project construction to the DBB model. One alternative that has become more widely used in the water/wastewater sector is the Progressive Design-Build (“PDB”) approach, which integrates design and construction services into a single contract.

Under the PDB project deliver method, the PDB contractor performs both design and construction functions as an integrated team, usually with a consulting engineer. The team, in close coordination with the WES project team, develops the project approach, design, construction plan, schedule, staffing and pricing to deliver the project. This model brings the builder into the project at a relatively early point in the design process to lend their expertise in the design phase to mitigate risk associated with construction challenges.

Having these activities occur during the design phase can benefit the Owner through lower construction costs, faster project completion, better project understanding, and closer relationships between Owner and PDB contractor. Under the PDB process, rather than selecting a general contractor solely on a cost competitive basis, the PDB contractor is retained using a Request for Proposals (“RFP”) process, which is based on a number of criteria, including qualifications and experience.

Once a PDB contractor is selected using the RFP process, the initial project budget is established, which includes both the value of the technical scope of work using the construction contractor’s real-time pricing data, and the value of the project risk profile, as mutually agreed with the Owner. The open book nature of the pricing process allows the project contingencies to be visible throughout the design and construction process, providing an opportunity for eliminating unrealized risk-related contingencies as the work moves forward.

As the project design progresses, the PDB contractor is expected to provide a guaranteed maximum price (“GMP”), which is negotiated at a predetermined point during design. This GMP provides the upper limit of the project construction costs, and allows the Owner to budget the value of the expected maximum construction cost. If the GMP is accepted by the Owner, the PDB contractor is then awarded the project and acts as the general contractor to perform the work. If the GMP is not accepted by the Owner, the PDB process includes an “off-ramp,” in which the Owner could direct the PDB contractor to complete the construction documents and then competitively bid the project’s construction phase, similar to the traditional DBB approach.

For WES to use this alternative project delivery method, the Board must first grant an exemption from standard requirements in accordance with LCRB Rules Section C-049-0620 and ORS 279C.335.

### D. Findings

#### 1. No favoritism or diminished competition.

The exemption is sought only to authorize a different competitive process to the standard low-bid procurement process. The PDB contractor will still be selected through the competitive RFP process. To ensure the exemption requested does not encourage favoritism or substantially diminish competition, a well-defined competitive procedure will be followed to select the contractor for this public improvement contract.

The RFP solicitation will be broadly advertised in a manner consistent with other public improvements and all qualified firms will be encouraged to apply. Procurement will include advertisements in the Portland Tribune and will post the opportunity on the State of Oregon Procurement Website (“ORPIN”). Further steps include direct notification to qualified PDB contractors, scheduling a pre-proposal conference, and appointment of an evaluation committee that will consider proposals received utilizing the comprehensive criteria identified in the RFP.

## BEFORE THE BOARD OF COUNTY COMMISSIONERS OF CLACKAMAS COUNTY, STATE OF OREGON

The qualifications-based RFP process for selecting a PDB contractor for this Project does not result in favoritism or diminished competition, because the process will remain competitive and contractors will be selected based on skills, experience and project approach. The qualifications-based RFP approach is widely recognized as one of the preferred alternative procurement methods for more complex projects. RFP responses allow contractors to compete based on their skills and experience. In this Project, some complexities will require a combination of skills that cannot be evaluated in a standard low-bid process, such as time constraints, budget constraints, and specialty construction methods. Overall, the ability to use the RFP process to select a PDB contractor fosters competition amongst the proposers similar to that of the traditional low-bid approach, while at the same time ensuring WES has the opportunity to evaluate non-monetary factors that will impact the quality and performance of the Project.

2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the public agency.

The benefits of using PDB for project delivery are greatest for larger, more complex projects; especially those that present high risk; those that are governed by schedule constraints; or those that would experience cost savings from the kind of value-engineering/design-evaluation that a construction contractor could provide during the design process. The Project will be a complex project to design, permit and construct. The Project will include risks associated with tunneling and work in the Willamette River. Preliminary geotechnical information collected during the conceptual design will inform the tunneling technology to be used, and has more closely defined the depth most suitable for the pipeline to be installed. Having an experienced tunneling contractor included during the design phase to lend their expertise will be beneficial. The construction schedule will be impacted by the in-water work windows set forth by the Oregon Department of Fish and Wildlife for work in the Willamette River. The requirement that portions of the tunneling be performed during this in-water work window will influence the construction schedule and sequence. An experienced contractor can advise on minimizing cost associated with construction scheduling.

Using a traditional DBB method of project delivery on a complex project has the potential to result in costly change orders that occur during the construction phase, such as when conditions on the ground may not match those anticipated. This is a particular risk for a project that is heavily geotechnical, since soil conditions can vary from what was revealed in exploration. By utilizing a project delivery method that involves the contractor in the early stages of design, the project team can identify the complexities and mitigate them before they get to a point where they will result in costly changes.

Overall, the complexity of this Project lends itself to the PDB delivery method, with substantial cost savings and other substantial benefits coming from the ability to anticipate design issues earlier in the process, including those related to tunneling and in-water work, in addition to scheduling efficiencies.

a. *How many persons are available to bid?*

Regionally, there are a number of contractors with the capabilities and expertise to construct the Tri City WRRF Outfall Project. The large diameter pipeline and tunnel construction techniques do require specialized capabilities and typically a similar project utilizing the DBB process would yield between 3-5 bids. To date, multiple prospective contractors have expressed preliminary interest in participating in the PDB process for this Project. It is anticipated that WES will receive between 3-5 responses, which is comparable to what would be expected for a DBB project.

b. *What are the construction budget and projected operating costs for the complete public improvement?*

At the conceptual design level, the construction cost is estimated to be between \$21 and \$25 million. An RFP process will allow the selection of an experienced PDB Contractor to advance the project through final design and construction, lending their large diameter tunneling expertise. Their early involvement may shorten the construction duration and potentially reduce the impact to Jon Storm Park. Because the outfall is a gravity pipe, there are no operating costs either associated with, or arising out of, its construction.

c. *What are the public benefits that may result from granting the exemption?*

As a member of the Project team, the PDB contractor has a significant influence on impacts to the public. Throughout construction, the Project may disrupt the local community and will require strategic scheduling to minimize traffic disturbances and impact to Jon Storm Park. Under the DBB process, the typical project is completed with primary consideration toward maximizing profit and minimizing interruption for the contractor. By selecting a PDB contractor early in the process, the project team will be able to identify construction activities that will impact the public and incorporate mitigation approaches into the project planning.

The selected PDB contractor must construct the project to meet the requirements of the many required permits in a way that best represents WES to the public. By having the PDB contractor on the team through the permitting process, the project team (WES and PDB contractor) will be able to effectively communicate with stakeholders. Having the PDB contractor available for involvement throughout the permitting process helps the contractor evaluate mitigation strategies to reduce disruption to the community.

Granting the exemption maximizes public benefits by ensuring the selection of a contractor that has demonstrated qualifications to effectively manage the public impact aspects of the work, and provide a long lasting, high-value product.

d. *Is it possible that value-engineering techniques may decrease the cost of the public improvement?*

To achieve greater effects, value-engineering is best accomplished early in the project design. In a traditional DBB project, the contractor is typically not involved during value-engineering assessments. The DBB model only provides a finalized set of construction contract documents and the contractor has limited to no involvement with design considerations and value engineering.

In a PDB delivery model, the contractor provides a cost estimates relatively early in the design process, which provides an early warning if the project's estimated cost is at risk of exceeding the budget established at project kickoff. In this case, WES and the contractor may initiate value engineering at a point in the project where changes can be made to recover the budget. In the case of this technically complex Project, identifying tunneling methods and creative ideas around scheduling within permitting constraints will be key to mitigating risk and minimizing cost. Only contractors with large-diameter tunneling experience can bring the specialized knowledge required to identify value-engineering opportunities during design. This will be accomplished by ongoing design evaluation and constructability reviews by the construction contractor member of a PDB team. The evaluations and reviews will increase the

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

opportunities for project success and reduce construction costs by defining or removing uncertainty so to reduce risk-based pricing that DBB contractors would bring to this type of project.

Granting the exemption will allow WES to select a contractor with demonstrated successful experience working with an owner to incorporate continuous value-engineering concepts and details into the design phase of the project to maximize cost savings for WES.

**e. *What is the cost and availability of specialized expertise that is necessary for the public improvement?***

Design and construction of a large diameter pipeline, shaft, tunnel, and a diffuser under a riverbed requires specialized design and construction. The specialized techniques will be best implemented by contractors with demonstrated successful experience on similar projects. The selection of a contractor with such specialized expertise to construct the Project will result in a substantially lower risk to WES, because it increases the likelihood of the Project being completed on or ahead of schedule, resulting in lower costs with minimal disruption to the area.

As part of the RFP procurement and selection process, PDB contractors will be evaluated on the basis of experience of the firm and qualification of key staff to deliver the Project. Particular emphasis will be placed on PDB contractors with specific demonstrated experience in successful construction of large diameter gravity pipelines with a tunnel component and in-river construction.

The ability to factor expertise and experience into contractor selection is inherent in the RFP process, but is not normally part of the standard low-bid process. The standard process does not ensure a contractor will possess the needed special expertise because prospective bidders only need to meet a limited criterion. The ability to consider each proposer's degree of expertise in these areas is an integral component of the proposal evaluation process on a project with this degree of complexity and inherent risk.

**f. *Are there any likely increases in public safety?***

Large scale construction requires considerable attention to on-site and off-site safety. The conceptual design of the Project contemplates a large, deep excavation in the clover leaf at southbound I205 and OR-99/McLoughlin Boulevard and some level of disruption in Jon Storm Park near the parking lot and boat dock. Deep and large excavation, additional traffic, and large construction equipment operation demand proper safety controls be in place at all times in order to minimize risk. Construction-generated staging, delivery, and parking activity will need to be considered in a comprehensive construction traffic safety and mitigation plan. Constant attention to traffic control, needs of park visitors and access to the Oregon City Shopping Center is crucial to maintaining a safe working and living environment for workers and the public.

The PDB delivery method will allow the contractor to work with the project team during the design to understand, plan for, and minimize safety hazards and conflicts between the project and the public. The contractor will provide input into issues of project phasing, construction staging areas, construction access corridors, and scheduling to reduce impacts. The close teamwork provides maximum flexibility to address both anticipated issues and concerns that may arise unexpectedly. Ultimately, this input will increase the public safety of the Project and reduce the risk of delays and claims.

**g. *Will granting the exemption reduce risks to the contracting agency or the public that are related to the public improvement?***

Granting the exemption will allow for reduced project cost and schedule risk by mitigating unforeseen conditions and misinterpretations through collaboration between designers and those constructing the improvements. Since it is not possible to entirely eliminate risk from a project, the use of a PDB delivery will provide an opportunity to actively manage the cost, schedule, and quality risks during the design process through the negotiated sharing of those risks with the PDB Contractor.

**h. *Will granting the exemption affect the sources of funding for the public improvement?***

No, the method of project delivery will not impact the source of funding. The project will be funded by rates and is budgeted for in the WES Capital Improvement Plant, regardless of project delivery method. WES finance will make a decision as to whether the project will be paid for in cash, through bonds or through the DEQ-administered State Revolving Loan Fund.

**i. *Will granting the exemption better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement?***

Market conditions for heavy and civil construction costs are currently volatile, due to the recent downturn in the economy throughout the nation and the Pacific Northwest related to the COVID-19 pandemic. WES needs to balance the ability to obtain a long-term, high-value facility while accounting for the pricing conditions of the current construction market. To ensure that WES is receiving value for its money, an independent consultant will be retained to act as its Owner's Representative ("OR") during the GMP negotiation process.

During the development of the GMP, solicitations of subcontractors for lower tier work will be required. In obtaining these bids, WES and the OR will be involved in the review and acceptance of the subcontractor firms that are solicited for bidding, and the bids will be openly reviewed with the contractor. Requiring a portion of the work to be let to subcontractors through a competitive bid process will allow WES to take advantage of the competitive bid market. As a result, the PDB method of delivery allows flexibility for WES to best react to the current market conditions.

In addition to managing contractor costs, having the contractor on board early provides the ability to facilitate early procurement of materials, which can provide a longer window for procurement of long lead items, and can also lock-in product costs to the benefit of WES.

After the GMP has been negotiated, the exemption will also allow for better control of increases to project costs and schedules by reducing unforeseen conditions and associated change orders through continuous coordination of the design and construction tasks being performed by the PDB contractor. Finally, WES will retain the ability to procure construction services through competitive bidding should continuing the relationship with the PDB contractor prove undesirable.

Overall, granting the exemption allows WES to balance quality-based selection with changing market conditions and to minimize material cost increases by leveraging contractor involvement early in the design process.



**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

*j. Will granting the exemption better enable the contracting agency to address the size and technical complexity of the public improvement?*

While the size of the Project in terms of construction cost is not outside the capability of many area contractors, the Project includes installing approximately a mile of very large diameter pipe. Approximately half of the length will be open cut, which except for the size of the pipe, is relatively straightforward, but about half a mile will require tunneling adjacent to a large shopping center and under a highly traveled state highway and a public park. The pipeline will terminate under the Willamette River bed at a depth of approximately 40 feet. Not all utility contractors are qualified to perform the work on a project of this type and complexity.

The large diameter pipeline, tunneling, and construction in the Willamette River require experienced construction crews that understand the impact geology can have on tunneling, know how to work around existing high traffic facilities and to ensure attention to details. Involvement by the PDB contractor during the design phase will also allow the contractor to more fully understand the project issues before providing a final price. For example, some geotechnical data is available, but the PDB contractor may elect to do additional exploration to better define risk and inform his approach. The technical complexity also impacts other project elements such as schedule, operations, and construction sequence which might be missed by a contractor submitting a low bid under a DBB process.

The technical complexity of this Project requires a contractor that is familiar with complex construction materials and techniques. The competitive Request for Proposals for PDB procurement allows WES to evaluate contractors' technical experience and staff that have conducted similar work to that required for the Project.

*k. Will the public improvement involve new construction, or renovation or remodeling of an existing structure?*

The Project is primarily new construction of a gravity pipeline and diffuser. The new construction will require connecting the new pipe to the existing one, which is an in-service outfall. Accordingly, the connections will need to be carefully planned and scheduled during the design phase of the Project.

The PDB process will allow WES to select a contractor who has a history of successfully completing pipeline projects while limiting unplanned impacts to existing facilities.

*l. Will the public improvement be occupied or unoccupied during construction?*

With the exception of Jon Storm Park, the majority of the Project construction will take place in an existing right-of-way that will be unoccupied during construction. The proposed tunneling techniques will minimize disruptions to Jon Storm Park, Oregon City Shopping Center, I-205 and OR99/McLoughlin Boulevard. For the in-river portion of the work, the contractor will adhere to the Oregon Department of Fish and Wildlife's Willamette River in-water work window and any other permit requirements. Coordination will be required for tie-in to the Tri City WRRF, which is an occupied facility that must remain operational during construction.

While most of the rights of way will be unoccupied during construction, the PDB process will allow the Contractor to fully understand and mitigate the impacts to the park and adjacent highways and commercial areas.

*m. Will the public improvement require a single phase of construction work or multiple phases of construction work to address specific project conditions?*

At this point, it is anticipated that this Project will be constructed in a single phase. The tunneling portion of the project will be scheduled to minimize the time the tunneling machine is on site and coordinated with the in-water work window for the Willamette River.

However, an advantage of PDB delivery is flexible adaptation to changing project conditions and the open book GMP process allows for the preparation of multiple negotiated design packages for the release for construction if that proves to be advantageous to WES. Possible advantages include commencing construction of the open cut portion of the pipeline as early as is practical, or advanced procurement of pipe material if market conditions are favorable.

While construction of the Project is anticipated to occur in one phase, the PDB delivery process could allow for phasing for potential scheduling advantages or to accommodate permitting requirements.

*n. Does the contracting agency have, or has it retained under contract, contracting agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract?*

WES has experience in implementing and completing projects utilizing alternative delivery methods, including the use of Construction Manager/General Contractor ("CM/GC") contracting method for the recent \$18M Kellogg Creek WRRF Improvements Project. County Counsel and County Procurement have additional experience working on CM/GC project delivery for the Housing Authority of Clackamas County and North Clackamas Parks and Recreation District, including development of necessary documentation and negotiation of contract terms.

For this Project, a team has been established that includes staff from WES, County Counsel, and County Procurement that will actively participate in the project from inception to completion. WES will retain the services of an Owner's Representative to assist with the procurement and contracting phase and services during construction administration. County Counsel and County Procurement will contract with additional outside entities or obtain additional required expertise as necessary throughout the development of this Project.

The combination of staff and consultants have experience completing similar projects using PDB delivery and have the necessary qualifications and expertise to negotiate, administer, and enforce the terms of the public improvement contract.

**E. Contract Terms and Conditions**

The technical complexities and uncertainties of the Project make it critical for the contract to contain specific terms and conditions that will increase efficiency and result in reduced costs. The Project team and WES' OR will provide a contract that includes industry best practices, mitigates WES and the project's risk exposure, and ensures fees that are fair and reasonable for the Project. County Counsel will also ensure that the contract includes all legally required public procurement terms.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

**F. Reservation of Rights**

ORS 279C.335(6) provides that the representations in and the accuracy of these findings are the bases for a contract-specific exemption if adopted by a LCRB resolution. These findings also describe, to some extent, anticipated features of the RFP and resulting public improvement contract, but the final parameters of the contract are those characteristics that will be announced in the solicitation document, and WES specifically reserves all of its rights in this regard.

**G. Recommendation for Proposed Project Delivery Approach**

A competitive RFP process to procure a PDB contractor is the preferred option for the Project. The RFP process will ensure that the selected contractors have the experience, expertise, and past performance to position the Project for success. Further, the RFP process ensures that meaningful competition occurs and that favoritism is not an element of the selection process. These factors will assist WES in achieving fair and equitable selection of a contractor that will deliver both quality design and successful completion while minimizing public impacts, controlling construction costs, and meeting an agreed-upon schedule.

The industry-accepted benefits of the PDB delivery include:

- Integrated design process results in a superior, more constructible design
- Shortened project schedules
- Reduced likelihood of change orders for unforeseen conditions
- Presence of “off-ramp” for contractual flexibility
- QBS selection
- Single contract for design and construction

WES staff therefore recommends adoption of a resolution approving a contract-specific exemption for the Project that permits use of the PDB delivery method, and to permit use of the competitive RFP process to select a PDB contractor.

# COVER SHEET

- New Agreement/Contract
- Amendment/Change/Extension to \_\_\_\_\_
- Other \_\_\_\_\_

Originating County Department: \_\_\_\_\_

Other party to contract/agreement: \_\_\_\_\_

Description:

After recording please return to: \_\_\_\_\_

County Admin

Procurement

If applicable, complete the following:

\_\_\_\_\_

Board Agenda Date/Item Number: \_\_\_\_\_