

AUTHORIZATION FOR AGREEMENTS, MOUs, OR OTHER DOCUMENTS OBLIGATING THE CITY

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: Contract for Demolition and Abatement - Various Sites Date: May 28, 2024

Statement of Purpose: In preparation for redevelopment, the existing structures on properties purchased by the Urban Renewal Agency need to be removed.

Department Head Signature: [Signature]

Remarks, if any:

City Attorney Review and Signature: See attached email Date: May 28, 2024

Other Signatures as Requested by the City Attorney: Chris Beethy / Acting City Engineering [Signature] Name/Position Date: 5/28/24

Budget Confirmed: Yes [x] No [ ] N/A [ ]

Certificate of Insurance Attached: Yes [x] No [ ] N/A [ ]

City Council Approval Needed: Yes [x] No [ ] Date: May 6, 2024

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 5/28/24

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: Date:

Date posted on website:

## Anna Iaukea

---

**From:** David Allen  
**Sent:** Thursday, May 23, 2024 11:32 AM  
**To:** Anna Iaukea; Chris Beatty  
**Cc:** Spencer Nebel; Derrick Tokos; Erik Glover  
**Subject:** Re: 24-0023 - City of Newport - Demolition & Abatement - Various Sites

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

You can use 5/28/24 as the effective date of the contract so long as Spencer signs it by or on that date. The contractor can fill in the 5/28/24 date, and also ask the contractor if the payment and performance bonds can be provided by that date as well. --David

---

**From:** Anna Iaukea  
**Sent:** Thursday, May 23, 2024 10:49 AM  
**To:** David Allen; Chris Beatty  
**Cc:** Spencer Nebel; Derrick Tokos; Erik Glover  
**Subject:** RE: 24-0023 - City of Newport - Demolition & Abatement - Various Sites

I just spoke with AEC's Contracts Manager and she confirmed that they need to know the effective date of the Contract in order for their Surety company to issue the bonds. I propose that we use May 28, 2024 as the effective date of the Contract. A Notice to Proceed will follow once the bonds have been reviewed and the Contract executed by the City.

Best Regards,

*Anna L. Iaukea*

Urban Renewal Project Manager  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365  
phone: 541.574.5868 fax: 541.574.0644  
[a.iaukea@newportoregon.gov](mailto:a.iaukea@newportoregon.gov)



---

**From:** David Allen <D.Allen@NewportOregon.gov>  
**Sent:** Thursday, May 23, 2024 10:25 AM  
**To:** Anna Iaukea <A.iaukea@NewportOregon.gov>; Chris Beatty <C.Beatty@NewportOregon.gov>  
**Cc:** Spencer Nebel <S.Nebel@NewportOregon.gov>; Derrick Tokos <D.Tokos@NewportOregon.gov>; Erik Glover

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

Prepared by



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

THIS AGREEMENT is by and between CITY OF NEWPORT (“Owner”) and  
Anderson Environmental Contracting, LLC (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

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

**ARTICLE 2 – THE PROJECT**

2.01 *The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Demolition and Abatement – Various Sites*

**ARTICLE 3 – ENGINEER**

3.01 *The Project has been designed by City of Newport.*

3.02 *The Owner has assigned the City Engineer (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.*

**ARTICLE 4 – CONTRACT TIMES**

4.01 Time of the Essence

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

4.02 Contract Times: Days

A. The Work will be substantially completed within **90** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **120** days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the

actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

## ARTICLE 5 – CONTRACT PRICE

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

- A. For all Work other than Unit Price Work, a lump sum of: \$\_\_\_\_\_.

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

- B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
1	Section 00210 MOBILIZATION	LS	1	\$22,238.00	\$22,238.00
2	Section 00221 COMMON PROVISIONS FOR WORK ZONE TRAFFIC CONTROL - TEMPORARY TRAFFIC CONTROL	LS	1	\$12,500.00	\$12,500.00
3	Section 00280 EROSION AND SEDIMENT CONTROL	LS	1	\$5,000.00	\$5,000.00
	<b>SITE 1 – 143 SW COAST HWY</b>				
4	Section 00310 REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	\$6,038.00	\$6,038.00
5	Section 00330 EARTHWORK – AGGREGATE BACKFILL	LS	1	\$4,100.00	\$4,100.00
6	Section 00495 TRENCH RESURFACING	LS	1	\$1.00	\$1.00
	<b>SITE 2 – 415-425 SW COAST HWY</b>				
7	Section 00295 ASBESTOS MATERIAL	LS	1	\$130,985.00	\$130,985.00
8	Section 00310 REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	\$219,987.00	\$219,987.00
9	00543 ARCHITECTURAL TREATMENT – SIDING INSTALLATION - HARDIE® PLANK OR EQUAL PRODUCT	SF	1,300	\$16.2276	\$21,096.00
10	00543 ARCHITECTURAL TREATMENT – PAINT SIDING	SF	1,300	\$3.85	\$5,005.00

11	Section 01069 – METAL HANDRAIL AND PEDESTRIAN FENCE	LS	1	\$9,173.00	\$9,173.00
	<a href="#">SITE 3 – SE 35<sup>th</sup> St &amp; US 101</a>				
12	Section 00310 REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	\$284,440.00	\$284,440.00
13	Section 00330 EARTHWORK – AGGREGATE BACKFILL	LS	1	\$18,700.00	\$18,700.00
14	Section 00495 TRENCH RESURFACING	LS	1	\$1.00	\$1.00
<b>Total of All Unit Price Bid Items</b>					<b>\$ 739,264.00</b>

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- C. Total of Lump Sum Amount and Unit Price Work \$ 739,264.00.
- D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

#### ARTICLE 6 – PAYMENT PROCEDURES

##### 6.01 Submittal and Processing of Payments

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

##### 6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 25th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
  - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
    - a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

- b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

**6.03 Final Payment**

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

**ARTICLE 7 – INTEREST – NOT USED**

**ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

8.01 *In order to induce Owner to enter into this Contract, Contractor makes the following representations:*

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.



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

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### **9.01 Contents**

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to 11, inclusive).
  - 2. Performance bond (pages 12 to 14, inclusive).
  - 3. Payment bond (pages 15 to 18, inclusive).
  - 4. Other bonds.
    - a. \_\_\_\_ (pages \_\_\_\_ to \_\_\_\_, inclusive).
  - 5. General Conditions (pages 19 to 88, inclusive).
  - 6. Supplementary Conditions (pages 89 to 114, inclusive).
  - 7. Specifications as listed in the table of contents of the Project Manual.
  - 8. Drawings.
  - 9. Addenda (numbers 1 to 2, inclusive).
  - 10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages 156 to 185, inclusive).
  - 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.

- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### **10.01 Terms**

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

### **10.02 Assignment of Contract**

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

### **10.03 Successors and Assigns**

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

### **10.04 Severability**

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

### **10.05 Contractor's Certifications**

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

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

#### 10.06 Other Provisions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.
- B. Pursuant to ORS 279C.505(1) - Contractor shall make payment promptly, as due, to all persons supplying the Contractor with labor or materials for the performance of the work provided in the contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract. Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished.
- C. Pursuant to ORS 279C.505(2) – Contractor certifies that it has an employee drug testing program in place.
- D. If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or subcontractor by any person in connection with the public improvement contract as the claim becomes due, the proper officer or officers representing the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. Other provisions of ORS 279C.515 and ORS 279C.580 concerning payments also apply.
- E. Contractor shall comply with hours of labor rules Pursuant to ORS 279C.520, 279C.540, and 279C.545.
- F. Per ORS 279C.530, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services. All subject Employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- G. Contractor shall pay workers not less than the applicable prevailing wage rate.
- H. Public Works Bond – Contractor shall have a public works bond filed with the Oregon Construction Contractors Board before starting Work on the Project unless exempt under ORS 279C.836. Contractor shall include in every subcontract a provision requiring every subcontractor to have a public works bond filed with the Oregon CCB before starting Work on the Project unless exempt under ORS 279C.836.

- I. Contractor shall defend, hold harmless and indemnify Owner , its officers, agents, engineers, attorneys and employees from any and all losses, liability, damages, costs, expenses (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), claims, suits or actions whatsoever in nature, including intentional acts, resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this Contract.
- J. Failure of Owner to enforce any provision of this Contract shall not constitute a waiver by the Owner of that or any other provisions.

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


This Agreement will be effective on May 28, 2024 (which is the Effective Date of the Contract).

OWNER:

City of Newport

By: Spencer Nebel 

Title: City Manager

Attest: 

Title: Urban Renewal Project Manager

Address for giving notices:

169 SW Coast Highway

Newport, OR 97365

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

CONTRACTOR:

Anderson Environmental Contracting, LLC

By: 

Title: Kylie Clarke - Contracts Manager

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

Attest: 

Title: Brian Gabbard - General Manager

Address for giving notices:

[REDACTED]

[REDACTED]

License No.: [REDACTED]

*(where applicable)*

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 Defined Terms

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

regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

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

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

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

## 1.02 Terminology

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



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

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 Delivery of Bonds and Evidence of Insurance

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

### 2.02 Copies of Documents

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

### 2.03 Before Starting Construction

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

during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

**2.04 Preconstruction Conference; Designation of Authorized Representatives**

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

**2.05 Initial Acceptance of Schedules**

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

**2.06 Electronic Transmittals**

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

## ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 Intent

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

### 3.02 Reference Standards

#### A. Standards Specifications, Codes, Laws and Regulations

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

### 3.03 Reporting and Resolving Discrepancies

#### A. Reporting Discrepancies:

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

2. **Contractor's Review of Contract Documents:** If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
  3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.
- B. **Resolving Discrepancies:**
1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
    - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
    - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 Requirements of the Contract Documents

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

### 3.05 Reuse of Documents

#### A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

## ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

### 4.01 Commencement of Contract Times; Notice to Proceed

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

### 4.02 Starting the Work

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

### 4.03 Reference Points

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

### 4.04 Progress Schedule

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

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

#### 4.05 Delays in Contractor's Progress

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

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

### **5.01 Availability of Lands**

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

### **5.02 Use of Site and Other Areas**

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

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

materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

- C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 Subsurface and Physical Conditions

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

- 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
- 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
- 3. Technical Data contained in such reports and drawings.

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

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

### 5.04 Differing Subsurface or Physical Conditions

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

- 1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
- 2. is of such a nature as to require a change in the Drawings or Specifications; or
- 3. differs materially from that shown or indicated in the Contract Documents; or



4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
  1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
    - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
  2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
    - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site

and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

#### 5.05 Underground Facilities

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

recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

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

#### 5.06 Hazardous Environmental Conditions at Site

- A. **Reports and Drawings:** The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  2. Technical Data contained in such reports and drawings.
- B. **Reliance by Contractor on Technical Data Authorized:** Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer,

or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

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

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

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

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

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

#### 6.02 Insurance—General Provisions

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

#### 6.03 Contractor's Insurance

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

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



out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.

- I. **General provisions:** The policies of insurance required by this Paragraph 6.03 shall:
  1. include at least the specific coverages provided in this Article.
  2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
  3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
  4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
  5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

#### 6.04 Owner's Liability Insurance

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

#### 6.05 Property Insurance

- A. **Builder's Risk:** Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder

of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."

2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
6. extend to cover damage or loss to insured property while in transit.
7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
8. allow for the waiver of the insurer's subrogation rights, as set forth below.
9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
10. not include a co-insurance clause.
11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
12. include performance/hot testing and start-up.

13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

#### 6.06 Waiver of Rights

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
  - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
  - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

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

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

## ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

### 7.01 Supervision and Superintendence

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

### 7.02 Labor; Working Hours

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

### 7.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

### 7.04 “Or Equals”

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
  - a. in the exercise of reasonable judgment Engineer determines that:
    - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
    - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
    - 3) it has a proven record of performance and availability of responsive service; and
    - 4) it is not objectionable to Owner.
  - b. Contractor certifies that, if approved and incorporated into the Work:
    - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
    - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. **Contractor's Expense:** Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. **Engineer's Evaluation and Determination:** Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. **Effect of Engineer's Determination:** Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. **Treatment as a Substitution Request:** If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

## 7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
  - a. shall certify that the proposed substitute item will:
    - 1) perform adequately the functions and achieve the results called for by the general design,
    - 2) be similar in substance to that specified, and
    - 3) be suited to the same use as that specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from that specified, and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

#### 7.06 Concerning Subcontractors, Suppliers, and Others

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.



- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
  - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

#### 7.07 Patent Fees and Royalties

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents,

consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

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

#### 7.08 Permits

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

#### 7.09 Taxes

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

#### 7.10 Laws and Regulations

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

contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.11 Record Documents

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

#### 7.12 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform

any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.13 Safety Representative

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

#### 7.14 Hazard Communication Programs

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

#### 7.15 Emergencies

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

#### 7.16 Shop Drawings, Samples, and Other Submittals

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

- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
  2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
  3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.
- B. *Submittal Procedures for Shop Drawings and Samples:*** Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.
1. ***Shop Drawings:***
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.
  2. ***Samples:***
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:*** Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:***
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

**E. Resubmittal Procedures:**

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

**7.17 Contractor's General Warranty and Guarantee**

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

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

#### 7.18 Indemnification

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

such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 7.19 Delegation of Professional Design Services

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

### ARTICLE 8 – OTHER WORK AT THE SITE

#### 8.01 Other Work

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.



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

#### 8.02 Coordination

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

#### 8.03 Legal Relationships

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

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

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9 – OWNER'S RESPONSIBILITIES**

### **9.01 Communications to Contractor**

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

### **9.02 Replacement of Engineer**

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

### **9.03 Furnish Data**

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

- 9.04 Pay When Due
- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.
- 9.05 Lands and Easements; Reports, Tests, and Drawings
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 Insurance
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 Change Orders
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 Inspections, Tests, and Approvals
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 Limitations on Owner's Responsibilities
- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 9.10 Undisclosed Hazardous Environmental Condition
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.
- 9.11 Evidence of Financial Arrangements
- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).
- 9.12 Safety Programs
- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## **ARTICLE 10 – ENGINEER’S STATUS DURING CONSTRUCTION**

### **10.01 Owner’s Representative**

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

### **10.02 Visits to Site**

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

### **10.03 Project Representative**

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

### **10.04 Rejecting Defective Work**

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

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

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

**10.06 Determinations for Unit Price Work**

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

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

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

**10.08 Limitations on Engineer's Authority and Responsibilities**

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

**10.09 Compliance with Safety Program**

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

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

**11.01 Amending and Supplementing Contract Documents**

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

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

#### 11.02 Owner-Authorized Changes in the Work

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

### 11.03 Unauthorized Changes in the Work

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

### 11.04 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  - 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
  - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
  - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
  - 1. a mutually acceptable fixed fee; or
  - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
    - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;

- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

#### 11.05 Change of Contract Times

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

#### 11.06 Change Proposals

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



is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

#### 11.07 Execution of Change Orders

A. Owner and Contractor shall execute appropriate Change Orders covering:

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

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

#### 11.08 Notification to Surety

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

### ARTICLE 12 – CLAIMS

#### 12.01 Claims

A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:

1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.

B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making

the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
  - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
  - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.
  - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

### **13.01 Cost of the Work**

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
  4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
  5. Supplemental costs including the following:
    - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
    - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

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

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

- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*: When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.
- E. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

### 13.02 Allowances

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

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual

conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.

- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
  2. there is no corresponding adjustment with respect to any other item of Work; and
  3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

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

### **14.01 Access to Work**

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

### **14.02 Tests, Inspections, and Approvals**

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

4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

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

#### 14.03 Defective Work

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

#### 14.04 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer

as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 Uncovering Work

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

#### 14.06 Owner May Stop the Work

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

#### 14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.



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

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

### **15.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
  - 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
  - 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

**C. Review of Applications:**

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

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

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

#### 15.02 Contractor's Warranty of Title

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

#### 15.03 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially

complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 Partial Use or Occupancy

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

**15.05 Final Inspection**

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

**15.06 Final Payment**

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
  - d. a list of all disputes that Contractor believes are unsettled; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in

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

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

#### 15.07 Waiver of Claims

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

#### 15.08 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such other adjacent areas;
  - 2. correct such defective Work;
  - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or

- arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
  - D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
  - E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

### **16.01 Owner May Suspend Work**

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

### **16.02 Owner May Terminate for Cause**

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



Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

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

#### 16.03 Owner May Terminate For Convenience

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

#### 16.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner

or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17 – FINAL RESOLUTION OF DISPUTES**

### **17.01 Methods and Procedures**

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

## **ARTICLE 18 – MISCELLANEOUS**

### **18.01 Giving Notice**

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

### **18.02 Computation of Times**

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

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

**18.03 Cumulative Remedies**

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

**18.04 Limitation of Damages**

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

**18.05 No Waiver**

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

**18.06 Survival of Obligations**

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

**18.07 Controlling Law**

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

**18.08 Headings**

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

# SUPPLEMENTARY CONDITIONS

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# SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C-700, 2013 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

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.

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### SC-1.01 Defined Terms

SC-1.01.A.3 Add the following language at the end of Paragraph 1.01.A.3:

*The Application for Payment form to be used on this Project is included in Section C-620. An electronic version is available from the Owner.*

SC-1.01.A.8 Add the following language at the end of Paragraph 1.01.A.8:

*The Change Order form to be used on this Project is included in Section C-941.*

SC-1.01.A.12 Add the following section and the end of paragraph 1.01.A.12

a. *Requests for Interpretation (RFI) – Contractor’s written request to obtain clarifications or interpretations of the Contract Documents.*

1) *Report conflicts, errors, ambiguities, and discrepancies in the Contract Documents by requesting an interpretation.*

SC-1.01.A.20. Add the following language at the end of paragraph 1.01.A.20:

*The City of Newport shall act as Authorized Engineer in regard to Contract Change Order Authorizations, Progress Payments and Project Closeout.*

SC-1.01.A.32 Add the following language at the end of Paragraph 1.01.A.32:

*Throughout the Project Manual, the terms “Resident Project Representative” and “Project Representative” have the same meaning.*

SC-1.01.A.40 Amend Paragraph 1.01.A.40 to read as follows:

*Substantial Completion - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer as evidenced by Engineer’s definitive certificate of Substantial Completion, it is 100% complete in accordance with the Contract Documents with the exception of minor and specific corrective items that would normally be itemized on a final punch list and completed before final acceptance; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by Engineer’s written recommendation of final payment in accordance with*

*paragraph 15.06. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.*

## **ARTICLE 2—PRELIMINARY MATTERS**

### **SC-2.02 Copies of Documents**

**SC-2.02.A** Amend Paragraph 2.02.A to read as follows:

*Owner shall furnish to Contractor up to five printed and bound hard copies of the Drawings (standard 11 x 17 sheet sets) and Project Manual. Additional copies will be furnished upon request at the cost of reproduction. One set of the Drawings and Project Manual in electronic format will be provided upon request.*

## **ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

### **SC-3.03 Reporting and Resolving Discrepancies**

**SC-3.03.B.1.b** Add the following new paragraphs immediately after Paragraph 3.03.B.1.b:

- 3.03.B.2** *Where a discrepancy occurs between or within the standards, specifications, and drawings, the more stringent or higher quality requirements shall apply. The precedence of the Construction Documents is in the following sequence:*
- a.** *Addenda and modifications to the Drawings and Specifications take precedence over the original construction documents.*
  - b.** *In the Drawings, the precedence shall be Drawings of a larger scale over those of a smaller scale, figured dimensions over scaled dimensions, and noted materials over graphic indications.*
  - c.** *Should there be a conflict within the Specifications, on the Drawings, or between the Drawings and the Specifications, the Engineer shall decide which stipulation will provide the best installation and his decision shall be final.*
- 3.03.B.3** *Before executing the Agreement, the Contractor shall thoroughly familiarize itself with all specified products and submit written notice to Engineer if it objects to the proposed use of any product.*
- 3.03.B.4** *Referenced standards are a part of these specifications. If choices or options are contained therein, selection will be made by the Engineer.*
- 3.03.B.5** *Wherever in these specifications a product is referred to in the singular number, such reference shall include as many such items as are indicated or required to complete work.*
- 3.03.B.6** *These specifications are of the abbreviated or 'streamlined' type and frequently include incomplete sentences. Words such as 'shall,' 'shall be,' 'the Contractor shall,' and similar phrases shall be supplied by inference.*

**ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

**SC-4.01 Commencement of Contract Times; Notice to Proceed**

SC-4.01.A Replace this Paragraph with the following:

4.01.A *The Contract Times will commence to run on the day indicated in the Notice to Proceed approving commencement of work.*

**SC-4.05 Delays in Contractor’s Progress**

SC-4.05.C.2 Add the following new paragraph immediately after Paragraph 4.05.C.2:

4.05.C.2.a *Abnormal weather conditions are further defined as the occurrence of more than 1.5 inches of rain in a 24-hour period on a normal workday or 1.0 inch of snow in a 24-hour period on a normal workday.*

**ARTICLE 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS**

**SC-5.02 Use of Site and Other Areas**

SC-5.02.B Add the following to Paragraph 5.02.B:

5.02.B.1 *Disposal Facilities*

*Spoils and debris shall be disposed of at the following facilities.*

a. *Trench Spoils*

*Contractor is responsible to identify disposal site(s) for trench spoils. All disposal sites must be approved by the Project Representative.*

b. *Asphalt*

*Road & Driveway Co.*

██████████  
████████████████████

*Clean asphalt debris is accepted free of charge.*

c. *Vegetation and Misc. Debris*

*Thompson’s Sanitary Service  
Agate Transfer Station*

██████████  
████████████████████



d. *Asbestos Containing Material (ACM)*

*Landfill or transfer station permitted by the Oregon Department of Environmental Quality to accept asbestos waste.*

e. *Any other disposal sites must be approved by the Project Representative.*

SC-5.03 Subsurface Physical Conditions

SC-5.03.B.3 Add the following new paragraphs immediately after Paragraph SC-5.03.B.3:

5.03.C *Technical Data is available that documents subsurface explorations performed around the site to assess the soil and groundwater for environmental contaminants near three former underground fuel tanks, a wastewater holding tank, and a former hydraulic lift at Project Site 3: SE 35<sup>th</sup> St and US 101. The three underground fuel tanks were removed in 1994, the hydraulic hoist was removed in 2002, and the wastewater holding tank remains on site:*

a. *Phase II Environmental Site Assessment, prepared by Anderson Geological, September 13, 2014 (attached as Appendix B)*

5.03.D *Copies of reports and drawings (if any) itemized in SC-5.03.C that are not included with Bidding Documents may be examined at the office of the Engineer during regular business hours. These reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which the Contractor may rely as identified and established above are incorporated therein by reference. Contractor is not entitled to rely upon other information and data utilized by Engineer and Engineer's Consultants in the preparation of the Drawings and Specifications.*

*Contractor is also required to visit the Site to become familiar with and satisfied as to the general, local, and Site conditions that may affect cost, progress, performance, and furnishing of the Work. This is to involve an alert, heads-up, eyes-open, reasonable examination of the area and the conditions under which the Work is to be performed (see GC-5.04.D.2.b).*

SC-5.05 Underground Facilities

SC-5.05.A.2.d Add the following new paragraph immediately after Paragraph 5.05.A.2.d:

5.05.A.3 *Oregon law requires Contractor to follow rules adopted by the Oregon Utility Notification Center (OUNC). These rules are set forth in OAR 952-001-0010 through 952-001-0090 and O.R.S. Chapter 757.542 through 562 and 757.993. OUNC can be contacted at (800) 332-2344 and copies of the rules can be obtained from the center.*

SC-5.06 Hazardous Environmental Condition at Site

SC-5.06.A Add the following new paragraph immediately after Paragraph 5.06.A.2

5.06.A.3 *Asbestos Containing Material (ACM) was detected during an inspection at Project Site 2: 415-425 SW Coast Hwy. Asbestos inspection reports are included in Appendix A.*

SC-5.06.C Add the following new paragraph immediately after Paragraph 5.06.C:

*5.06.C.1 Contractor shall be responsible for and pay all costs associated with the abatement, removal, and disposal of any existing asbestos containing material (ACM) requiring removal or disturbed during the Work which is shown or indicated in the asbestos inspection reports.*

SC-5.06.I Amend the first line of Paragraph 5.06.I. to read as follows:

*Subject to the provisions of the Oregon Constitution, applicable laws and regulations, and to the limits of the Oregon Tort Claims Act, Owner shall indemnify and hold harmless Contractor...*

SC-5.07 Historical or Archaeological Finds

SC-5.07 Add the following new paragraph immediately after Paragraph 5.06.K:

*5.07 Historical or Archaeological Finds – Where historical objects of archaeological or paleontological nature are encountered during the course of construction, including but not limited to ruins, sites, buildings, artifacts, and fossils, the Contractor shall suspend operations in the area, preserve all such objects from disturbance and shall notify the Engineer of the nature and location of such finds. The Engineer will arrange for the disposition of all finds and shall notify the Contractor when to proceed with construction in the affected area.*

## **ARTICLE 6—BONDS AND INSURANCE**

SC-6.01 Performance, Payment and Other Bonds

SC-6.01.B Add the following new paragraph immediately after Paragraph 6.01.B:

*6.01.B.1 The Bonds shall be accompanied by the name, address and phone number of the agent for the surety who is authorized to receive notice of claims against the Bond.*

SC-6.01.C Add the following new paragraph immediately after Paragraph 6.01.C:

*6.01.C.1 Bonds shall be written by companies licensed to do business in the State of Oregon and satisfactory to the Owner.*

SC-6.01.G Add the following new paragraph immediately after Paragraph 6.01.F:

*6.01.F Owner reserves the right to review, investigate, and reject Bonding companies proposed to be used by Contractor if they are determined inadequate to provide necessary coverages as specified in these documents.*

SC-6.02 Certificates of Insurance

SC-6.02 Add the following new paragraphs immediately after Paragraph 6.02.J:

*6.02.K By requiring such insurance and insurance limits herein, Owner does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities*

granted to Owner in the Contract Documents.

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

SC-6.03 Contractor's Insurance

SC-6.03.G Add the following new paragraph immediately after Paragraph 6.03.G:

6.03.G.1 Other parties to be named as additional insured include the following:

- a. Tenants (if applicable)
- b. Subcontractors (if not separately insured)
- c. City of Newport

SC-6.03.I Add the following new paragraphs immediately after Paragraph 6.03.I.5:

6.03.I.6 The limits of liability for Workman's Compensation insurance required by Paragraph 6.03.A of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

- |   |           |
|---|-----------|
| a. State                                    | Statutory |
| b. Applicable Federal (e.g. Longshoremen's) | Statutory |
| c. Employer's Liability                     | \$500,000 |
| d. Each Accident                            | \$100,000 |

6.03.I.7 Contractor shall require all subcontractors to purchase and maintain Workman's Compensation Insurance, including Occupational Disease and Employer's Liability Insurance, in the amounts and coverage as required by all applicable Federal, State or other laws.

6.03.I.8 Contractor's General Liability under paragraphs 6.03.B and 6.03.C of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody, and control of the Contractor:

- |  |  |
|--|--|
| a. General Aggregate   | \$2,000,000                                |
| b. Products - Completed Operations Aggregate   | \$2,000,000                                |
| c. Personal and Advertising Injury   | \$1,000,000                                |
| d. Each Occurrence (Bodily Injury and Property Damage)   | \$1,000,000                                |
| e. Fire Damage (any one fire)  | \$100,000                                  |
| f. Excess Liability  | See below for Umbrella or Excess Liability |
| g. (Ad. 4.1) Medical Expense (Any one person)  | \$5,000                                    |
| h. Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable. |  |

6.03.I.9 Comprehensive Automotive Liability required under paragraph 6.03.D of the General Conditions:

- a. *Bodily Injury (Each Person)* \$1,000,000
- b. *Bodily Injury (Each Accident)* \$1,000,000
- c. *Property Damage (Each Accident)* \$1,000,000

6.03.1.10 *Contractual Liability* required by paragraph 6.03.C.2 of the General Conditions shall be provided by the Contractor as part of the Contractor's General Liability Coverage.

- a. *Bodily Injury (Each Person)* \$1,000,000
- b. *Bodily Injury (Each Accident)* \$1,000,000
- c. *Property Damage (Each Accident)* \$1,000,000
- d. *Property Damage (Annual Aggregate)* \$1,000,000

6.03.1.11 *Umbrella or Excess Liability* required under paragraph 6.03.E of the General Conditions:

- a. *Aggregate* \$5,000,000
- b. *Each Occurrence* \$5,000,000

6.03.1.12 *Contractor's Pollution Liability Insurance* required under paragraph 6.03.F of the General Conditions:

- a. *Aggregate* \$2,000,000
- b. *Each Occurrence* \$2,000,000

6.03.1.13 *All liability policies* required by 6.03.1.8 through 6.03.1.12 shall be primary and non-contributory with Owner and shall contain a waiver of subrogation in favor of Owner.

#### SC-6.05 Property Insurance

SC-6.05.A.1 Add the following new paragraph immediately after Paragraph 6.05.A.1:

6.05.A.1.a *Other parties to be named additional insured include: None.*

### ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

#### SC-7.02 Labor; Working Hours

SC-7.02.B Replace all instances of "legal holiday" with "City-observed holiday".

Add the following new sentences to Paragraph 7.02.B:

*Contractor will not perform work that impacts US 101 on the following days: Friday, May 24, 2024; and Friday, July 5, 2024.*

*Regular working hours are defined as 7:00AM to 7:00PM.*

#### SC-7.03 Services, Materials, and Equipment

SC-7.03.B Add the following new paragraphs immediately after Paragraph 7.03.B:

7.03.B.1 *Contractor agrees to prefer goods or services that have been manufactured or produced in the United States of America if price, fitness, availability and quality are otherwise equal.*

**SC-7.06 Concerning Subcontractors, Suppliers, and Others**

**SC-7.06.A** Add the following new paragraphs immediately after Paragraph 7.06.A:

**7.06.A.1** *In accordance with the Instructions to Bidders (Section 00200), Contractor shall list subcontractors on the Proposed Subcontractor List (Section 00440), sign, and submit the completed form to Owner within two working hours of the time and at the place for receipt of Bids as identified in the Advertisement for Bids (Section C-100). Criteria for listing subcontractors shall be in accordance with ORS 279C.370 and are as follows:*

- a. Only public improvement projects with a total contract value in excess of \$100,000 are required to list first tier subcontractors.*
- b. Only first tier subcontractors need to be listed.*
- c. Any first-tier subcontractor that will be furnishing labor or labor and materials on the Bid, if awarded, whose subcontract value would be equal to or greater than:
  - (1) Five percent of the total Bid amount, but at least \$15,000; or*
  - (2) \$350,000, regardless of the percentage of the total Bid amount.**
- d. If there are no subcontractors who meet the criteria stated 6.01.A.1.a, b and c above, Bidder must state "none" on the form provided and submit it to Owner as stated in 6.01.A.1 above.*
- e. The Proposed Subcontractor List (Section 00435) must be submitted in a separate sealed envelope. The form may be submitted with the Bid or anytime within two working hours of the Bid opening.*
- f. Failure to submit a subcontractor list in accordance with the instructions herein may result in the Bid being rejected as non-responsive.*

**SC-7.06.O** Add the following new paragraphs immediately after Paragraph 7.06.O:

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

**7.06.Q** *Contractor and all first tier Subcontractors and Suppliers must comply with prompt payment provisions pursuant to ORS 279C.515. Contractor shall include in each subcontract for property, materials or services (1) a payment clause which obligates the Contractor to pay such Subcontractor or Supplier within 30 days of receiving payment from the Owner, (2) an interest penalty clause which obligates the Contractor to pay the Subcontractor an interest penalty on delinquent payments, and (3) a clause which requires first tier Subcontractors or Suppliers to include similar payment and interest penalty clauses in lower tier subcontracts. These clauses and the rights and obligations described thereby, shall conform to the requirements of ORS 279C.515 and ORS 279C.580.*

**7.06.R** *Contractor shall comply with ORS 279C.580 regarding all relations with Subcontractors.*

SC-7.09 Taxes

SC-7.09.A Add the following new paragraphs immediately after Paragraph 7.09.A:

- 7.09.A.1 *Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.*
- 7.09.A.2 *Contractor shall pay promptly all contributions or amounts to the State Industrial Accident Fund and the State Unemployment Compensation Fund from Contractor or any Subcontractor in connection with the performance of the contract.*

SC-7.10 Laws and Regulations

SC-7.10.C Add the following new paragraphs immediately after Paragraph 7.10.C:

- 7.10.D *Payment of Prevailing Wage Rates for Public Works. The Contractor and all persons doing or contracting to do any of the work contemplated by the Contract shall comply with all Federal and State Laws in employment and payment of labor. Contractor shall comply with all provisions of said laws (and pay all related fees), not only in regard to the payment of prevailing wage rates, but also in the matter of the necessary certificates and affidavits required to accompany each request for payment. No payment, progress or otherwise, will be paid unless accompanied by the necessary certificates and affidavits pertaining to prevailing wages.*
- 7.10.E *The minimum wages to be paid workers on this project shall not be less than the prevailing rate including fringe benefits in accordance with ORS 279C, paid to the corresponding classes of workers in the locality where the public work is being provided. Prevailing rates shall be in accordance with the most current version (or as it is modified by addendum) of the "Prevailing Wage Rates for Public Works Contracts in Oregon" as published by the Oregon Bureau of Labor and Industries. Such publications can be obtained from the Bureau of Labor and Industries and a copy of the most current version is to be supplied to the Owner with the first pay request. If a dispute arises as to what is the prevailing wage rate for any class of workers, and a dispute cannot be settled by the parties involved, it may be referred to the Commissioner of Labor, State of Oregon, for final determination.*
  - 7.10.E.1 *The wage rates are minimum rates only and the Owner will not consider any claims for additional compensation because of payment made by the Contractor or a Subcontractor of any wage rate in excess of the prevailing rate.*
  - 7.10.E.2 *If Owner determines at any time that the prevailing rate of wage has not or is not being paid as required herein, it may retain from moneys due to Contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the Contract. Liquidated damages for failure to pay the rate of wage required herein shall be an additional amount equal to the unpaid premium, over and above the liability of the Contractor, any Subcontractor, or surety to pay said unpaid minimum to any workers affected.*
- 7.10.F *Under the provisions of Oregon Law, ORS 279C.845, the wage certification form on public works contracts must be provided: Once within fifteen (15) days of the date the Contractor*

*or Subcontractor first began work on the project and once before the final inspection of the project by the public contracting agency: In addition, for projects exceeding ninety (90) days, submissions are to be made at 90-day intervals. Payroll information is to be filed with both the public contracting agency and the Wage and Hour Division, Bureau of Labor and Industries, 1400 S.W. 5th Avenue, Portland, Oregon 97201. This payroll information must be kept by the Contractor and/or Subcontractor for three (3) years.*

- 7.10.G** *Contractor shall strictly observe and obey all of the terms and provisions of ORS 279 pertaining specifically, but not exclusively, to the furnishings of Workers Compensation Insurance, payment of laborers and materialmen, the withholding of State and Federal income and other taxes, hours of labor, and all other regulations provided in said chapter, and shall hold Owner harmless on account thereof.*
- 7.10.H** *Contractor shall employ no person for more than eight hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it. In such cases, Contractor shall pay the laborer at least time and a half pay for all overtime in excess of eight hours a day and for work performed on any legal holiday specified in ORS 279C.520. When specifically agreed to in a written labor-management negotiated labor agreement, a laborer may be paid at least time and a half pay for work performed in any legal holiday specified in ORS 187.010 and 187.020 and not listed in ORS 279C.540(1). Contractor to comply with ORS 279C.540 to 279C.545 and ORS 653.268 to 653.269 regarding hours of labor and overtime.*
- 7.10.I** *Contractor shall comply with ORS 279C.530 and shall make payment promptly, as due, to any person, co-partnership, association, or corporation furnishing medical, surgical, hospital, or other needed care of attention incident to sickness or injury to the employees of Contractor of all sums which the Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, Contractor or agreement for the purpose of providing payment for such service.*
- 7.10.J** *The Contractor, or its Subcontractors, if any, and all employers working under this Contract are subject employers under Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation for all their subject workers as defined under ORS chapter 656 (ORS 279C.530(2)).*
- 7.10.K** *Contractor shall comply with all federal, state, and local laws and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the Contract. If new or amended statutes, ordinances, or regulations are adopted, or the Contractor encounters a condition not referred to in the bid document not caused by the Contractor and not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws or regulations dealing with the prevention of environmental pollution or the preservation of natural resources, both the Owner and the Contractor shall have all the rights and obligations specified in ORS 279C.525 to handle the situation.*
- 7.10.L** *The Contractor and all Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, marital status, age or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.*

- 7.10.L.1 *The Contractor shall post in conspicuous places available to employees and applicant for employment, notices setting forth the provisions of this nondiscrimination clause. Contractor's and Subcontractor's solicitations and advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, handicap, marital status, age or national origin.*
- 7.10.M *Contractor certifies that all subcontractors performing work described in ORS 701.005(2) (i.e. construction work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the Contract.*
- 7.10.N *Upon award of this contract, the Owner is required to pay a fee to the BOLI Prevailing Wage Rate Unit in accordance with ORS 279C.830 (2) and OAR 839-025-0200. The amount of the fee shall be one tenth of one percent (.001) of the contract price; however, the fee must be no less than \$250 or more than \$7,500 regardless of the contract price.*
- 7.10.O *The Contractor shall furnish and maintain all legally required job-site postings.*

#### SC-7.18 Indemnification

SC-7.18.C.2 Add the following new paragraphs immediately after Paragraph 7.18.C.2:

- 7.18.D *Contractor shall not be required to indemnify any indemnitee to the extent the claim, cost, loss or damage is caused by the indemnitee's negligence.*
- 7.18.E *The performance of this Contract is at Contractor's sole risk. The service or services to be rendered under this Contract are those of an independent Contractor who is not an officer or agent of the Owner as those terms are used in ORS 30.265.*
- 7.18.F *The Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner in connection with this Contract and agrees to assume full responsibility for their satisfaction should any lien or claim be filed.*

#### ARTICLE 8—OTHER WORK AT THE SITE

##### SC-8.01 Related Work at Site

SC-8.01.A Add the following new paragraphs immediately after Paragraph 8.01.A:

- 8.01.A.1 *Owner has not contracted with other contractors or others for performance of work that relates to the Work at the Site.*

#### ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

##### SC-10.01 Owner's Representative

SC-10.01.A Amend Paragraph 10.01.A to read as follows:



*Owner will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of the Resident Project Representative and any assistants will be as provided herein, with limitations on the responsibilities thereof as provided in Paragraph 10.03 of the General Conditions.*

SC-10.01.B Add the following new paragraph immediately after Paragraph 10.01.A:

*10.01.B Should the Owner furnish a Resident Project Representative, this assistant will be assigned to various portions of the work by the Engineer. It is understood that the Resident Project Representative shall have the power, in the absence of the Engineer, to issue instructions and make decisions within the limitations of the authority of the Engineer. The authority of such assistants shall, however, be limited to the particular portion or phase of the work to which they are assigned and by the particular duties assigned to them by the Engineer.*

## **ARTICLE 11—CHANGES TO THE CONTRACT**

SC-11.01 Amending the Contract Documents; Changes in the Work

11.01.A.1 Add the following sections below Paragraph 11.01.A.1.b:

c. *Procedure.*

- 1) *Each Change Order will include a separate letter of transmittal. Contractor shall print three originals of Change Order for Contractor's signature.*
- 2) *Contractor shall promptly sign each original Change Order and, within five days of receipt, deliver all originals to Owner's Engineer.*
- 3) *After approval and signature by Owner's Engineer, original Change Orders will be distributed as indicated below.*
- 4) *Original, signed Change Orders will be distributed as follows:*
  - a) *Contractor: One original.*
  - b) *Owner: One original.*
- 5) *Upon Contractor's receipt of the fully-signed Change Order, promptly perform the Work ordered thereby in accordance with the Contract Documents and the Progress Schedule accepted by Owner's Engineer.*

11.01.A.2 Add the following sections below Paragraph 11.01.A.2:

a. *Each Work Change Directive will include a separate letter of transmittal. Signed Work Change Directives will be transmitted to:*

1) *Contractor.*

b. *Documentation of Costs:*

- 1) *Promptly following receipt of the Work Change Directive:*
  - a) *Advise Owner's Engineer in writing of anticipated quantity and type of construction equipment and machinery required or anticipated for the associated Work.*
  - b) *Advise Owner's Engineer in writing of which construction equipment and machinery is owned by the Contractor or Subcontractor and which is, or will be, rented from an equipment rental firm.*
  - c) *When construction equipment and machinery is rented from a rental firm, transmit to Owner's Engineer copy of the associated rental agreements(s) pertinent to the Work ordered by the Work Change Directive.*

- d) *For all construction equipment and machinery, indicate to Owner's Engineer whether each item is required only for the Work ordered by the Work Change Directive and whether each item is being, or will be, used for other Work on the Project or other projects for Owner.*
  - e) *Advise Owner's Engineer in writing of information on anticipated temporary materials (including items such as temporary support of excavations, scaffolding, temporary barriers, temporary plates covering excavations, and other temporary materials) to same extent as required for construction equipment and machinery.*
- 2) *When basis of payment for Work ordered under a Work Change Directive will be paid as Cost of the Work plus a fee, or when otherwise required by Owner's Engineer, document for the Work performed under each separate Work Change Directive, for each day, the following:*
- a) *Number and labor classifications of workers employed and hours worked each day on the Work ordered via the Work Change Directive.*
  - b) *Construction equipment used, including manufacturer, model, and year of manufacture, and number of hours such equipment was onsite and used each day for the Work under the Work Change Directive. Indicate where the equipment was used for other Work under the Contract and idle time.*
  - c) *Temporary materials; furnish the same information as required for construction equipment and machinery. Where rental costs of such items approach the purchase cost of such item, or when otherwise requested by Engineer, furnish evidence, satisfactory to Owner's Engineer, of the purchase price of such temporary materials.*
  - d) *Consumables and similar materials used.*
  - e) *Suppliers' receipts, bills, or invoices for and descriptions of materials and equipment incorporated into the Work.*
  - f) *Invoices and labor and equipment breakdowns for Subcontractors.*
  - g) *Other information required by Owner's Engineer.*
  - h) *Transmit such documentation as a Change Proposal promptly after such documentation is available to Contractor. Actively pursue Subcontractors and Suppliers for required documentation to promptly furnish required documentation to Owner's Engineer.*
- 3) *Separately track and document Work performed in accordance with each Work Change Directive and Work performed under stipulated price methods of compensation (including lump sums and Unit Price Work).*
- a) *Use City of Newport Time & Materials Worksheet to track labor and equipment.*
- 4) *Submit such information in a format acceptable to Owner's Engineer.*
- c. *Documentation of Time:*
- 1) *General:*
    - a) *Contractor will be entitled to change of Contract Times Work ordered by a Work Change Directive in accordance with the requirements of the General Conditions, as may be modified by the Supplementary Conditions.*
    - b) *Contractor will be entitled to a change in Contract Times only when the Work ordered by the Work Change Directive is implemented promptly and affects the Contractor's ability to comply with the Contract Times.*
  - 2) *Requirement Documentation: Submit the following as part of the Change Proposal documenting price-related impact of the Work ordered by the Work Change Directive:*
    - a) *Statement on whether the subject Work affected Contractor's ability to comply with the Contract Times.*
    - b) *If Contractor's ability to comply with the Contract Times was so affected, indicate*

*the effect on each of the relevant Contract Times.*

- c) Document that Contractor acted promptly and properly upon receipt of the Work Change Directive to promptly implement the Work ordered thereby.*
- d) Time impact analysis for the affected Work, in accordance with Section 01 32 16 - Construction Progress Schedule.*
- e) Other time-related documentation required by Owner's Engineer.*

**11.01.A.3** Add the following section below Paragraph 11.01.A.3:

- a. Each Field Order will include a separate letter of transmittal.*
- b. Each Field Order will be distributed to the following:
  - 1) Contractor.*
  - 2) Owner.**
- c. Field Orders that One or Both Parties Believes Entails a Change to the Contract Price or Contract Times:
  - 1) If Contractor believes that a change in the Contract Price or Contract Times or other change to the Contract is required as a result of a Field Order, so advise Owner's Engineer in writing before proceeding with the Work associated with the Field Order.*
  - 2) If, after this initial communication, Contractor believes that change in Contract Price, Contract Times, both, or other relief with respect to the terms of the Contract is necessary, recourse shall be in accordance with the Contract Documents.**
- d. If the Field Order is unclear, submit Request for Interpretation.*

**SC-11.01B** Add the following new section immediately after Paragraph 11.01.A.3.d.

**11.01.B** *Requests for Information:*

- 1. Procedure.**
  - a. If Owner's Engineer requests additional information to make an interpretation, entity requesting the interpretation shall transmit the information requested within 10 days, unless Engineer allows additional time, via correspondence referring to request for interpretation number.*
  - b. Owner's Engineer will review and respond to requests for interpretation with reasonable promptness. Allow sufficient time for review and response.*
  - c. Owner's Engineer will maintain log of requests for interpretation. Upon request, copy of log will be transmitted to requestor.*
  - d. Each response to a request for interpretation will include a separate letter of transmittal.*
  - e. Owner's Engineer's response to each request for interpretation will be distributed to:
    - 1) Contractor.*
    - 2) Owner.**
  - f. If Contractor desires to appeal Owner's Engineer's interpretation or clarification, comply with the appeals procedure set forth in the General Conditions, as may be modified by the Supplementary Conditions.*
  - g. Interpretations that One or Both Parties Believes Entails a Change to the Contract:
    - 1) If Contractor believes that a change in the Contract Price or Contract Times or other change to the Contract is required as a result of Owner's Engineer's interpretation, so advise Owner's Engineer in writing before proceeding with the Work associated with the request for interpretation.*
    - 2) If, after this initial communication, either Owner or Contractor believes that change in Contract Price, Contract Times, both, or other relief with respect to the terms of the**

*Contract is necessary, recourse shall be in accordance with the Contract Documents.*

2. *Preparation of Requests for Interpretation:*
  - a. *Prepare each request for interpretation on the "Request for Interpretation" form included with the Contract Document or other form acceptable to Owner's Engineer.*
  - b. *Number each request for interpretation as follows: Numbering system shall be the Contract number and designation followed by a hyphen and three-digit sequential number. Example: First request for interpretation on the general contract for project titled, "Contract WWTP09" would be, "RFI No. WWTP09-GC-001".*
  - c. *In space provided on form, describe the interpretation requested. Provide additional sheets as necessary. Include text and sketches as required in sufficient detail to describe the need for interpretation.*
  - d. *When applicable, request for interpretation shall include Contractor's recommended resolution.*
  
3. *Written Clarifications*
  - a. *General:*
    - 1) *Written clarifications, when required, will be initiated and issued by Owner's Engineer.*
    - 2) *Written clarifications do not change the Contract Price or Contract Times, and do not alter the Contract Documents.*
    - 3) *Written clarifications will be issued as correspondence or using clarification notice form acceptable to Owner's Engineer, with additional information as required.*
  
  - b. *Procedure.*
    - 1) *Each written clarification will be distributed to:*
      - a) *Contractor.*
      - b) *Owner.*
    - 2) *If Contractor desires to appeal Owner's Engineer's interpretation or clarification, comply with the appeals procedure set forth in the General Conditions, as may be modified by the Supplementary Conditions.*
    - 3) *Written Clarifications that One or Both Parties Believes Entails a Change to the Contract:*
      - a) *If Contractor believes that a change in the Contract Price or Contract Times or other change to the Contract is required as a result of Owner's Engineer's written clarification, so advise Owner's Engineer in writing before proceeding with the Work associated with the written clarification.*
      - b) *If, after this initial communication, either Owner or Contractor believes that change in the Contract Price, Contract Times, both, or other relief with respect to the terms of the Contract is necessary, recourse shall be in accordance with the Contract Documents.*
    - 4) *If Owner's Engineer's written clarification is unclear, prepare and transmit a request for interpretation in accordance with the Contract Documents.*

SC-11.01B Add the following new section immediately after Paragraph 11.01.B.3.b.5.

**SC-11.01B.2 Change Proposals**

1. *General:*
  - a. *Prepare and transmit written Change Proposal to Owner's Engineer in response to each Proposal Request; or when Contractor believes a change in the Contract Price, Contract Times, both, or other change to the terms of the Contract is required; or to appeal an initial*

*decision by Owner's Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract.*

**2. Procedure:**

- a. *Prepare and transmit Change Proposals within time limits indicated in the General Conditions, as may be modified by the Supplementary Conditions.*
- b. *Submit only one Change Proposal for each change issue, unless Owner's Engineer requires additional information or clarification. Do not submit repeated Change Proposals for the same change issue. Rather, when Contractor is dissatisfied with Owner's Engineer's decision on a Change Proposal, recourse is set forth in the General Conditions, as may be modified by the Supplementary Conditions, and elsewhere in this Article.*
- c. *Include with each Change Proposal all required supporting documentation and a separate letter of transmittal.*
- d. *Owner's Engineer's Review and Requests for Additional Information:*
  - 1) *Owner's Engineer will review and act on each Change Proposal in accordance with, and within the time limits indicated in, the General Conditions, as may be modified by the Supplementary Conditions.*
  - 2) *When, Owner's Engineer requests additional information to render a decision, submit required information within five days of receipt of Owner's Engineer's request, unless Owner's Engineer allows more time. Submit the required information via correspondence that refers to the specific Change Proposal number.*
  - 3) *Owner's Engineer will render a written decision on the Change Proposal or take other action in accordance with the General Conditions, as may be modified by the Supplementary Conditions.*
- e. *Owner's Engineer's response to each Change Proposal will be distributed to:*
  - 1) *Contractor.*
  - 2) *Owner.*
- f. *If Change Proposal is recommended for approval by Owner's Engineer and is approved by Owner, a Change Order will be issued or, when applicable, an appropriate use of an allowance (already included in the Contract Price) will be authorized by Owner.*
- g. *If parties do not agree on terms for the change, Owner or Contractor may file a Claim against the other, in accordance with the General Conditions, as may be modified by the Supplementary Conditions.*

**3. Preparation of Change Proposals:**

- a. *Each Change Proposal shall be submitted on the "Change Proposal" form included with this Specifications section, or other form acceptable to Owner's Engineer.*
- b. *Number each Change Proposal as follows: Numbering system shall be the Contract number and designation followed by a hyphen and three-digit sequential number. Example: First Change Proposal for the general contract for project named "Contract No. 8" would be, "Change Proposal No. 8-GC-001".*
- c. *In space provided on Change Proposal form:*
  - 1) *Describe scope of each proposed change. Include text and sketches on additional sheets as required to provide detail sufficient for Owner's Engineer's review and response. If a change item is submitted in response to Proposal Request, write in as scope, "In accordance with Proposal Request No." followed by the Proposal Request number. Submit written clarifications, if any, to scope of change.*
  - 2) *Submit justification for each proposed change. If change is in response to proposal request, write in as justification, "In accordance with Proposal Request No." followed*

- by the Proposal Request number.
- 3) Indicate the total change in the Contract Price and Contract Times for each separate change item included in the Change Proposal.
- d. Proposed Effect on Contract Price: Unless otherwise directed by Owner's Engineer, attach to Change Proposal detailed pricing breakdowns (Contractor's cost; Contractor's fee) including:
- 1) List of Work tasks to accomplish the change.
  - 2) For each task, labor cost breakdown including labor classification, total hours per labor classification, and hourly cost rate for each labor classification. Where overtime is included, indicate overtime hours, labor classifications, and associated overhead rates.
  - 3) Construction equipment and machinery to be used, including manufacturer, model, and year of manufacture, and number of hours for each. Indicate whether the construction equipment or machinery is owned by Contractor, Subcontractor, or leased from a rental firm; if leased, include with the Change Proposal a copy of the rental agreement. Indicate whether the construction equipment and machinery are already onsite and used for other activities, or whether it is required solely for the Work in the contemplated change. Indicate overtime hours budgeted, if any, and the associated cost rate for overtime compared with the straight-time rate.
  - 4) Indicate temporary materials required, including description of extent, scope, and quality, and associated cost. Temporary materials include items such as temporary sheeting for support of excavations, scaffolding, temporary plates to cover open excavations, temporary barriers, and other temporary items. Indicate ownership or source of such items. Include copy of rental agreement if rented from a third-party rental firm in which neither Contractor nor any Subcontractor has a financial interest. Indicate intended duration of use for such items and purchase cost of such items.
  - 5) Detailed breakdown of cost of materials and equipment to be incorporated into the Work, including quantities, unit costs, and total cost, with Supplier's written quotations. When requested by Owner's Engineer, submit quotes by multiple prospective Suppliers.
  - 6) Breakdowns of each Subcontractors' pricing, including labor, construction equipment and machinery, temporary materials, and materials and equipment incorporated into the Work, other costs, and Subcontractor fees (e.g., overhead and profit). Breakdown of Subcontractors' pricing shall be the same level of detail as that for Contractor.
  - 7) Breakdown of other costs eligible, in accordance with the General Conditions and the Supplementary Conditions under "Cost of the Work" provisions.
  - 8) Other information required by Owner's Engineer.
  - 9) Contractor's fees (overhead and profit) applied to eligible Contractor costs and eligible Subcontractor costs.
- e. Proposed Effect on Contract Times: Unless otherwise directed by Owner's Engineer, attach to the Change Proposal detailed information substantiating the proposed change in Contract Times, including:
- 1) Time impact analysis required by Section 01 32 16 - Construction Progress Schedule.
  - 2) Indication of whether the Work associated with the contemplated change will affect Contractor's ability to comply with the Contract Times.
  - 3) Other time-related information requested by Owner's Engineer.

## **ARTICLE 13—COST OF WORK; ALLOWANCES, UNIT PRICE WORK**

### **SC-13.03 Unit Price Work**

SC-13.03.E.1 Amend Paragraph 13.03.E.1 to read as follows:

*13.03.E.1 the quantity of any item of Unit Price Work performed by Contractor differs by more than 15% from the estimated quantity of such item indicated in the Agreement;*

## **ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

### SC-14.02 Tests, Inspections, and Approvals

SC-14.02.A Add the following new paragraph immediately after Paragraph 14.02.A:

*14.02.A.1 Timely notice for inspections, tests, or approvals shall mean not less than 24 hours prior to the time when inspection, test, or approval is required.*

### SC-14.04 Acceptance of Defective Work

SC-14.04.A Add the following language to the end of the last sentence in Paragraph 14.04.A:

*...including all Owner's engineering costs associated with correction of the defective Work and re-inspection of the corrected Work.*

## **ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD**

### SC-15.01 Progress Payments

SC-15.01.B.2 Add the following new paragraph immediately after Paragraph 15.01.B.2:

*15.01.B.2.a Payments of Liens, Withholding Taxes, Contributions to Industrial Accident Fund, Labor, and Materials. The Contractor shall make payment promptly as due to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for herein, and shall pay all contributions or amounts due the State Industrial Accident Fund from the Contractor or subcontractors incurred in the performance of this Contract. The Contractor shall permit no lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished, and shall promptly pay any and all withholding taxes, whether state or federal, all social security charges and all contributions on amounts due to the State Unemployment Compensation Trust Fund, and promptly pay or cause to be withheld, as the case may be, any and all taxes, charges, or fees, or sums whatsoever which are now or may hereafter be required to be paid or withheld under any laws of the state and location where the work is to be performed. Contractor shall assume responsibility for satisfaction of any liens or claims filed or prosecuted and shall defend, indemnify and hold Owner harmless against any such liens or claims.*

*15.01.B.2.b Payment of Claims by the Owner. In the event the Contractor shall fail, neglect, or refuse to make prompt payment of any claim for labor or services furnished to the Contractor or Subcontractor by any person in connection with this contract as such claim becomes due, whether said services and labor be performed for the Contractor or a Subcontractor, then in such event, the proper officer or officers representing the Owner may pay such claim to the person furnishing the labor or services and charge the amount*

*of the payment against funds due or to become due to the Contractor. The payment of a claim in the manner authorized herein shall not relieve the Contractor or his Surety from his or its obligation with respect to any unpaid claims. If the Owner is unable to determine the validity of any claim for labor or material furnished, the Owner may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by the Contractor or the Owner. There shall be no final acceptance of the work under the Contract until all such claims have been resolved.*

**15.01.B.2.c Content And Procedure For Requesting Progress For Payments**

**1. Procedure:**

- a. *Review with Resident Project Representative (RPR) quantities and the Work proposed for inclusion in each progress payment request. Application for Payment shall cover only the Work and quantities recommended by the RPR.*
- b. *Contractor will review with Owner's Engineer or RPR the status of Project record documents, in connection with Owner's Engineer's review of each Application for Payment. Failure to maintain record document current will be cause for Owner's Engineer to recommend a reduction in payment for record documents in accordance with Section 01 29 73 - Schedule of Values, and will entitle Owner to set-offs in accordance with the Contract Documents.*
- c. *Submit to Owner's Engineer three (3) printed originals, each with Contractor's signature, of each complete Application for Payment and other documents to accompany the Application for Payment.*
- d. *Owner's Engineer will act on request for payment in accordance with the General Conditions and Supplementary Conditions.*

**2. Content: Each request for payment shall include:**

- a. *Completed Application for Payment form, including summary/signature page, progress estimate sheets, and stored materials summary. Progress estimate sheets shall have the same level of detail as the Schedule of Values.*
- b. *Documentation for Stored Materials and Equipment:*
  - 1) *For materials and equipment not incorporated in the Work but suitably stored, submit documentation in accordance with the General Conditions and Supplementary Conditions.*
  - 2) *UCC-1 Financial Statement:*
    - a) *For each lot or delivery of stored materials and equipment for which payment is requested prior to installation of the item(s) at the Site, complete UCC-1, "Financial Statement" form. On UCC-1 form, indicate Owner as "security party"; indicate Supplier as "debtor" when stored item(s) are in Supplier's custody, and indicate Contractor as "debtor" when stored item(s) are in Contractor's custody; and clearly indicate in detail all stored item(s) included in the filing as "collateral" on the form. Include attachments to the form when necessary to clearly and fully indicate in detail the associated "collateral".*
    - b) *File completed UCC-1 form with the secretary of state in the state where the subject item(s) are stored.*
    - c) *Include with Application for Payment the completed UCC-1 form together with evidence of filing with the required state(s). Submit UCC-1 form and related documentation once for each lot or delivery of stored items.*
  - 3) *Submit photographs sufficient to clearly indicate each stored item, clearly showing marking of Owner's property in accordance with Paragraph 1.2.C. 1 of this section. For*



- each month that such item(s) are stored, take and submit monthly new photographs of each stored item, with date-stamp on each photograph.*
- 4) *Legibly indicate on invoice or bill of sale the specific stored materials or equipment included in the payment request and corresponding bid/payment item number for each and the Supplier price for each item.*
- c. *Listing of Subcontractors and Suppliers:*
- 1) *In accordance with the General Conditions, submit not less than monthly updated listing of all Subcontractors and Suppliers known to Contractor, whether or not such entities have a contract directly with Contractor.*
  - 2) *Submit complete information using the form attached to this Specifications section.*
- d. *Partial Release or Reduction of Retainage:*
- 1) *For each Application for Payment where Contractor requests partial release or reduction of retainage in any amount (other than request for final payment), submit with associated progress payment request consent of surety to partial release or reduction of retainage, duly completed by Contractor and surety.*
  - 2) *Acceptable form includes AJA G707 A, "Consent of Surety to Reduction in or Partial Release of Retainage" (1994 or later edition), or other form acceptable to Owner.*
  - 3) *For payment requests that include reduction in or payment of retainage in an amount greater than that required by the Contract Documents, obtain Owner's concurrence for partial release or reduction in retainage prior to submitting such Application for Payment.*

SC-15.01.B.3 Amend Paragraph 15.01.B.3 to read as follows:

*15.01.B.3 A percentage of the amount requested on each payment certificate will be withheld as retainage until final acceptance of the work by the Owner. Retainage amounts and details are stipulated in the Agreement.*

SC-15.01.D.1 Amend Paragraph 15.01.D.1 to read as follows:

*15.01.D.1 After presentation of the Application for Payment to Owner by Engineer with Engineer's recommendation, the Application for Payment will be reviewed and processed by Owner and any involved funding agencies. The amount recommended and accepted by Owner and any involved agencies will, subject to the provisions of paragraphs 15.01.C.5 and 15.01.E, become due and payable by Owner to Contractor within 30 days of submission to the Owner.*

SC-15.01.D.2 Add the following new paragraph immediately after Paragraph 15.01.D.1:

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

SC-15.01.E.1.i Add the following new paragraphs immediately after Paragraph 15.01.E.1.i:

*15.01.E.1.m Third party claims filed or evidence indicating probable filing of such claims.*

*15.01.E.1.n Failure of Contractor to make payments properly or promptly to subcontractors for material, labor, or equipment.*

*15.01.E.1.o Damage to Owner or others.*

### SC-15.03 Substantial Completion

SC-15.03.A Add the following new paragraphs immediately after Paragraph 15.03.A:

**15.03.A.1** *Substantially complete is further defined and clarified as being 100% complete in accordance with the Contract Documents with the exception of minor and specific corrective items that will be itemized by the Engineer on a final punch list and completed before final acceptance. Final completion of the entire project shall be no later than the time indicated on the Certificate of Substantial Completion. If no date is indicated, then fifteen (15) calendar days from the date of substantial completion will be considered maximum. If final completion is not accomplished within the time indicated, liquidated damages if included in this Contract and as defined in the Agreement will be reinstated at that date and will continue until final completion or a time extension is granted.*

**15.03.A.2** *Liquidated Damages. Should the Contractor fail to accomplish Substantial Completion or Final Acceptance in the time agreed upon in the Contract or within such extra time as may have been allowed for delays by extensions granted as provided in the Contract, the Contractor shall reimburse the Owner for the additional expense and damage for every day, that the Contract remains uncompleted after the date of completion given in the Contract. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the Work within the time agreed is the per diem rate stipulated in the Agreement as a minimum or actual expenses or damages if they exceed this agreed to minimum amount. The said amounts are hereby agreed upon as liquidated damages for the loss to the Owner and on account of the value of the operation of the works dependent thereon. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as actual expense and damages experienced by the Owner for delay of completion beyond the agreed to Contract times. Owner is authorized to deduct the amount of such damages from any monies due the Contractor for work performed or material furnished under this Contract, and the Contractor and his sureties shall be liable for any excess. Liquidated damages include only cost and expenses incurred by the Owner for delay of completion beyond the agreed to Contract times. Liquidated damages do not include any other cost, expense or claim Owner may have against Contractor for any other reason.*

### SC-15.06 Final Payment

SC-15.06.A Add the following new paragraph immediately after Paragraph 15.06.A.3:

**15.06.A.4** *Final payment will not be made to the Contractor until it files with the Owner a notarized affidavit containing the following statements:*

- a. "I (we) hereby certify that all work has been performed and material supplied in accordance with the plans, specifications, and Contract Documents for the above work;*
- b. No less than the prevailing rates of wages as ascertained by the governing body of the contracting agency has been paid to laborers and workers employed on this work (a signed State-approved Wage Certification Form certifying that Contractor has paid not less than the prevailing rate of wages as required by law);*

- c. *No subcontract was assigned or transferred or performed by any subcontractor other than the original subcontractor, without prior notice having been submitted to the Engineer together with the names of all subcontractors;*
- d. *All suppliers and subcontractors connected with the Work have been paid in full;*
- e. *All claims for material and labor and other services performed in connection with these specifications have been paid; and*
- f. *All monies due the State Industrial Accident Fund, the State Unemployment Compensation Trust Fund, the State Tax Commission, hospital associations and/or others have been paid."*

SC-15.06.D Add the following language at the end of Paragraph 15.06.D:

*Final Payment shall include all amounts previously withheld as retainage.*

#### SC-15.08 Correction Period

SC-15.08.A Amend the first sentence of Paragraph 15.08.A as follows:

*Change the words "Substantial Completion" to "Final Acceptance."*

SC-15.08.C Delete Paragraph 15.08.C in its entirety.

### ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

#### SC-17.01 Methods and Procedures

SC-17.01 Delete Paragraph 17.01 in its entirety and insert the following in its place:

*17.01.A Engineer's action under Paragraph 11.06.A.2 shall become final and binding 30 days after receipt of written notice of Engineer's action or decision unless, within that time period, Owner or Contractor gives to the other party written notice of intent to submit the Claim to a process of bilateral negotiations as set forth below.*

*17.01.B Within 30 days of the delivery of such notice, Owner and Contractor shall meet and confer regarding the Claim. A good-faith effort to negotiate resolution shall be made by both parties.*

*17.01.C If the negotiations contemplated by Paragraph SC-17.01.B are unsuccessful, management representatives of Owner and Contractor at least one tier above the individuals who met under SC-17.01.B shall meet, confer, and negotiate within 30 days of the closure of the unsuccessful negotiations.*

*17.01.D If the Claim is not resolved by negotiation, Engineer's action under Paragraph 11.06.A.2 shall become final and binding 30 days after termination of the negotiations unless, within that time period, Owner or Contractor:*

- 1. elects in writing to demand arbitration of the Claim, pursuant to Paragraph SC-17.01.B,*

or

2. *agrees with the other party to submit the Claim to another dispute resolution process.*

## SC-17.02 Arbitration

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

- 17.02.A** *All Claims or counterclaims, disputes, or other matters in question between Owner and Contractor arising out of or relating to the Contract Documents or the breach thereof (except for Claims which have been waived by the making or acceptance of final payment as provided by Paragraph 15.07) including but not limited to those not resolved under the provisions of Paragraph SC-17.01 will be decided by arbitration in accordance with the National Arbitration Center, subject to the conditions and limitations of this Paragraph SC-17.02. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforceable under the prevailing law of any court having jurisdiction.*
- 17.02.B** *The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitrator or arbitration provider, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the 30 day period specified in Paragraph SC-17.01.B, and in all other cases within a reasonable time after the Claim or counterclaim, dispute, or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such Claim or other dispute or matter in question would be barred by the applicable statute of limitations.*
- 17.02.C** *No arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:*
1. *the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and*
  2. *such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings.*
- 17.02.D** *The award rendered by the arbitrator(s) shall be consistent with the agreement of the parties, in writing, and include: (i) a concise breakdown of the award; (ii) a written explanation of the award specifically citing the Contract Document provisions deemed applicable and relied on in making the award.*
- 17.02.E** *The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Controlling Law relating to vacating or modifying an arbitral award.*
- 17.02.F** *The fees and expenses of the arbitrators and any arbitration service shall be shared equally by Owner and Contractor.*

## ARTICLE 18—MISCELLANEOUS

### SC-18.00 Miscellaneous

SC-18.08 Add the following new paragraphs immediately after Paragraph 18.08:

- 18.09** *If either party commences any legal action, suit or proceeding against the other to enforce the terms of this Contract or to interpret any provision of these Contract Documents, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees and costs, as are fixed by the courts, incurred in any action, suit or proceeding and in any appeal therefrom.*
- 18.10** *Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due hereunder, without the previous written consent of the Owner.*

**CITY OF NEWPORT, OREGON  
SPECIAL PROVISIONS**

**SECTION 00165 - QUALITY OF MATERIALS**

Comply with the applicable sections within “Part 1: Contract Documents” located within this booklet and with Section 00165 of the Standard Specifications modified as follows:

**00165.03 Testing by Agency** - Replace this subsection except for the subsection number and title, with the following:

No testing will be performed by the City. All testing shall be the responsibility of the Contractor.

**00165.04 Cost of Testing** - Replace this subsection except for the subsection number and title, with the following:

All testing required to be performed by the Contractor will be considered incidental and will be at the Contractor's expense.

**SECTION 00170 - LEGAL RELATIONS AND RESPONSIBILITIES**

Comply with the applicable sections within “Part 1: Contract Documents” located within this booklet and with Section 00170 of the Standard Specifications modified as follows:

**00170.02 Permits, Licenses, and Taxes** - Add the following bulleted items:

- The City of Newport requires a Bulk Water Permit to be issued when using fire hydrants or other City devices to obtain water for construction or bulk purposes. A Bulk Water Permit is available from the City of Newport Public Works Department.
- City of Newport requires a permit for all street closures and lane closures.
- Contractor shall be licensed to do business in the City of Newport.
- Contractor shall obtain an ODOT permit for the project. Contact ODOT District 4 office at 541-757-4211 for permit information.

**00170.60 Safety, Health, and Sanitation Provisions** - Add the following paragraph to the end of this subsection:

The Contractor shall provide and maintain proper portable sanitary facilities for their employees and their subcontractors' employees during day and night shifts that will comply with the regulations of the local and State departments of health and as directed by the Engineer.

**SECTION 00180 - PROSECUTION AND PROGRESS**

Comply with the applicable sections within "Part 1: Contract Documents" located within this booklet and with Section 00180 of the Standard Specifications modified as follows:

**00180.50(c) Beginning of Contract Time** - Replace this subsection except for the subsection number and title, with the following:

When the Contract Time is stated in Calendar Days, counting of Contract Calendar Days will begin on the day "Notice to Proceed" is issued by the City.

**00180.85(b) Liquidated Damages** - Add the following to the end of this subsection:

The liquidated damages will be assessed for failure to complete the Work on time as required by 00180.50(g) will be \$500.00 per calendar day.

**SECTION 00190 - MEASUREMENT OF PAY QUANTITIES**

Comply with the applicable sections within "Part 1: Contract Documents" located within this booklet and with Section 00190 of the Standard Specifications.

**SECTION 00195 - PAYMENT**

Comply with the applicable sections within "Part 1: Contract Documents" located within this booklet and with Section 00195 of the Standard Specifications.

**SECTION 00196 - PAYMENT FOR EXTRA WORK**

Comply with the applicable sections within "Part 1: Contract Documents" located within this booklet and with Section 00196 of the Standard Specifications.

**SECTION 00197 - PAYMENT FOR FORCE ACCOUNT WORK**

Comply with the applicable sections within "Part 1: Contract Documents" located within this booklet and with Section 00197 of the Standard Specifications.

**SECTION 00199 - DISAGREEMENTS, PROTESTS, AND CLAIMS**

Replace Section 00199 of the Standard Specifications except for the Section number and title, with the following:

Comply with applicable sections within "Part 1: Contract Documents" located of this booklet.

## SECTION 00210 - MOBILIZATION

Comply with Section 00210 of the Standard Specifications.

## SECTION 00221 - COMMON PROVISIONS FOR WORK ZONE TRAFFIC CONTROL

Comply with Section 00221 of the Standard Specifications modified as follows:

**00221.06 Traffic Control Plan** - Replace this subsection with the following subsection:

**00221.06 Traffic Control Plan and Tourist-Oriented Directional and Business Logo Signs –**

**(a) Traffic Control Plan** - Submit the following, 5 Calendar Days before the preconstruction conference:

**(2) Contractor-Modified Traffic Control Plan** - A Contractor-modified ODOT TCP or a TCP developed by the Contractor. Do not use a modified TCP, or a TCP developed by the Contractor, unless approved by the Engineer. The TCP for each site shall be adapted to the site. Side streets may be smaller than Highway 101 and need modification of TCP to control traffic within close proximity of the job sites.

The TCP will be reset for each job site to provide maximum safety and efficiency of traffic moving across Highway 101 and adjacent streets.

When requesting a Contractor-modified ODOT TCP, or a TCP developed by the Contractor, at a minimum the request shall meet all requirements of the Contract documents and comply with the Project transportation management plan (TMP). Provide the following information:

- Stamped Working Drawings according to 00150.35 that include the proposed TCP showing all TCM and quantities of TCD.
- A TPAR plan that includes:
  - Details and features used to provide pedestrian accessibility.
  - Pedestrian staging Plans at a scale no smaller than 1 inch = 50 feet.
  - Temporary alternate facilities or detour routes for pedestrian traffic.
- Staging sequences and details for Work affecting vehicular, pedestrian, and bicycle traffic.
- Proposed order and duration of the TCM.
- A detailed temporary striping plan.

Once a TCP has been accepted by the Engineer, any additional modifications must be submitted by the Contractor for City review following the procedure described above. The Engineer is not obligated to consider additional modifications to a previously approved TCP.

**(b) Tourist-Oriented Directional and Business Logo Signs** - Submit one of the following for approval, at least 5 Calendar Days before the preconstruction conference:



**(1) No Signs** - If there are no tourist-oriented directional (TOD) or business logo signs on the Project, a written notification that no TOD or business logo signs exist within the Project limits or

**(2) Signs** - Submit one copy of a sketch map of the Project showing all existing TOD and business logo signs and a written narrative describing how these signs will be kept in service and protected throughout all the construction stages. If modifications are necessary, submit updated information to the Engineer for approval at least 21 Calendar Days before the change is needed.

**Measurement** – The following method will be used:

**00221.88 Measurement, Method “B”** – Under this method, no measurement of quantities will be made.

**Payment** – The following method will be used:

**00221.98 Payment, Method B”** – Lump Sum Basis

#### **SECTION 00253 - TEMPORARY WORK ACCESS AND CONTAINMENT**

Comply with Section 00253 of the Standard Specifications.

#### **SECTION 00280 - EROSION AND SEDIMENT CONTROL**

Comply with Section 00280 of the Standard Specifications modified as follows:

**00280.00 Scope** - Replace the paragraph that begins "This Work also consists of providing temporary ..." with the following paragraph:

This Work also consists of providing temporary erosion and sediment control (ESC) measures and furnishing, installing, moving, operating, maintaining, inspecting, and removing ESC throughout the Project area according to the Standard Drawings, the erosion and sediment control plan (ESCP), the Specifications, or as directed, until the site is permanently stabilized. Included also is the monitoring of weather, of stormwater and receiving waters, the reporting of monitoring observations, the reporting of corrective actions (when necessary) and the updates and revisions of the ESCP, including ESCP cover sheet, necessary to keep it representative of current site conditions and compliant with the 1200-CA permit if applicable.

Delete the paragraph that begins “When contaminants, pollutants or hazardous materials...”.

Add the following paragraph to the end of this subsection:

An NPDES 1200-CA permit is not applicable to this Project. Comply with all applicable conditions of this Section.

**00280.06 Erosion and Sediment Control Manager** - Delete this subsection.

**00280.90 Payment** – Replace this subsection, except for the subsection number and title, with the following:

All work performed under this section will be paid at the Contract lump sum price.

Payment will be payment in full for furnishing and placing all Materials, and for furnishing all Equipment, labor, and Incidentals necessary to complete the Work as specified.

## **SECTION 00290 - ENVIRONMENTAL PROTECTION**

Comply with Section 00290 of the Standard Specifications modified as follows:

**00290.90 Payment** – Replace this subsection, except for the subsection number and title with the following:

All Work performed under this section will be incidental to the appropriate items under which this Work is required.

## **SECTION 00295 - ASBESTOS MATERIALS**

Section 00295, which is not a Standard Specification, is included in this Project by Special Provision.

### **Project Site 1: 143 SW Coast Highway**

**00295.00 Scope** - An asbestos survey was performed on Site 1: 143 SW Coast Hwy that will be demolished for this Project. No asbestos-containing materials (ACMs) were identified on the inspected Structure. The Asbestos Inspection Report documenting the asbestos survey within the Project is included in Appendix A. Maintain a copy of this report and all additional asbestos survey results on site at all times and readily available to employees and inspectors during demolition and repair activities.

### **Project Site 2: 415-425 SW Coast Hwy**

**00295.00 Scope** - In addition to the requirements of Section 00290, remove asbestos according to the following Specifications.

Remove asbestos from the locations identified on Table 1 in the Asbestos Inspection Report (pages 24-26) dated April 13, 2023, included in Appendix A.

Maintain a copy of this report and all additional asbestos survey results on site at all times and readily available to employees and inspectors during demolition and repair activities.

**Project Site 3: SE 35<sup>th</sup> St & US 101**

**00295.00 Scope - 00295.00 Scope** - An asbestos survey was performed on Site 3: SE 35 St & US 101. Results are not available at the time of Advertisement to Bid. No ACMs are anticipated due to date of construction and nature of building materials. An addendum will be issued when City receives survey results.

**00295.01 Definitions:**

**Asbestos Containing Material (ACM)** - Any material containing more than 1% asbestos.

**00295.03 Submittals** - The following forms and reports are required:

- Completed and signed DEQ Project Notification Form and an abatement plan to City and DEQ at least 10 Calendar Days before beginning friable asbestos removal.
- Completed and signed DEQ Notice for Removal of Non-Friable Asbestos to City and DEQ at least 5 Calendar Days before beginning non-friable asbestos removal.
- Completed and signed DEQ Waste Shipment Report Form according to the following:
  - Send the form along with the asbestos waste to the disposal facility.
  - Provide a copy of the form to the Engineer within 48 hours of transportation of the asbestos waste.
    - Obtain the final signed form from the disposal facility along with the disposal receipts and submit them to the Engineer within 3 calendar days after receiving them from the waste disposal facility.
- Completed and signed DEQ Air Clearance Sample Results form to the City and DEQ within 30 Calendar Days after completing the asbestos removal.
- Disposal receipts within 72 hours of receipt from the waste disposal facility.

**Labor**

**00295.30 Personnel Qualifications** - Provide employees meeting the following requirements:

- A current Oregon DEQ Asbestos Abatement Contractor license.
- A current Oregon DEQ Certified Supervisor meeting the requirements of OAR 340-248-0130.
- Current Oregon DEQ Certified asbestos workers meeting the requirements of OAR 340-248-0130

Ensure the DEQ Certified Supervisor is on site and overseeing work whenever asbestos containing materials are disturbed or removed.

**Construction**

**00295.40 Asbestos Removal** - Comply with 29 CFR 1910, 29 CFR 1926.1101, 40 CFR 61,

40 CFR 763, OAR 340-248, ORS 468A and the following:

- Before beginning asbestos removal work, sign and submit all notifications and pay all fees to DEQ. Provide copies to the Engineer.
- Complete and sign all manifests and bill-of-lading forms for transporting and disposing the ACM.
- Maintain the ACM in an undamaged and non-friable condition by keeping the material wet during demolition or by using methods approved by DEQ.
- Keep material sealed during transport to the disposal facility. Transport and dispose of all ACM according to OAR 340-248-280 and OAR 340-248-290.
- Conduct final clearance air monitoring according to OAR 340-248-0270(13), with a contractor that is National Institute of Occupational Safety and Health (NIOSH) 582 certified and is financially independent from the abatement contractor.
- Remove and dispose of the materials identified as having less than 1% asbestos according to 29 CFR 1926.1101, where that regulation refers to "asbestos" rather than "asbestos containing material" or "ACM".

### **Payment**

**00295.90 Payment** - All Work performed under this section will be paid at the Contract lump sum price. Payment will be payment in full for furnishing and placing all Materials, and for furnishing all Equipment, labor, and Incidentals necessary to complete the Work as specified.

## **SECTION 00310 - REMOVAL OF STRUCTURES AND OBSTRUCTIONS**

Comply with Section 00310 of the Standard Specifications modified as follows:

**Section 00310.00** – Replace this subsection, except for the subsection number and title, with the following:

This Work consists of removing and disposing of man-made materials and cleaning up areas they occupy, including the removal of asphalt concrete pavement and the removal, cutting, capping and plugging of pipes.

**Payment** - payment will be made on a lump sum basis per Section 00310.91:

**00310.91 Lump Sum Basis Payment** – Replace this subsection, except for the subsection number and title, with the following:

All Work performed under this section will be paid at the Contract lump sum price.

Payment will be payment in full for furnishing and placing all Materials, and for furnishing all Equipment, labor, and Incidentals necessary to complete the Work as specified.

## SECTION 00330 EARTHWORK

Comply with Section 00330 of the Standard Specifications modified as follows:

### Materials

Add the following paragraph to the end of the Materials subsection:

**00330.18 Aggregate Backfill** - 1" minus aggregate shall be used for all areas

**00330.21 – Vibratory Rollers** – This subsection applies for compaction work.

**00330.40 General** – add the following paragraph to the end of this subsection:

**00340.40(d)** –Backfill all excavated areas and straight grade surface. Straight grade north to south based on undisturbed existing ground level, and east to west from driveway entrance to driveway entrance. Backfill excavated areas with 1" minus aggregate and compact in 12" lifts. Compact to 92% in backfill areas greater than two (2) feet. Compaction tests shall be conducted in areas with 3' or more of aggregate. Compaction tests shall be performed in compliance with the ODOT Manual of Field Test Procedures.

**00330.41(a)(5) Waste Materials** - Replace this subsection, except for the subsection number and title, with the following:

Unless otherwise specifically allowed and subject to the requirements of Section 00280, dispose of materials, classed as waste materials in 00330.41(a)(3), outside and beyond the limits of the Project and City controlled property according to 00290.20. Do not dispose of materials on Wetlands, either public or private, or within 300 feet of rivers or streams.

**00330.90 Payment** - Replace this subsection, except for the subsection number and title, with the following:

All work performed under this section will be paid at the Contract lump sum price.

Payment will be payment in full for furnishing and placing all Materials, and for furnishing all Equipment, labor, Incidentals, and testing necessary to complete the Work as specified.

## SECTION 00495 - TRENCH RESURFACING

Comply with Section 00495 of the Standard Specifications modified as follows:

**00495.90 Payment** – Replace this subsection, except for the subsection number and title, with the following:

All Work performed under this section will be paid at the Contract lump sum price.

Payment will be payment in full for furnishing and placing all Materials, and for furnishing all Equipment, labor, and Incidentals necessary to complete the Work as specified.

**SECTION 00543 - ARCHITECTURAL TREATMENT**

Section 00543, which is not a Standard Specification, is included in this Project by Special Provision.

**00543.00 Scope** – This Work consists of installing Hardie® Plank siding (or Engineer approved equal product) in all areas where ACM siding was removed, and painting of siding to match existing building paint color.

**00543.10 Materials –**

00543.10(a) – Hardie® Plank (or Engineer approved equal product).

00543.10(b) – Hardie® Plank compatible paint (or Engineer approved equal product). If Hardie® Plank equal product is selected, paint shall be compatible with selected equal product.

**00543.40 Construction** – Siding shall be installed per manufacturers recommendations. After installation of the siding, paint shall be applied according to manufacturer’s recommendations. The completed painted surface shall be free of blemishes, discoloration, and surface voids. Dispose of any unused paint in compliance with Section 00290.

**00543.90 Payment** - The accepted quantities of Work performed under this Section will be paid for at the Contract unit price, per unit of measurement, for the following items:

<b>Pay Item</b>	<b>Unit of Measurement</b>
(a) Siding .....	Square Foot
(b) Paint.....	Square Foot

**SECTION 01069 - METAL HANDRAIL AND PEDESTRIAN FENCE**

Comply with Section 01069 of the Standard Specifications modified as follows:

**01069.90 Payment** – Replace this subsection, except for the subsection number and title, with the following:

All Work performed under this section will be paid at the Contract lump sum price.

Payment will be payment in full for furnishing and placing all Materials, and for furnishing all Equipment, labor, and Incidentals necessary to complete the Work as specified.

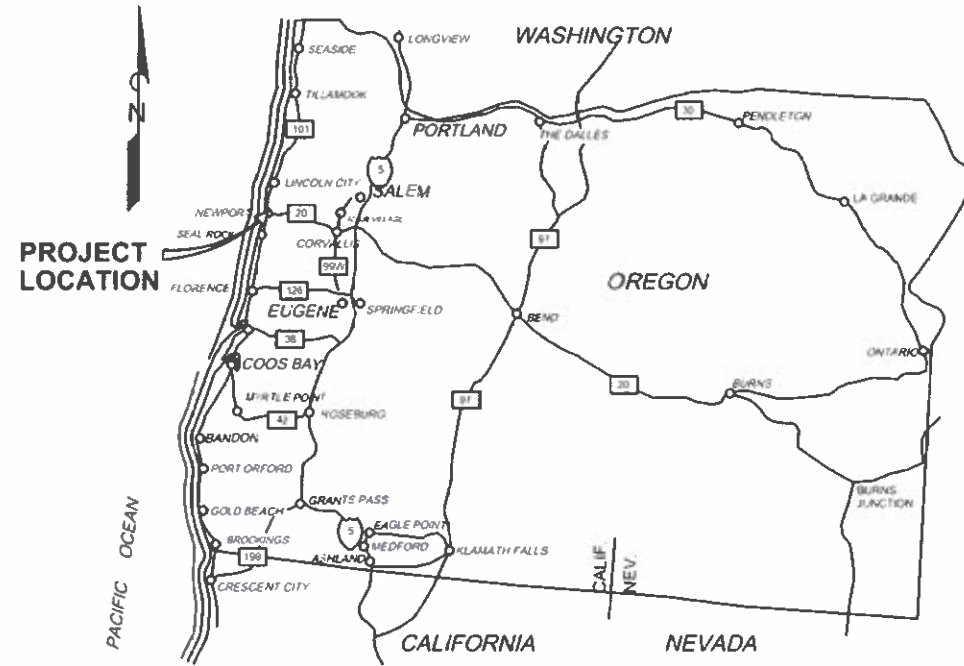
## **DEMOLITION AND ABATEMENT – VARIOUS SITES**

### **PART 3 – CONSTRUCTION DOCUMENTS**

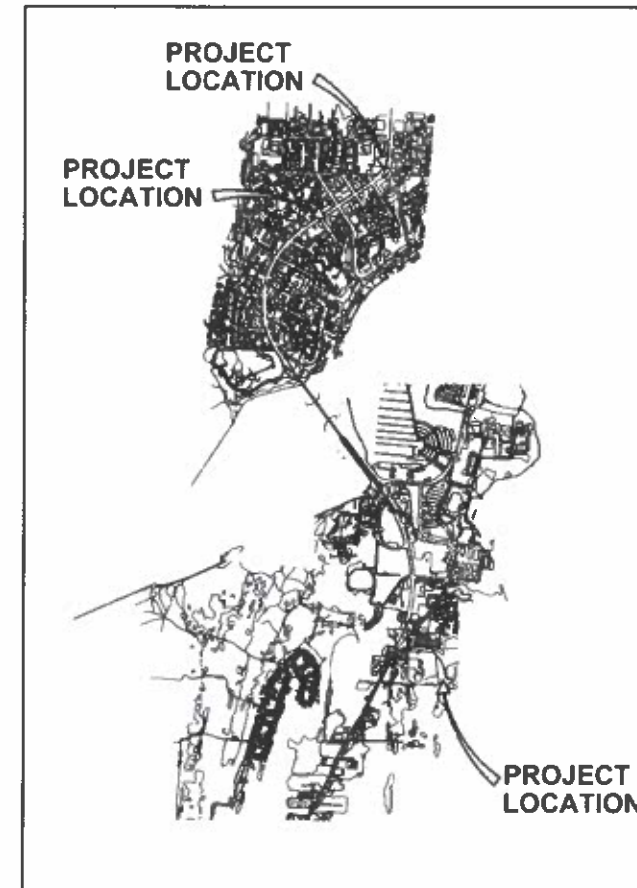
- G1 - Location Map / Vicinity Map
- G2 - Scope of Work / Sheet Index / Notes
- C1 - Project Site 1: 143 SW Coast Hwy
- C2 - Project Site 2: 415-425 SW Coast Hwy
- C3 - Project Site 3: SE 35<sup>th</sup> St & US 101
- D1 - S-300B Lateral Abandonment Detail
- ODOT Standard Drawing RD 770
- ODOT Standard Drawing RD 771

# URBAN RENEWAL DEMOLITION PROJECT

CITY OF NEWPORT, LINCOLN COUNTY,  
OREGON

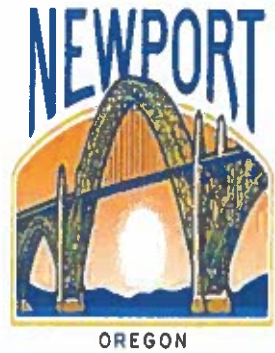


**LOCATION MAP**



**VICINITY MAP**  
NOT TO SCALE

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Newport, Oregon 97365  
541-574-3376  
[www.newportoregon.gov](http://www.newportoregon.gov)

REV	DATE	DESCRIPTION	BY	CHECKED BY

Drawn By: MLJR  
 Checked By:   
 Project No: 2017-008 & 2023-071

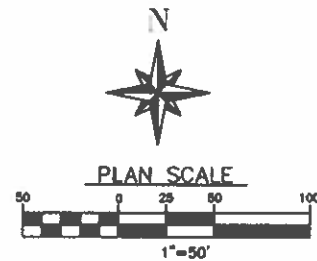
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DATE: ####

CITY OF NEWPORT  
169 SW COAST HIGHWAY, NEWPORT, OR 97365  
URBAN RENEWAL DEMOLITION PROJECT  
**COVER SHEET**

**G1**



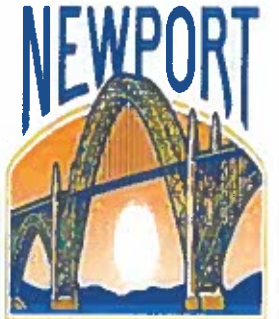




**SHEET NOTES:**

1. REMOVE BUILDING AND FOUNDATION. BACKFILL WITH 1" - MINUS AGGREGATE TO NEAT LINE WITH EXISTING ASPHALT OR UNDISTURBED EARTH
2. REMOVE POLE AND BASE
3. PROTECT SIDEWALK DURING DEMOLITION
4. PROTECT DRIVEWAY.
5. REMOVE LIGHT, POLE AND BASE

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REV	DATE	DESCRIPTION	BY

Designed By	Checked By
Drawn By	
Project No	

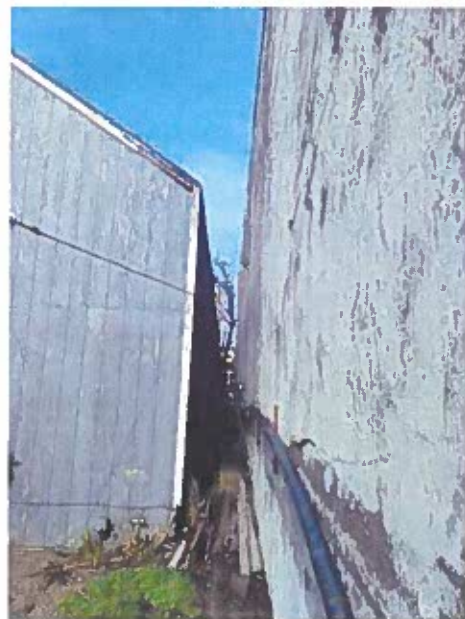
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DATE: ####

CITY OF NEWPORT  
169 SW COAST HIGHWAY, NEWPORT, OR 97365

URBAN RENEWAL DEMOLITION PROJECT

143 SW COAST HIGHWAY DEMOLITION

**C1**



COAST HIGHWAY 101

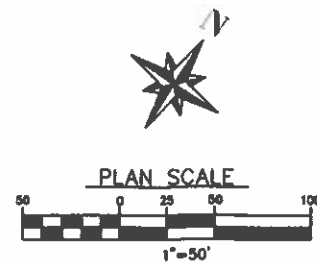
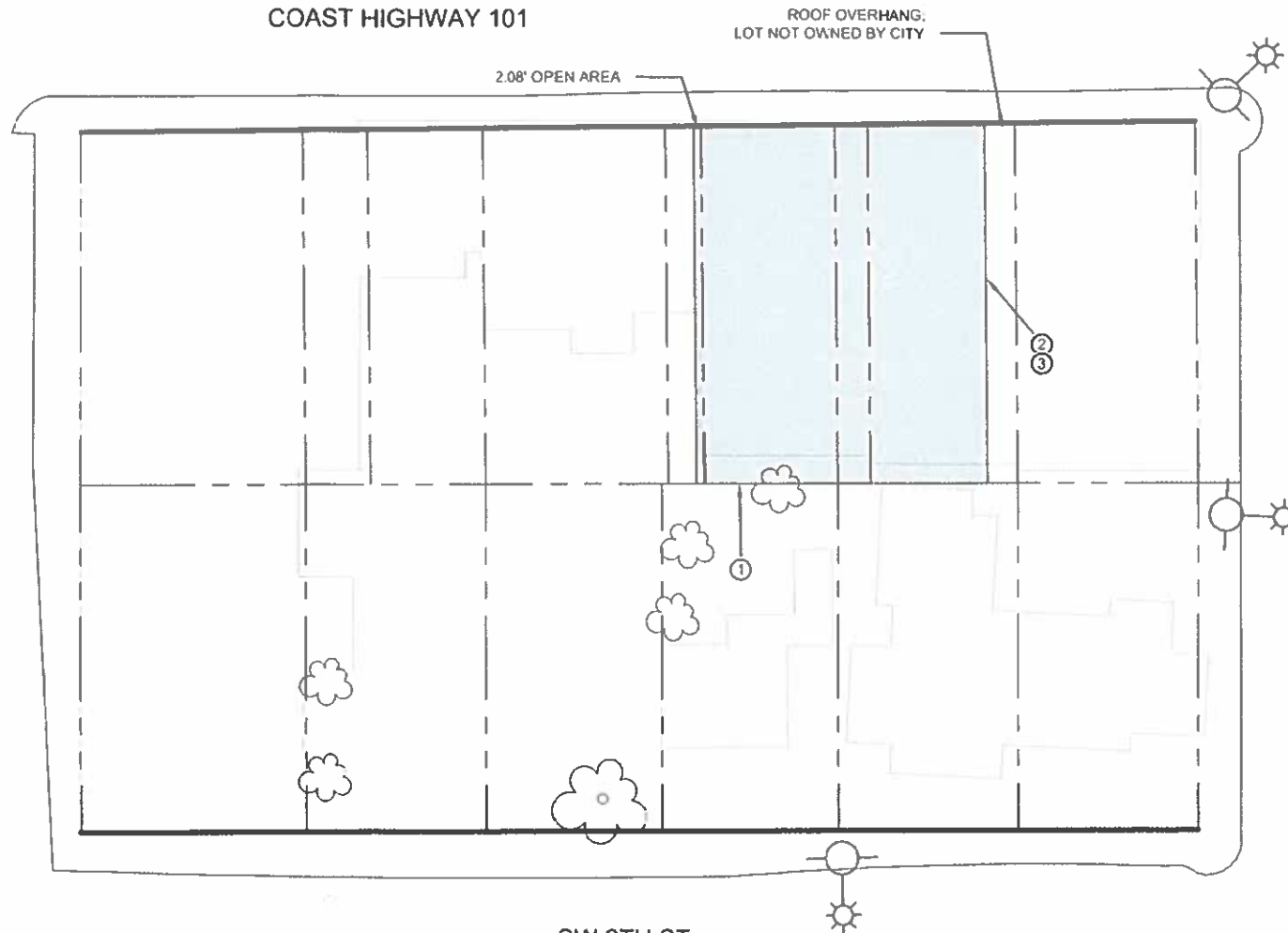
ROOF OVERHANG,  
LOT NOT OWNED BY CITY

2.08' OPEN AREA

SW ALDER ST

SW HURBERT ST

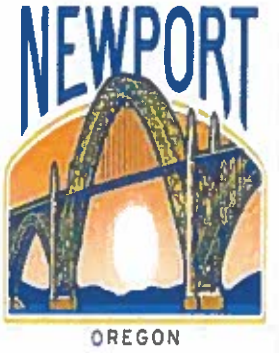
SW 9TH ST



**SHEET NOTES:**

1. REMOVE BUILDING LEAVE FOUNDATION.
2. REMOVE ASBESTOS SIDING ON KITE SHOP EXPOSED BY DEMOLITION.
3. INSTALL AND PAINT SIDING ON EXPOSED KITE SHOP WALL.

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REV	DATE	DESCRIPTION	BY

Designed By	Drawn By	Checked By

Project No	
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**RECORD DRAWING**  
DATE: ####

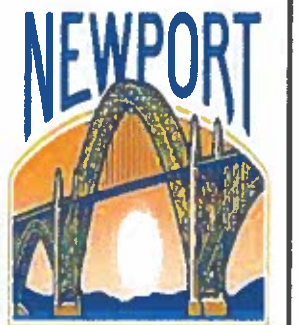
CITY OF NEWPORT  
169 SW COAST HIGHWAY, NEWPORT, OR 97365

URBAN RENEWAL DEMOLITION PROJECT

415-425 SW COAST HIGHWAY  
DEMOLITION

**C2**

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REV	DATE	DESCRIPTION	BY

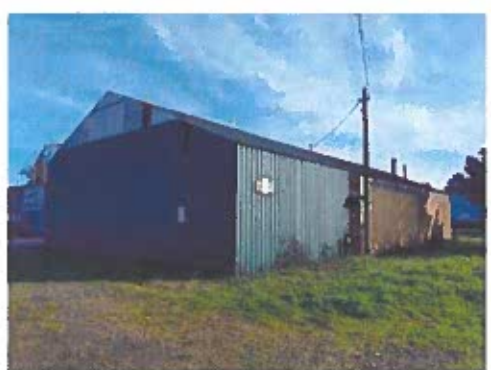
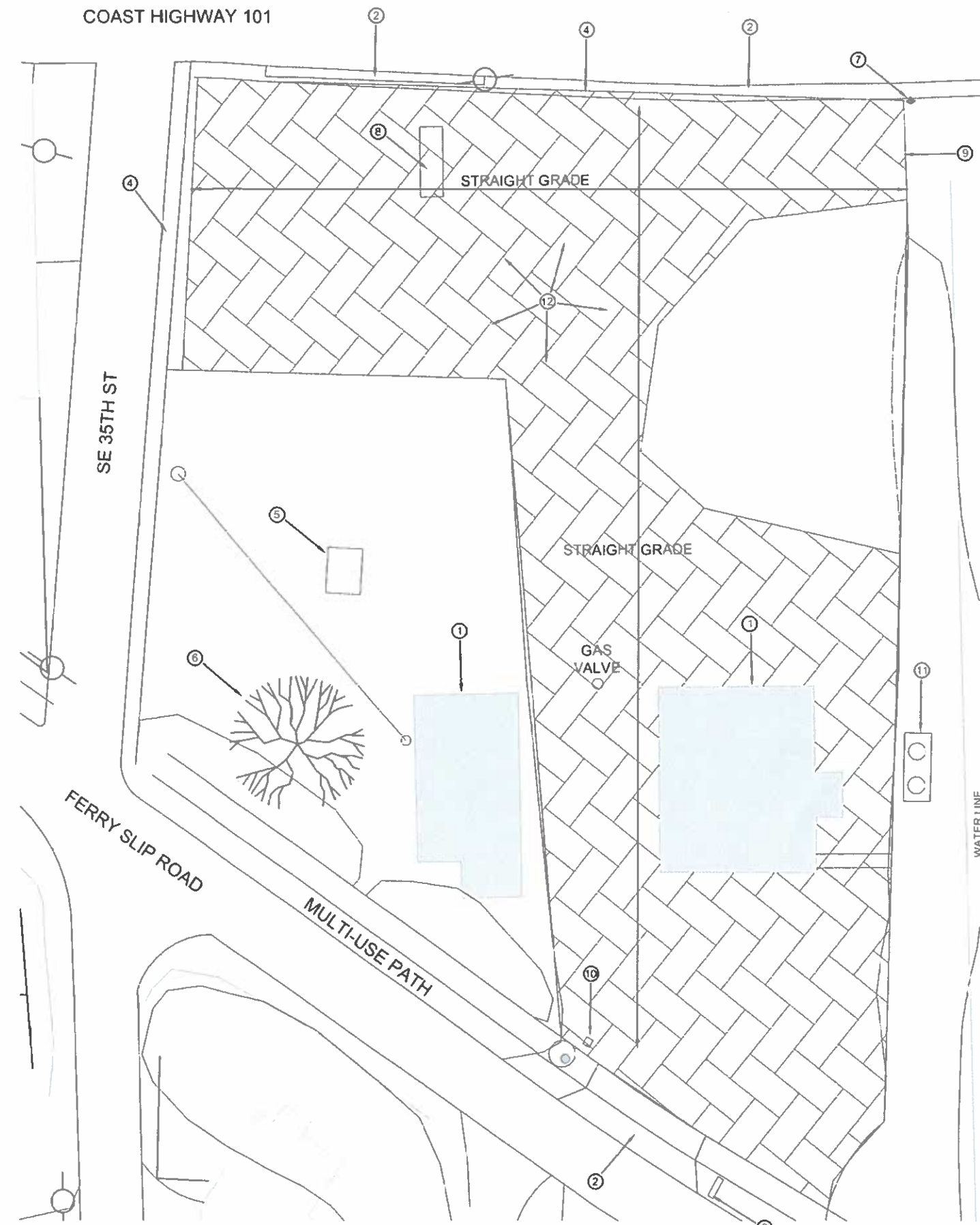
Designed By	Checked By
Drawn By	
Project No	

**RECORD DRAWING**  
DATE: ####

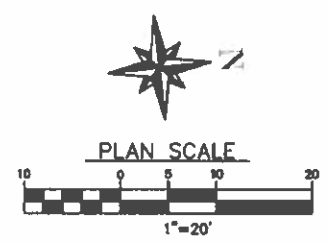
CITY OF NEWPORT  
169 SW COAST HIGHWAY, NEWPORT, OR 97365  
URBAN RENEWAL DEMOLITION PROJECT  
SE 35TH ST DEMOLITION

C3

COAST HIGHWAY 101

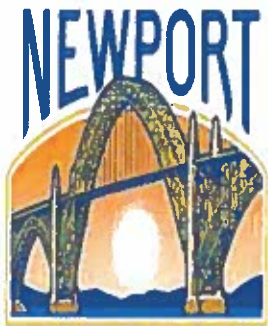


- SHEET NOTES:**
- 1 REMOVE BUILDING AND FOUNDATION
  - 2 PROTECT DRIVEWAY DURING DEMOLITION
  - 3 PROTECT MULTI-USE PATH DURING DEMOLITION
  - 4 PROTECT SIDEWALK AND STREET LIGHTS DURING DEMOLITION
  - 5 REMOVE ABANDONED ELECTRICAL BOX SETUP
  - 6 PROTECT TREE DURING DEMOLITION AND CLEANUP
  - 7 PROTECT FIRE HYDRANT DURING DEMOLITION
  - 8 REMOVE SIGN AND FOUNDATION
  - 9 SAWCUT STRAIGHT LINE FOR ASPHALT REMOVAL COORDINATE WITH PROJECT REPRESENTATIVE
  - 10 PROTECT CATCH BASIN DURING DEMOLITION
  - 11 REMOVE TANK
  - 12 REMOVE ASPHALT STRAIGHT GRADE ROCK TO TIE IN TO EASTWEST DRIVEWAY ENTRANCES AND NORTH/SOUTH EXISTING GROUND.



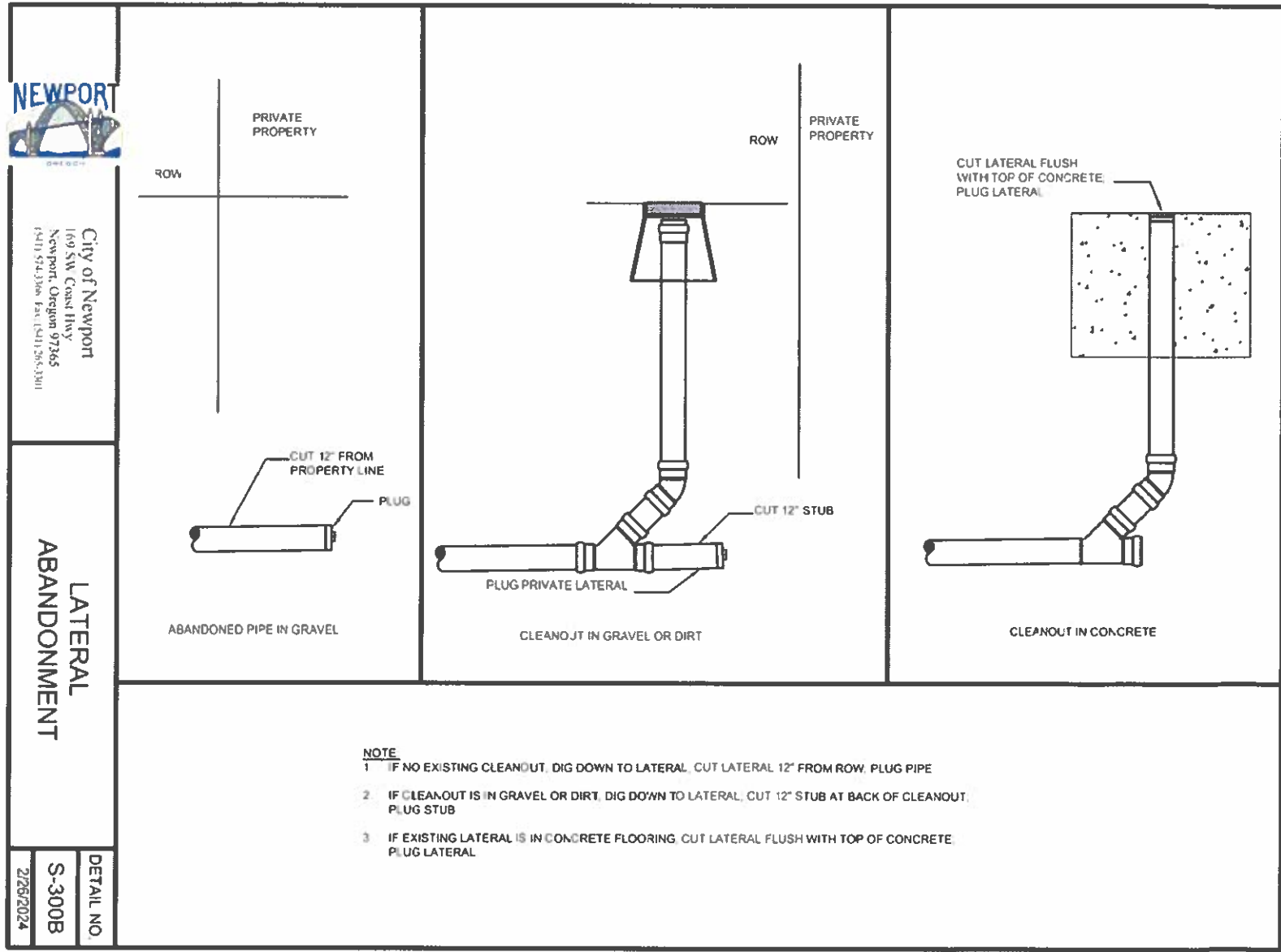
DATE: 3/14/24 FILE C:\Users\roman\Desktop\Anna's Demolition.dwg

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City of Newport  
169 SW Coast Hwy  
Newport, Oregon 97365  
541-574-3376 Fax: 541-265-3311

LATERAL  
ABANDONMENT

DETAIL NO.  
S-300B  
2/26/2024

REV	DATE	DESCRIPTION	BY

Designed By: #####  
 Drawn By: #####  
 Checked By: #####  
 Project No: #####  
 Date: ####

**RECORD DRAWING**  
DATE: ####

####  
####  
URBAN RENEWAL DEMOLITION PROJECT  
###

Sheet No. **D1**  
MARCH 4, 2024

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CITY OF NEWPORT  
169 SW COAST HWY  
NEWPORT, OREGON 97365



phone: 541.574.5868

fax: 541.574.0644

<http://newportoregon.gov>

COAST GUARD CITY, USA

Mombetsu, Japan, Sister City

**Date:** March 28, 2024 **Addenda No. 1**

**To:** PLAN HOLDERS

**Prepared By:** Anna Laukea, Urban Renewal Project Manager

**Subject:** Demolition and Abatement Project – Various Sites

**RESPONSES TO QUESTIONS RECEIVED AT MARCH 21, 2024 PRE-BID MEETING**

**GENERAL QUESTION CLARIFICATIONS:**

1. Will the power be shut off prior to demolition?  
Yes, power is shut off at all three project sites and Central Lincoln PUD meters and equipment will be removed prior to demolition.
2. Will the Contractor be required to obtain permits required for lane closures on US 101?  
Yes, see Special Provision 00221 Common Provisions for Work Zone Traffic Control, included in the bid package.
3. Will there be a specification for the rock to be used, as well as for the compaction of the backfill?  
See Special Provision 00330 Earthwork, included in the bid package.
4. Will a 1200-C permit be required for Project Site 3 SE 35<sup>th</sup> St & US 101? Will it apply to all sites?  
Yes, a 1200-C permit will be required for Project Site 3 only, SE 35<sup>th</sup> St and US 101. Contract shall get 1200-C Permit.
5. You stated that there will be a substantial completion within 90 days for this project, with the combination of abatement and demolition at the various sites this is a very



accelerated schedule, will there be a formal timeline for completion that contractors need to adhere to, or will an extension be available?

The following change is made to Section C-520 Agreement Between Owner and Contractor for Construction Contract (Stipulated Price) DRAFT. See attached revised Draft Agreement:

Replace ARTICLE 4.02 Contract Times, in its entirety with: Days with:

- A. "The Work will be substantially completed within 120 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 150 days after the date when the Contract Times commence to run."
- B. Parts of the Work shall be substantially completed on or before the following Milestone:

- 1. Milestone 1: Project Site 2 415-425 SW Coast Hwy shall be completed with 45 days after the date when the Contract Times commence to run.

- 6. Will the Contractor be required to follow City Code and use Thompson's Sanitary Service for hauling and disposal of waste?

Yes, all waste is to be hauled and disposed of in compliance with the City's Franchise Agreement using Thompson's Sanitary Service.

Contact Thompson's Sanitary Service if you have additional questions about waste hauling and disposal.

**SITE SPECIFIC:**

**Site 1: 143 SW Coast Highway**

- 1. Does the base of the pole on the northwest corner of the site need to be removed?

If the base can be removed without disturbing the sidewalk, then yes. If not, remove pole to 6" below grade and backfill with aggregate.

- 2. Clarification of the City's expectation for volume of import material at the 143 SW Coast Hwy site (Project Site 1). At a minimum, will the City establish control points for finish elevation?

Finish elevation is the same as existing elevation. Per Sheet C1, after building and foundation are removed, backfill with 1" minus aggregate to neat line with existing asphalt or undisturbed earth.

**Site 2: 415-425 SW Coast Highway**

1. Will the lines, (power, data, etc.) be removed from the SW corner of the 415-425 SW Coast Hwy site?

No power lines impact the Project site.

The City is coordinating with the telecommunications providers to remove or raise existing lines.

2. Will the City coordinate with the Kite Shop for potential closure during the abatement of their exterior siding?

The City will handle all coordination with the Kite Shop owner regarding any potential impacts to their business. We do not anticipate that the Kite Shop will need to be closed during abatement activities. Note: Per the scope of work, Contractor is to provide 2-weeks notice prior to siding removal to allow time for Cable company to complete relocation work of existing cable and internet infrastructure located on wall.

3. The previous owner is entitled to salvage any windows and glass prior to demolition. They will be required to complete all salvage work prior to the start of the Project. They are to be provided a one-week notice for completion of their work.

**Site 3: SE 35<sup>th</sup> St. and US 101**

1. Will the paint cans be removed from the storage building prior to demolition?

Yes

2. Will there be a formal grading and backfill plan for the 3335 SW Coast Hwy location?

No. All asphalt shall be removed and replaced with 6 inches of aggregate material with the driveway slopes blended in to a distance of 10-feet from the throat of the driveways into the lot. The combined straight grades shown on the plans are intended to recreate the existing surface finish grade with the same vertical curve that currently exists.

3. Do the underground holding tanks need to be completely removed or just decommissioned and filled?

Tanks need to be completely removed and area backfilled with aggregate.

4. Will a 1200-C permit be required for this project?

Yes, a 1200-C permit will be required for Project Site 3 only. See below,  
REVISIONS TO SPECIAL PROVISIONS

## **REVISIONS TO SPECIAL PROVISIONS**

### Revise Section 00170 as follows:

Add the following bullet points to Section 00170.02:

- The City of Newport requires a grading permit for Project Site 3 SE 35<sup>th</sup> St & US 101.
- The City of Newport requires a demolition permit for all three Project Sites.
- The City of Newport requires a right-of-way permit for any work within the City's right-of-way.

### Replace Section 00280 of the Special Provisions with:

Comply with Section 00280 of the Standard Specifications modified as follows:

Add the following paragraph to the end of this subsection:

Before beginning Work on the Project, Contractor shall obtain a NPDES 1200-C permit that is applicable to the Project. Comply with all 1200-C permit conditions.

**00280.62(a) Inspection** - Replace the paragraph that begins "Perform site inspection, complete..." with the following paragraph:

Inspect the Project Site and all ESC devices for Effective Function and potential erosion or sediment movement and submit a summary to the Project Representative.

### **Attachments**

- Revised Section C-520 Agreement Between Owner and Contractor for Construction Contract (Stipulated Price) DRAFT
- Revised City of Newport Special Provisions

## **END OF ADDENDUM**

**AGREEMENT (DRAFT REVISED 3/28/2024)**  
**BETWEEN OWNER AND CONTRACTOR**  
**FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between CITY OF NEWPORT (“Owner”) and  
\_\_\_\_\_ (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

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

**ARTICLE 2 – THE PROJECT**

2.01 *The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Demolition and Abatement – Four Sites*

**ARTICLE 3 – ENGINEER**

3.01 *The Project has been designed by City of Newport.*

3.02 *The Owner has assigned the City Engineer (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.*

**ARTICLE 4 – CONTRACT TIMES**

4.01 Time of the Essence

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

4.02 Contract Times: Days

A. The Work will be substantially completed within **120** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **150** days after the date when the Contract Times commence to run.

B. Parts of the Work shall be substantially completed on or before the following Milestone:

1. Milestone 1: Project Site 2 415-425 SW Coast Hwy shall be completed within **45** days after the date when the Contract Times commence to run.

**4.03 Liquidated Damages**

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
  - 1. Substantial Completion: Contractor shall pay Owner **\$500** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

**ARTICLE 5 – CONTRACT PRICE**

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

- A. For all Work other than Unit Price Work, a lump sum of: \$\_\_\_\_\_.  
All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.
- B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- C. Total of Lump Sum Amount and Unit Price Work \$\_\_\_\_\_.
- D. For all Work, at the prices stated in Contractor’s Bid, attached hereto as an exhibit.

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 Submittal and Processing of Payments

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

### 6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 25th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
  1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
    - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
    - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

### 6.03 Final Payment

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

## ARTICLE 7 – INTEREST – NOT USED

## ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

### 8.01 *In order to induce Owner to enter into this Contract, Contractor makes the following representations:*

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### **9.01 Contents**

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to \_\_\_\_, inclusive).
  - 2. Performance bond (pages \_\_\_\_ to \_\_\_\_, inclusive).
  - 3. Payment bond (pages \_\_\_\_ to \_\_\_\_, inclusive).
  - 4. Other bonds.

- a. \_\_\_ (pages \_\_\_ to \_\_\_, inclusive).

**NOTE(S) TO USER:**

*Such other bonds might include maintenance or warranty bonds intended to manage risk after completion of the Work.*

5. General Conditions (pages \_\_\_ to \_\_\_, inclusive).
  6. Supplementary Conditions (pages \_\_\_ to \_\_\_, inclusive).
  7. Specifications as listed in the table of contents of the Project Manual.
  8. Drawings (not attached but incorporated by reference) consisting of \_\_\_ sheets with each sheet bearing the following general title: \_\_\_ [or] the Drawings listed on the attached sheet index.
  9. Addenda (numbers \_\_\_ to \_\_\_, inclusive).
  10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages \_\_\_ to \_\_\_, inclusive).
  11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### **10.01 Terms**

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

### **10.02 Assignment of Contract**

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



### 10.03 Successors and Assigns

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

### 10.04 Severability

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

### 10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

### 10.06 Other Provisions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.
- B. Pursuant to ORS 279C.505(1) - Contractor shall make payment promptly, as due, to all persons supplying the Contractor with labor or materials for the performance of the work provided in the contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract. Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished.

- C. Pursuant to ORS 279C.505(2) – Contractor certifies that it has an employee drug testing program in place.
- D. If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or subcontractor by any person in connection with the public improvement contract as the claim becomes due, the proper officer or officers representing the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. Other provisions of ORS 279C.515 and ORS 279C.580 concerning payments also apply.
- E. Contractor shall comply with hours of labor rules Pursuant to ORS 279C.520, 279C.540, and 279C.545.
- F. Per ORS 279C.530, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services. All subject Employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- G. Contractor shall pay workers not less than the applicable prevailing wage rate.
- H. Public Works Bond – Contractor shall have a public works bond filed with the Oregon Construction Contractors Board before starting Work on the Project unless exempt under ORS 279C.836. Contractor shall include in every subcontract a provision requiring every subcontractor to have a public works bond filed with the Oregon CCB before starting Work on the Project unless exempt under ORS 279C.836.
- I. Contractor shall defend, hold harmless and indemnify Owner , its officers, agents, engineers, attorneys and employees from any and all losses, liability, damages, costs, expenses (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), claims, suits or actions whatsoever in nature, including intentional acts, resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this Contract.
- J. Failure of Owner to enforce any provision of this Contract shall not constitute a waiver by the Owner of that or any other provisions.

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

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

**NOTE(S) TO USER:**

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

**OWNER:**

**CONTRACTOR:**

City of Newport \_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

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

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

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

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

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

**CITY OF NEWPORT, OREGON  
SPECIAL PROVISIONS**

**SECTION 00165 - QUALITY OF MATERIALS**

Comply with the applicable sections within “Part 1: Contract Documents” located within this booklet and with Section 00165 of the Standard Specifications modified as follows:

**00165.03 Testing by Agency** - Replace this subsection except for the subsection number and title, with the following:

No testing will be performed by the City. All testing shall be the responsibility of the Contractor.

**00165.04 Cost of Testing** - Replace this subsection except for the subsection number and title, with the following:

All testing required to be performed by the Contractor will be considered incidental and will be at the Contractor’s expense.

**SECTION 00170 - LEGAL RELATIONS AND RESPONSIBILITIES**

Comply with the applicable sections within “Part 1: Contract Documents” located within this booklet and with Section 00170 of the Standard Specifications modified as follows:

**00170.02 Permits, Licenses, and Taxes** - Add the following bulleted items:

- The City of Newport requires a Bulk Water Permit to be issued when using fire hydrants or other City devices to obtain water for construction or bulk purposes. A Bulk Water Permit is available from the City of Newport Public Works Department.
- City of Newport requires a permit for all street closures and lane closures.
- Contractor shall be licensed to do business in the City of Newport.
- Contractor shall obtain an ODOT permit for the project. Contact ODOT District 4 office at 541-757-4211 for permit information.
- The City of Newport requires a grading permit for Project Site 3 SE 35<sup>th</sup> St & US 101.
- The City of Newport requires a demolition permit for all three Project Sites.
- The City of Newport requires a right-of-way permit for any work within the City's right-of-way.

**00170.60 Safety, Health, and Sanitation Provisions** - Add the following paragraph to the end of this subsection:

The Contractor shall provide and maintain proper portable sanitary facilities for their employees and their subcontractors' employees during day and night shifts that will comply with the regulations of the local and State departments of health and as directed by the Engineer.

### **SECTION 00180 - PROSECUTION AND PROGRESS**

Comply with the applicable sections within "Part 1: Contract Documents" located within this booklet and with Section 00180 of the Standard Specifications modified as follows:

**00180.50(c) Beginning of Contract Time** - Replace this subsection except for the subsection number and title, with the following:

When the Contract Time is stated in Calendar Days, counting of Contract Calendar Days will begin on the day "Notice to Proceed" is issued by the City.

**00180.85(b) Liquidated Damages** - Add the following to the end of this subsection:

The liquidated damages will be assessed for failure to complete the Work on time as required by 00180.50(g) will be \$500.00 per calendar day.

### **SECTION 00190 - MEASUREMENT OF PAY QUANTITIES**

Comply with the applicable sections within "Part 1: Contract Documents" located within this booklet and with Section 00190 of the Standard Specifications.

### **SECTION 00195 - PAYMENT**

Comply with the applicable sections within "Part 1: Contract Documents" located within this booklet and with Section 00195 of the Standard Specifications.

### **SECTION 00196 - PAYMENT FOR EXTRA WORK**

Comply with the applicable sections within "Part 1: Contract Documents" located within this booklet and with Section 00196 of the Standard Specifications.

### **SECTION 00197 - PAYMENT FOR FORCE ACCOUNT WORK**

Comply with the applicable sections within "Part 1: Contract Documents" located within this booklet and with Section 00197 of the Standard Specifications.

### **SECTION 00199 - DISAGREEMENTS, PROTESTS, AND CLAIMS**

Replace Section 00199 of the Standard Specifications except for the Section number and title, with the following:

Comply with applicable sections within “Part 1: Contract Documents” located of this booklet.

### **SECTION 00210 - MOBILIZATION**

Comply with Section 00210 of the Standard Specifications.

### **SECTION 00221 - COMMON PROVISIONS FOR WORK ZONE TRAFFIC CONTROL**

Comply with Section 00221 of the Standard Specifications modified as follows:

**00221.06 Traffic Control Plan** - Replace this subsection with the following subsection:

**00221.06 Traffic Control Plan and Tourist-Oriented Directional and Business Logo Signs –**

**(a) Traffic Control Plan** - Submit the following, 5 Calendar Days before the preconstruction conference:

**(2) Contractor-Modified Traffic Control Plan** - A Contractor-modified ODOT TCP or a TCP developed by the Contractor. Do not use a modified TCP, or a TCP developed by the Contractor, unless approved by the Engineer. The TCP for each site shall be adapted to the site. Side streets may be smaller than Highway 101 and need modification of TCP to control traffic within close proximity of the job sites.

The TCP will be reset for each job site to provide maximum safety and efficiency of traffic moving across Highway 101 and adjacent streets.

When requesting a Contractor-modified ODOT TCP, or a TCP developed by the Contractor, at a minimum the request shall meet all requirements of the Contract documents and comply with the Project transportation management plan (TMP). Provide the following information:

- Stamped Working Drawings according to 00150.35 that include the proposed TCP showing all TCM and quantities of TCD.
- A TPAR plan that includes:
  - Details and features used to provide pedestrian accessibility.
  - Pedestrian staging Plans at a scale no smaller than 1 inch = 50 feet.
  - Temporary alternate facilities or detour routes for pedestrian traffic.
- Staging sequences and details for Work affecting vehicular, pedestrian, and bicycle traffic.
- Proposed order and duration of the TCM.
- A detailed temporary striping plan.

Once a TCP has been accepted by the Engineer, any additional modifications must be submitted by the Contractor for City review following the procedure described above. The Engineer is not obligated to consider additional modifications to a previously approved TCP.

**(b) Tourist-Oriented Directional and Business Logo Signs** - Submit one of the following for approval, at least 5 Calendar Days before the preconstruction conference:

**(1) No Signs** - If there are no tourist-oriented directional (TOD) or business logo signs on the Project, a written notification that no TOD or business logo signs exist within the Project limits or

**(2) Signs** - Submit one copy of a sketch map of the Project showing all existing TOD and business logo signs and a written narrative describing how these signs will be kept in service and protected throughout all the construction stages. If modifications are necessary, submit updated information to the Engineer for approval at least 21 Calendar Days before the change is needed.

**Measurement** – The following method will be used:

**00221.88 Measurement, Method “B”** – Under this method, no measurement of quantities will be made.

**Payment** – The following method will be used:

**00221.98 Payment, Method B”** – Lump Sum Basis

### **SECTION 00253 - TEMPORARY WORK ACCESS AND CONTAINMENT**

Comply with Section 00253 of the Standard Specifications.

### **SECTION 00280 - EROSION AND SEDIMENT CONTROL**

Comply with Section 00280 of the Standard Specifications modified as follows:

**00280.00 Scope** - Replace the paragraph that begins "This Work also consists of providing temporary ..." with the following paragraph:

This Work also consists of providing temporary erosion and sediment control (ESC) measures and furnishing, installing, moving, operating, maintaining, inspecting, and removing ESC throughout the Project area according to the Standard Drawings, the erosion and sediment control plan (ESCP), the Specifications, or as directed, until the site is permanently stabilized. Included also is the monitoring of weather, of stormwater and receiving waters, the reporting of monitoring observations, the reporting of corrective actions (when necessary) and the updates and revisions of the ESCP, including ESCP cover sheet, necessary to keep it representative of current site conditions and compliant with the 1200-CA permit if applicable.

Delete the paragraph that begins “When contaminants, pollutants or hazardous materials...”.

Add the following paragraph to the end of this subsection:

Before beginning Work on the Project, Contractor shall obtain a NPDES 1200 C permit that is applicable to the Project. Comply with all 1200-C permit conditions.

**00280.62(a) Inspection** Replace the paragraph that begins "Perform site inspection, complete..." with the following paragraph:

Inspect the Project Site and all ESC devices for Effective Function and potential erosion or sediment movement and submit a summary to the Project Representative.

**00280.06 Erosion and Sediment Control Manager** - Delete this subsection.

**00280.90 Payment** – Replace this subsection, except for the subsection number and title, with the following:

All work performed under this section will be paid at the Contract lump sum price.

Payment will be payment in full for furnishing and placing all Materials, and for furnishing all Equipment, labor, and Incidentals necessary to complete the Work as specified.

## **SECTION 00290 - ENVIRONMENTAL PROTECTION**

Comply with Section 00290 of the Standard Specifications modified as follows:

**00290.90 Payment** – Replace this subsection, except for the subsection number and title with the following:

All Work performed under this section will be incidental to the appropriate items under which this Work is required.

## **SECTION 00295 - ASBESTOS MATERIALS**

Section 00295, which is not a Standard Specification, is included in this Project by Special Provision.

### **Project Site 1: 143 SW Coast Highway**

**00295.00 Scope** - An asbestos survey was performed on Site 1: 143 SW Coast Hwy that will be demolished for this Project. No asbestos-containing materials (ACMs) were identified on the inspected Structure. The Asbestos Inspection Report documenting the asbestos survey within the Project is included in Appendix A. Maintain a copy of this report and all



additional asbestos survey results on site at all times and readily available to employees and inspectors during demolition and repair activities.

**Project Site 2: 415-425 SW Coast Hwy**

**00295.00 Scope** - In addition to the requirements of Section 00290, remove asbestos according to the following Specifications.

Remove asbestos from the locations identified on Table 1 in the Asbestos Inspection Report (pages 24-26) dated April 13, 2023, included in Appendix A.

Maintain a copy of this report and all additional asbestos survey results on site at all times and readily available to employees and inspectors during demolition and repair activities.

**Project Site 3: SE 35<sup>th</sup> St & US 101**

**00295.00 Scope - 00295.00 Scope** - An asbestos survey was performed on Site 3: SE 35 St & US 101. Results are not available at the time of Advertisement to Bid. No ACMs are anticipated due to date of construction and nature of building materials. An addendum will be issued when City receives survey results.

**00295.01 Definitions:**

**Asbestos Containing Material (ACM)** - Any material containing more than 1% asbestos.

**00295.03 Submittals** - The following forms and reports are required:

- Completed and signed DEQ Project Notification Form and an abatement plan to City and DEQ at least 10 Calendar Days before beginning friable asbestos removal.
- Completed and signed DEQ Notice for Removal of Non-Friable Asbestos to City and DEQ at least 5 Calendar Days before beginning non-friable asbestos removal.
- Completed and signed DEQ Waste Shipment Report Form according to the following:
  - Send the form along with the asbestos waste to the disposal facility.
  - Provide a copy of the form to the Engineer within 48 hours of transportation of the asbestos waste.
    - Obtain the final signed form from the disposal facility along with the disposal receipts and submit them to the Engineer within 3 calendar days after receiving them from the waste disposal facility.
- Completed and signed DEQ Air Clearance Sample Results form to the City and DEQ within 30 Calendar Days after completing the asbestos removal.
- Disposal receipts within 72 hours of receipt from the waste disposal facility.

**Labor**

**00295.30 Personnel Qualifications** - Provide employees meeting the following

requirements:

- A current Oregon DEQ Asbestos Abatement Contractor license.
- A current Oregon DEQ Certified Supervisor meeting the requirements of OAR 340-248-0130.
- Current Oregon DEQ Certified asbestos workers meeting the requirements of OAR 340-248-0130

Ensure the DEQ Certified Supervisor is on site and overseeing work whenever asbestos containing materials are disturbed or removed.

### **Construction**

**00295.40 Asbestos Removal** - Comply with 29 CFR 1910, 29 CFR 1926.1101, 40 CFR 61, 40 CFR 763, OAR 340-248, ORS 468A and the following:

- Before beginning asbestos removal work, sign and submit all notifications and pay all fees to DEQ. Provide copies to the Engineer.
- Complete and sign all manifests and bill-of-lading forms for transporting and disposing the ACM.
- Maintain the ACM in an undamaged and non-friable condition by keeping the material wet during demolition or by using methods approved by DEQ.
- Keep material sealed during transport to the disposal facility. Transport and dispose of all ACM according to OAR 340-248-280 and OAR 340-248-290.
- Conduct final clearance air monitoring according to OAR 340-248-0270(13), with a contractor that is National Institute of Occupational Safety and Health (NIOSH) 582 certified and is financially independent from the abatement contractor.
- Remove and dispose of the materials identified as having less than 1% asbestos according to 29 CFR 1926.1101, where that regulation refers to "asbestos" rather than "asbestos containing material" or "ACM".

### **Payment**

**00295.90 Payment** - All Work performed under this section will be paid at the Contract lump sum price. Payment will be payment in full for furnishing and placing all Materials, and for furnishing all Equipment, labor, and Incidentals necessary to complete the Work as specified.

## **SECTION 00310 - REMOVAL OF STRUCTURES AND OBSTRUCTIONS**

Comply with Section 00310 of the Standard Specifications modified as follows:

**Section 00310.00** – Replace this subsection, except for the subsection number and title, with the following:

This Work consists of removing and disposing of man-made materials and cleaning up areas they occupy, including the removal of asphalt concrete pavement and the removal, cutting, capping and plugging of pipes.

**Payment** - payment will be made on a lump sum basis per Section 00310.91:

**00310.91 Lump Sum Basis Payment** – Replace this subsection, except for the subsection number and title, with the following:

All Work performed under this section will be paid at the Contract lump sum price.

Payment will be payment in full for furnishing and placing all Materials, and for furnishing all Equipment, labor, and Incidentals necessary to complete the Work as specified.

### **SECTION 00330 EARTHWORK**

Comply with Section 00330 of the Standard Specifications modified as follows:

#### **Materials**

Add the following paragraph to the end of the Materials subsection:

**00330.18 Aggregate Backfill** - 1" minus aggregate shall be used for all areas

**00330.21 – Vibratory Rollers** – This subsection applies for compaction work.

**00330.40 General** – add the following paragraph to the end of this subsection:

**00340.40(d)** –Backfill all excavated areas and straight grade surface. Straight grade north to south based on undisturbed existing ground level, and east to west from driveway entrance to driveway entrance. Backfill excavated areas with 1" minus aggregate and compact in 12" lifts. Compact to 92% in backfill areas greater than two (2) feet. Compaction tests shall be conducted in areas with 3' or more of aggregate. Compaction tests shall be performed in compliance with the ODOT Manual of Field Test Procedures.

**00330.41(a)(5) Waste Materials** - Replace this subsection, except for the subsection number and title, with the following:

Unless otherwise specifically allowed and subject to the requirements of Section 00280, dispose of materials classed as waste materials in 00330.41(a)(3), outside and beyond the limits of the Project and City controlled property according to 00290.20. Do not dispose of materials on Wetlands, either public or private, or within 300 feet of rivers or streams.

**00330.90 Payment** - Replace this subsection, except for the subsection number and title, with the following:

All work performed under this section will be paid at the Contract lump sum price.

Payment will be payment in full for furnishing and placing all Materials, and for furnishing all Equipment, labor, Incidentals, and testing necessary to complete the Work as specified.

**SECTION 00495 - TRENCH RESURFACING**

Comply with Section 00495 of the Standard Specifications modified as follows:

**00495.90 Payment** – Replace this subsection, except for the subsection number and title, with the following:

All Work performed under this section will be paid at the Contract lump sum price.

Payment will be payment in full for furnishing and placing all Materials, and for furnishing all Equipment, labor, and Incidentals necessary to complete the Work as specified.

**SECTION 00543 - ARCHITECTURAL TREATMENT**

Section 00543, which is not a Standard Specification, is included in this Project by Special Provision.

**00543.00 Scope** – This Work consists of installing Hardie® Plank siding (or Engineer approved equal product) in all areas where ACM siding was removed, and painting of siding to match existing building paint color.

**00543.10 Materials** –

00543.10(a) – Hardie® Plank (or Engineer approved equal product).

00543.10(b) – Hardie® Plank compatible paint (or Engineer approved equal product). If Hardie® Plank equal product is selected, paint shall be compatible with selected equal product.

**00543.40 Construction** – Siding shall be installed per manufacturers recommendations. After installation of the siding, paint shall be applied according to manufacturer's recommendations. The completed painted surface shall be free of blemishes, discoloration, and surface voids. Dispose of any unused paint in compliance with Section 00290.

**00543.90 Payment** - The accepted quantities of Work performed under this Section will be paid for at the Contract unit price, per unit of measurement, for the following items:

<b>Pay Item</b>	<b>Unit of Measurement</b>
(a) Siding .....	Square Foot
(b) Paint.....	Square Foot

**SECTION 01069 - METAL HANDRAIL AND PEDESTRIAN FENCE**

Comply with Section 01069 of the Standard Specifications modified as follows:

City of Newport, OR  
Demolition & Abatement – Multiple Sites  
Projects 2017-008 & 24-23071

**01069.90 Payment** – Replace this subsection, except for the subsection number and title, with the following:

All Work performed under this section will be paid at the Contract lump sum price.

Payment will be payment in full for furnishing and placing all Materials, and for furnishing all Equipment, labor, and Incidentals necessary to complete the Work as specified.

CITY OF NEWPORT  
169 SW COAST HWY  
NEWPORT, OREGON 97365



phone: 541.574.5868  
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<http://newportoregon.gov>

COAST GUARD CITY, USA

Mombetsu, Japan, Sister City

**Date:** April 2, 2024 **Addenda No. 2**

**To:** PLAN HOLDERS

**Prepared By:** Anna Iaukea, Urban Renewal Project Manager

**Subject:** Demolition and Abatement Project – Various Sites

### ANSWERS TO QUESTIONS

1. Will a balance sheet from an accountant/outside book keeper be sufficient or are audited balance sheets required?

Balance sheets from an accountant/outside book keeper are acceptable.

Please note: For a period for not less than three years after the City's final payment to Contractor, Contractor shall permit the City, the State of Oregon and the Federal Government (if state or federal funding is involved) to have access to all books, documents, papers and records of Contractor which are pertinent to the Services provided under this Contract for purposes of audit, examination, excerpts and transcripts.

2. If you require a bond, which is assurance for the City of Newport that the company is in good standing and also gives the City of Newport the confidence/protection that the project will get completed, what is the reasoning for asking for 3 years of a balance sheet?

This is a standard requirement of the EJDC Qualifications Statement. Please see response to question number 1.

**END OF ADDENDUM**

# BID FORM FOR CONSTRUCTION CONTRACTS

Prepared by



Issued and Published Jointly by



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**BID FORM**

**DEMOLITION AND ABATEMENT PROJECT – VARIOUS SITES**

**Project Numbers 2017-008 & 24-23071**

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**ARTICLE 1 – BID RECIPIENT**

1.01 This Bid is submitted to:

**Anna Laukea  
Urban Renewal Project Manager  
169 SW Coast Highway  
Newport, OR 97365**

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

**ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS**

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

**ARTICLE 3 – BIDDER’S REPRESENTATIONS**

3.01 In submitting this Bid, Bidder represents that:

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

<u>Addendum No.</u>	<u>Addendum, Date</u>
<u>1</u>	<u>March 28, 2024</u>
<u>2</u>	<u>April 2, 2024</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

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

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

#### **ARTICLE 4 – BIDDER'S CERTIFICATION**

##### **4.01 Bidder certifies that:**

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

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

**ARTICLE 5 – BASIS OF BID**

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
1	Section 00210 MOBILIZATION	LS	1	22,238	22,238
2	Section 00221 COMMON PROVISIONS FOR WORK ZONE TRAFFIC CONTROL - TEMPORARY TRAFFIC CONTROL	LS	1	12,500	12,500
3	Section 00280 EROSION AND SEDIMENT CONTROL	LS	1	5,000	5,000
	<b>SITE 1 – 143 SW COAST HWY</b>				
4	Section 00310 REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	6,038	6,038
5	Section 00330 EARTHWORK – AGGREGATE BACKFILL	LS	1	4,100	4,100
6	Section 00495 TRENCH RESURFACING	LS	1	1.00	1.00
	<b>SITE 2 – 415-425 SW COAST HWY</b>				
7	Section 00295 ASBESTOS MATERIAL	LS	1	130,985	130,985
8	Section 00310 REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	219,987	219,987
9	00543 ARCHITECTURAL TREATMENT – SIDING INSTALLATION - HARDIE® PLANK OR EQUAL PRODUCT	SF	1,300	16.2276	21,096
10	00543 ARCHITECTURAL TREATMENT – PAINT SIDING	SF	1,300	3.85	5,005
11	Section 01069 – METAL HANDRAIL AND PEDESTRIAN FENCE	LS	1	9,173	9,173
	<b>SITE 3 – SE 35<sup>th</sup> St &amp; US 101</b>				
12	Section 00310 REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	284,440	284,440
13	Section 00330 EARTHWORK – AGGREGATE BACKFILL	LS	1	18,700	18,700

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Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
14	Section 00495 TRENCH RESURFACING	LS	1	1.00	1.00
<b>Total of All Unit Price Bid Items</b>	<b>\$ 739,264</b>				

Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

**ARTICLE 6 – TIME OF COMPLETION**

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

**ARTICLE 7 – ATTACHMENTS TO THIS BID**

- 7.01 The following documents are submitted with and made a condition of this Bid:
  - A. Required Bid security;
  - B. List of Proposed Subcontractors;
  - C. List of Proposed Suppliers;
  - D. List of Project References;
  - E. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
  - F. Contractor's License No.: XXXXXXXXXX
  - G. Required Bidder Qualification Statement with supporting data; and

**ARTICLE 8 – DEFINED TERMS**

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

**ARTICLE 9 – BID SUBMITTAL**

**BIDDER:** *[Indicate correct name of bidding entity]*

**Anderson Environmental Contracting, LLC**

---

By:  
[Signature]



[Printed name]

Brian G. G. G.

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:  
[Signature]



[Printed name]

Kari Booth

Title:

General Manager

Submittal Date:

4-5-24

Address for giving notices:





Telephone Number:



Fax Number:



Contact Name and e-mail address:

Ed Woodward



Bidder's License No.:



(where applicable)

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

**FIRST-TIER SUBCONTRACTOR  
DISCLOSURE FORM**

**Project Name: Demolition & Abatement – Various Sites**

**Bid Closing: April 5, 2024, 2:00 PM**

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two working hours after the advertised bid closing time.

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

Category of Work: Asbestos Abatement

Name: Alpine Abatement

Address: [REDACTED]

Phone Number: [REDACTED]

Construction Contractor's Board Registration Number: [REDACTED]

Dollar Value of Subcontract: \$113,900

Category of Work: Mechanical Demolition

Name: Clarke Construction, LLC

Address: [REDACTED]

Phone Number: [REDACTED]

Construction Contractor's Board Registration Number: [REDACTED]

Dollar Value of Subcontract: \$251,150



Category of Work: \_\_\_\_\_

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

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

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

Construction Contractor's Board Registration Number: \_\_\_\_\_

Dollar Value of Subcontract: \_\_\_\_\_

Category of Work: \_\_\_\_\_

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

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

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

Construction Contractor's Board Registration Number: \_\_\_\_\_

Dollar Value of Subcontract: \_\_\_\_\_

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

Form submitted by (bidder name): Anderson Environmental Contracting, LLC

Contact name: Brian Gabbard

Phone: [REDACTED]

Signature: 

Date: 4/5/24

# QUALIFICATIONS STATEMENT

Prepared by



Issued and Published Jointly by



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## QUALIFICATIONS STATEMENT

THE INFORMATION SUPPLIED IN THIS DOCUMENT IS CONFIDENTIAL TO THE EXTENT PERMITTED BY LAWS AND REGULATIONS

**1. SUBMITTED BY:**

Official Name of Firm: Anderson Environmental Contracting, LLC

Address: [REDACTED]

**2. SUBMITTED TO:**

City of Newport attn: Spencer Nebel

**3. SUBMITTED FOR:**

DEMOLITION AND ABATEMENT PROJECT – VARIOUS SITES

Owner: City of Newport

Project Name: DEMOLITION AND ABATEMENT PROJECT – VARIOUS SITES

**TYPE OF WORK:**

Demolition & Abatement

**4. CONTRACTOR'S CONTACT INFORMATION**

Contact Person: Ed Woodward

Title: Sr. Project Manager

Phone: [REDACTED]

Email: [REDACTED]

**5. AFFILIATED COMPANIES:**

Name: N/A  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6. TYPE OF ORGANIZATION:**

SOLE PROPRIETORSHIP

Name of Owner: \_\_\_\_\_

Doing Business As: \_\_\_\_\_

Date of Organization: \_\_\_\_\_

PARTNERSHIP

Date of Organization: \_\_\_\_\_

Type of Partnership: \_\_\_\_\_

Name of General Partner(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CORPORATION

State of Organization: \_\_\_\_\_

Date of Organization: \_\_\_\_\_

Executive Officers:

- President: \_\_\_\_\_

- Vice President(s): \_\_\_\_\_  
\_\_\_\_\_

- Treasurer: \_\_\_\_\_

- Secretary: \_\_\_\_\_

**LIMITED LIABILITY COMPANY**

State of Organization: Washington

Date of Organization: 1 March 2000

Members: Steve Anderson

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**JOINT VENTURE**

Sate of Organization: \_\_\_\_\_

Date of Organization: \_\_\_\_\_

Form of Organization: \_\_\_\_\_

Joint Venture Managing Partner

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

- Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Joint Venture Managing Partner

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

- Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Joint Venture Managing Partner

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

- Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

7. LICENSING

Jurisdiction: Oregon

Type of License: Construction Contractors Board (CCB)

License Number: [REDACTED]

Jurisdiction: \_\_\_\_\_

Type of License: \_\_\_\_\_

License Number: \_\_\_\_\_

8. CERTIFICATIONS

CERTIFIED BY: \_\_\_\_\_

Disadvantage Business Enterprise: \_\_\_\_\_

Minority Business Enterprise: \_\_\_\_\_

Woman Owned Enterprise: \_\_\_\_\_

Small Business Enterprise: Dept. of VA

Other (Veteran Owned): Dept. of VA & WA State

9. BONDING INFORMATION

Bonding Company: CB&MS of Washington

Address: [REDACTED]

Bonding Agent: Nicholas B. Fix

Address: [REDACTED]

Contact Name: Nicholas B. Fix

Phone: [REDACTED]

Aggregate Bonding Capacity: \$10,000,000

Available Bonding Capacity as of date of this submittal: \$7,000,000

**10. FINANCIAL INFORMATION**

Financial Institution: Heritage Bank NW  
Address: [REDACTED]  
[REDACTED]  
Account Manager: Marlene Johanson  
Phone: [REDACTED]

INCLUDE AS AN ATTACHMENT AN AUDITED BALANCE SHEET FOR EACH OF THE LAST 3 YEARS

"AEC does not have an audited balance sheet. AEC engages a third party CPA to conduct a review engagement annually. The CPA reviewed Balance Sheet can be provided under separate cover upon request".

**11. CONSTRUCTION EXPERIENCE:**

Current Experience:

List on **Schedule A** all uncompleted projects currently under contract (If Joint Venture list each participant's projects separately).

Previous Experience:

List on **Schedule B** all projects completed within the last 5 Years (If Joint Venture list each participant's projects separately).

Has firm listed in Section 1 ever failed to complete a construction contract awarded to it?

YES  NO

If YES, attach as an Attachment details including Project Owner's contact information.

Has any Corporate Officer, Partner, Joint Venture participant or Proprietor ever failed to complete a construction contract awarded to them in their name or when acting as a principal of another entity?

YES  NO

If YES, attach as an Attachment details including Project Owner's contact information.

Are there any judgments, claims, disputes or litigation pending or outstanding involving the firm listed in Section 1 or any of its officers (or any of its partners if a partnership or any of the individual entities if a joint venture)?

YES  NO

If YES, attach as an Attachment details including Project Owner's contact information.



**12. SAFETY PROGRAM:**

Name of Contractor's Safety Officer: Zack Chaffin

Include the following as attachments:

Provide as an Attachment Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) OSHA No. 500- Log & Summary of Occupational Injuries & Illnesses for the past 5 years.

Provide as an Attachment Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) list of all OSHA Citations & Notifications of Penalty (monetary or other) received within the last 5 years (indicate disposition as applicable) - IF NONE SO STATE.

Provide as an Attachment Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) list of all safety citations or violations under any state all received within the last 5 years (indicate disposition as applicable) - IF NONE SO STATE.

Provide the following for the firm listed in Section V (and for each proposed Subcontractor furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) the following (attach additional sheets as necessary):

Workers' compensation Experience Modification Rate (EMR) for the last 5 years:

YEAR	<u>2023</u>	EMR	<u>1.1479</u>
YEAR	<u>2022</u>	EMR	<u>1.1103</u>
YEAR	<u>2021</u>	EMR	<u>1.1115</u>
YEAR	<u>2020</u>	EMR	<u>.8892</u>
YEAR	<u>2019</u>	EMR	<u>.9266</u>

Total Recordable Frequency Rate (TRFR) for the last 5 years:

YEAR	<u>2019</u>	TRFR	<u>1.65</u>
YEAR	<u>2020</u>	TRFR	<u>3.79</u>
YEAR	<u>2021</u>	TRFR	<u>0.0</u>
YEAR	<u>2022</u>	TRFR	<u>1.94</u>
YEAR	<u>2023</u>	TRFR	<u>2.17</u>

**Total number of man-hours worked for the last 5 Years:**

YEAR	<u>2023</u>	TOTAL NUMBER OF MAN-HOURS	<u>91,965</u>
YEAR	<u>2022</u>	TOTAL NUMBER OF MAN-HOURS	<u>103,270</u>
YEAR	<u>2021</u>	TOTAL NUMBER OF MAN-HOURS	<u>97,735</u>
YEAR	<u>2020</u>	TOTAL NUMBER OF MAN-HOURS	<u>108,581</u>
YEAR	<u>2019</u>	TOTAL NUMBER OF MAN-HOURS	<u>122,422</u>

**Provide Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) Days Away From Work, Days of Restricted Work Activity or Job Transfer (DART) incidence rate for the particular industry or type of Work to be performed by Contractor and each of Contractor's proposed Subcontractors and Suppliers) for the last 5 years:**

YEAR	<u>2019</u>	DART	<u>1.65</u>
YEAR	<u>2020</u>	DART	<u>1.84</u>
YEAR	<u>2021</u>	DART	<u>0.00</u>
YEAR	<u>2022</u>	DART	<u>1.94</u>
YEAR	<u>2023</u>	DART	<u>2.17</u>

**13. EQUIPMENT:**

**MAJOR EQUIPMENT:**

List on **Schedule C** all pieces of major equipment available for use on Owner's Project.

I HEREBY CERTIFY THAT THE INFORMATION SUBMITTED HEREWITH, INCLUDING ANY ATTACHMENTS, IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

NAME OF ORGANIZATION: Anderson Environmental Contracting, LLC

BY: 

TITLE: General Manager

DATED: 4/5/24

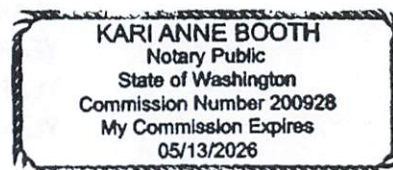
NOTARY ATTEST:

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 5<sup>th</sup> DAY OF April, 2024

NOTARY PUBLIC - STATE OF Washington

MY COMMISSION EXPIRES: 5/13/2024



REQUIRED ATTACHMENTS

1. Schedule A (Current Experience).
2. Schedule B (Previous Experience).
3. Schedule C (Major Equipment).
4. Audited balance sheet for each of the last 3 years for firm named in Section 1.
5. Evidence of authority for individuals listed in Section 7 to bind organization to an agreement.
6. Resumes of officers and key individuals (including Safety Officer) of firm named in Section 1.
7. Required safety program submittals listed in Section 13.
8. Additional items as pertinent.

SCHEDULE A

CURRENT EXPERIENCE

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
Washington State Patrol Union Gap UST Rmvl	Name: Burton Construction Address: [REDACTED]	Name: George Richmond Company: Richmond Engineering Telephone: [REDACTED]	04/02/24	UST Removal	Not started	\$117,840
Rose City Golf Course AST Decom & Install	Name: Blue1 Energy Address: [REDACTED]	Name: N/A Company: Telephone:	03/19/24	AST decom & install	Not started	\$80,575
YMCA Kilworth Capping FedWay	Name: Forterra Address: [REDACTED]	Name: Gabe Cisneros Company: Floyd Snider Telephone: [REDACTED]	03/07/24	Remedial capping	Started	\$166,558
Wyckoff Harbor InSitu Stabilization	Name: Jacobs Address: [REDACTED]	Name: Juan Parra Company: Jacobs Telephone: [REDACTED]	02/07/24	Soil remediation & stabilization	Started	\$131,046
Timberline New UST	Name: Bremik Construction Address: [REDACTED]	Name: John Adams Company: Cherokee General Telephone: [REDACTED]	02/21/24	UST & fuel system install	Not started	\$387,762
Hattenhauer Tank Decom Boardman	Name: Hattenhauer Distributing Company Address: [REDACTED]	Name: N/A Company: Telephone:	02/12/24	UST decom	Started	\$99,383
New Fuel Station Ridgefield	Name: Pioneer Partners Ridgefield Address: [REDACTED] Telephone: [REDACTED]	Name: Chris Wonderly Company: Olson Engineering Telephone: [REDACTED]	01/31/24	UST & fuel system install	Started	\$439,436

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SCHEDULE B

PREVIOUS EXPERIENCE (Include ALL Projects Completed within last 5 years)

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
ORRCO Demolition Woodland	Name: ORRCO Address: [REDACTED] [REDACTED]	Name: Jill Betts Company: Coles & Betts Telephone: [REDACTED]	09/09/22	Structure demo	Done	\$64,732
Skanska PSU Science Bldg Demo Portland	Name: Performance Abatement Services Address: [REDACTED] [REDACTED]	Name: AEC was a 4th-tier contractor, we were not given this info Company: [REDACTED] Telephone: [REDACTED]	10/04/22	Interior demo	Done	\$266,128
Port of Grays Harbor Hungry Whale Site Cleanup	Name: Port of Grays Harbor Address: [REDACTED] Telephone: [REDACTED]	Name: Marc Sauze Company: Stantec Telephone: [REDACTED]	05/05/23	Remedial excavation & demo	Done	\$1,722,412
ODOT Cairo Junction Property Demo	Name: ODOT Address: [REDACTED] [REDACTED]	Name: Michelle Peterson Company: ODOT Telephone: [REDACTED]	11/09/22	Structure demo	Done	\$269,949
DEQ Forest Rd Drug Lab Cleanup	Name: Maul Foster & Alongi Address: [REDACTED] [REDACTED]	Name: Jessica Glenn Maul Foster & Alongi Company: [REDACTED] Telephone: [REDACTED]	07/13/23	Clandestine drug lab cleanup	Done	\$577,165
Patten Bldg Sandy Blvd Demo Portland	Name: Bill Patten Address: N/A (private) Telephone: [REDACTED]	Name: Daniel Young Company: Oregon Business Architecture Telephone: [REDACTED]	09/25/21	Structure demo	Done	\$447,717
BNSF Demo Sites Everett	Name: Environmental Works Address: [REDACTED] Telephone: [REDACTED]	Name: Scott Mertz Company: Environmental Works Telephone: [REDACTED]	09/14/20	Small structure demo	Done	\$83,116

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SCHEDULE B

PREVIOUS EXPERIENCE (Include ALL Projects Completed within last 5 years)

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
USDA Detroit Ranger Station Abatement & Demo	Name: USDA Forest Service Address: [REDACTED]	Name: Cary Pence Company: USDA Forest Service Telephone: [REDACTED]	11/09/20	Fire cleanup response, incl. demo & debris cleanup	Done	\$200,000
PGE Stephens Substation Demo	Name: Portland General Electric Address: [REDACTED]	Name: Brandon Werner Company: Jacobs Telephone: [REDACTED]	02/18/20	UST decom, demo, and remedial excavation	Done	\$608,397
DEQ Air Monitoring Station Replacement Portland	Name: APEX Companies Address: [REDACTED]	Name: Mike Stevens Company: APEX Companies Telephone: [REDACTED]	05/24/21	Structure demo	Done	\$114,088
Timber Lake Job Corps Abatement & Demo Estacada	Name: USDA Forest Service Address: [REDACTED]	Name: Cary Pence Company: USDA Forest Service Telephone: [REDACTED]	05/28/21	Fire cleanup response, incl. demo & debris cleanup	Done	\$638,144
US Bank Demo Vancouver	Name: Gray West Construction Address: [REDACTED]	Name: Mary Mustonen Company: RSP Architects Telephone: [REDACTED]	06/01/21	Interior demo	Done	\$42,621
PACCAR Remedial Activities Tukwila	Name: Shannon & Wilson Address: [REDACTED] Telephone: [REDACTED]	Name: Shannon & Wilson Company: Meg Strong Telephone: [REDACTED]	07/29/21	Remedial excavation and underground structure demo/removal	Done	\$1,224,669
DEQ Former Johnson Oil Clatskanie	Name: Haley & Aldrich Address: [REDACTED]	Name: Rick Ernst Company: Haley & Aldrich Telephone: [REDACTED]	03/10/22	Remedial excavation & UST decom	Done	\$400,054



**SECTION 00460 - BIDDER RESPONSIBILITY CERTIFICATION**

**This page must be completed, signed, and returned with the Bid Schedule.  
Failure to do so will result in bid rejection.**

This certifies that the below named Bidder meets the standards of responsibility as provided by ORS 279C.375.  
The below named Bidder certifies that:

1. It has the appropriate financial, material, equipment, facility and personnel resources and expertise necessary to meet all contractual responsibilities as required by this contract.
2. It has a satisfactory record of performance for other public contracts.
3. It has a satisfactory record of integrity for other public contracts.
4. It is qualified legally to contract with the City of Newport (City) for this project.
5. It will supply all required information requested by the City in connection with its bid for this project.


**CERTIFICATION:**

Contractor certifies that it meets the Standards of Responsibility as provided by ORS 279C.375.

Signature:  Title: General Manager

Name: Brian Gabbard (Print or Type)

Firm: Anderson Environmental Contracting, LLC

Telephone:  Date: \_\_\_\_\_



The City of Newport  
169 S.W. Coast Highway  
Newport, OR 97365

Coast Guard City, U.S.A.



phone: 541.574.0603  
fax: 541.265.0609  
www.newportoregon.gov

Home Port of NOAA Pacific Fleet  
Sister City: Mombetsu, Japan

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## NOTICE OF INTENT TO AWARD

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DATE OF ISSUANCE: May 7, 2024

PROJECT NAME: Demolition and Abatement Project - Various Sites

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The City of Newport announces its Intent to Award the contract for the above-mentioned project to Anderson Environmental Contracting, LLC, in an amount not to exceed \$729,263.88 over a one-year period. The contract may be awarded 7 days after the date of issuance shown above if there are no protests during this period.

Executed by  on May 7, 2024  
Spencer Nebel  
City Manager

c: Anderson Environmental Contracting, LLC (email)  
3 Kings Environmental, Inc. (email)  
Westech Construction, Inc. (email)

