

## CONSTRUCTION MANAGEMENT AGREEMENT

This **CONSTRUCTION MANAGEMENT AGREEMENT** ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Agreement Date") by and between the City of Medford, Oregon ("Owner") and \_\_\_\_\_ ("Contractor"). In consideration of the mutual covenants and obligations contained herein, Owner and Contractor hereby agree as follows:

### WITNESSETH:

**WHEREAS**, Owner intends to upgrade its Regional Wastewater Reclamation Facility ("Project");

**WHEREAS**, Owner has entered into a contract with West Yost Associates ("Engineer"), whereby Engineer was engaged to provide design and construction phase services to Owner on the Project, including the preparation of the Project's construction documents; and

**WHEREAS**, Owner has determined that its best interests are served in retaining a construction manager/general contractor ("CM/GC") to provide both preconstruction and construction services for the Project, as provided for by OAR 137-049-0690; and

**WHEREAS**, on or about \_\_\_\_\_, Owner issued a Request for Qualifications ("RFQ") soliciting interested parties to submit a Statement of Qualifications ("SOQ") to serve as the CM/GC for the Project; and

**WHEREAS**, on or about \_\_\_\_\_, Contractor submitted an SOQ, and on or about January 23, 2024, Owner notified Contractor that it was one of the shortlisted respondents invited to respond to a Request for Proposals ("RFP"); and

**WHEREAS**, on or about \_\_\_\_\_, Contractor submitted its proposal ("Contractor's Proposal") in response to the RFP; and

**WHEREAS**, on or about \_\_\_\_\_, Owner notified Contractor that it was the successful respondent; and

**WHEREAS**, on or about \_\_\_\_\_, Owner, after negotiating the commercial terms for Contractor's performance of the Preconstruction Services and obtaining approval from Owner's Board of Directors, notified Contractor that it was awarded this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, Owner and Contractor hereby agree as follows:

## **Article 1** **Project**

1.1 **The Project.** The Project is generally referred to as the Regional Wastewater Reclamation Facility Upgrade, and is expected to consist of, among other things:

[INSERT AS APPROPRIATE]

## **Article 2** **Scope of Work**

2.1 **Scope of Work.** Contractor shall execute the Work, as described in the General Conditions of Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. For ease of reference, the Work is generally categorized as: (a) Preconstruction Services; and (b) Construction Services.

### **2.2 Preconstruction Services.**

2.2.1 **General.** Contractor shall provide the Preconstruction Services specifically described in Exhibit 2.2.1 (“Scope of Preconstruction Services”), as may be modified under Article 11 of the General Conditions of Contract.

2.2.2 **Standard of Care.** Contractor’s standard of care in performing the Preconstruction Services will be the care and skill ordinarily used by construction contractors providing similar services on projects similar to this Project.

2.2.3 **No Responsibility for Design.** Notwithstanding anything to the contrary in this Agreement, Contractor is not responsible for providing, nor does Contractor control, the Project design and contents of the design documents, including but not limited to the Drawings and Specifications. By performing constructability, value engineering and other reviews of the design as part of the Preconstruction Services, Contractor shall not be deemed to assume responsibility or liability, in whole or in part, for the Project design and contents of the design documents, or for any of the contractual or customary responsibilities or duties of a design professional. For the avoidance of doubt, this Section 2.2.3 shall not be construed to affect Contractor’s responsibilities if the Drawings and Specifications specifically delegate any portion of the design to Contractor.

2.2.4 **Construction Activities at the Site.** As of the Agreement Date, the Preconstruction Services do not include the performance by Contractor of any construction activities (e.g., Site clearing, demolition, or construction of permanent Work) at the Site. If Owner and Contractor determine that the best interests of the Project would be served by having Contractor perform one or more Early Work Packages involving construction activities at the Site, they will proceed in accordance with Section 2.4 below. For the avoidance of doubt, Contractor’s Site visits and investigations shall not be construed as being construction activities.

2.3 Construction Services. The Construction Services include everything required to be performed by Contractor under the Contract Documents other than the Preconstruction Services. Such services are generally set forth in Article 7 of the General Conditions of Contract, and include but are not limited to: (a) procuring Equipment and Materials for the Project; (b) providing labor, supplies, construction equipment and everything else required to construct the Project in accordance with the Contract Documents; and (c) performing start-up, commissioning, and testing required under the Contract Documents.

2.4 Early Work Packages. The Parties anticipate that there may be some elements of the Construction Services that are more appropriately undertaken by Contractor before the GMP Amendment Date (“Early Work Packages”). Owner shall have the sole discretion as to whether to consider and/or authorize an Early Work Package. If Owner authorizes Contractor to prepare a commercial proposal for an Early Work Package, the Parties will work together in good faith to develop the specific process for doing so, with the understanding that the process is intended to generally follow the submittal and negotiation process set forth for the GMP Proposal. Each Early Work Package will be contracted through an amendment to this Agreement (“Early Work Package Amendment”), which amendment shall set forth all commercial terms specific to that Early Work Package. For the avoidance of doubt, Early Work Packages are considered part of the Construction Services.

2.5 Project Kick-Off Meeting.

2.5.1 Purpose of Meeting. The parties will meet within seven (7) days after the Agreement Date to discuss issues affecting the administration of this Agreement, including potential Subcontractor involvement during the Preconstruction Phase, processes relating to submittals and payment, and other matters that will facilitate the ability of the parties to perform their obligations under this Agreement.

2.5.2 Authorized Representatives. At the meeting 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.

2.6 Project Schedule.

2.6.1 Development and Maintenance of Project Schedule. Contractor will develop and maintain a Project schedule (“Project Schedule”) on behalf of the entire Project Team. The fundamental purpose of the Project Schedule is to identify, coordinate, manage and monitor the tasks and activities to be performed by all Project Team members for all phases of the Project. Among other things, the Project Schedule will depict: (a) the production of various design phase documents; (b) long-lead procurements; (c) permitting requirements; (d) bid packaging strategy

and awards to Subcontractors and Suppliers; (e) major stages of construction; (f) start-up and commissioning; and (g) substantial completion.

2.6.2 Further Development of Project Schedule. The Project Schedule is intended to become more detailed as the design progresses, evolving from conceptual to detailed. Early Project Schedules will concentrate on milestones for each design phase deliverable (e.g., 30% and 60% design), Equipment lead times and general construction durations. Contractor will expand and update the Project Schedule throughout the Preconstruction Phase such that it will not require significant changes as of the GMP Amendment to incorporate Contractor's plan for the performance of construction. It is intended that the Baseline Schedule developed by Contractor as part of the GMP Proposal will be derived from the most current Project Schedule.

2.6.3 Updates. Contractor will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than monthly.

### **Article 3** **Contract Times**

#### **3.1 Date of Commencement.**

3.1.1 Preconstruction Services. Contractor shall commence the Preconstruction Services upon Contractor's receipt of Owner's Notice to Proceed with Preconstruction Services ("NTP with Preconstruction"). Owner will issue to Contractor an NTP with Preconstruction no later than seven (7) days after the Agreement Date, unless the Parties mutually agree otherwise in writing.

3.1.2 Construction Services. Contractor shall commence the Construction Services upon Contractor's receipt of Owner's Notice to Proceed with Construction Services ("NTP with Construction"). Owner will issue to Contractor an NTP with Construction no later than seven (7) days after the GMP Amendment Date, unless the Parties mutually agree otherwise in writing. Notwithstanding anything to the contrary in the Contract Documents, Owner's issuance of an NTP with Construction is conditioned upon Contractor furnishing Owner with executed Performance and Payment Bonds, as required by Article 6 of the General Conditions of Contract.

#### **3.2 Schedule for Preconstruction Services.**

3.2.1 Performance Time. Specific periods of time and/or dates for Contractor rendering the Preconstruction Services are, as applicable, provided in Exhibit 2.2.1 ("Scope of Preconstruction Services").

3.2.2 Completion of Preconstruction Services. Contractor shall be deemed to have completed its obligations to perform the Preconstruction Services under this Agreement upon the earlier to occur of: (a) execution by Owner and Contractor of a GMP Amendment; or (b) Owner's exercise of its right to terminate Contractor for convenience under Sections 5.5(c) and

11.1.1 below; or (c) Contractor's exercise of its rights under Section 5.6 below to declare that Owner has constructively terminated Contractor for convenience.

### **3.3 Schedule for Construction Services.**

3.3.1 Scheduled Substantial Completion Date. Contractor shall substantially complete the Work no later than the date set forth in the GMP Amendment ("Scheduled Substantial Completion Date").

3.3.2 Scheduled Final Completion Date. Contractor shall achieve Final Completion no later than sixty (60) days from Substantial Completion ("Scheduled Final Completion Date").

3.3.3 Milestones. If the GMP Amendment identifies any Milestones, Contractor shall complete the Work for the Milestone no later than the date set forth in the GMP Amendment for such Milestone ("Scheduled Milestone Completion Date").

3.3.4 Contract Time(s). The Scheduled Substantial Completion Date, Scheduled Final Completion Date, and Scheduled Milestone Completion Dates are deemed to be the Contract Time(s). The Contract Time(s) shall be subject to adjustment in accordance with the General Conditions of Contract.

3.3.5 Time is of the Essence. Owner and Contractor mutually agree that the Scheduled Substantial Completion Date, Scheduled Final Completion Date, and Scheduled Milestone Completion Date(s), individually and collectively, are of the essence of this Agreement.

3.4 Delay Liquidated Damages. If Contractor does not achieve Substantial Completion, Final Completion and/or Milestones on or before the applicable Contract Time, Owner will suffer damages which are difficult to determine and accurately specify. To compensate Owner for such damages, Contractor hereby agrees to pay Owner Delay Liquidated Damages as follows:

3.4.1 Substantial Completion. If the Substantial Completion Date has not been achieved by the Scheduled Substantial Completion Date, then Contractor shall pay to Owner Delay Liquidated Damages in the daily amount set forth in the GMP Amendment for each day between the Scheduled Substantial Completion Date and the Substantial Completion Date.

3.4.2 Final Completion. If the Final Completion Date has not been achieved by the Scheduled Final Completion Date, Contractor shall pay to Owner Delay Liquidated Damages in the daily amount set forth in the GMP Amendment for each day between the Scheduled Final Completion Date and the Final Completion Date.

3.4.3 Milestones. If a Milestone Completion Date has not been achieved by the Scheduled Milestone Completion Date, Contractor shall pay to Owner Delay Liquidated Damages

in the daily amount set forth in the GMP Amendment for each day between the Scheduled Milestone Completion Date and the Milestone Completion Date.

3.5 Delay Liquidated Damages Not Penalty. The Parties acknowledge, recognize, and agree on the following:

(a) that because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Owner as a result of Contractor's failure to complete the Work on or before the applicable Contract Times;

(b) that any sums which would be payable under this Agreement as Delay Liquidated Damages are in the nature of liquidated damages, and not a penalty, and are fair and reasonable, and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure;

(c) that any sums which would be payable under this Agreement as Delay Liquidated Damages shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether direct, indirect, special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the applicable Contract Time(s); and

(d) that, in recognition of the acknowledgments above, Contractor is expressly estopped from arguing, and waives any rights it may have to argue, that Delay Liquidated Damages are a penalty and that they are not enforceable.

For the avoidance of doubt, and notwithstanding anything to the contrary in Paragraph (c) above, Delay Liquidated Damages are not intended to excuse Contractor from liability for any other breach of its obligations under the Contract Documents.

3.6 Owner's Rights to Offset. In addition to any of its other rights under the Contract Documents or as a matter of law, Owner shall have the right to: (a) deduct the Delay Liquidated Damages established under Section 3.4 above from any monies unpaid, otherwise due, or to become due, to Contractor; (b) to demand and receive prompt payment from Contractor of such Delay Liquidated Damages; and (c) initiate applicable dispute resolution procedures under the General Conditions of Contract to recover such Delay Liquidated Damages. The deductions of such Delay Liquidated Damages from any monies unpaid, otherwise due, or to become due shall be in addition to retainage under the Contract Documents. Owner also has the discretion to allow Delay Liquidated Damages to accrue without collecting and by doing so does not waive any rights to collect them at a later time.

## **Article 4** **Contract Price and GMP**

### **4.1 Contract Price.**

4.1.1 **Contract Price Defined.** Owner shall pay Contractor in accordance with Article 15 of the General Conditions of Contract a contract price (“Contract Price”) equal to the sum of the following:

- (a) The Preconstruction Services Compensation, as established by Exhibit 7.1 (“Preconstruction Services Compensation”);
- (b) The Cost of the Work, as defined in Section 6.1 below;
- (c) Contractor’s General Conditions, as defined in Section 6.2 below; and
- (d) Contractor’s Fee, as defined in Section 4.3 below.

4.1.2 **Conditions Applicable to Contract Price.** For the avoidance of doubt, the Parties agree that the following conditions are applicable to Owner’s payment of the Contract Price.

- (a) Sections 4.1.1(b) through 4.1.1(d) above do not apply to the Preconstruction Services and only apply to the Construction Services;
- (b) Until such time as the GMP Amendment has been executed and an NTP with Construction has been issued by Owner, the only financial obligation of Owner to Contractor shall be the Preconstruction Services Compensation, *provided, however*, that if an Early Work Package Amendment has been executed and Owner has issued a notice to proceed with such Early Work Package, the financial obligation of Owner to Contractor shall be the Preconstruction Services Compensation and the applicable amount of the Early Work Package Amendment; and
- (c) Once the GMP Amendment has been executed and an NTP with Construction has been issued by Owner, Owner’s obligation to pay the Contract Price is subject to the GMP.

4.2 **Guaranteed Maximum Price.** The Guaranteed Maximum Price (“GMP”) is the monetary value designated as the “Guaranteed Maximum Price” and/or “GMP” in the GMP Amendment, as such value may be adjusted in accordance with Article 11 of the General Conditions of Contract. Contractor guarantees that it shall not exceed the GMP, and that it will be responsible for paying all costs of completing the Work which exceed the GMP. The GMP is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal

Requirements. Contractor does not guarantee any specific line item provided as part of the GMP.

#### 4.3 Contractor's Fee.

4.3.1 Amount and Basis of Fee. Contractor's Fee is \_\_\_\_\_ percent (\_\_\_\_%), which is that percentage fee proposed in Contractor's Proposal. Contractor's Fee will be used in the negotiation of the GMP Proposal and, if applicable, Early Work Package proposals. Contractor's Fee represents Contractor's compensation for profit and Non-Reimbursable Costs.

4.3.2 Application of Contractor's Fee. In determining the GMP under Article 5 below, Contractor's Fee shall be calculated by applying Contractor's Fee to the sum of: (a) the estimated Cost of the Work; and (b) the estimated Contractor's General Conditions, *provided, however*, that for the purpose of determining the GMP, there shall be no Contractor's Fee applied to: (i) Contractor's premiums for the Performance and Payment Bonds, Builder's Risk Insurance or Contractor's subcontractor default insurance; (ii) Contractor Contingency; (iii) any Allowance Payment Item; and (iv) those Costs of the Work identified in Section 6.1 below that are identified as having no Contractor's Fee. Once the Contractor's Fee has been established, it shall then be treated as a fixed price, subject to adjustment as set forth in Section 4.3.3 below.

4.3.3 Adjustment of Contractor's Fee. Contractor's Fee will be adjusted as follows:

(a) For additive Change Orders, including additive Change Orders arising from both additive and deductive items, Contractor shall receive a Fee not to exceed [*Note, this is same number as Section 4.3.1*] \_\_\_\_\_% of the additional Costs of the Work incurred for that Change Order.

(b) For Costs of the Work that are drawn from the Contractor Contingency or incurred for an Allowance Payment Item (including the Owner's Allowance), Contractor shall receive a Contractor's Fee not to exceed [*Note, this is same number as Section 4.3.1*] \_\_\_\_\_% of such Costs of the Work.

(c) For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, an amount equal to [*Note, this is same number as Section 4.3.1*] \_\_\_\_\_%, which shall be applied to the net reduction in the Costs of the Work for such Change Orders and which amount will account for a reduction associated with Contractor's Fee.

#### 4.4 Allowance Payment Items and Allowance Payment Values.

4.4.1 Generally. Any and all Allowance Payment Items, as well as their corresponding Allowance Payment Values, will be set forth in the GMP Amendment. Contractor and Owner will work together during Contractor's development of a GMP Proposal to review potential Allowance Payment Items based on information then available, and then to determine



that reasonable Allowance Payment Values for such Allowance Payment Items.

4.4.2 Owner's Authorization. No work shall be performed on any Allowance Payment Item without Contractor first obtaining in writing advanced authorization to proceed from Owner. Owner agrees not to unreasonably withhold or delay its consent to any Allowance Payment Item which would impact Contractor's progress on the Work.

4.4.3 Potential Adjustment of GMP. If the actual costs for an Allowance Payment Item differ from the stated Allowance Payment Value, such difference shall be reflected in a Change Order that adjusts the GMP by such difference, *provided however*, that the preceding shall not preclude Owner from administering the Allowance Payment Items by reallocating overruns and underruns among the Allowance Payment Values when Owner determines that it is appropriate. The Allowance Payment Value for an Allowance Payment Item includes the direct Cost of the Work for labor, Equipment and Materials, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Payment Item. All other costs, including Contractor's General Conditions and Contractor's Fee, are deemed to be included in other components of the GMP and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

## **Article 5** **GMP Proposal**

### **5.1 Submission of GMP Proposal.**

5.1.1 Format and Documentation. Upon written authorization by Owner, Contractor shall submit to Owner a GMP Proposal for the Construction Services. The format of the GMP Proposal, including the format of supporting documentation and line items of the Work, shall be initially developed by Contractor and provided to Owner for its review and approval. At a minimum, the supporting documentation will include a complete line item cost estimate indicating the itemized costs that comprise the GMP. The format of the GMP Proposal shall be agreed upon at least sixty (60) days prior to the submittal of such proposal.

5.1.2 GMP Proposal Design Documents. The Parties acknowledge that the GMP Proposal Design Documents to be included in the GMP Proposal are not fully completed Drawings and Specifications, and that such documents will be further developed after the GMP Amendment Date. The GMP Proposal, including the GMP itself, represents Contractor's offer to fully complete the Project, including, without limitation, its offer to provide and construct, at no increase in the GMP, items in the Drawings and Specifications that are not shown on the GMP Proposal Design Documents but which are a logical development of the design intent reflected in the GMP Proposal Design Documents. The GMP Proposal (including the GMP itself) represents Contractor's offer to construct the Project in accordance with the Drawings and Specifications, at no increase in the GMP, with the understanding that the Contractor Contingency accounts for clarifications, assumptions, and further development of the GMP Proposal Design Documents into the Drawings

and Specifications.

5.2 Contents of GMP Proposal. The GMP Proposal shall include the following, unless the Parties mutually agree otherwise:

- (a) A proposed GMP, which shall be the sum of:
  - (1) The Preconstruction Services Compensation;
  - (2) The GMP or lump sum price for any Early Work Package Amendments;
  - (3) The estimated Cost of the Work (other than Work covered by Early Work Package Amendments), inclusive of Allowance Payment Items and the Contractor Contingency;
  - (4) Contractor's General Conditions; and
  - (5) Contractor's Fee.

The proposed GMP shall be supported by a detailed cost estimate organized by trade categories, including a detailed breakdown of Contractor's General Conditions and any Allowance Payment Items and Contractor Contingency.

- (b) The GMP Proposal Design Documents, with such documents to be listed and attached to the GMP Proposal;
- (c) A list of the assumptions and clarifications made by Contractor in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the GMP Proposal Design Documents;
- (d) The Scheduled Substantial Completion Date upon which the proposed GMP is based, and a proposed Baseline Schedule upon which the Scheduled Substantial Completion Date is based, which schedule shall provide an orderly progression of the Work to completion within the Contract Times and shall be compliant with Paragraph 4.04 of the General Conditions of Contract;
- (e) A schedule of Submittals listing each required Submittal and the times for submitting, reviewing and processing each Submittal;
- (f) A Schedule of Values for all of the Work, which will include quantities and prices of items which when added together equal the GMP and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work;

- (g) A cash flow projection estimating that portion of the GMP to be due during each month of performance;
- (h) If applicable, a list of Allowance Payment Items, Allowance Payment Values, and a statement of their basis;
- (i) If applicable, a schedule of alternate prices;
- (j) If applicable, a schedule of unit prices;
- (k) If applicable, a statement of Additional Services which may be performed but which are not included in the GMP and which, if performed, shall be the basis for an adjustment to the GMP and/or Scheduled Substantial Completion Date;
- (l) A subcontracting plan for the Construction Services which will, among other things, set forth a list of Subcontractors and Suppliers whose bids/proposals have been accepted by Owner;
- (m) An updated letter from its surety or sureties verifying that Contractor has bonding capacity for the Performance and Payment Bonds in the amount of the GMP;
- (n) An updated list of Key Personnel and Contractor's Project Organizational Chart;
- (o) A specimen Builder's Risk Insurance policy with all appropriate attachments, sub-limits that has been approved by Owner, and a letter of certification from Contractor or Contractor's insurance broker confirming that Builder's Risk Insurance in the form of such specimen policy will be placed prior to the commencement of construction;
- (p) Such other information and materials as Owner may reasonably request; and
- (q) Confirmation that the GMP Proposal will remain valid during the GMP Proposal Acceptance Period.

### **5.3 Review and Negotiation of GMP Proposal.**

**5.3.1 Review Process.** After submission of a GMP Proposal under Section 5.2 above, Contractor and Owner shall meet to discuss and review such proposal, with the understanding that: (a) all information shall be provided by Contractor on an Open-Book Basis; (b) Contractor shall provide such information as Owner may reasonably request relative to such proposal, including but not limited to support for proposed rates (e.g., hourly, unit, and productivity), multipliers and markups; and (c) Contractor shall identify and justify any costs that

are significantly different than Contractor's latest cost model. If Owner has any comments regarding the proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly notify Contractor of such comments or findings. If appropriate, Contractor shall, upon receipt of Owner's notice, make appropriate adjustments to the proposal. Contractor is also on notice that Owner may, at any time, submit the proposal to an independent third party for review and verification.

5.3.2 Negotiation. If Owner determines that there is merit in considering the GMP Proposal, it shall so notify Contractor, whereupon the Parties shall negotiate in good faith and attempt to reach agreement on the terms of the proposal.

5.4 Agreement on GMP Proposal and Execution of GMP Amendment. If the Parties reach agreement on the GMP Proposal, as such proposal may be amended by Contractor to reflect discussions between the Parties, the GMP Proposal shall be incorporated into a GMP Amendment to the Agreement.

5.5 Failure to Agree upon GMP Proposal. If the Parties are unable to reach an agreement on the GMP Proposal within the GMP Proposal Acceptance Period, as such period may be extended by mutual agreement of the Parties, the GMP Proposal shall be deemed withdrawn and null and void. In such event, Owner and Contractor shall meet and confer as to how the Project will proceed, with Owner having the following options:

- (a) Owner may suggest modifications to the proposal, whereupon, if such modifications are accepted in writing by Contractor, the GMP Proposal shall be deemed acceptable and the Parties shall proceed in accordance with Section 5.4 above;
- (b) Owner may authorize Contractor to continue to provide services under this Agreement and/or have Contractor provide another proposal at a later point in time, which proposal shall comply with this Article 5; or
- (c) Owner may exercise its rights to terminate this Agreement for convenience pursuant to Section 11.1.1 below.

5.6 Contractor's Rights if Owner Fails to Act. If Owner fails to exercise any of its options under Section 5.5 within the GMP Proposal Acceptance Period, as such period may be extended by mutual agreement of the Parties, Contractor may, after giving Owner thirty (30) days written notice of its intention to do so, declare the GMP Proposal withdrawn and null and void. Additionally, Contractor may declare that Owner has constructively terminated the Agreement under Section 11.1.1 below, in which case Contractor's sole rights and remedies shall be as stated in Section 11.1.2 below.

## 5.7 Owner's Allowance.

5.7.1 General. The GMP includes an Owner's Allowance that is intended to cover, among other things, the funding of events that would typically be the subject of a Change Order. If Contractor is entitled to a Change Order for such an event, then: (a) payment to Contractor will be made through such Owner's Allowance as long as there are funds remaining within such Owner's Allowance; and (b) no Change Order will be issued to reflect the value of the event, notwithstanding conflicting provisions of Article 11 of the General Conditions of Contract. If the Owner's Allowance is totally depleted, Owner will fund these items, or replenish the Owner's Allowance, by increasing the GMP by Change Order in accordance with Article 11 of the General Conditions of Contract. Neither Owner's nor Contractor's rights or obligations under the Contract Documents shall be affected by the Owner's Allowance.

5.7.2 Compliance with Change Order Requirements. For the avoidance of doubt, for all items covered by the Owner's Allowance, Contractor shall be obligated to comply with all of the requirements set forth in Article 11 of the General Conditions of Contract, as well as any other requirements that are set forth in the General Conditions of Contract with respect to the item that forms the basis for the Change Order.

5.7.3 Impact on Savings. Any unused amounts of the Owner's Allowance shall be reflected in a Change Order that decreases the GMP by such amounts, with the understanding that Contractor shall not be entitled to share in any savings on this allowance.

## 5.8 Contractor Contingency.

5.8.1 General. The GMP Proposal and GMP Amendment will include a contingency line item ("Contractor Contingency") as part of the estimated Cost of the Work. The Contractor Contingency is available for Contractor's exclusive use for unanticipated Costs of the Work that it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work; (e) Subcontractor defaults; and (f) deductibles incurred by Contractor under the insurance required under Exhibit 14.1 ("Insurance Requirements"), but not to exceed \$10,000 per occurrence. The Contractor Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Contractor to increase the GMP under the Contract Documents.

5.8.2 Draws. Contractor may draw upon the Contractor Contingency by making a written request to Owner, identifying the reason and amount of the draw, and by obtaining Owner's written approval, which shall not be unreasonably withheld. If Owner approves a draw against the Contractor Contingency, Contractor shall, in its Payment Applications, show an increase in the relevant line item by the amount drawn and a decrease in the line item for the Contractor Contingency. The amount of the draw shall be the Costs of the Work incurred by Contractor plus Contractor's Fee applied to such Costs of the Work (as set forth in Section 4.3.3(b))

above), unless any Cost of the Work is not subject to Contractor's Fee by the terms of Section 6.1 below.

5.8.3 Draws for Subcontractor Default or Insurable Event. Contractor agrees that with respect to any expenditure from the Contractor Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Contractor will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Contractor agrees that if Contractor is subsequently reimbursed for said costs, then said recovery will be credited back to the Contractor Contingency, net of any costs and expenses incurred by Contractor in pursuing such recovery.

## 5.9 Savings.

5.9.1 Definition. If upon Final Completion the sum of: (a) the Preconstruction Services Compensation; (b) the monies paid Contractor for Early Work Package Amendments; (c) the actual Cost of the Work incurred by Contractor (e.g., not including any unused portions of the Contractor Contingency or Allowance Payment Values); (d) Contractor's General Conditions; and (e) Contractor's Fee is less than the GMP, as such GMP may have been adjusted over the course of the Project, then the difference ("Savings") shall be treated as set forth in the GMP Amendment.

5.9.2 Payment. Savings shall be calculated and paid as part of Final Payment, with the understanding that to the extent Contractor incurs costs after Final Completion which would have been payable to Contractor as a Cost of the Work, the Parties shall recalculate the Savings in light of the costs so incurred.

5.10 Effect and Administration of the GMP. By executing a GMP Amendment, Contractor guarantees that Owner's payment obligations shall not exceed the amount of the GMP, and that Contractor shall be responsible for paying all costs of completing the Work which exceed the GMP, as the GMP may be adjusted in accordance with the Contract Documents.

5.11 Exhibits to the GMP Amendment. It is intended that the GMP Amendment will have a number of exhibits that will derive from the GMP Proposal and the negotiations between the Parties. Among these exhibits will be: (a) the agreed-upon GMP Proposal; (b) Allowance Payment Items; (c) the Schedule of Values; (d) the Baseline Schedule; and (e) an updated list of Key Personnel and Contractor's Project Organizational Chart.

**Article 6**  
**Cost of the Work**

6.1 Cost of the Work. The term “Cost of the Work” shall mean costs reasonably and actually incurred by Contractor in the proper performance of the Work. The Cost of the Work shall include only the following:

.1 Wages of construction workers directly employed by Contractor to perform the Work at the Site or, with Owner’s agreement, at locations off the Site.

.2 A multiplier applied to the wages of the employees of Contractor covered under Section 6.1.1 above as compensation for the costs incurred or customarily paid by Contractor for employee benefits (e.g., sick leave, medical and health benefits, holidays, vacations, and project-related bonuses), social security contributions, unemployment, excise, and payroll taxes, and workers’ compensation premiums, and, in the case of employees covered by collective bargaining agreements, taxes, insurance, contributions, assessments and benefits required under such agreements. The multiplier for craft/field, hourly-based on-site personnel shall be \_\_\_\_%. The multiplier for all off-site personnel shall be \_\_\_\_%.

.3 Payments properly made by Contractor to Subcontractors for performance of portions of the Work, including any bond premiums incurred by Subcontractors.

.4 Costs incurred by Contractor in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), *provided however*, that: (a) such Work was beyond the reasonable control of Contractor, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Contractor or any Contractor-Related Entities; and (b) no Contractor’s Fee shall apply to such costs. If the costs associated with such Work are recoverable from insurance or Subcontractors, Contractor shall exercise reasonable commercial efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained, net of any costs and expenses reasonably incurred by Contractor in pursuing and obtaining such recovery.

.5 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

.6 Costs (less salvage value) of Equipment and Materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Contractor, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

.7 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Contractor at the Site, whether rented from Contractor or others, and incurred in the performance of the Work.

.8 Fuel and utility costs incurred in the performance of the Work.

.9 Costs for Governmental Approvals, permits, royalties, licenses, tests, and inspections incurred by Contractor in the performance of the Work.

.10 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Contractor resulting from such suits or claims, and paying settlements with Owner's consent, *provided however*, that no Contractor's Fee shall apply to such costs.

.11 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

.12 Premiums for the Performance and Payment Bonds, and Builder's Risk insurance, *provided, however*, that no Contractor's Fee shall apply to such costs.

.13 If applicable, the cost of Contractor's Subcontractor default insurance, in an amount to be approved by Owner, *provided, however*, that no Contractor's Fee shall apply to such costs.

.14 Sales, use or similar taxes, tariffs, or duties incurred in the performance of the Work.

.15 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

6.2 Contractor's General Conditions. The term "Contractor's General Conditions" shall mean Contractor's costs reasonably and actually incurred by Contractor for supervisory, construction management and overhead-related items in connection with the proper performance of the Work and which are not covered by the Cost of the Work. Contractor's General Conditions shall include only the following, unless specifically agreed upon otherwise by Owner and Contractor during the development of the GMP Proposal and execution of the GMP Amendment:

.1 Base wages or salaries of Contractor's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or, with Owner's agreement, working at locations off the Site.



.2 A multiplier applied to the wages of the employees of Contractor covered under Section 6.2.1 above as compensation for the costs incurred or customarily paid by Contractor for employee benefits (e.g., sick leave, medical and health benefits, holidays, vacations, and project-related bonuses), social security contributions, unemployment, excise, and payroll taxes, and worker's compensation premiums, and, in the case of employees covered by collective bargaining agreements, taxes, insurance, contributions, assessments and benefits required under such agreements. The multiplier for professional, salary-based on-site personnel shall be \_\_\_\_%. The multiplier for craft/field, hourly-based on-site personnel shall be \_\_\_\_%. The multiplier for all off-site personnel shall be \_\_\_\_%.

.3 Costs of removal of debris and waste from the Site not performed or required to be performed by Subcontractors.

.4 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long distance telephone calls, postage and express delivery charges, telephone service, photocopying, reasonable petty cash expenses.

.5 Vehicles for the transport of persons, such as passenger cars and pick-up trucks, to the extent used by any of Contractor's personnel while performing their Project-related responsibilities.

.6 Accounting and data processing costs related to the Work where previously identified and approved by Owner.

6.3 Non-Reimbursable Costs. The Cost of the Work and Contractor's General Conditions shall not include the following:

.1 Salaries and other compensation for Contractor personnel stationed at Contractor's principal or branch offices, except as expressly provided for in Sections 6.1.1 and 6.2.1 above.

.2 Expenses of Contractor's principal office and offices other than the Site office.

.3 Overhead and general expenses, except as expressly provided for in Sections 6.1 and 6.2 above.

.4 Bonuses, profit sharing, thrift or similar plans paid to employees of Contractor, whether or not such employee worked on the Project, except as expressly provided for in Sections 6.1.2 and 6.2.2 above.

.5 The cost of Contractor's capital used in the performance of the Work.

- .6 Insurance premiums incurred or paid by Contractor, other than the Builder's Risk insurance and, if approved by Owner, Contractor's Subcontractor default insurance.
- .7 Corporate and non-Project specific accounting and data processing costs.
- .8 Costs and expenses incurred to obtain any Governmental Approval, permit, license, registration, or other approval, or fee or charge incurred, in connection with the general operations of Contractor and not required specifically and exclusively for the performance of the Work.
- .9 Any federal, state or local income or gross receipts tax.
- .10 Delay Liquidated Damages paid by Contractor or withheld by Owner under this Agreement.
- .11 Any costs not specifically set forth in Sections 6.1 and 6.2 above.
- .12 Costs that would cause the GMP to be exceeded.

## **Article 7**

### **Payment Procedures**

7.1 Preconstruction Services Compensation. The Preconstruction Services Compensation is set forth in Exhibit 7.1 ("Preconstruction Services Compensation"), which exhibit includes, among other things, hourly rates, not-to-exceed amounts, and other information associated with the compensation and pricing associated with the Preconstruction Services. For purposes of any modifications to the Preconstruction Services, whenever provisions in the General Conditions of Contract refer to an adjustment or increase in the GMP, such provisions shall be deemed to include adjustments or increases in the Preconstruction Services Compensation. All modifications to the Preconstruction Services shall be based upon the hourly rates and other information set forth in Exhibit 7.1 ("Preconstruction Services Compensation").

#### 7.2 Preconstruction Services Payment.

7.2.1 Preparation and Submittal of Invoices. Contractor will prepare and submit invoices for Preconstruction Services to Owner on a monthly basis in a format acceptable to Owner. Contractor will provide documentation acceptable to Owner to allow Owner to verify Contractor's charges included in invoices.

7.2.2 Owner Action on Invoices. Owner will, within fifteen (15) days after receipt of each invoice, including each resubmittal, either notify Contractor in writing that the invoice has been approved or the reasons it has not been approved. In the latter case, Contractor shall make the necessary corrections and resubmit the invoice. Owner reserves the right, instead

of requiring Contractor to correct or resubmit an invoice that has been rejected in part, to the undisputed portion of the invoice. Owner shall make payment of approved invoices within fifteen (15) days of Owner's approval.

7.2.3 Retainage. No retainage will be withheld by Owner for payments made to Contractor for Preconstruction Services. If Owner and Contractor execute an amendment to this Agreement authorizing Contractor to perform an Early Work Package, such amendment will address what, if any, retainage will be withheld on such Early Work Package, given that Early Work Packages are Construction Services and not Preconstruction Services.

7.3 Progress Payments for Construction Services. Contractor shall submit Applications for Payment for Construction Services, and such applications will be processed by Owner, in accordance with Article 15 of the General Conditions of Contract.

7.4 Retainage for Payments on Construction Services. In accordance with OAR 137-049-0820 and ORS 279C.570, the following provisions are applicable relative to retainage withheld on progress payments for Construction Services.

7.4.1 Withholding of Retainage. Progress payments will be subject to retainage in the amount of five percent (5%). Owner shall place amounts deducted as retainage into an interest-bearing escrow account. Interest on the retainage amount accrues from the date the payment request is approved until the date the retainage is paid to Contractor.

7.4.2 Reduction of Retainage. If Contractor has performed at least fifty percent (50%) of the Work and is progressing satisfactorily, upon Contractor's submission of a written application containing the Contractor's surety's written approval, Owner may, in its discretion, reduce or eliminate retainage on any remaining progress payments. Owner shall respond in writing to all such applications within a reasonable time. When the Work is ninety-seven and one-half percent (97.5%) completed, Owner may, at its discretion and without application by Contractor, reduce the retained amount to one hundred percent (100%) of the value of the remaining unperformed Work. Owner may at any time reinstate retainage. Retainage held Owner shall be included in and paid to Contractor as part of the Final Payment.

7.4.3 Alternatives in Lieu of Cash Retainage. In accordance with OAR 137-049-0820(4), unless Owner finds in writing that the alternatives to cash retainage set forth in OAR 137-049-0820(4) pose an extraordinary risk that is not typically associated with such alternatives, Owner, in lieu of withholding moneys from payment, shall accept from Contractor one of the alternatives set forth in the above-referenced OAR offered by Contractor. The Parties agree that if Owner has not disapproved of the use of alternatives to cash retainage, Contractor shall identify in writing the alternative it chooses in the GMP Proposal (or, if applicable, the first Early Work Package proposal), and that such alternative shall be binding throughout the term of the Contract.

7.5 Final Payment. Contractor shall submit Applications for Final Payment, and such applications will be processed by Owner, in accordance with Article 15 of the General Conditions

of Contract.

7.6 Interest. Notwithstanding anything to the contrary in the Contract Documents, Owner is subject to the requirements of ORS 279C.570 (Prompt Payment Policy), and shall pay Contractor interest in accordance with such statute as applicable.

## **Article 8**

### **Self-Perform Work and Subcontracts**

#### **8.1 Self-Perform Work.**

8.1.1 General. Self-Perform Work will be performed as part of the Preconstruction Services and Construction Services, with the understanding that the specific scope of Self-Perform Work will be determined by mutual agreement of the Parties. Self-Perform Work packages shall either be negotiated or subject to competition, as determined by Owner in its sole and absolute judgment.

8.1.2 Self-Perform Work Subject to Negotiations. If Owner determines that the Self-Perform Work package will be subject to negotiation, Contractor shall submit a detailed proposal for such package based upon: (a) the estimated Cost of the Work for such Self-Perform Work, with the entity performing Self-Perform Work pricing its labor on actual wages plus the appropriate multiplier on such wages; and (b) Contractor's Fee being applied to such Cost of the Work. For the avoidance of doubt, the entity performing Self-Perform Work shall provide such information as Owner may reasonably request, with the understanding that all information that formed the basis for the applicable estimate will be provided to Owner on an Open-Book Basis. Owner shall have the right to obtain at least one independent cost estimate prior to accepting such proposal. If the Parties are unable to reach an agreement on the proposal, Owner may, in its sole and absolute judgment: (x) withdraw its permission that the applicable Work be deemed Self-Perform Work; or (y) give Contractor permission to submit a competitive proposal in accordance with Section 8.1.3 below.

8.1.3 Self-Perform Work Subject to Competition. If Owner determines that the Self-Perform Work package will be subject to competition, Contractor must disclose in the procurement documents that it or an Affiliate will be submitting a bid/proposal for such work package. Contractor shall be allowed to perform such package if: (a) Contractor submits its bid or proposal for such package in the same manner as all other Subcontractors and (b) Owner determines that Contractor's bid or proposal provides the best value for Owner. If Contractor wishes to submit a bid or proposal for such package, Owner shall require the submittal of all bids or proposals for such work directly to Owner or another third party (and not to Contractor) for review, opening and evaluation.

8.1.4 Self-Perform Work Performed on Lump Sum Basis. If any Self-Perform Work is performed on a lump sum basis, such lump sum shall be treated in the same manner as if the lump sum was performed by a Subcontractor for purposes of determining Cost of the Work

and Contractor's Fee on such Cost of the Work. Notwithstanding the preceding sentence, if the lump sum for Contractor's Self-Perform Work was the result of the negotiation process set forth in Section 8.1.2 above, there shall be no Contractor's Fee applied to such lump sum, as the lump sum is deemed to include Contractor's Fee.

8.1.5 Self-Perform Work Performed on a GMP or Cost of the Work Basis. If any Self-Perform Work is performed on a GMP or Cost of the Work basis, such Work will be paid in accordance with Article 6 above.

## 8.2 Work to Be Performed through Subcontractors.

8.2.1 General. Contractor shall develop a procurement plan for Owner's review and approval in accordance with Exhibit 2.2.1 ("Preconstruction Services"). Unless stated differently in this Section 8.2 or approved otherwise in writing by Owner, Contractor's Subcontractor selection process must be competitive. Consistent with OAR 137-049-0690(5)(k)(A), this means that the process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to Owner, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment. While not subject to the competitive procurement requirements of ORS Chapter 279C, the procurement process shall not encourage favoritism or substantially diminish competition, and shall be in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.

8.2.2 Alternatives to Low-Bid Award. Notwithstanding that Subcontracts are generally expected to be awarded on a low-bid basis, Owner and Contractor may determine that the Project will benefit by awarding some Subcontracts on a basis that would consider factors other than low-bid. Contractor shall identify in its procurement plan elements of the Work where alternatives to low-bid award might be beneficial, including how price and other non-price factors will be considered in the procurement and award process. If Owner agrees that an alternative to low-bid award is appropriate for certain Subcontracts, it shall so notify Contractor in writing. The selection and performance criteria for such procurement shall be developed by Contractor, subject to the approval of Owner.

8.2.3 Procurement Process. Contractor shall be responsible for procuring all Subcontractors, consistent with the following process:

- (a) Contractor shall be responsible for dividing the Work into suitable bid packages and developing all necessary procurement documents for such bid packages.
- (b) Contractor may develop and implement a prequalification process for particular solicitations, including the use of a publicly advertised process, with Owner's prior written approval of such prequalification process.

(c) Contractor will document any and all discussions, questions and answers, modifications and responses to and from any bidder.

(d) Unless Owner agrees otherwise in writing, Contractor shall obtain bids from at least three (3) bidders for all Subcontracts. If fewer than three (3) bids are submitted in response to any solicitation (inclusive of any Self-Perform bids), a written record of the efforts made to obtain quotes must be submitted to Owner and prior written approval by Owner shall be required to accept a bid.

(e) Contractor shall analyze and evaluate the bids and proposals in accordance with the selection criteria established in the procurement documents and shall review them with Owner.

(f) Contractor shall schedule, coordinate, and, unless otherwise mutually agreed to, conduct scope review meetings with each apparent successful bidder. When scope review meetings for an individual Subcontract have been completed, Contractor will revise the bid tabulation forms based on any new information obtained in the meetings. Contractor will analyze the results and recommend to Owner individual subcontractors for contract negotiation and award.

(g) Contractor agrees to disclose in writing to Owner any financial interest it has in any person or entity whenever such person or entity intends to compete on any Project work, directly or indirectly, including whether such party is an Affiliate.

8.2.4 Non-Competitive Procurements. Consistent with OAR 137-049-0690(5)(k)(B), if Contractor would like to use a non-competitive procurement process for certain Work, Contractor must first prepare and submit a written justification to Owner explaining the Project circumstances that support a non-competitive Subcontractor selection process for a particular work package before pursuing the non-competitive process. If Owner approves the use of a non-competitive selection process for the work package, Contractor must: (a) provide an independent cost estimate for the work package that will be subject to the non-competitive process, if required by Owner; and (b) fully respond to any questions or comments submitted to Contractor by Owner.

8.2.5 Owner's Rights to Participate in Procurement Process. Contractor acknowledges and agrees that Owner shall have the right to: (a) review and comment on all procurement documents; (b) attend any bid or proposal openings; (c) attend any meetings with prospective subcontractors, including scope review meetings; (d) review all bids, proposals, and other information developed or otherwise resulting from any competitive procurement, including Contractor's tabulation, scoring or evaluation materials; and (e) otherwise participate in the negotiation and contract award process.

8.2.6 Subcontract Award. Owner shall have the ultimate authority to determine which bidder will be awarded a Subcontract. If, after the GMP Amendment Date, Owner selects

a Subcontractor other than the one recommended by Contractor and if Owner's selected Subcontractor's final contract amount is higher than the final amount proposed by Contractor's recommended Subcontractor, the GMP will be adjusted to reflect any difference. Upon Subcontract award, Contractor shall provide Owner with a written description of the process undertaken in connection with such Subcontract award, together with copies of all material documents used in connection therewith, including executed copies of all Subcontracts.

8.2.7 Registration. All Subcontractors performing construction Work must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.

8.2.8 Briefings for Unsuccessful Subcontractors. Consistent with OAR 137-049-0690(5)(m) and ORS 279C.337, Contractor's procurement documents for all competitive bid packages shall enable those bidders who were not selected to perform a particular element of the construction Work to obtain specific information from Contractor, and meet with Contractor to discuss the subcontractor qualification and selection process involved and Contractor's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the work for this Project or for future projects. Briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by Owner and Contractor. Contractor is not obligated to provide this briefing opportunity unless Contractor receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unsuccessful subcontractors will be allowed 60 days from Contractor's notice of award of a subcontract for a particular work package to request, in writing, a post-selection meeting with Contractor. Contractor shall hold such meetings within 45 days of the subcontractor's written request.

8.2.9 Protests. Consistent with OAR 137-049-0690(5)(l), Contractor shall include in the procurement documents for all competitive bid packages a protest process, which process shall be subject to approval by Owner. The protest procedures shall, among other things, specifically state that: (a) Contractor's subcontracting records are not to be considered public records; and (b) such procedures do not grant to any bidder or other protestor any rights or remedies (including third party beneficiary rights) against Owner in connection with any procurement protest. Contractor shall act as an independent contractor, and not as an agent of Owner, in connection with any procurement protest, and Contractor shall be solely responsible for resolving procurement protests, and shall indemnify, defend and hold harmless Owner from and against any such procurement protests and resulting claims or litigation. Owner retains the right to monitor the subcontracting process, including the resolution of protests, in order to protect Owner's interests and to confirm Contractor's compliance with the Contract and with applicable Laws and Regulations.

8.2.10 Contractor's Procurement and Subcontracting Records Shall Not Be Considered Public Records. Contractor's procurement and subcontracting records shall not be considered public records. For the avoidance of doubt, Owner and other agencies of the State of Oregon shall retain the right to audit and monitor the subcontracting process in order to protect Owner's interests.

8.2.11 Disadvantaged, Minority, Women, and Emerging Small Business Enterprises.

(a) In accordance with ORS 279A.110, Contractor may not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.

(b) Contractor shall comply with OAR 125-246-0200, OAR 125-246-0210, and OAR 125-246-0220 in all respects for affirmative action and the solicitation of Disadvantaged, Minority, Women and Emerging Small Business Enterprises. Compliance shall include, without limitation, pass-through requirements for Subcontractor demonstrations of good faith efforts for all subcontract offer packages, for which set goals shall not be utilized.

(c) Contractor shall report to Owner on the results of the good faith efforts of compliance required in this Section 8.2.11 following award of all Subcontracts. Contractor shall also submit quarterly reports to Owner listing Work contracted to date with Disadvantaged, Minority, Women and Emerging Small Business Enterprises.

8.3 Subcontractor Participation in Performance of the Preconstruction Services. If Contractor wishes to retain any Subcontractor to assist Contractor in the performance of the Preconstruction Services, Contractor shall so notify Owner. The Parties shall meet and confer about the most appropriate way of having such Subcontractors participate, and Owner will have ultimate authority to determine whether and how any Subcontractor will be awarded a Subcontract to provide Preconstruction Services under this Agreement and, if so, the commercial arrangement with the applicable Subcontractor.

## **Article 9**

### **Work Product**

9.1 Owner's Rights in Work Product. Contractor hereby assigns and conveys to Owner all right, title, and interest, including all copyrights, patents, or any other intellectual property rights (but excluding Pre-Existing Intellectual Property) in all Work Product and all ideas or methods specifically developed for such Work Product. All Work Product will become the property of Owner on the earlier of: (a) Owner's payment to Contractor of monies due in accordance with this Agreement and not subject to a good faith dispute; (b) the date any Work Product is delivered to



Owner; or (c) upon any termination of this Agreement. Owner's use of any Work Product for any purpose other than the Project, without the involvement of Contractor, shall be at its own risk, and Contractor shall have no liability to Owner for or relating to any such use.

9.2 Contractor and/or Contractor-Related Entities' Rights in Work Product. Owner hereby grants Contractor and any respective Contractor-Related Entity, to the extent to which Contractor and/or Contractor-Related Entity developed any Work Product, a perpetual, royalty-free, irrevocable, global, and unrestricted license to use the Work Product for any purposes whatsoever for itself and other clients or owners, including without limitation, the right to copy, develop derivative works, improve, alter, and to further sublicense the Work Product to any other entities, clients, owners, subconsultants and/or subcontractors of any tier. For the avoidance of doubt, Contractor may make and retain copies of the Work Product for information, reference and use by Contractor-Related Entities with respect to the Work. Except as specifically provided in this Section 9.2 and in Section 9.3 below, no Contractor-Related Entity will own or claim any copyright, patent, or any other intellectual property right in or with respect to any Work Product or ideas or methods specifically developed for such Work Product.

9.3 Pre-Existing Intellectual Property. Owner acknowledges and agrees that in the performance of services under this Agreement, a Contractor-Related Entity may use proprietary algorithms, software, hardware, databases, other background technology, and other proprietary information that the Contractor-Related Entity developed or licensed from third parties prior to the Agreement Date or, in the case of the performance of Construction Services, prior to the date upon which the GMP Amendment is effective, or for any specific Early Work Package, prior to the date upon which the relevant Early Work Package amendment is effective ("Pre-Existing Intellectual Property"). Without limiting Owner's rights with respect to the Work Product or the Project, the Contractor-Related Entity will retain all right, title, and interest in such Pre-Existing Intellectual Property. However, Owner shall have the irrevocable, perpetual, and unrestricted right from and after the Agreement Date to use (or permit use of) all Pre-Existing Intellectual Property incorporated in the Work Product or the Project, all oral information received by Owner in connection with the Work, and all ideas or methods represented by Pre-Existing Intellectual Property incorporated in the Work Product or the Project, and in each case without additional compensation. Contractor hereby licenses such irrevocable, perpetual, and limited rights to Owner for the sole purpose of designing, constructing, commissioning, operating, and maintaining the Project. Owner's use of such license rights for any purpose other than the Project shall be at its own risk, and neither Contractor nor any other Contractor-Related Entity shall have liability to Owner for or relating to any such use.

## **Article 10**

### **Books and Records**

10.1 Proper Financial Management. Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, consistently applied.

10.2 Retention and Audit of Books and Records. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and its accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable written notice, all Books and Records relating to the Work, all of which Contractor shall preserve for the Books and Records Period. Such inspection shall take place at Contractor's offices during normal business hours unless another location and time is agreed to by the Parties. Owner may take possession of such Books and Records by reproducing such Books and Records for off-site review. Within a reasonable time after Owner's written notice, Contractor shall provide Owner with copies of electronic and electronically stored Books and Records in a reasonably usable format that allows Owner to access and analyze all such Books and Records and to determine, among other things, whether the Contract costs paid to Contractor are allowable, properly allocated and reasonable. For Books and Records that require proprietary software to access and analyze, Contractor shall provide Owner with the means to do so, including a license authorizing Owner to access and analyze all such Books and Records. Contractor is on notice that, in addition to periodic audits of Costs of the Work, Owner intends to conduct a final audit of Costs of the Work prior to the Contract closeout and Final Payment application approval. Contractor shall cooperate fully with Owner in the performance of such audits.

10.3 Items Not Subject to Audit. For the avoidance of doubt, Owner shall not have the right to audit any items for which it has accepted a lump sum proposal or agreed upon a fixed price/lump sum, including, but not limited to any agreed-upon billing rates, multipliers or markups agreed to by Owner and Contractor as part of this Agreement, which are only subject to audit to confirm that such billing rate, multiplier or markup has been charged in accordance with this Agreement.

10.4 Flow-Down in Subcontracts. Contractor shall insert a clause containing all the provisions of this Article 10 in all Subcontracts having values over \$50,000.

## **Article 11**

### **Owner's Right to Terminate for Convenience Prior to Execution of a GMP Proposal**

11.1 Owner's Right to Terminate for Convenience Prior to Execution of GMP Amendment.

11.1.1 Generally. Prior to execution of the GMP Amendment, Owner may terminate this Agreement for its convenience for any reason, including but not limited to the failure of Owner and Contractor to agree upon the terms of a GMP Amendment. Owner's decision to terminate under this Section 11.1.1 shall be made in its sole and absolute judgment. The provisions of this Section 11.1 address Owner's rights to terminate this Agreement for its convenience prior to the execution of the GMP Amendment. For the avoidance of doubt, the termination for convenience provisions of Paragraph 16.03 of the General Conditions of Contract are not applicable to Owner's termination under this Section 11.1.

11.1.2 Sole and Exclusive Remedy. If Owner terminates this Agreement under Section 11.1.1 above, Contractor's sole and exclusive right and remedy shall be to be paid for all Preconstruction Services and (if applicable) Early Work Package Work properly performed through the date of the termination notice. Contractor shall not be entitled to any overhead or profit on unperformed Work or services of any other kind. In no case shall Contractor or any other Contractor-Related Entity be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of the termination.

11.1.3 Owner's Rights to Deliver Project. Owner shall have the right, in its sole and absolute judgment, to determine whether to complete the Project and, if so, the delivery approach for the Project.

11.2 Furnishing of Documents. If Owner has exercised its rights under Section 11.1.1 above, Owner and Contractor shall promptly meet and confer about the documents and other materials prepared by Contractor and, if applicable, Subcontractors as part of the Preconstruction Services. Contractor shall furnish, or cause to be furnished, to Owner all materials, including but not limited to schedules, bid packages, cost estimates, and procurement documents, requested by Owner, which documents shall, to the extent they were not already Work Product, be deemed Work Product.

11.3 Owner's Right to Terminate for Convenience after Execution of GMP Amendment. Upon execution of the GMP Amendment, Owner's rights to terminate this Agreement for convenience shall be governed by Paragraph 16.03 of the General Conditions of Contract.

## **Article 12**

### **Contractor's Representations**

12.1 Representations in Executing Agreement. Contractor reaffirms that all disclosures, representations, warranties, and certifications made in Contractor's Proposal remain true and correct as of the Agreement Date and shall remain binding and in effect throughout the term of this Agreement.

12.2 Representations in Submitting the GMP Proposal and Executing the GMP Amendment. Contractor shall be deemed to have made the following representations with its submission of the GMP Proposal and execution of the GMP Amendment:

(a) Contractor has examined, carefully studied, and thoroughly understands the Contract Documents associated with the Work covered by the GMP Proposal and GMP Amendment.

(b) Contractor has visited the Site and has become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work covered by the GMP Proposal and GMP Amendment.

(c) Contractor is familiar with and is satisfied as to all Legal Requirements that may affect cost, progress, or performance of the Work covered by the GMP Proposal and GMP Amendment.

(d) Contractor has correlated the Contract Documents with the information known to Contractor and observations made during visits to the Site.

(e) Contractor is aware of the nature of other work that will be undertaken by Owner's Separate Contractors, and of the relationship of such other work to the Work.

(f) Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents before submitting the GMP Proposal and the written resolution thereof by Owner is acceptable to Contractor.

(g) The Contract Documents are sufficiently complete to indicate and convey an understanding of all terms and conditions for performance and furnishing of the Work covered by the GMP Proposal and GMP Amendment, including having enabled Contractor to establish the GMP.

(h) The GMP established by the GMP Proposal contains sufficient monies to perform all Work associated with the GMP Proposal, including Contractor's obligation to provide and construct any items that are not explicitly contained in the GMP Proposal Documents but which are reasonably inferable from the GMP Proposal Design Documents.

(i) Contractor shall be bound by and shall perform its obligations in full compliance with the Contract Documents.

### **Article 13** **Contract Documents**

13.1 Contract Documents. The Contract Documents are comprised of the following:

(a) This Agreement, including all Exhibits;

(b) The General Conditions of Contract between Owner and Contractor ("General Conditions of Contract"); and

(c) The following, which shall be designated, completed, delivered, prepared, or issued after the Agreement Date, and are not attached hereto:

(1) All written amendments to the Contract Documents, Change Orders, Field Orders, and Work Change Directives, including but not limited to the GMP

Amendment and any Early Work Package Amendments;

(2) The Drawings and Specifications.

13.2 Inconsistencies, Conflicts or Ambiguities.

13.2.1 Intent. The Contract Documents are intended to permit the Parties to complete the Work and all obligations required by the Contract Documents within the Preconstruction Services Compensation, GMP and Contract Times. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of inconsistencies, conflicts or ambiguities between or among the Contract Documents are discovered, Owner and Contractor shall attempt to resolve such ambiguities, conflicts or inconsistencies informally. Requirements contained in one component of the Contract Documents and not contained in another component of the Contract Documents shall not be deemed an inconsistency, conflict or ambiguity.

13.2.2 Order of Precedence of the Contract Documents. The following order of precedence shall apply in the case of direct, irresolvable conflicts between or among Contract Documents:

- (a) All written amendments to the Contract Documents issued after the GMP Amendment Date.
- (b) Change Orders issued after the GMP Amendment Date.
- (c) Work Change Directives issued after the GMP Amendment Date.
- (d) Field Orders issued after the GMP Amendment Date.
- (e) The GMP Amendment and all exhibits other than the GMP Proposal Design Documents.
- (f) All written amendments to the Contract Documents issued after the Agreement Date and before the GMP Amendment Date, including any Early Work Package Amendments.
- (g) Change Orders, Work Change Directives and Field Orders issued after the Agreement Date and before the GMP Amendment Date.
- (h) This Agreement, including all Exhibits.
- (i) The General Conditions of Contract.

- (j) The Drawings and Specifications.
- (k) The GMP Proposal Design Documents.

13.3 Amending the Contract Documents. The Contract Documents may only be amended, modified, or supplemented through a written amendment executed by the Parties (including, but not limited to, the GMP Amendment and any Early Work Package Amendment) or a Change Order, Field Order, or Work Change Directive issued in accordance with Article 11 of the General Conditions of Contract.

13.4 Defined Terms. Terms used in this Agreement will have the meanings indicated in the General Conditions of Contract.

13.5 Entire Agreement. This Agreement represents the entire agreement between Owner and Contractor relating to the Project and supersedes all prior negotiations, representations, or agreements.

#### **Article 14** **Miscellaneous**

14.1 Insurance Requirements. Contractor shall procure and maintain the insurance required by Exhibit 14.1 (“Insurance Requirements”).

14.2 Performance and Payment Bonds. Contractor shall procure and maintain, in accordance with Paragraph 6.01 of the General Conditions of Contract, the Performance Bond in the form set forth in Exhibit 14.2(a) (“Form of Performance Bond”) and Payment Bond in the form set forth in Exhibit 14.2(b) (“Form of Payment Bond”). Such bonds shall be furnished to Owner no later than five (5) days after the GMP Amendment Date, *provided, however*, that if any Early Work Package Amendments are issued, no later than five (5) days after the date of the first Early Work Package Amendment.

14.3 Key Personnel and Organizational Chart. Contractor’s Key Personnel and Project organizational structure are set forth in Exhibit 14.3 (“Key Personnel and Project Organizational Structure”). The GMP Amendment will contain an updated list of Key Personnel and Project organizational structure.

14.4 Public Improvement Contract. In accordance with OAR137-049-0690(5)(a) and OAR 839-025-0020(8), this Contract is not, as of the Agreement Date, a public improvement contract under applicable Oregon Laws and Regulations. This Contract will become a public works contract on the earlier of: (a) the execution by Owner of an Early Work Package Amendment that obligates Contractor to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement that is a public works; or (b) the execution by Owner of the GMP Amendment.

14.5 Prevailing Wage Rates. Upon this Contract becoming a public improvement contract in accordance with Section 14.4 above, Contractor shall pay and comply with, and require Subcontractors to pay and comply with, state and federal prevailing wage rates then in effect, as listed in the Bureau of Labor Industry (“BOLI”) publication titled “Prevailing Wage Rates for Public Works Contracts in Oregon” and the Davis-Bacon wage rates, and any amendments thereto. The higher of those rates shall be incorporated in the Contract and shall then apply throughout the remainder of the Project. The applicable rates shall be included as attachments or incorporated by reference in, as applicable, the Early Work Package Amendment or the GMP Amendment.

14.6 Payroll Certification; Additional Retainage; Fee Requirements.

14.6.1 Certified Statements Regarding Payroll. In accordance with ORS 279C.845, Contractor and every Subcontractor shall submit written certified statements to Owner, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying: (a) the hourly rate of wage paid each worker which Contractor or Subcontractor has employed on the Project; and (b) that no worker employed on the Project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract. The certificate and statement shall be verified by the oath of Contractor or Subcontractor that Contractor or Subcontractor has read the certified statement, that Contractor or Subcontractor knows the contents of the certified statement and that to Contractor’s or Subcontractor’s best knowledge and belief the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker’s correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which Contractor or Subcontractor has employed a worker on the Project shall be submitted once a month, by the fifth business day of the following month. Contractor and Subcontractors shall preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.

14.6.2 Retention by Owner until Contractor has Filed Certified Statements. Pursuant to ORS 279C.845(7), Owner shall retain twenty-five percent (25%) of any amount earned by Contractor on the Project until Contractor has filed the certified statements required Section 14.6.1 above. Owner shall pay to Contractor the amount retained under this Section 14.6.2 within fourteen (14) days after Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements. Owner is not required to verify the truth of the contents of certified statements filed by Contractor.

14.6.3 Retention by Contractor until First-Tier Subcontractor has Filed Certified Statements. Pursuant to ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier Subcontractor on the Project until the first-tier Subcontractor has filed with Owner the certified statements required by Section 14.6.1 above. Before paying any amount retained under this Section 14.6.3, Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier Subcontractor files the required certified statement Contractor shall pay the first-tier Subcontractor any amount retained under this Section 14.6.3. Neither Owner nor Contractor is required to verify the truth of

the contents of certified statements filed by a first-tier Subcontractor.

14.6.4 Fees. In accordance with statutory requirements, and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

14.7 Conditions Concerning Payment, Contributions, Liens, and Withholding. Pursuant to ORS 279C.505, Contractor shall:

- (a) Make payment promptly, as due, to all persons supplying to Contractor labor, Equipment or Materials for the prosecution of the Work provided for in this Contract.
- (b) Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.
- (c) Not permit any lien or claim to be filed or prosecuted against Owner on account of any labor, Equipment or Material furnished. Contractor will not assign any claims that Contractor has against Owner, or assign any sums due by Owner, to Subcontractors or Suppliers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against Owner.
- (d) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

14.8 Drug Testing. Pursuant to ORS 279C.505, Contractor shall demonstrate that an employee drug testing program is in place as follows:

14.8.1 Qualifying Employee Drug Testing Program. Contractor represents and warrants that Contractor has in place as of the Agreement Date and shall maintain during the term of this Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following:

- (a) A written employee drug testing policy;
- (b) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis; and
- (c) Required testing of a Subject Employee when Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

A drug testing program that meets the above requirements will be deemed a “Qualifying Employee Drug Testing Program.” For the purposes of this section, an employee is a “Subject Employee” only if that employee will be working on the Site.



14.8.2 Subcontractor Obligations. Contractor shall require each Subcontractor providing labor for the Project to:

(a) Demonstrate to Contractor that it has a Qualifying Employee Drug Testing Program for Subcontractor's Subject Employees, and represent and warrant to Contractor that the Qualifying Employee Drug Testing Program is in place at the time of Subcontract execution and will continue in full force and effect for the duration of the Subcontract; or

(b) Require that Subcontractor's Subject Employees participate in Contractor's Qualifying Employee Drug Testing Program for the duration of the Subcontract.

14.9 Prompt Payment. Pursuant to ORS 279C.515, Contractor agrees to the following provisions:

14.9.1 Contractor's Failure to Promptly Pay. If Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to Contractor or a Subcontractor in connection with the Project as such claim becomes due, the proper officer that represents Owner may pay the amount of the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Paying a claim in this manner shall not relieve Contractor or Contractor's surety from obligation with respect to an unpaid claim.

14.9.2 Interest. If Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor, Equipment or materials in connection with this Contract within thirty (30) Days after receiving payment from Owner or a contractor, Contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-Day period within which payment is due under ORS 279C.580(3) and that end upon Final Payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent (9%) per annum. The amount of interest may not be waived.

14.9.3 Complaint with Construction Contractors Board. If Contractor or a Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every contract related to this Contract must contain a similar clause.

14.9.4 Flow-Down to First-Tier Subcontractors. Pursuant to ORS 279C.580, Contractor shall include in each Subcontract for property or services Contractor enters into with a first-tier Subcontractor, including a Supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates Contractor to pay the first-tier Subcontractor for satisfactory performance under the Subcontract within ten (10) Days out of amounts Owner pays to Contractor under the Contract;

(b) A clause that requires Contractor to provide first-tier Subcontractor with a standard form that first-tier Subcontractor may use as an application for payment or as another method by which Subcontractor may claim a payment due from Contractor;

(c) A clause that requires Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the Subcontract. Contractor may change the form or the regular administrative procedures Contractor uses for processing payments if Contractor:

(1) Notifies Subcontractor in writing at least 45 days before the date on which Contractor makes the change; and

(2) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

(d) An interest penalty clause that obligates Contractor, if Contractor does not pay the first-tier Subcontractor within thirty (30) Days after receiving payment from Owner, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. 'Contractor or first-tier Subcontractor is not obligated to pay an interest penalty if the only reason that Contractor or first-tier Subcontractor did not make payment when payment was due is that Contractor or first-tier Subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and is computed at the rate specified in ORS 279C.515(2).

(e) A clause which requires each of Contractor's Subcontractors to include, in each of their contracts with lower-tier Subcontractors or Suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and Suppliers in accordance with the provisions of paragraphs (a) through (d) above and requiring each of their Subcontractors and Suppliers to include such clauses in their subcontracts and supply contracts.

**14.9.5 Workers' Compensation.** All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

14.10 Payment for Medical Care. Pursuant to ORS 279C.530, Contractor shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, all sums of which Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

14.11 Hours of Labor.

14.11.1 Compliance with ORS 279C.520. Contractor shall comply with ORS 279C.520, as amended from time to time and incorporated herein by this reference.

14.11.2 Hours and Overtime. Pursuant to ORS 279C.520, Contractor may not employ an employee to perform Work under this Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:

- (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five (5) consecutive Days, Monday through Friday; or
- (b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four (4) consecutive Days, Monday through Friday; and
- (c) For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

This Section 14.11.2 will not apply to Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization. For the avoidance of doubt, this Section 14.11.2 shall not excuse Contractor from completion of the Work within the Contract Times.

14.12 Compliance with Certain Laws and Regulations. Consistent with its obligations under Paragraph 7.12 of the General Conditions of Contract and without limiting the generality of its obligations to comply with all applicable Laws and Regulations, Contractor expressly agrees to comply with the following as applicable:

- (a) Title VI and VII of Civil Rights Act of 1964, as amended;
- (b) Section 503 and 504 of the Rehabilitation Act of 1973, as amended;
- (c) The Health Insurance Portability and Accountability Act of 1996, as amended;

- (d) The Americans with Disabilities Act of 1990, as amended;
- (e) ORS Chapter 659A; as amended;
- (f) ORS 279C.510(1), requiring Contractor to salvage or recycle construction and demolition debris from demolition Work, if feasible and cost-effective, and ORS 279C.510(2), requiring Contractor to compost or mulch yard waste material at an approved site, if feasible and cost-effective;
- (g) ORS 652.220, prohibiting discriminatory wage rates based on sex;
- (g) All regulations and administrative rules established pursuant to the foregoing laws;  
and
- (h) All other applicable requirements of federal and state civil rights and rehabilitation Laws and Regulations.

14.13 Non-Appropriation. Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the Owner's appropriation or limitation. Notwithstanding anything to the contrary in this Contract, termination may occur for non-appropriation. Specifically, all Owner obligations to spend money under this Contract are contingent upon future appropriations as part of Owner's budget process and local budget law. The failure of Owner to make the appropriation shall necessarily result in termination of this Contract. As such, in the event insufficient funds are appropriated for the payments under this Contract, then Owner may terminate this Contract at the end of its current fiscal year, with no further liability or penalty to Owner. Owner shall deliver written notice to Contractor of such termination no later than thirty (30) days from the determination by Owner of the event of non-appropriation.

14.14 Waiver of Consequential Damages.

14.14.1 General. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement (other than Section 14.14.2 below), in no event, whether arising out of contract, breach of warranty (express or implied), tort (including negligence), strict liability, or any other cause of or form of action whatsoever, shall either Party be liable to the other for any consequential damages (including, without limitation, damages for loss of use, loss of profits or anticipated profits, loss of revenue, and loss of business opportunity) or punitive damages arising out of or in connection with the performance or non-performance of its obligations under this Agreement.

14.14.2 Exclusions. Notwithstanding Section 14.14.1 above, or anything else in the Contract Documents, Contractor's liability for the following shall not be limited or released in any way for the following liabilities, losses, damages, costs or expenses:

(a) Any loss, cost or expense, to the extent such loss, cost or expense is paid by the proceeds of insurance (excluding payment of deductibles) up to the specific amounts Contractor is required to carry under Exhibit 14.1 (“Insurance Requirements”);

(b) Any loss, cost or expense arising out of or connected with Contractor’s fraud, fraudulent misrepresentation, gross negligence, willful misconduct, or criminal acts;

(c) Any loss, cost or expense incurred by Contractor in connection with Contractor’s indemnification obligations set forth in Paragraph 7.18 of the General Conditions of Contract; and

(d) Contractor’s obligation to pay Delay Liquidated Damages in accordance with Section 3.4 above.

14.14.3 Applicability. The provisions of this Article 14.14 shall be binding on and extend to the benefit of all successors, assignees, employees, officers, directors and Affiliates of each Party.

14.15 Funding Agreement Requirements. Because the Work may be funded, in whole or in part, with grants or loans from one or more federal and state agencies, this Agreement may be subject to certain contract provisions that are mandated by such grants or loans. Contractor understands that Owner may amend this Agreement to include other provisions mandated by federal or state funding agencies if/when such grants and/or loans are obtained, and Contractor agrees that it will fully comply with such provisions. If any provision of the Contract Documents conflicts with any mandated provision referenced above, the mandated provision shall govern.

14.16 Notice. The following individuals and addresses shall be used for purposes of giving notices under Paragraph 18.01 of the General Conditions of Contract:

If to Owner:

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If to Contractor:

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14.17 Exhibits. The following exhibits (“Exhibits”) are specifically made part of, and incorporated by reference into, this Agreement:

Exhibit 2.2.1	Scope of Preconstruction Services
Exhibit 7.1	Preconstruction Services Compensation
Exhibit 14.1	Insurance Requirements
Exhibit 14.2(a)	Form of Performance Bond
Exhibit 14.2(b)	Form of Payment Bond
Exhibit 14.3	Key Personnel and Project Organizational Chart

**IN WITNESS WHEREOF**, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor.

**OWNER:**

**CONTRACTOR:**

City of Medford, Oregon

\_\_\_\_\_  
*Name of Contractor)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

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

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

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

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

*Date:* \_\_\_\_\_

*Date:* \_\_\_\_\_

**City of Medford, Oregon**  
**General Conditions of Contract**

**Regional Wastewater Reclamation Facility Upgrade Project**





## GENERAL CONDITIONS OF CONTRACT

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## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the 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.

*Affiliate* means, with respect to any particular company or entity, a company or entity that: (a) owns and controls, directly or indirectly, such company or entity; (b) is owned and controlled, directly or indirectly, by such company or entity; or (c) is owned and controlled, directly or indirectly, by the same company or entity that owns and controls such company or entity. The term "control" for purposes of this definition means: (i) ownership, directly or indirectly, of fifty percent (50%) or more of the issued voting shares of a company or entity or ownership of equivalent rights to determine the decisions of such company or entity; or (ii) having the right to appoint at least fifty percent (50%) of the members of the board of directors or equivalent governing body of such company or entity.

*Agreement* means the written instrument, executed by Owner and Contractor, concerning the Work that, among other things, designates the Contract Documents.

*Agreement Date* means the date indicated in the Agreement on which the Contract becomes effective.

*Allowance Payment Item* means those items of Work described as such in the GMP Amendment.

*Allowance Payment Value* means those monetary values for Allowance Payment Items set forth in the GMP Amendment.

*Application for Payment* means the document prepared by Contractor, in a form acceptable to Owner, to request progress or Final Payment, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

*Baseline Schedule* means the schedule identified in the GMP Amendment as such and set forth as an exhibit to the GMP Amendment.

*Books and Records* means all documents (whether paper, electronic, or other media) and electronically stored information, including, but not limited to, any and all books, correspondence, receipts, vouchers, estimates, records, contracts, cost data, schedules, subcontracts, schedules, job cost reports, and other data, including computations and projections, of Contractor related to bidding, negotiating, pricing, or performing the Work.

*Books and Records Period* means that period starting on the Agreement Date and ending six (6) after Final Payment, *provided, however*, that if litigation, a claim, or an audit is in process, or if audit findings are not resolved, such Books and Records Period

shall be extended until the later of the final conclusion of the litigation, claim, audit, or audit finding resolution.

*Builder's Risk Insurance* means the policy of insurance required under Exhibit 14.1 (Insurance Requirements) of the Agreement identified as the Builder's Risk insurance policy, which policy is intended to provide property insurance for the Work in progress and other coverages.

*Change Order* means a document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the GMP, Contract Price or Contract Times, or other revision to the Contract, issued on or after the Agreement Date.

*Change Proposal* means a written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein: (a) seeking an adjustment in the GMP, Contract Price or Contract Times; (b) contesting an initial decision by Owner or Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; (c) challenging a set-off against payments due; or (d) seeking other relief with respect to the terms of the Contract.

*Claim* means a demand or assertion by Contractor to Owner, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of the GMP, Contract Price or Contract Times, or seeking other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

*Constituent of Concern* means asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

*Construction Services* has the meaning set forth in Section 2.3 of the Agreement.

*Contract* means the entire and integrated written contract between Owner and Contractor concerning the Work.

*Contract Documents* means those items so designated in the Agreement, and which together comprise the Contract.

*Contract Price* means the money that Owner has agreed to pay Contractor for completion of the Work, as defined in Section 4.1.1 of the Agreement.

*Contract Times* means the Scheduled Substantial Completion Date, Scheduled Final Completion Date, and, if applicable, Milestone Completion Dates.

*Contractor* means the entity named as such in the Agreement.

*Contractor Contingency* has the meaning set forth in Section 5.8.1 of the Agreement.

*Contractor-Related Entity* means Subcontractors, Sub-Subcontractors, Suppliers and anyone for whose acts any of them may be legally or contractually responsible.

*Contractor's Fee* has the meaning set forth in Section 4.3.1 of the Agreement.



*Contractor's General Conditions* has the meaning set forth in Section 6.2 of the Agreement.

*Contractor's Proposal* means the proposal submitted by Contractor in response to the RFP and referenced in the Preamble to the Agreement.

*Cost of the Work* has the meaning set forth in Section 6.1 of the Agreement.

*Delay Liquidated Damages* has the meaning set forth in Section 3.4 of the Agreement.

*Differing Site Conditions* has the meaning set forth in Paragraph 5.03.A below.

*Drawings* means the part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

*Early Work Package* has the meaning set forth in Section 2.4 of the Agreement.

*Early Work Package Amendment* has the meaning set forth in Section 2.4 of the Agreement.

*Electronic Document* means any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

*Electronic Means* are electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

*Engineer* means the entity named as such in the Preamble to the Agreement.

*Equipment and/or Material* means all of the equipment, materials, machinery, apparatus, structures, supplies and other goods required by the Contract Documents to complete the Work and to be incorporated into the Project or provided to Owner. The term "Equipment and/or Materials" shall not be construed to include any construction equipment, supplies, materials, apparatus or tools owned by Contractor or any Contractor-Related Entity that are used to complete the Work but are not contemplated under the Contract Documents to become incorporated into the Project or to be provided to Owner.

*Excusable Delay* has the meaning set forth in Paragraph 4.05.A below.

*Exhibits* have the meaning set forth in Section 14.17 of the Agreement.

*Field Order* means a written order issued by Owner which requires minor changes in the Work but does not change the GMP or the Contract Times.

*Final Completion* means the event set forth in Paragraph 15.06.D below.

*Final Payment* has the meaning set forth in Paragraph 15.06 below.

*Force Majeure Event* has the meaning set forth in Paragraph 4.05.B below.

*GMP (Guaranteed Maximum Price)* has the meaning set forth in Section 4.2 of the Agreement.

*GMP Amendment Date* is the date upon which the GMP Amendment is effective, as set forth in the GMP Amendment.

*GMP Proposal* means that document identified in Article 5 of the Agreement that has been agreed upon by the Parties.

*GMP Proposal Acceptance Period* means the date that is sixty (60) days after the submission of the GMP Proposal.

*GMP Proposal Design Documents* mean those design documents referenced as such in the GMP Amendment.

*General Conditions of Contract* means this document.

*Governmental Approval* means any authorization, consent, approval, license, lease, ruling, permit, certification, exemption, or registration by or with any Governmental Unit.

*Governmental Unit* means, other than Owner, any federal, state, or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity.

*Hazardous Environmental Condition* means 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.

- a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and/or Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
- b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

*Inclement Weather* has the meaning set forth in Paragraph 4.05.C below.

*Key Personnel* mean those individuals identified as such in the Agreement and/or GMP Amendment.

*Laws and Regulations; Laws or Regulations* mean any and all applicable federal, state and local laws, ordinances, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all Governmental Units.

*Liens* mean charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

*Milestone* mean elements of the Work designated as such in the GMP Amendment, which Work Contractor is to complete by a time prior to Substantial Completion.

*Milestone Completion Date* mean the date upon which a Milestone has been completed in accordance with the Contract Documents.

*Non-Reimbursable Costs* mean those costs set forth in Section 6.3 of the Agreement.

*Notice to Proceed (NTP) with Preconstruction* has the meaning set forth in Section 3.1.1 of the Agreement.

*Notice to Proceed (NTP) with Construction* has the meaning set forth in Section 3.1.2 of the Agreement.

*Open Book Basis* means allowing Owner to review all underlying assumptions, records, stand-alone Subcontractor and Supplier quotes, and other data associated with each element of pricing, or any adjustment thereto, including assumptions as to Costs of the Work, schedule, composition of construction equipment, construction equipment rates, labor rates and burdens, production rates, estimating factors, contingency and indirect costs, risk pricing, inflation and deflation rates, profit, home office overhead rates, fees, charges, levies, incentives, and other items reasonably required by Owner to satisfy itself as to the reasonableness and accuracy of the amounts proposed by Contractor.

*Owner* is the City of Medford, Oregon.

*Owner Indemnitee* means Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, authorized representatives and subcontractors of each and any of them.

*Owner's Allowance* has the meaning set forth in Section 5.7.1 of the Agreement.

*Payment Bond* has the meaning set forth in Section 14.2 of the Agreement.

*Performance Bond* has the meaning set forth in Section 14.2 of the Agreement.

*Preconstruction Phase* means that period of time when the Preconstruction Services are being performed.

*Preconstruction Services* has the meaning set forth in Section 2.2 of the Agreement.

*Pre-Existing Intellectual Property* has the meaning set forth in Section 9.3 of the Agreement.

*Project* means the project identified in the Preamble to the Agreement.

*Project Representative* means the authorized representative of Owner assigned to assist Owner at the Site, which may include a third party engaged by Owner in such capacity. As used herein, the term Project Representative includes any assistants or field staff of Project Representative.

*Project Schedule* has the meaning set forth in Section 2.6.1 of the Agreement.

*Project Team* means Owner, Engineer, and Contractor.

*RFP* means Owner's Request for Proposals for the Project, as identified in the Preamble to the Agreement.

*RFQ* means Owner's Request for Qualifications for the Project, as identified in the Preamble to the Agreement.

*RWRF* means Owner's Regional Wastewater Reclamation Facility.

*SOQ* means Contractor's Statement of Qualifications submitted in response to the RFQ, as identified in the Preamble to the Agreement.

*Samples* mean physical examples of Equipment, Materials, 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.

*Savings* has the meaning set forth in Section 5.9.1 of the Agreement.

*Schedule of Submittals* means the schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Owner's review of the Submittals.

*Schedule of Values* means the document identified in the GMP Amendment as such and set forth as an exhibit to the GMP Amendment, which document allocates portions of the GMP to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

*Scheduled Final Completion Date* has the meaning set forth in Section 3.3.2 of the Agreement.

*Scheduled Milestone Completion Dates* has the meaning set forth in Section 3.3.3 of the Agreement.

*Scheduled Substantial Completion Date* has the meaning set forth in Section 3.3.1 of the Agreement.

*Self-Perform* means those Construction Services performed by employees of the Contractor or any of its Affiliates.

*Shop Drawings* means 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.

*Site* means the area of the RWRF upon which the Project is located, as set forth in the Contract Documents.

*Specifications* means the part of the Contract that consists of written requirements for Equipment and Materials, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

*Subcontract* means any contract entered into by Contractor and any Subcontractor in connection with the carrying out a portion of the Work.

*Subcontractor* means an individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work, and shall include materialmen and Suppliers.

*Sub-Subcontractor* means any person or entity having a direct contract with a Subcontractor.

*Submittal* means a written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Owner, or that is indicated as a Submittal in the Schedule of Submittals accepted by Owner. Submittals may include

but are not limited to Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Owner, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for information/interpretation or clarification are not Submittals.

*Substantial Completion* means the time at which the Work (or a specified part thereof) has progressed to the point where 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 of such Work.

*Supplier* means a manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or any Contractor-Related Entity to provide Equipment and Materials, or construction equipment, supplies or other goods to be used in the performance of the Work but not incorporated into the Work.

*Underground Facilities* means all active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

*Unit Price Work* means Work to be paid for on the basis of unit prices.

*Work* means the Preconstruction Services and Construction Services, including but not limited to all labor, services, and documentation necessary to provide such services.

*Work Change Directive* means a written, signed directive from Owner to Contractor issued on or after the Agreement Date ordering an addition, deletion, or revision in the Work.

*Work Product* means all cost estimates, schedules, bid packages, studies, data, models, documents, photographs, videos, and work developed or produced by or on behalf of Contractor, whether in hard-copy, digital or electronic data, or any other medium, and whether completed or not completed.

## 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Contract Documents, have the indicated meaning.

- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed,” and the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import. Such words are used to describe an action or determination of Owner as to the Work. It is intended that such 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 Owner 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 9 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents; or
  2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  3. has been damaged prior to Owner’s Final Payment (unless responsibility for protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by an Owner Indemnitee.
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, Equipment and Materials, means to supply and deliver said services, Equipment and Materials, 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, Equipment and Materials, means to put into use or place in final position said services, Equipment and Materials, complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, Equipment and Materials, means to furnish and install said services, Equipment and Materials, complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, Equipment and Materials, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, Equipment and Materials, complete and ready for intended use.
- F. *GMP or Contract Times*: References to a change in “GMP or Contract Times” or “Contract Times or GMP” or similar, indicate that such change applies to (1) the GMP, (2) the Contract Times, or (3) both the GMP and Contract Times, as warranted, even if the term “or both” is not expressed.

- G. 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 Performance and Payment Bonds; Evidence of Insurance***

- A. *Performance and Payment Bonds*: Contractor shall deliver to Owner the Performance Bond and Payment Bond required to be provided by Contractor in accordance with Section 14.2 of the Agreement.
- B. *Evidence of Contractor's Insurance*: Contractor has, as of the Agreement Date, delivered to Owner, with copies to each additional insured (as identified in Paragraph 6.02.L below), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6 and Exhibit 14.1 to the Agreement.

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

- A. Owner shall furnish to Contractor one printed copy of the Contract (including one fully signed 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 (1) 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.

### **2.03 *Key Personnel***

- A. Contractor's Key Personnel are set forth in the Agreement and in the GMP Amendment. Contractor acknowledges that the qualifications of its Key Personnel were an essential element to: (a) Contractor being awarded the Agreement; and, if a GMP Amendment is executed by the parties, (b) Owner agreeing to execute the GMP Amendment. Job duties and responsibilities of Key Personnel shall not be delegated to others for the duration of the Project. Absent voluntary or involuntary termination of employment, retirement, death, disability, or incapacity, none of the Key Personnel may be withdrawn from the Project without prior written approval of Owner, with it being understood and agreed that Contractor will provide Owner with at least thirty (30) days' written notice of any request to withdraw any Key Personnel. Any replacement personnel shall have equivalent skill, experience and reputation, and Owner shall have the right to determine whether any replacement personnel are qualified to work on the Project. Contractor shall provide such supporting documentation as Owner reasonably requests with respect to the withdrawal of Key Personnel and replacement personnel. Owner shall not unreasonably withhold approval of staff changes.
- B. Contractor shall remove or replace, or have removed or replaced, any personnel, including Key Personnel, performing the Work if Owner has a reasonable objection to such individual and Owner considers such removal necessary and in the best interest

of the Project. In such case, Owner shall notify Contractor in writing and allow a reasonable period of time for the transition to different personnel.

#### 2.04 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents 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 Electronic Documents.

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

#### 3.01 *Intent*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents to 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 versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Owner will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will 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.
- G. Nothing in the Contract Documents creates:
  - 1. any contractual relationship between Owner and any Contractor-Related Entity; or
  - 2. any obligation on the part of Owner to pay or to see to the payment of any money due any Contractor-Related Entity, except as may otherwise be required by Laws and Regulations.



### 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, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect on the Agreement Date, except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer 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 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 Owner 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 Owner, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01. Contractor shall not be entitled to any adjustment for any unreported conflict, error, ambiguity, or discrepancy that Contractor had actual knowledge of.
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 Owner 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 Owner, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01. Contractor shall not be entitled to any adjustment for any unreported conflict, error, ambiguity, or discrepancy that Contractor had actual knowledge of. Contractor shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof, or reasonably

should have had such knowledge in the proper performance of the Preconstruction Services.

**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 Owner 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 shall submit to Owner in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation) or relating to the performance or acceptability of the Work under the Contract Documents, as soon as possible after such matters arise.
- B. Owner will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, and if appropriate initiate a change to the Contract Documents. In determining its response, Owner will consider Contractor's prior involvement and obligations with respect to reviewing and commenting on draft design documents during Contractor's provision of the Preconstruction Services. Owner will be the final interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work, subject to Contractor's rights to submit a Claim in accordance with Article 12 hereof.

**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 versions, 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 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 precludes 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 Notice to Proceed with Construction.

### 4.02 *Starting the Construction Services*

- A. Contractor shall start to perform the Construction Services on the date when the Contract Times commence to run.

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which Owner determines 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 Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

### 4.04 *Baseline Schedule*

- A. The Baseline Schedule, among other things, shall identify certain events that are critical to the orderly progress and timely completion of the Work and the dates by which such events are required to occur. The Baseline Schedule shall be in a critical path method format, and shall include all information, data, and detail required by the Contract Documents or Owner.
- B. Contractor shall submit monthly updates to the Baseline Schedule in accordance with the Contract Documents. Updated schedules shall not be deemed to modify the Contract Times, nor relieve Contractor of its obligations to complete the Work within the Contract Times, as may be adjusted in accordance with the Contract Documents. Proposed adjustments in the Baseline Schedule that will change the Contract Times must be submitted in accordance with the requirements of Paragraph 4.05 and Article 11.
- C. Upon the GMP Amendment Date, Contractor shall carry on the Work and adhere to the Baseline Schedule, as updated in accordance with Paragraph 4.04.B above, including during all disputes or disagreements with Owner. No Work will 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.
- D. Owner's review and approval of the Baseline Schedule, in conjunction with its execution of the GMP Amendment, and monthly schedule updates shall not be construed as relieving Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work. Owner may rely on the Baseline Schedule and updates in planning and conducting ongoing operations and other work at the Site.

#### 4.05 *Delays in Contractor's Progress*

- A. *Excusable Delays*: The term "Excusable Delay" shall refer to: (a) Force Majeure Events and any other events caused by acts, omissions, conditions, events, or circumstances that are beyond the reasonable control of Contractor; and (b) events for which these General Conditions provide that Contractor is entitled to claim a schedule adjustment by reference to this Article 4 or Article 11, provided that in either case the event was not caused by the negligent acts, omissions, fault, recklessness, willful misconduct, breach of contract, or violation of law by Contractor or any Contractor-Related Entity. Notwithstanding the preceding sentence, the risks arising from the following events or circumstances shall be borne exclusively by Contractor, shall not be deemed Excusable Delays, and shall not be the basis for any relief, monetary or otherwise, to Contractor:
1. General market and economic conditions affecting the availability, supply or cost of labor, Equipment and/or Materials, construction equipment, supplies, or commodities or any other goods or services;
  2. Strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions, unless such strikes, disputes, slowdowns, stoppages, boycotts or disruption affect a specific trade on a national or regional level and were not caused by the improper acts or omissions of Contractor or any other Contractor-Related Entity;
  3. Delays in obtaining or delivery of Equipment and/or Materials, construction equipment, supplies, or commodities or any other goods or services, from any Contractor-Related Entity, unless the Contractor-Related Entity's reason for delay arises from an event that would otherwise be excusable to Contractor under these General Conditions;
  4. Inclement Weather days that do not exceed the annual baselines set forth in Paragraph C below;
  5. Delays of common carriers, unless the common carrier's reason for the delay arises from an event that would otherwise be excusable to Contractor under these General Conditions; and
  6. Bankruptcy or insolvency of a Contractor-Related Entity or the inability of a Contractor-Related Entity to perform, unless such inability would be otherwise excusable to Contractor under these General Conditions.
- B. *Force Majeure Events*: As used in these General Conditions, the term "Force Majeure Event" shall mean those Excusable Delays, including but not limited to acts of God, unusually severe and abnormal climatic conditions, actions of Governmental Units, fires, epidemics, pandemics, quarantine restrictions, riots, civil commotions or freight embargoes, that are also beyond the reasonable control of Owner, except for the following:
1. Differing Site Conditions, which are otherwise addressed in Paragraph 5.03;
  2. Hazardous Environmental Conditions, which are otherwise addressed in Paragraph 5.05;

3. Changes in Laws or Regulations, which are otherwise addressed in Paragraph 7.11.C; and
4. Suspensions of Work, which are otherwise addressed in Paragraph 16.01.

*C. Inclement Weather*

1. If Contractor intends to seek an adjustment in the Contract Times for unusually severe and abnormal weather conditions, it shall, in addition to fulfilling all other requirements for a time extension, demonstrate that the actual weather encountered: (a) was more severe than the adverse weather that was anticipated for the Site during the given month; and (b) prevented or inhibited Contractor's performance of the Work (such unusually severe weather conditions referred herein as "Inclement Weather"). A weather report indicating daily precipitation less than 0.10 inch or "traces of rain" will not be considered as justification for a day being considered an Inclement Weather day. Contractor shall notify Owner in writing of the occurrence of Inclement Weather within five days after the onset of such Inclement Weather and shall describe in reasonable detail the type of Inclement Weather encountered by Contractor and the work thereby interfered with or interrupted.

*D. Adjustment of Contract Times*

1. *Right to Request a Change Order:* Contractor shall be entitled to request a Change Order adjusting the Contract Times to reflect the amount of time Contractor is actually delayed by an Excusable Delay, expressly conditioned upon Contractor demonstrating that: (a) Contractor has complied with the procedural requirements of this Paragraph 4.05.D; (b) the delay impacts the critical path of the Work as demonstrated by Paragraph 4.05.D.3; (c) the delay was not foreseeable by Contractor (or Contractor-Related Entity, as applicable), and would not have been foreseen by a reasonably experienced contractor, as of the Agreement Date; and (d) Contractor (or Contractor-Related Entity, as applicable), in view of all the circumstances, has exercised reasonable efforts to avoid the delay and did not cause the delay.
2. *Procedural Requirements:* If Contractor intends to seek an adjustment in the Contract Times as the result of an Excusable Delay, it shall comply with Paragraph 4.05.D.3 below and Article 11 below.
3. *Time Impact Analysis:* Contractor shall demonstrate the critical path impact of an Excusable Delay and the effect on the applicable Contract Time through a written Time Impact Analysis ("TIA"), which TIA shall be developed in accordance with the Specifications.

*E. Compensation for Delays*

1. *Compensable Delays:* Contractor shall be entitled to request an adjustment of the GMP pursuant to the provisions of Article 11 for all Excusable Delays Events for which it is entitled to a time extension pursuant to Paragraph 4.05.D above ("Compensable Delays"); *provided, however*, that Compensable Delays shall not be deemed to include: (a) Force Majeure Events; or (b) Excusable Delays Events where Contractor's performance was or would have been concurrently delayed or

interrupted by any event that does not otherwise qualify as an Excusable Delay Event (collectively “Non-Compensable Delays”).

2. *Non-Compensable Delays:* Contractor’s sole remedy for Non-Compensable Delays shall be an extension of the applicable Contract Time, provided that Contractor has complied with the requirements of Paragraph 4.05.D above.
- F. *Recovery Schedules:* Notwithstanding the right of Contractor to request a time extension for an Excusable Delay pursuant to this Paragraph 4.05, Contractor agrees that it will, if directed by Owner, develop and implement a recovery schedule and plan to improve progress and take such measures to overcome such delay. Should Owner have a reasonable belief that the Contract Times will not be met, then Owner has the right, but not the obligation, to so notify Contractor and direct Contractor to overcome such delay by working additional overtime, engaging additional personnel and taking such other measures as necessary to complete the Work within the Contract Times. If such delay is not an Excusable Delay, Contractor shall bear all costs related to such overtime, additional personnel and other measures. If such delay is an Excusable Delay, and Contractor has met the requirements of this Paragraph 4.05.D for an adjustment to the applicable Contract Time for such delay, then Contractor may request an adjustment to the GMP in accordance with the requirements of Article 11 for the costs related to such overtime, additional personnel and other measures.

## **ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site and obtain and pay for easements for permanent structures or permanent changes in existing facilities. Owner shall notify Contractor in writing 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. Contractor acknowledges that the Site is not subject to filing a mechanic’s or construction lien as described in Paragraph 18.12 below.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of Equipment and Materials, supplies or other goods to be used in the performance of the Work but not incorporated into the Work.

### **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 Equipment and Materials, 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 Equipment and Materials, construction equipment, supplies or other goods to be used in the performance of the Work. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other areas used for Contractor's operations; (c) damage to any other land or areas, or to improvements, structures, utilities, or similar facilities located at such lands 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 7.13, 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 in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless, the Owner Indemnitees 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) resulting from, arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against any Owner Indemnitee 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 will conform to applicable Laws and Regulations. If Contractor fails to comply with this Paragraph 5.02.B, Owner shall have the right to take corrective action and charge the costs of doing so to Contractor, including withholding amounts otherwise due Contractor to reimburse Owner's costs of doing so.
- 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. If Contractor fails to comply with this Paragraph 5.02.C, Owner shall have the right to take corrective action and charge the costs of doing so to Contractor, including withholding amounts otherwise due Contractor to reimburse Owner's costs of doing so.
- 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 *Differing Site Conditions*

- A. *Definition:* The term “Differing Site Conditions” means: (1) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents; or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents. The term “Differing Site Conditions” excludes: (a) conditions of which Contractor had actual or constructive knowledge as of the GMP Amendment Date, or reasonably should have known as of the GMP Amendment Date consistent with its representations in Article 12 of the Agreement; and (b) conditions (excluding man-made conditions) that come into existence after the GMP Amendment Date.
- B. *Action Upon Discovery:* Upon discovering an alleged Differing Site Condition and before the condition is further disturbed, Contractor shall immediately, after taking appropriate measures to secure the Work, stop work in and secure the affected area and notify Owner of the alleged Differing Site Condition by telephone or in person, which notice shall be given within 24 hours of Contractor discovering the alleged Differing Site Condition. Additionally, Contractor shall notify Owner in writing of the alleged Differing Site Condition by submitting a Proposed Change Order in accordance with the provisions of Paragraph 11.03 below. Owner will investigate the Site conditions promptly after receiving notice.
- C. *Possible Price and Times Adjustments:* If Contractor establishes that it has encountered a Differing Site Condition that has impacted its cost or time of performance, Contractor shall be entitled to an appropriate Change Order, provided that Contractor satisfies the requirements of Article 11 hereof.
- D. *Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of this Paragraph 5.03 are not applicable to the presence or location of Hazardous Environmental Conditions.

#### 5.04 *Underground Facilities*

- A. *Contractor’s Responsibilities:* Unless it is otherwise expressly provided in the GMP Amendment, the cost of all the following is included in the GMP and Contractor shall have full responsibility for:
  - 1. Collaborating with Owner during the Preconstruction Phase to improve the accuracy and completeness of information regarding Underground Facilities that Engineer gathers and depicts in the final Contract Documents;
  - 2. Complying with applicable state and local utility damage prevention Laws and Regulations;
  - 3. Verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities prior to construction;



4. Coordination of the Work with the owners, including Owner, of such Underground Facilities, during construction; and
  5. 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 meets the definition of a Differing Site Condition, it shall follow the processes set forth in Paragraph 5.03 above.

5.05 *Hazardous Environmental Conditions at Site*

- A. The Contract Documents identify:
1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
- B. Where Hazardous Environmental Conditions are shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, Contractor shall take such action as is necessary, in accordance with applicable Laws and Regulations, to plan for and to remediate and render harmless all such Hazardous Environmental Conditions. Remediation plans for such known Hazardous Environmental Conditions shall be provided to Owner for approval prior to undertaking the remediation.
- C. If Contractor encounters any unknown Hazardous Environmental Conditions at the Site, it shall stop Work immediately in the affected part of the Work to the extent required to avoid any such safety or health hazard until it has taken such action as is necessary, in accordance with applicable Laws and Regulations, to protect the interests of any affected party. Contractor shall, immediately upon encountering any Hazardous Environmental Conditions at the Site, stop work in and secure the affected area and promptly, but in no event later than 24 hours after becoming aware thereof and before further disturbing the Hazardous Environmental Conditions, notify Owner and, if required by Laws and Regulations, all Governmental Units with jurisdiction over the Project or Site.
- D. Contractor shall take all necessary measures required to ensure that Hazardous Environmental Conditions are remediated or rendered harmless in accordance with applicable Laws and Regulations. Contractor shall, prior to proceeding with any such work: (a) obtain all environmental site assessments of the affected property and submit copies of such assessments to Owner for its approval; (b) develop remediation plans for the Hazardous Environmental Conditions, subject to Owner's approval; and (c) obtain all pertinent permits to implement such plans. During the period of any investigation and remediation efforts, Contractor shall take all necessary measures to isolate and contain such Hazardous Environmental Conditions from the unaffected parts of the Work, and shall continue the Work to the maximum extent possible on unaffected parts of the Work.

- E. Except for those Hazardous Environmental Conditions set forth in Paragraph F below, Contractor will be entitled to submit a request for an adjustment to the GMP and/or Contract Time(s) to the extent Contractor's cost and/or time of performance have been adversely impacted by the presence, removal or remediation of unknown Hazardous Environmental Conditions. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- F. Notwithstanding anything to the contrary in the Contract Documents, Contractor shall bear full responsibility for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to: (a) any Hazardous Environmental Conditions present at, on, in or under, or migrating and/or emanating to or from the Site, that were generated by or brought or caused to be brought on the Site by any act or omission (whether negligent, reckless or willful misconduct) of Contractor or any Contractor-Related Entity; (b) those Hazardous Environmental Conditions identified in Paragraph B above; and (c) the creation or exacerbation of any Hazardous Environmental Condition due to the negligence, recklessness or willful misconduct of Contractor or any Contractor-Related Entity. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend and hold harmless the Owner Indemnitees from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from (a), (b) and/or (c) above.
- G. The provisions of Paragraph 5.03 above do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.
- H. Nothing contained in this Paragraph 5.05 is intended to identify Contractor as the generator of any pre-existing Constituents of Concern or Hazardous Environmental Condition, except as set forth in applicable Laws and/or Regulations.

## **ARTICLE 6—BONDS AND INSURANCE**

### **6.01 *Performance and Payment Bonds***

- A. Contractor shall furnish a Performance Bond and a Payment Bond, each in an amount equal to the GMP, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds shall be furnished within the time required by Section 14.2 of the Agreement, and must 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.
- B. All bonds 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 Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, 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 State of Oregon.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and shall, within twenty (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 provide Owner with the Performance and Payment Bonds within the time required by Section 14.2 of the Agreement, Owner may exclude the Contractor from the Site and exercise Owner's termination for cause rights under Article 16.
- F. Upon request to either Owner or Contractor from any Contractor-Related Entity, the recipient of the request shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

- A. Contractor shall obtain and maintain, at its own cost and expense, the insurance coverages specified in Exhibit 14.1 to the Agreement, which insurance shall be in accordance with this Paragraph 6.02.
- B. All insurance required by this Paragraph 6.02 shall be from insurance companies that are duly licensed or authorized to do business in the State of Oregon and have a current policyholder's management and financial size category rating of not less than "A-:VIII" according to A.M. Best's Financial Strength and Financial Size Category.
- C. Contractor shall deliver to Owner, with copies to each additional insured identified in Paragraph 6.02.L below, the following:
  - 1. Certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required hereunder, with the understanding that updated, compliant certificates of insurance and endorsements shall be delivered annually, at least ten (10) days prior to the expiration of any policy, to evidence renewal of the required insurance coverages.
  - 2. Upon request by Owner or any additional insured, other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Contractor, Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) any confidential premium or pricing information or other information not applicable to this Project or Contract.
- D. Failure of Owner or additional insured to demand the documents required by Paragraph 6.02.C, or failure of Owner to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the obligation of the relevant party (i.e., Contractor, Subcontractor, or Supplier) to obtain and maintain such insurance.

- E. Contractor shall require Subcontractors and Suppliers to purchase and maintain the insurance coverages specified under Exhibit 14.1 to the Agreement.
- F. Without prejudice to any other right or remedy, if Contractor has failed to obtain required insurance, Owner may elect (but is in no way obligated) to obtain equivalent insurance to protect Owner and additional insureds' interests at the expense of Contractor, and the GMP will be adjusted accordingly.
- G. Owner does not represent that insurance coverage and limits established in Exhibit 14.1 to the Agreement will be adequate to protect the interests of Contractor, Subcontractors and/or Suppliers. Each such party is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- H. The insurance and insurance limits required under this Contract are minimums and shall not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner, additional insureds and other individuals and entities in the Contract or otherwise.
- I. If in any instance Contractor has not performed its obligations respecting obtaining and maintaining insurance coverage required hereunder, or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the insurance policies, then for purposes of determining Contractor's liability and the limits thereon or determining reductions in compensation due from Owner to Contractor on account of available insurance, Contractor shall be treated as if it has elected to self-insure up to the full amount of insurance coverage that would have been available had Contractor performed such obligations and not committed such failure.
- J. Contractor, Subcontractors and Suppliers shall be solely responsible for any and all deductibles or self-insured retentions that shall apply under any required, or otherwise purchased, insurances and shall have no recourse against Owner for any such costs, *provided, however*, that if a deductible is specifically identified as a Cost of the Work, Contractor shall be entitled to seek payment for such deductible.
- K. All policies of insurance that Contractor is required to purchase and maintain under this Contract shall:
  - 1. Contain a provision requiring the insurer to give not less than thirty (30) days' prior notice to Owner whenever the insurer gives Contractor a notice of cancellation or non-renewal with respect to the policy (except in the case of any non-premium payment, not less than ten (10) days' prior notice, which the insurer shall be obligated to give to Owner simultaneously with providing such notice to Contractor). The provision required by the preceding sentence shall not be deemed to infer a right of cancellation that would otherwise not exist in the absence of such provision. Should Contractor's insurers be unable to provide notice in compliance with the above-noted requirement, in the alternative, Owner will accept a commitment from Contractor or Contractor's insurance broker to provide such timely notice.
  - 2. Contain coverage terms and conditions that reflect the industry standard for projects of a similar size, scope, and nature of this Project that the commercial market will

provide and support as of the date of such insurance procurement and any subsequent renewals.

3. Other than for workers compensation/employer's liability insurance, professional liability, and the Builder's Risk Insurance, include cross-liability clauses allowing one insured to bring a claim against another insured party. With regard to pollution liability insurance, a cross-liability clause will be allowed as long as it does not impact Owner's ability to sue another insured party and collect under the policy.
  4. Be endorsed so that the insurer agrees to waive, to the extent permitted by law, all rights of subrogation or action that it may have or acquire against Owner or Owner Indemnitees.
  5. Other than for workers compensation/employer's liability insurance, automobile liability insurance, and contractor pollution liability insurance, contain a provision under which the insurer agrees that the failure of one insured to observe and fulfill the terms of the policy will not prejudice the coverage of the other insureds.
  6. With regard to the Builder's Risk Insurance and any other first-party property insurance, have each policy endorsed to contain a standard mortgagee clause to the effect that Owner and other insureds will not be prejudiced by an unintended and/or inadvertent error, omission or mistaken description of the risk interest in property insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured, or failure to comply with a statutory requirement.
  7. Not include defense costs within the limits of coverage or permit erosion of coverage limits by defense costs, except that defense costs may be included within the limits of coverage of contractor pollution liability policies.
- L. Contractor's commercial general liability, automobile liability, umbrella or excess, pollution liability, and marine protection and indemnity policies must:
1. Include and list as additional insureds Owner and Owner Indemnitees;
  2. Include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  3. Afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
  4. Not seek contribution from insurance maintained by the additional insured; and
  5. As to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of Contractor-Related Entities, in the performance of Contractor's operations.

## ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES

### 7.01 *Contractor’s Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not Owner-delegated professional design services under this Contract, and Owner has no responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

### 7.02 *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, applicable Laws and Regulations, and good construction practices, using reasonable care, skill and judgment.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner except under extraordinary circumstances. Contractor’s superintendent will be Contractor’s representative at the Site and shall have authority to act on behalf of Contractor. All communication given to or received from Contractor’s superintendent shall be binding on Contractor. Contractor’s superintendent must be acceptable to Owner.

### 7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, skilled, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner for all acts and omissions of Contractor’s employees and Contractor-Related Entities and their employees.
- C. 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 will 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 Owner’s observed holidays only with Owner’s written consent, which will not be unreasonably withheld. Regular working hours shall be defined as 7 a.m. to 6 p.m. unless otherwise approved in advance by Owner.

#### 7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, Equipment and Materials, 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 Equipment and Materials must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Owner, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of Equipment and Materials.
- C. All Equipment and Materials must 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.
- D. Without limiting the responsibility or liability of Contractor pursuant to this Agreement, all warranties given by manufacturers on Equipment and Materials are hereby assigned by Contractor to Owner. If requested, Contractor shall execute formal assignments of said manufacturer's warranties to Owner. All such warranties shall be directly enforceable by Owner. Such assignment shall in no way affect Contractor's responsibilities and duties during the warranty period. Copies of all such warranties shall be provided to the Owner no later than the time of Substantial Completion.

#### 7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of Equipment or Material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the GMP 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 Owner authorize the use of other items of Equipment or Material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Owner in its sole discretion determines that an item of Equipment or Material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Owner will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of Equipment or Material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Owner determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  - 3) has a proven record of performance and availability of responsive service; and
  - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) the item 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. *Owner's Evaluation and Determination*: Owner will evaluate each "or-equal" request. Owner may require Contractor to furnish additional data about the proposed "or-equal" item. Owner will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Owner determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Owner will advise Contractor in writing of any negative determination.
- D. *Effect of Owner's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in the GMP. Owner's denial of an "or-equal" request will be final and binding and may not be reversed through any kind of appeal or Claim under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request*: If Owner determines that an item of Equipment or Material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Owner consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of Equipment or Material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Owner authorize the use of other items of Equipment or Material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Owner to determine if the item of Equipment or Material proposed is functionally equivalent to that named and an acceptable substitute therefor. Owner will not accept requests for review of proposed substitute items of Equipment or Material from anyone other than Contractor.



2. The requirements for review by Owner will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Owner may decide is appropriate under the circumstances.
3. Contractor shall make written application to Owner for review of a proposed substitute item of Equipment or Material that Contractor seeks to furnish or use. The application:
  - a. will 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 the item specified; and
    - 3) be suited to the same use as the item 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 the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will 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 the GMP, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Owner's Evaluation and Determination:* Owner will evaluate each substitute request. Owner may require Contractor to furnish additional data about the proposed substitute item. Owner will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Owner's review is complete and Owner, in its sole discretion, determines that the proposed item is an acceptable substitute. Owner'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 the GMP or Contract Times. Owner 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:* Whether or not Owner 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 Owner's Determination*: If Owner approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. Owner's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

#### 7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers in accordance with Article 8 of the Agreement for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Owner may require the replacement of any Subcontractor or Supplier. 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 or Suppliers 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 or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- E. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in the GMP or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- F. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- G. On a monthly basis, Contractor shall submit to Owner 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.
- H. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- I. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- J. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner.
- K. Upon request, Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- L. Contractor shall restrict all Subcontractors and Suppliers from communicating with Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.
- M. Each Subcontract is assigned by Contractor to Owner provided that:
  - 1. assignment is effective only after termination of the Contract by Owner pursuant to Paragraphs 16.02 or 16.03 below and only for those Subcontracts which Owner accepts by notifying the Subcontractor and Contractor in writing; and
  - 2. assignment is subject to the prior rights of Contractor's surety under the Performance Bond.Upon such assignment to Owner, Owner may further assign the Subcontract to a successor contractor on the Project.

7.08 *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 an 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, 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 will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Owner Indemnitees 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. Additionally, in the event Owner is enjoined from the operation or use of the Work or any part thereof in connection with any dispute resolution proceeding, Contractor shall (at its sole expense) take all reasonable steps possible to procure for Owner the right to operate or use the Work or part thereof. If Contractor cannot so procure the aforesaid right within a reasonable time, Contractor shall then promptly (at Contractor's sole expense): (i) modify the Work so as to avoid infringement of any patent or other proprietary interest, or (ii) replace said Work with Work that does not infringe or violate any such patent or other proprietary interest, or (iii) remove said Work and refund any compensation theretofore paid to Contractor and pay to Owner any transportation costs and other expenses that may have been paid or incurred by them in connection with the Work so removed.

#### 7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. 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 as of the GMP Amendment Date. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 7.10 *Taxes*

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

#### 7.11 *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. Owner shall not 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 the Owner Indemnitees 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 is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03 above.
- C. Changes in Laws or Regulations that occur after the Agreement Date and affect the cost or time of performance shall be the subject of an equitable change in the GMP or Contract Times, *provided, however*, that Contractor requests such equitable change in accordance with Articles 4 and 11 hereunder. Notwithstanding anything to the contrary, the relief afforded by this Paragraph 7.11.C shall not apply to the creation of or changes in any Laws or Regulations relating to: (a) any federal, state or local income or gross receipts tax; (b) any Contractor-Related Entity's corporate existence or the maintenance of its business; or (c) payroll taxes or other taxes associated with labor.

#### 7.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, 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 Owner for reference. Upon completion of the Work, Contractor shall deliver these record documents to Owner. Contractor shall certify, to the best of its knowledge and belief, that the record documents delivered to Owner and the approved Samples are complete.

#### 7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve any Contractor-Related Entity of its responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor's Key Personnel includes a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs. This safety representative shall work with Owner to ensure that no construction activities at the Site infringe upon any activities of Owner or its employees or the existing facilities located at the Site. Further, the safety representative shall work closely with Owner to ensure that Contractor's emergency plans do not adversely affect or infringe upon the emergency or regular operations of Owner's existing facilities or its emergency plans and operations.
- C. 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 Equipment and Materials, 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.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor or any Contractor-Related Entity 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 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 Contractor-Related Entity. If Contractor has not promptly restored damaged property after written notice by Owner, Owner may proceed with restoration of the property, improvements, or facilities deemed necessary.

The cost thereof will be deducted from and monies due or which may become due Contractor under the Contract.

- E. 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.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that 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.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs. Owner's safety programs that are applicable to the Work are identified or included in the Specifications.
- H. Contractor shall inform Owner of the specific requirements of Contractor's safety program with which Owner's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Owner has issued a written notice to Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will 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.
- K. Owner reserves the right, but shall not be obligated to, to suspend the Work or any portion thereof if, in its reasonable judgment, Contractor has or is violating the Contract or any requirement thereof, including but not limited to violations of Owner's safety programs or any Law or Regulation related to jobsite safety. Contractor shall not receive any adjustment in the GMP or Contract Time on the basis of such suspension unless it is ultimately determined that Contractor had not violated the Contract or any requirement thereof.

#### 7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as 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.
- B. Contractor shall inform Owner of safety data sheets and hazard communications requirements to further ensure that Owner's employees and representatives are not exposed to hazards associated with any portion of the Project in which Owner's employees and representatives do not have prior specific knowledge.

## 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 damage, injury, or loss. Contractor shall give Owner prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Owner determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.
- B. Contractor shall immediately inform Owner if any condition exists or occurs which has the potential to inflict or cause an environmental health or safety risk to any employee or property of Owner.

## 7.16 *Submittals*

### A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) the suitability of all Equipment and Materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must 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 Shop Drawing or Sample, Contractor shall give Owner specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Owner for review and approval in accordance with the accepted Schedule of Submittals.

1. Shop Drawings

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Owner the services, Equipment and Materials Contractor proposes to provide, and to enable Owner to review the information for the limited purposes required by Paragraph 7.16.C.

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 Owner may require to enable Owner to review the Submittal for the limited purposes required by Paragraph 7.16.C.

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

C. *Owner's Review of Shop Drawings and Samples*

1. Owner will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals, *provided, however*, that unless stated differently in the Schedule of Submittals, Owner shall provide its review no later than twenty-one (21) days from the date it has received the Shop Drawings or Samples. Owner's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of 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. Owner'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. Owner's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Owner's review and approval of a Shop Drawing or Sample will 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 Owner has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Owner will document any such approved variation from the



requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Owner's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Owner's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or GMP, unless such changes are included in a Change Order.
7. Neither Owner's receipt, review, acceptance, or approval of a Shop Drawing or Sample will 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.C.4.

*D. Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Owner 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 Owner on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Contractor shall be responsible for Engineer's charges to Owner for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

*E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
  - a. Contractor shall submit all such Submittals to Owner in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
  - b. Owner will provide timely review of all such Submittals in accordance with the Schedule of Submittals, *provided, however*, that unless stated differently in the Schedule of Submittals, Owner shall provide its review no later than twenty-one (21) from the date it has received the Submittal. Owner shall return

Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

- c. Owner's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
- d. If any such Submittal is not accepted, Contractor shall confer with Owner regarding the reason for the non-acceptance, and resubmit an acceptable document.

F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

#### 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.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
  - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor or any Contractor-Related Entity; or
  - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
  - 1. Observations by Owner;
  - 2. Payment by Owner of any progress or Final Payment;
  - 3. The issuance of a certificate of Substantial Completion by Owner 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 Submittal, Shop Drawing or Sample;
  6. The issuance of a notice of acceptability by Owner;
  7. The end of the correction period established in Paragraph 15.08;
  8. Any inspection, test, or approval by others; or
  9. Any correction of defective Work by Owner.
- E. Contractor agrees to conduct with Owner a joint inspection of the Work one year after Substantial Completion or, in the event defective Work has been corrected, or removed or replaced, one year after the last defective Work has been satisfactorily corrected or removed or replaced under Paragraph 15.08 below. The purpose of such joint inspection is to enable the Owner to identify any issues (including any alleged latent defects) with the Work that have been observed by Owner during the above-referenced one-year period, and for Contractor to collaborate with Owner on how to address such issues. For the avoidance of doubt, this inspection shall not be construed to extend Contractor's correction period established by Paragraph 15.08 below. Owner's rights against Contractor, if any, for such issues shall be as allowed by applicable Laws and/or Regulations.
- F. 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 will 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 the Owner Indemnitees from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by the intentional misconduct or any negligent act or omission of Contractor or any Contractor-Related Entity. Nothing herein shall require Contractor to indemnify any Owner Indemnitees for losses, damages, costs or judgments arising out of such party's own negligence.
- B. In any and all claims against an Owner Indemnitee by any employee (or the survivor or personal representative of such employee) of Contractor or any Contractor-Related Entity, the indemnification obligation under Paragraph 7.18.A will 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 Contractor-Related Entity's workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### 7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Owner with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor or any Contractor-Related Entity, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Owner.
- D. Owner shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Owner's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

### **ARTICLE 8—OTHER WORK AT THE SITE**

#### 8.01 *Other Work*

- A. In addition to and apart from the Work to be performed by Contractor under the Contract Documents, the Owner may perform other work at or adjacent to the Site during the course of the Project. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also

arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site. The parties acknowledge, however, that the Site is an active work location for Owner and shall remain such for the duration of this Project, and that Contractor shall in no way interfere with or impede Owner's regular business activities.

- 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 third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. 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 Owner and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of 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.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

## 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, then Owner shall be responsible for coordinating such entities with work of Contractor.
- B. If Owner does contract with other entities for the performance of other work at or adjacent to the Site, it intends to have coordination meetings among Contractor and such other entities in an effort to manage the overall program associated with the work being performed at the Site. Contractor agrees that it will attend and participate in these

logistics meetings and shall cooperate with Owner and such other entities to the extent reasonably necessary for the performance by such other entities of their work.

### 8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the 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 GMP or the Contract Times or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the GMP 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 will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the GMP Amendment Date, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in the GMP will 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 or GMP is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- 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.
  - 1. 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 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 8.03.B.
  - 2. 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 Contractor.
- C. 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 or an Owner Indemnitee, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner; and (2) indemnify and hold harmless the Owner Indemnitee 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 Owner and, if so designated in the Contract Documents or by written communication from Owner to Contractor after the Agreement Date, Owner’s Project Representative.

### **9.02   *Replacement of Engineer***

- A. Owner may at its discretion appoint an engineer to replace Engineer. The replacement engineer’s status under the Contract Documents will 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   *Change Orders***

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

### **9.07   *Inspections, Tests, and Approvals***

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

### **9.08   *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.

9.09 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.056.

9.10 *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.

9.11 *Other Responsibilities*

- A. The foregoing Paragraphs 9.01 through 9.10 shall not be construed to limit the other responsibilities of Owner set forth in these General Conditions.

**ARTICLE 10— OWNER'S ROLE AND RIGHTS DURING CONSTRUCTION**

10.01 *General*

- A. This Article 10 generally establishes Owner's role and rights during construction, with the understanding that such role and rights are inclusive of other roles and rights that are set forth elsewhere in these General Conditions and other Contract Documents.
- B. Owner shall have the right to stop work whenever, in its sole discretion, Owner determines that such action is needed to prevent improper execution of the Work or to otherwise protect Owner's interests.

10.02 *Owner's Representative*

- A. Owner may furnish a Project Representative to assist Owner in providing more extensive observation of the Work or fulfill other responsibilities of Owner. If Owner elects to furnish a Project Representative, then Owner will notify Contractor in writing of the identity, authority and responsibilities of any such Project Representative.

10.03 *Clarifications and Interpretations*

- A. Owner will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as Owner may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations shall be binding on Contractor. If Contractor disagrees with such clarifications and interpretations, or on the amount or extent, if any, of any adjustment in the GMP or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, it may pursue its rights to submit a Claim in accordance with Article 12 hereof.



#### 10.04 *Authorized Variations in Work*

- A. Owner may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the GMP or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and shall be binding on the Contractor, who shall perform the Work involved promptly. If the Contractor believes that a Field Order justifies an adjustment in the GMP or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of such adjustment, Contractor may pursue its rights to submit a Claim in accordance with Article 12 hereof.

#### 10.05 *Rejecting Defective Work*

- A. Owner shall have authority to disapprove or reject Work which Owner believes to be defective, or that Owner believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Owner shall also have authority to require special inspection or testing of the Work as provided in Paragraph 14.4, whether or not the Work is fabricated, installed, or completed.

#### 10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Owner 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.

#### 10.07 *Limitations on Owner's Responsibilities*

- A. Owner 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. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- B. Owner will not be responsible for the acts or omissions of Contractor or of any Contractor-Related Entity performing any of the Work.
- C. Owner's review of the Application for Final 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 Contractor under 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.
- D. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Project Representative, if any.

## ARTICLE 11—CHANGES TO THE CONTRACT

### 11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, a Field Order, or a written amendment signed by Owner and Contractor, including but not limited to the GMP Amendment and any Early Work Package Amendments.
- B. If a supplement to the Contract includes a change in the GMP or Contract Times, and is not a part of the GMP Amendment or an Early Work Package Amendment, such supplement must be set forth in a Change Order.
- C. All changes to the Contract must be approved by the Owner.

### 11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the GMP 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 the GMP 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 11.05, (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) otherwise agreed upon in writing by the parties to be a change in the Work; and
  - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from Allowance Payment Items; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.
- C. Contractor agrees that duly executed Change Orders will constitute full resolution of all Contractor's rights arising out of or related to the subject matter of the Change Order, including but not limited to time extensions, delays, disruption and cumulative impact.

### 11.03 *Work Change Directives*

- A. A Work Change Directive will not change the GMP 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 GMP and/or Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of the GMP.
- B. If Owner has issued a Work Change Directive and Contractor believes that an adjustment in the Contract Times or GMP is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.

### 11.04 *Field Orders*

- A. Owner may authorize minor changes in the Work if the changes do not involve an adjustment in the GMP 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 Contractor, which shall perform the Work involved promptly, unless the provisions of Paragraph B below are applicable.
- B. If Contractor believes that a Field Order justifies an adjustment in the GMP or Contract Times, then it shall, before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

### 11.05 *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.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on the Contract Times or GMP; or by a Work Change Directive or Field Order, consistent with the provisions above setting for the criteria for each. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved (except where indicated in Paragraph 11.04 with respect to Field Orders); or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates 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.

### 11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the GMP 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.C.2.

#### 11.07 *Change of GMP*

- A. The GMP may only be changed by a Change Order. Any Change Proposal for an adjustment in the GMP must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of the GMP must comply with the provisions of Article 12.
- B. An adjustment in the GMP 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);
  - 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 Contractor's Fee); 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 plus Contractor's Fee.
  - 4. Where the Work involved results in an extension of the Contract Times as set forth in Paragraph 11.08 below, Contractor's General Conditions may be subject to an adjustment: (a) to the extent that Contractor demonstrates that Contractor's General Conditions have been increased as a result of such time extension; and (b) provided, however that the basis for the time extension does not arise from the events set forth in Paragraph 4.05.C above.

#### 11.08 *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 must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

#### 11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Owner to request an adjustment in the Contract Times or GMP; challenge a set-off against payment due or any other position taken by Owner; or seek other relief under the Contract. The Change Proposal will specify any proposed change in the Contract Times or GMP, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.
- B. *Change Proposal Procedures*
  - 1. *Submittal:* Contractor shall submit each Change Proposal to Owner within 10 days after the start of the event giving rise thereto, or after such initial decision.

2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in the GMP or Contract Time (if any), to Owner within 21 days after the submittal of the Change Proposal.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
  - b. Change proposals related to a change of the GMP must include full and detailed accounts of Equipment or Materials incorporated into the Work and labor and construction equipment used for the subject Work.

The supporting data must 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. Contractor bears all costs of preparing and pursuing a Change Proposal as well as the burden of proof in establishing entitlement to relief under a Change Proposal.

3. *Owner's Initial Review:* If in its discretion Owner concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Owner may request that Contractor submit such additional supporting data by a date specified, prior to Owner beginning its full review of the Change Proposal.
4. *Owner's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Owner), Owner will conduct a full review of each Change Proposal and either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing and provided to Contractor. If Owner does not take action on the Change Proposal within 60 days, then Contractor may at any time thereafter submit a letter to Owner indicating that as a result of Owner's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
5. *Binding Decision:* Owner's decision is final and binding upon Contractor, unless Contractor appeals the decision by filing a Claim under Article 12.

#### 11.10 *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, the GMP 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:* In the event Contractor appeals any Owner decision regarding Change Proposals, or any other decision or event that these General Conditions state may give

rise to a Claim, including but not limited Paragraphs 3.04, 7.17, 10.03 and 10.04, the provisions in this article shall govern the appeal.

- B. *Submittal of Claim:* Contractor shall deliver a Claim to Owner promptly (but in no event later than 10 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 21 days of the decision under appeal. The responsibility to substantiate a Claim rests with Contractor. In the case of a Claim by Contractor seeking an increase in the Contract Times or GMP, 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:* Owner 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 will be stated in writing and submitted to the other party.
- D. *Partial Approval:* If Owner approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action Contractor invokes the procedure set forth in Article 17 for final resolution of disputes.
- E. *Denial of Claim:* If efforts to resolve a Claim are not successful, Owner may deny it by giving written notice of denial to Contractor. If Owner does not take action on the Claim within 90 days, then 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 will be final and binding unless within 30 days of the denial Contractor invokes the procedure set forth in Article 17 for the final resolution of disputes.
- F. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, 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 will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the GMP.

## **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 and Contractor's General Conditions:* The terms "Cost of the Work" and "Contractor's General Conditions" are used for two distinct purposes:
  - 1. To determine Cost of the Work and Contractor's General Conditions as components of the GMP; and
  - 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment to the GMP. When the value of any such adjustment is determined on the basis of Cost of the Work and/or Contractor's General Conditions, Contractor is entitled only to those additional costs directly required

because of the change in the Work or because of the event giving rise to the adjustment.

- B. *Costs Included:* The costs included as Cost of the Work and Contractor's General Conditions are identified in Article 6 of the Agreement.
- C. *Costs Excluded:* The Cost of the Work and Contractor's General Conditions shall not include any Non-Reimbursable Costs.
- D. *Documentation and Audit:* For the avoidance of doubt, all of the Costs of the Work and Contractor's General Conditions shall be made available to Owner on an Open Book Basis, and subject to the Books and Records requirements of Article 11 of the Agreement.

#### 13.02 *Allowances*

- A. It is understood that Contractor has included in the GMP Allowance Payment Items, with corresponding Allowance Payment Values. The administration of such items shall be as set forth in Section 4.4 of the Agreement.
- B. Contractor agrees that the Owner's Allowance in the GMP is for the sole use of Owner to cover unanticipated costs.

#### 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 GMP 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 determining the GMP. 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 General Conditions and Contractor's Fee for each separately identified item.
- D. Owner will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Owner will review with Contractor its preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Owner'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, and the final adjustment of the GMP will be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. *Adjustments in Unit Price*
  - 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:

- a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement.
  - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in the GMP is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

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

### **14.01 *Access to Work***

- A. Owner, its consultants and other representatives and personnel, independent testing laboratories, and Governmental Units having jurisdiction 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 with such procedures and programs as applicable.

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

- A. Contractor shall give Owner 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 will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any Governmental Unit having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such Governmental Unit, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner 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 acceptance of Equipment or Materials;
  3. by manufacturers of Equipment furnished under the Contract Documents;



4. for testing, adjusting, and balancing of mechanical, electrical, and other Equipment; and
5. for acceptance of Equipment or Materials or mix designs for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, 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 Owner, Contractor shall, if requested by Owner, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Owner timely notice of Contractor's intention to cover the same and Owner had not acted with reasonable promptness in response to such notice.
- G. Both parties may rely on the results of inspections and tests performed pursuant to this Paragraph 14.02 and the governing provisions of the Contract Documents, Laws and/or Regulations.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Owner's Rights:* Owner has the right to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner has actual knowledge will be given to Contractor.
- D. *Remedying Defective Work:* Contractor will start the process of remedying defective Work within five (5) days of Owner's notice of such defective Work. If Contractor does not promptly remedy such defective Work, then Owner shall have the right to perform directly, or have performed by third parties, the necessary remedy, and the costs thereof shall be borne by Contractor.
- 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 Units 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, 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 will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the GMP, 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. Owner has the right to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Owner, then Contractor shall, if requested by Owner, uncover such Work for Owner's observation, and then replace the covering, all at Contractor's expense.
- C. If Owner considers it necessary or advisable that covered Work be observed by Owner or inspected or tested by others, then Contractor, at Owner's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner may require, that portion of the Work in question, and provide all necessary labor, Equipment and Material.
  - 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 GMP or an extension of the Contract Times, 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 Equipment or Materials, or construction 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 will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor or any Contractor-Related Entity.

#### 14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Owner to correct defective Work, or to remove and replace defective Work as required by Owner, then Owner may, after 7 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 Equipment and Materials 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, and Owner's other contractors 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 for Construction Services*

- A. *Basis for Progress Payments:* The Schedule of Values will serve as the basis for progress payments for Construction Services and will be incorporated into a form of Application for Payment acceptable to Owner. Progress payments for 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. On or before the twenty-fifth (25<sup>th</sup>) day of the month, 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 Owner 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.
2. If payment is requested on the basis of Equipment and Materials 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 must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the Equipment and Materials; (b) at Owner's request, documentation warranting that Owner has received the Equipment and Materials free and clear of all Liens; and (c) evidence that the Equipment and Materials 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.
3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

#### *C. Owner's Review of and Action Upon Applications*

1. Owner will, within fifteen (15) days after receipt of each Application for Payment, including each resubmittal, either notify Contractor in writing that Application for Payment has been approved or disapproved, in whole or in part, and the reasons for the disapproval.
2. By approving an Application for Payment, Owner will have relied upon the representations of Contractor that:
  - 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 have been fulfilled.
3. In reviewing and acting upon Applications for Payment, Owner shall not be deemed to have represented that the inspections it has made (if any) to check the quality or

the quantity of the Work as it has been performed have been exhaustive, or extended to every aspect of the Work in progress.

4. Owner may refuse to approve the whole or any part of any Application for Payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, may revise or revoke any payment approval previously made, as Owner may believe necessary, in its sole discretion, to protect itself from loss because:
  - a. the Work is defective, requiring correction or replacement;
  - b. the GMP 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. Owner 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. Fifteen (15) days after Owner's approval of an Application of Payment, the amount approved will be paid by Owner to Contractor.

*E. Reductions in Payment by Owner*

1. Owner is entitled to impose a set-off against payment based on any of the following:
  - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from 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 GMP has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Delay Liquidated Damages or other damages that have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or Final Completion;
  - k. Liens have been filed in connection with the Work and Contractor has failed to fulfill its obligations under Paragraph 18.11, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
  - l. Other items entitle Owner to a set-off against the amount recommended.
- 2. If Owner imposes any set-off against payment, Owner will give Contractor written notice 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 will 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 will be treated as an amount due as determined by Paragraph 15.01.D.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, Equipment and Materials 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 7 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 in writing that the entire Work is substantially complete and request that Owner issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner an initial draft of punch list items to be completed or corrected before Final Payment.
- B. Promptly after Contractor's notification, Owner and Contractor, shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Contractor in writing giving the reasons therefor.
- C. If Owner considers the Work substantially complete, Owner will prepare and deliver to Contractor a certificate of Substantial Completion which will fix the date of Substantial Completion. There shall be attached to the certificate a punch list of items to be completed or corrected before Final Payment. If Owner determines that the Work

is not substantially complete, it shall so notify Contractor in writing, stating the reasons therefor.

- D. Prior to Owner issuing the 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 Insurance coverage. 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.
- G. Contractor will provide Owner with all Supplier warranties upon Substantial Completion.

#### *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 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 and Owner will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
  - 2. At any time, Contractor may notify Owner in writing that Contractor considers any such part of the Work substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within seven (7) days after such request, Owner and Contractor shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Contractor in writing giving the reasons therefor. If Owner 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 6.04 regarding Builder's Risk Insurance 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, Owner will promptly make a final inspection with 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 Owner, 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 7.12), and other documents, Contractor may make application for Final Payment.
2. The Application for Final Payment must 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, Equipment and Materials, 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 duly pending Change Proposals and Claims;
  - 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; and
  - f. a general release executed by Contractor waiving, upon receipt of Final Payment by Contractor, all Claims and other rights arising out of or related to the Contract, except those Claims specifically identified and listed in the general release that remain unsettled at the time of Final Payment, which Claims shall have been previously made in writing in accordance with this Contract.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2.e 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, Equipment and Material, supplies or other goods to be used in the performance of the Work for which a Lien could be filed; and (b) all payrolls, Equipment and Material 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. *Owner's Review of Application for Final Payment and Approval of Payment:* If Owner is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Owner will, within 15 days after receipt of the Application for Final Payment, approve such Application for Payment. Such approval will account for any set-offs against payment that are necessary in Owner's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. If Owner does not approve the Application for Final Payment, Owner will notify Contractor in writing the reasons for its disapproval, in which case Contractor shall make the necessary corrections and resubmit the Application for Final Payment.
- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for Final Payment as established by the Owner's approval of Final Payment pursuant to Paragraph B above.
- D. *Final Payment Becomes Due:* Owner shall set off against the amount approved for Final Payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within thirty (30) days of its approval of the Application for Final Payment.

#### 15.07 *Waiver of Claims*

- A. The acceptance of Final Payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner, other than those specifically set forth in the general release required by Paragraph 15.06.A.2(f), which Claims shall have been previously made in writing in accordance with this Contract.

#### 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), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect 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 adjacent areas;
  - 2. correct such defective Work;
  - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, 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 from the corrective measures.

- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, 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 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).
- D. 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.
- E. 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.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to 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. 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 GMP or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work. Notwithstanding the above, if Owner suspends Work or any portion thereof due to its reasonable judgment that Contractor has or is violating the Contract or any requirement thereof, including but not limited to violations of Owner's safety programs or any Law or Regulation related to jobsite safety, then Contractor shall not receive any adjustment in the GMP or extension of the Contract Times, unless it is ultimately determined that Contractor had not violated the Contract or any requirement thereof.

#### 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 Equipment and Materials, or failure to adhere to the Baseline 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 Governmental Unit having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner, Engineer, or Project Representative.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 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) written notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under the Performance Bond.
- C. Subject to the terms and operation of the 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 Equipment and Materials 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 7 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 GMP 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, Contractor will only be entitled to be paid for Work performed prior to its default and the balance will be for the account of and retained by Owner. 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. 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 under the Performance or Payment Bonds. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

- G. The provisions of the Performance Bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor, 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 Contractor's Fee on such Work;
  - 2. Cost of the Work and Contractor's General Conditions incurred prior to the effective date of termination in performing services and furnishing labor, Equipment or Materials as required by the Contract Documents in connection with uncompleted Work, plus Contractor's Fee 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 for any loss of anticipated profits or revenue, post-termination overhead costs, 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 any Governmental Unit, or (2) Owner fails for 45 days to pay Contractor any undisputed sums due under this Contract, then Contractor may, upon 7 days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Contractor any sum undisputed sums due under this Contract, Contractor may, 7 days after written notice to Owner, 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 the GMP 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, pursuant to Article 12; and
2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after Final Payment has been made.

The party seeking to invoke these Article 17 processes shall provide written notice of the disputed matter to the other party in a “Notice of Request for Dispute Resolution” for which it wishes to use these Article 17 processes. The Notice of Request for Dispute Resolution shall identify the substance and basis for the disputed matter, along with the amount disputed, if any. The party receiving the Notice of Request for Dispute Resolution shall respond in writing within ten business days by setting forth that party's position with respect to the disputed matter raised in the Notice of Request for Dispute Resolution.

B. *Mediation:* The Parties may, at any time after a Notice of Request for Dispute Resolution has been made, mutually agree to mediate the Dispute. For the avoidance of doubt, mediation is voluntary and will not be a condition precedent to the initiation of litigation. Any mediation will be based upon a process mutually agreed upon by the Parties. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

C. *Litigation:* Any and all disputed matters which are unresolved following voluntary mediation, if pursued, shall be resolved solely and exclusively within the Circuit Court of Jackson County for the State of Oregon; provided, however, if the disputed matter must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon, Medford Division. In no event shall this section be construed as a waiver by Owner on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS PARAGRAPH 17.01.C. THE PARTIES VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY. THE FACT FINDER SHALL BE THE COURT SITTING WITHOUT A JURY.

## ARTICLE 18—MISCELLANEOUS

### 18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner or Contractor, it will be deemed to have been validly given only if delivered:
  - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### 18.02 *Computation of Times*

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

### 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 any other Owner Indemnitee 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 will not constitute a waiver of that provision, nor will 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, Final Completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the State of Oregon, without regard to principles of conflict of laws.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party 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.

18.09 *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.

18.10 *Headings*

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

18.11 *Independent Contractor*

- A. The relationship of Contractor to Owner shall be that of an independent contractor.

18.12 *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.

END OF SECTION

## EXHIBIT 2.2.1

### SCOPE OF PRECONSTRUCTION SERVICES

**[This draft Scope of Preconstruction Services will serve as the basis of negotiation for the scope of work and contract amount for Preconstruction Services.]**

For the Preconstruction Services, the Contractor will support the Owner (City of Medford or City) and the Engineer with design development, performance of field investigations, estimating construction costs, pursuing project value, and managing an integrated project schedule. The Contractor shall determine construction means and methods, and sequencing of the work to provide for a seamless integration of the new and upgraded facilities into the existing wastewater treatment infrastructure.

Upon completion of Preconstruction Services, but no earlier than 90 percent completion of the design documents, the Contractor will prepare and submit a Guaranteed Maximum Price (GMP) Proposal, and City will enter into negotiations for the GMP Amendment. If upon agreement of the GMP Amendment, the amendment to the Construction Management Agreement (Agreement) will be executed and Construction Services may commence.

This scope is written based on the following assumptions:

- The Contractor is provided 30% design deliverables and Engineer's design schedule within 30 calendar days upon issuance of Notice to Proceed (NTP) with Preconstruction.
- The performance period for Preconstruction Services is expected to span eighteen (18) months starting with the Notice to Proceed (NTP) for Preconstruction through the GMP Amendment Date (i.e., completion of GMP Proposal negotiations and execution of the GMP Amendment).
- Early Works Packages may be authorized prior to the GMP Amendment in the form of one or more Early Work Package Amendments.

Tasks to be performed during the Preconstruction Phase are organized into the following eight major tasks. Specific details and deliverables for each task and associated subtasks are established on the following pages. Changes or modifications to the scope of services and associated deliverables identified in these tasks shall be amended according to the provisions contained within the Agreement.

- Task 1. Project Management and Coordination
- Task 2. Meetings
- Task 3. Permitting Assistance
- Task 4. Site Investigations
- Task 5. 30% Design Review and Cost Estimate
- Task 6. 60% Design Review and Cost Estimate
- Task 7. 90% Design Review and Cost Estimate
- Task 8. GMP Proposal and Early Work Packages



## Task 1. Project Management and Coordination

Provide overall project management of the Contractor services and ensure coordination of all Contractor efforts with the City, the Design Engineer, Owner's Advisor and others as appropriate. Task 1 provides for management, administration, and coordination with project stakeholders. Services to be provided by the Contractor are detailed in the following subtasks comprising Task 1.

### 1.1 Project Management and Administration

This task involves the Contractor's management of its Preconstruction Services performed in accordance with the Agreement, confirming compliance with the Agreement terms and conditions, and developing any Preconstruction Services scope amendments that may be required. Contractor will provide oversight of its project staff, manage efforts of Contractor team and ensure coordination with City, Design Engineer, and other project participants during the Preconstruction Services. Contractor shall prepare and submit monthly invoices in a form of invoice approved by City prior to approval of the first invoice.

Within 30 days (all days herein are calendar days per Agreement, unless stated otherwise) of receipt of the Project Kickoff Meeting (see below), the Contractor is to prepare a Draft Project Management Plan (PMP) that addresses the Contractor's project management and administration approach for completing the Preconstruction Services. The PMP shall include:

- Contractor's organization and key staff responsibilities
- Template for monthly invoicing and progress reporting
- Communication plan
- Risk management plan (including risk register template)
- Document control procedures
- Quality management processes
- Change management and tracking
- Preconstruction Services logs (templates only)
- Project Schedule

City and Owner's Advisor will review the draft PMP and provide comments to the Contractor. The Contractor will resolve the review comments with City and Owner's Advisor for incorporation into the final PMP.

The Contractor will prepare and submit with their monthly invoice a progress report summarizing activities completed for the current invoice period as well as activities planned for the upcoming month. A cost summary will be provided, presenting actual costs versus planned costs with details regarding any variances to plan. A summary narrative of planned versus actual schedule progress will be presented with updates on key milestones dates and activities. The report will identify any issues being faced by the Project Team and any potential impacts to scope and/or compensation. A progress report template shall be approved by City prior to approval of the first invoice. Each month, an up to date Design Evolution Log, Action Log, and Decision Log will be included as attachments to monthly reports.

#### **Deliverables:**

- Draft and Final Project Management Plan
- Monthly invoices
- Monthly progress reports

**Assumptions:** Contractor and City will utilize a collaborative online system, such as Microsoft SharePoint, for reviewing and making comments on deliverables prepared by the Engineer as well as prepared by the Contractor. File sharing system will be provided by City with access granted to Contractor, Engineer and Owner's Advisor.

## 1.2 Schedules

With the draft PMP, the Contractor will submit a draft critical path method Project Schedule, using the latest version of Primavera P6. The Project Schedule will initially include a detailed level of activities for Contractor's Preconstruction Services scope and a summary-level of detail for the Construction Services activities. It shall identify all required reviews and approvals (internal and external to Project Team), and appropriate levels of information necessary for action and timely response. Contractor shall identify tasks which may require action by the City. The Engineer will provide the Contractor with its detailed schedule for design phase activities for incorporation into the overall Project Schedule.

The Project Schedule shall include preconstruction, construction, permitting, procurement, and facility start-up activities as well as Project milestones. Contractor and Engineer shall collaborate in developing drawing package issuance schedules to meet the requirements of the Project milestones. The Project Schedule shall include all items identified in Agreement, major sequences of the preconstruction and construction work, subcontract bid package development, GMP Amendment negotiations, subcontract bidding/procurement, material supplies, Engineer's approval of shop drawings, anticipated outages to the existing facility, and performance testing. Included in this schedule shall be summary level detail of all anticipated construction activities. The schedule shall identify all long-lead procurement items.

The Project Schedule will be updated at every formal design milestone after City acceptance of draft Project Schedule. Design milestone schedule updates will include a brief memorandum explaining schedule adjustments relative to the previous design milestone. The schedule update at the 90% design milestone shall include detailed construction and commissioning activities and be the partial basis for the GMP Amendment negotiations and shall serve as the draft Baseline Schedule. During preparation of the draft Baseline Schedule, Owner's Advisor and Engineer will facilitate Contractor's efforts by answering questions regarding sequencing issues, scheduling constraints, interface points, and dependency relationships.

The expanded and revised Project Schedule will be incorporated into Contractor's GMP Proposal as the proposed Baseline Schedule. Once City has accepted the schedule, it will be the Baseline Schedule and will be incorporated in the GMP Amendment.

### **Deliverables:**

- Draft Project Schedule
- Updates of Project Schedule and schedule update memorandum
- Draft and proposed Baseline Schedule
- City-accepted Baseline Schedule

## 1.3 Risk Management

Within 90 days of NTP, Contractor shall submit the initial risk register that identifies risks that are the responsibility of the Contractor, that is in a format approved by the City and includes a qualitative classification of the impact of all risks identified. Contractor shall facilitate a four-hour initial Risk Register Workshop for Project Team to concur on risk register completeness.

Contractor shall perform quantitative risk analysis as the basis for the Contractor Contingency estimate included in each cost estimate submittal. Contractor shall conduct a two-hour risk register workshop prior to submission of each milestone cost estimate.

**Deliverables:**

- Initial risk register
- Risk Register Workshop(s)
- Revised risk register with each cost estimate submittal including estimated Contractor Contingency.
- Additional updates of risk register as described in subsequent subtasks

#### 1.4 Preconstruction Logs

Contractor shall develop and maintain several logs and provide updates as required in subsequent subtasks:

- Decision Log which records decisions made by the Project Team.
- Action Log which records all assigned action items assigned to the Project Team. The log shall include a description of the action required, the date and place (meeting) at which the action was assigned, the responsible party or person, and a reasonable due date for completing the action.
- Design Evolution Log which identifies and tracks design changes and quantifies Rough Order of Magnitude (ROM) cost and time impacts.

As directed by the City, logs may be separate or combined with other logs based on the needs of the Project Team. Items will be reviewed with the Project Team on a monthly basis.

**Deliverables:**

- Logs, as described above.
- Regular updates of logs as described in subsequent subtasks.

#### 1.5 Preconstruction Plans

In preparation for the Construction Services, Contractor shall develop and maintain several plans and provide updates as required in subsequent subtasks. In general, Plans will be developed based on 60% design documents and finalized based on 90% design documents. The Plans or elements of the Plans will need to be completed prior to preparation of commercial proposal for an Early Work Package.

##### 1.5.1 Construction Services Execution Plan

This plan is intended for Contractor to provide direction for managing critical elements of the Construction Services Work. In coordination with the Project Team, develop a construction plan that addresses issues relating to how the construction will be managed for the Project. Specific issues to be addressed include but are not limited to:

- Comprehensive document management and tracking system that will be accessible by Contractor and its subcontractors, the City, and the Engineer.
- Start-up planning (responsibilities of Contractor, coordination with City's Operations and Maintenance staff, warranties, training, manuals).
- Cost and change management and tracking.
- Site access and control issues (site security, traffic, pedestrian access, parking, noise and vibration, hoisting equipment, survey, etc.).

- Sequencing of the work, including consideration to avoid interruptions to plant's ongoing operations.
- Schedule control and reporting.
- Site staging, including construction offices, laydown and work areas, temporary facilities and utilities.
- Process for working closely with Engineer to integrate Building Information Modeling (BIM) and Virtual Design and Construction (VDC), to maximize efficiency design, construction, commissioning, start up, operations and ongoing maintenance and operations.

The Contractor shall submit the draft Construction Services Execution Plan for City review no later than 90 days after the 60% design submittal. The revised plan shall incorporate City comments and shall be submitted prior to the 90% design submittal. The Contractor shall provide revisions to the Plan as necessary to adapt to changing conditions and design advancement.

#### *1.5.2 Procurement Plan*

The Contractor shall develop and submit a Procurement Plan that includes, at a minimum:

- The scope of work and cost estimates for each bid package.
- The approach for Subcontractor and Supplier outreach.
- The approach for procuring subcontracted work in accordance with OAR 137-049-0690(5)(k)(A).
- A proposed scope and estimate of the value for proposed Self-Perform Work.
- The Contractor's updated inclusion plan for Small Business Entities, Disadvantaged Business Enterprises, and any other disadvantaged or underutilized businesses as the public body may designate in the public solicitation of proposals, as Subcontractors and Suppliers for the project are pursuant to EPA Water Infrastructure Finance and Innovation Act (WIFIA) requirements (Title 40 CFR Part 33).
- Other procurement requirements for compliance with WIFIA funding.

Based on the expected work to be performed for the Project, the Contractor's Procurement Plan shall identify how the Work will be broken into independent packages, and specialty or supply work packages that will maximize bidder participation and competition and provide best value to City. The Contractor shall identify long-lead procurement items and anticipated schedule as well as any early procurement of equipment packages. The Contractor shall ensure that subcontracting opportunities within each subcontract bid package are clearly identified and that these opportunities will attract a high level of competition from responsible local subcontractors. The Procurement Plan will describe the Contractor's approach for inviting competitive bids for the construction trade work packages and for equipment and material. Plan shall address Subcontractor and Supplier buyout and how Contractor will obtain maximum value and maintain price competitiveness. Contractor shall develop a plan to involve the best qualified subcontractors in the Project.

The Procurement Plan shall also identify construction work packages for which the Contractor plans to submit their own sealed, competitive bid(s) as well as work packages they intend to self-perform. The Contractor shall note that City must manage bid openings in which Contractor submits a bid. The process to be used by the Contractor for solicitation and receipt of competitive bids and quotations will also be identified in the Plan. The Contractor will also describe their approach for determining the specific objective criteria that will be used by the Contractor and City to evaluate bidder responsibility and recommending awards for construction subcontracts and equipment and material purchases.

The Contractor shall submit draft Procurement Plan to City for review and comment not later than 90 days after the Contractor has received the 60% design submittal. After the Contractor's receipt of City comments, the Contractor will convene a workshop to review and resolve City comments on the Procurement Plan. The Contractor will submit a revised, final Procurement Plan incorporating City's comments. Contractor will update the Procurement Plan based on the Contractor's final approach to bidding the project. The Contractor will use the 90% design documents for the technical content to be provided in the trade subcontract bid documents, and equipment and material requests for quotations. The Contractor shall submit the bids and a summary of the bid evaluations to City and the Owner's Advisor for review, and the Contractor shall facilitate a workshop to discuss the Contractor's recommendations for self-performed work, subcontracts, equipment and materials. The workshop should include the selection process and the final selection.

### *1.5.3 Health and Safety Plan(s)*

The Contractor shall develop the Preconstruction Health and Safety Plan to support site investigations during Preconstruction Phase of the project.

The Preconstruction Health and Safety Plan shall be developed for site investigations which may include soil borings, subsurface utility locations, confirmation of facility as-builts, and assessment of structural conditions as well as other investigations recommended by Engineer. The Contractor will submit draft Preconstruction Health and Safety Plan for City review and comment 60 days prior to any site investigations. The Contractor will reconcile and incorporate City comments into the final Preconstruction Health and Safety Plan and update Plan as necessary for Preconstruction Services.

The Contractor shall develop a draft Construction Health and Safety Plan for Construction Services and submit with its 90% Cost Estimate Submittal (Subtask 7.2) or earlier if needed for performance of an Early Work Package. The Contractor will finalize Construction Health and Safety Plan based on City review comments for inclusion in the GMP Proposal in Task 8.

### *1.5.4 Quality Management Plan*

The Contractor shall develop a draft Quality Management Plan (QMP) that discusses its Quality Assurance/Quality Control Program (QA/QC Program) during the construction of the Project. The Contractor shall identify a Quality Control Manager (QC Manager) who is responsible for implementing the QA/QC Program and identify the responsibilities for the Contractor, City, Engineer, and third-party testing agencies.

Draft and final QMP shall include, at a minimum:

- A statement by the Contractor's Project Manager designating the QC Manager and specifying the authority delegated to the QC Manager to direct cessation or removal and replacement of defective Work.
- Describe the QA/QC program and include procedures, work instructions, and records. Describe methods relating to areas that require special testing and procedures as required by the Specifications.
- Include specific instructions defining procedures for observing Work in process and comparing this Work with the Contract requirements (organized by specifications section).
- Describe procedures to ensure that equipment or materials that have been accepted at the Worksite are properly stored, identified, installed, and tested.



- Include procedures to verify that procured products and services conform to the requirements of the Specifications. Requirements of these procedures shall be applied, as appropriate, to lower-tier Suppliers and/or Subcontractors.
- Commissioning quality control: Include procedures to verify that the commissioning requirements of the Contract Documents are integrated into the QA/QC Program and QMP and conform to the requirements of the Specifications. Requirements of these procedures shall be applied, as appropriate, to the Contractor and the lower-tier Suppliers and/or Subcontractors.
- Include instructions for recording inspections and requirements for demonstrating through the Daily Inspection Reports that Work inspected was in compliance or a deficiency was noted and action to be taken.
- Defects and Corrective Action: Include procedures for avoiding and handling deficiencies and non-conforming Work.
- Include procedures to preclude the covering of deficient or rejected Work.
- Include procedures for halting or rejecting Work.
- Include procedures for resolution of differences between the QC Manager and the production personnel.
- Identify contractual hold/inspection points as well as any Contractor-imposed hold/inspection points.
- Discuss document control/quality records.
- QMP shall include a schedule of tests, inspections, and similar quality-control services required by the design documents.

The Draft QMP shall be submitted for City review a minimum of 14 days prior to the date of the QA/QC Program Meeting (Subtask 2.2). The results of the meeting shall inform revisions to the draft Plan that shall be submitted with Contractor's 90% Cost Estimate (Subtask 7.2) or earlier if necessary for performance of an Early Work Package. The Contractor will update QMP based on City review comments and design development for inclusion in the draft GMP Proposal in Task 8.

#### *1.5.5 Commissioning Plan*

No later than the 90% Design Review Workshop, the Contractor shall prepare for and conduct a meeting with the Project Team to discuss the draft Commissioning Plan, including confirmation of roles and responsibilities during the commissioning phase of the Project. The Contractor shall develop a draft Commissioning Plan according to the Project specifications that supports activities, personnel, and costs for Start-up, Commissioning and Acceptance Testing. The draft Commissioning Plan will be included in the Contractor's GMP Proposal.

The Commissioning Plan shall lay out the Contractor's overall plan for performing all testing activities required by Contract Documents, as applicable. It should discuss the organization of the Commissioning Team, roles and responsibilities of team members, and the lines of communication. The Plan shall address how water will be produced, conveyed, treated, recycled, and or disposed of until testing verifies specified requirements and how sludge will be introduced into the system for performance testing. The Plan shall also include a description of services, materials, and equipment to be provided and by whom. The Plan shall include a detailed schedule that is integrated into the Project Schedule and that includes at a minimum the interrelationships between O&M manual delivery, vendor training, functional testing, process controls integration, commissioning and performance testing.

#### **Assumptions:**

- City quality requirements shall be in accordance with the Agreement and the Division 01 Specifications to be provided during Preconstruction Services and shall be the basis for the draft QMP.
- City checkout and start-up procedures requirements shall be in accordance with the Agreement and the Division 01 Specifications to be provided during Preconstruction Phase and shall be the basis for the draft Commissioning Plan.

**Deliverables:**

- Draft and final Commissioning Plans as described above.

## Task 2. Meetings

This task includes the select meetings required for Preconstruction Services. Additional meetings and workshops are identified in other task sections with the Scope of Preconstruction Services.

### 2.1 Project Kick-Off Meeting

Within 30 days of NTP with Preconstruction Services, the Owner's Advisor will make arrangements for and conduct a Project Kick-Off Meeting. Attendees will include key staff from the City, Contractor, Owner's Advisor, and Design Engineer. The purpose of the meeting is to introduce team members, discuss project objectives, define roles and responsibilities of team members, discuss communication and decision-making protocols, discuss project administration including review of monthly invoicing and progress reporting, discuss Preconstruction Services scope and schedule (generally), and to discuss and implement procedures allowing the City, Contractor, and Design Engineer to perform their respective obligations of the Project. The Owner's Advisor will prepare a meeting summary and will distribute to the attendees.

**Assumptions:**

- Meeting is assumed to be in-person and will last no more than six hours.
- Meeting will additionally include site walk to review existing field conditions.

**Deliverables:**

- As requested prior to meeting.

### 2.2 Monthly Progress Meetings

The Contractor shall conduct Progress Meetings on a monthly basis during the Preconstruction Phase. The standing meeting agenda will be developed by the Contractor with input from City and the Owner's Advisor and will include schedule and cost estimate updates, status of Contractor's Preconstruction Services activities and deliverables, as well as updates to the Preconstruction logs.

**Assumptions:**

- Each meeting is assumed to last no more than two hours and be conducted virtually.

**Deliverables:**

- Agenda and Preconstruction logs
- Meeting minutes

### 2.3 Bi-Weekly Design Progress and Coordination Meetings

The Contractor shall attend bi-weekly (every other week) design progress and coordination

meetings to address project specific issues or questions.

**Assumptions:**

- Each meeting is assumed to last no more than two hours and be conducted virtually.

**Task 3. Permitting Assistance**

The purpose of this task is to support the City and Engineer in securing project permits. The Contractor will assist in the completion and negotiation of these permits as it relates to implementation of the project construction, except for permits required to be obtained directly by the Contractor.

**Assumptions:**

- The Contractor shall assume 40 hours of effort to support this task.

**Task 4. Site Investigations**

The Contractor shall coordinate with the Engineer and City to identify field investigations required to support design development, prepare risk mitigation plans, and gather information to support the development of Methods of Procedures (MOPs) during subsequent construction. City MOP requirements shall be in accordance with the Agreement and the Division 01 Specifications to be provided during Preconstruction Phase.

**4.1 Subsurface Utility Verifications**

The Contractor shall assist the Engineer in field verification of existing utility locations within the boundaries of the site work areas. Contractor shall be responsible for subcontracting for subsurface utility verification services. The Engineer will support these investigations by providing documentation of the findings with a memo and marked up site plan. The Contractor and Engineer will determine if the utility verifications identify impacts on the design and construction of the Project.

**4.2 Verification of As-Built Conditions**

The Contractor shall assist the Engineer in the validation of as-built conditions of the existing facilities to identify constructability issues which may impact construction means and methods.

**Assumptions:**

- Task includes Contractor participation in up to four in-person meetings on-site, each lasting up to four hours.
- Engineer to evaluate and document as-built conditions through annotated drawings.
- Contractor shall document existing conditions describing the current operation of systems such as instrumentation and controls, power distribution, and support utilities. Existing conditions must include visible condition, operational status, and operational description including alarms and setpoints.

**Task 5. 30% Design Review and Cost Estimate**

**5.1 30% Design Review**

Up to two (2) 30% Design Workshops will be conducted to allow the Engineer to present the 30% design to the City and Contractor. The Contractor shall provide initial perspective on conflicts,



omissions, dimensioning and other potential problems. Within 21 days after receiving the 30% design submittal, the Contractor will produce a summary of review comments focused on value engineering concepts, constructability, design coordination, and issues, if any, related to project implementation.

**Assumptions:**

- Workshops shall be conducted in-person and last no more than six hours each.

**Deliverables:**

- Design review comments.

## 5.2 Cost Estimate Submittal based on 30% Design

Within 30 days from the 30% design submittal, the Contractor will prepare the Cost Estimate Submittal in accordance with the cost model methodology provided as Attachment A to this Scope of Preconstruction Services and submit to the City and Engineer for review. The Contractor shall furnish copies of quotations to City in its Cost Estimate Submittal. This estimate will provide information for the City and Engineer to assist in evaluating alternative designs, equipment, materials or other variations in implementation of the project and will provide the basis for tracking costs during detailed design development. The Contractor shall incorporate information on labor rates, productivity, pricing of materials and equipment, overhead costs and escalation. The Contractor shall conduct a meeting (not to exceed six hours) with the Engineer and City to address estimate review comments and reconcile cost elements that appear to be misaligned with the project's intended scope and the Engineer's cost estimate (30% Cost Reconciliation Workshop).

**Deliverables:**

- Cost Estimate Submittal based on 30% design.
- Meeting notes from 30% Cost Reconciliation Workshop.

## 5.3 Value Analysis and Constructability Review of 30% Design

The Contractor shall perform an initial value analysis and constructability review on the 30% design deliverable. Value analysis or constructability review comments generated from this review shall be recorded in a spreadsheet summarizing the comment, its positive or negative benefits, as well as an order of magnitude assessment of the impact to the project cost and schedule. Value analysis shall identify, evaluate, and propose cost-effective alternatives to all aspects of the Project design, and also identify alternatives that increase overall project effectiveness (i.e., quality improvements, construction efficiencies, and improve life cycle costs). Such analysis shall be presented by the Contractor, as requested by City and Engineer, in a format (report, sketches, drawings, PowerPoint presentation) that enables the City and the Engineer to readily evaluate proposed alternatives on the basis of their potential Project cost and time savings.

The Contractor's constructability review shall provide recommendations on the construction documents with issues such as constructing early work, phasing of the work, staging, temporary work, new construction techniques or methods for executing the work, along with identifying where the contract documents are not consistent or complete. The review should confirm that good building practice is being incorporated into the documents and design elements are buildable as designed. Additionally, the Contractor shall (a) identify physical conflicts between existing structures and/or utilities; (b) confirm that tie-in conditions to existing structures are coordinated with the Drawings; (c) confirm that sequencing of the Work is coordinated with the Drawings; (d) identify and clarify any potential impacts to existing facility operations which require a mitigation plan to be developed; (e) identify site logistics which need to be incorporated into the

Drawings; and (f) identify items or issues in the Drawings which may cause the Project additional cost and time impacts and which can be avoided or eliminated from the Project.

The Contractor shall participate in a meeting (not to exceed six hours) facilitated by the Owner and/or Owner's Advisor to receive input and address questions from City and the Engineer on the Contractor's review comments. At or following this meeting, the City shall identify value analysis and constructability review comments which are to be incorporated into the project scope and design. The Contractor will incorporate City-approved modifications resulting from this review into the Design Evolution Log to record design modifications and their overall impact on the project cost and schedule. Log shall include analysis of costs and schedules and savings or other benefits that will be gained with the recommended alternatives.

**Deliverables:**

- Value analysis and constructability review spreadsheet for 30% design.
- Value analysis schematics, if requested.
- Updated Design Evolution Log incorporating scope changes as agreed upon by City.

### Task 6. 60% Design Review and Cost Estimate

The Contractor will support the Engineer and provide advice and input as requested as the design is advanced from the 30% design phase to 60% design phase. The Contractor will address day-to-day matters of design development involving constructability, cost, maintenance of plant operations, tie-in approaches, design discipline coordination, risk identification and their planned mitigations, and others matters identified by the Engineer and City. Throughout this interaction, the Contractor will actively update and maintain the Design Evolution Log and Risk Register.

#### 6.1 60% Design Workshops

The Contractor will participate in up to two (2) 60% Design Workshops conducted by the Engineer to present the 60% design to City and the Contractor. The Contractor shall provide input to the Engineer on items including conflicts, omissions, dimensioning and other potential problems. Within 21 days after receiving the 60% design submittal, the Contractor will produce a summary of review comments focused on value analysis concepts, constructability, design coordination, and issues, if any, related to project implementation.

**Assumptions:**

- Workshops shall be conducted in-person and last no more than six hours each.

**Deliverables:**

- Design Evolution Log update based on the 60% Design Reconciliation Workshop.

#### 6.2 Cost Estimate Submittal based on 60% Design

Within 30 days from receiving the 60% design submittal, the Contractor shall update Cost Estimate to incorporate adopted changes resulting from various project reviews and other accepted changes, incorporate any new information on labor rates, productivity, pricing of materials and equipment, overhead costs and escalation. The Contractor will convene a meeting (not to exceed six hours) with the Engineer and City to address estimate review comments .

**Deliverables:**

- Cost Estimate submittal based on the 60% design.

### 6.3 Value Analysis and Constructability Review of 60% Design

The Contractor shall perform value analysis and constructability review on the 60% design deliverables. Constructability review and value analysis shall be performed as described in Subtask 5.3, and shall be updated and advanced to reflect additional level of design detail. The Contractor will submit the spreadsheet to Owner and the Engineer for review and evaluation. The Contractor will incorporate Owner-approved modifications resulting from this review into the Design Evolution Log to record design modifications and their overall impact on the project cost and schedule. Log shall include analysis of costs and schedules and savings or other benefits that will be gained with the recommended alternatives.

#### **Deliverables:**

- Value analysis and constructability review spreadsheet for 60% Design.
- Updated Design Evolution Log incorporating scope changes as agreed upon by City.

### Task 7. 90% Design Review and Cost Estimate

The Contractor will support the Engineer and provide advice and input as requested as the design is advanced from the 60% to 90% design phase. The Contractor will address day-to-day matters of design development involving constructability, cost, maintenance of plant operations, tie-in approaches, design discipline coordination, risk identification and their planned mitigations, and others matters identified by the Engineer and City. Throughout this interaction, the Contractor will actively update and maintain the Design Evolution Log and Risk Register.

#### 7.1 90% Design Review

The Contractor will participate in up to two (2) 90% Design Workshops conducted by the Design Engineer to present the 90% design to City and the Contractor. The Contractor shall provide input to Engineer on items including initial perspective on conflicts, omissions, dimensioning and other potential problems. Within 21 days after the conclusion of the workshop, the Contractor will produce a summary of review comments focused on value analysis concepts, constructability, design coordination, and issues, if any, related to project implementation. City, Engineer and Contractor will meet to resolve design review comments and to establish clear direction on how comments impact 100% design, Project scope and cost.

#### **Assumptions:**

- Workshops shall be conducted in-person and last no more than six hours each.

#### **Deliverables:**

- Design Evolution Log update based on 90% Design Review Workshop.

#### 7.2 Cost Estimate Submittal based on 90% Design

Within 30 calendar days from the 90% Design Review Workshop, the Contractor shall update Cost Estimate to incorporate adopted changes resulting from various project reviews and other accepted changes, incorporate any new information on labor rates, productivity, pricing of materials and equipment, overhead costs and escalation. The Contractor will convene a meeting with the Engineer and City to address estimate review comments and reconcile cost elements that appear to be misaligned with the projects intended scope.

#### **Deliverables:**

- Cost Estimate Submittal.

- Cost Review Workshop.

### Task 8. GMP Proposal(s)

The Contractor shall develop GMP Proposal in accordance with the Agreement. The GMP Proposal will establish the commercial terms for performance of the Construction Services. Upon City acceptance of the GMP Proposal, it is anticipated that City and Contractor will amend the Agreement and incorporate the agreed-upon GMP Amendment.

This task includes utilizing the 90% design documents that have been revised to reflect changes agreed to at the 90% Design Review Workshop to bid work packages, bid trade subcontract work packages, and request binding quotations for equipment and materials. Contractor will procure the work in accordance with the Procurement Plan and Agreement.

#### 8.1 GMP Proposal Development

Within 60 calendar days of the 90% Design Review Workshop, the Contractor will develop GMP Proposal based on Contractor's recommendation for award of trade subcontract bids, and quotations for equipment and permanent materials. Contractor's recommendations for award are to be documented in an open book format. Additionally, Contractor shall work with Engineer and City to develop scope for startup and commissioning that will serve as the basis for a cost allowance in the GMP. The GMP Proposal format will be developed consistent with the requirements established in the Agreement and Attachment A to this Scope of Work.

#### Deliverables

- Draft GMP Proposal
- Negotiated GMP Proposal

#### 8.2 GMP Workshops

##### 8.2.1 GMP Approach Workshop

Following submission to City and the Design Engineer of the draft Procurement Plan per Subtask 1.5 and the Construction Cost Estimate based on the 60% Design per subtask 6.2, the Contractor will conduct an initial GMP Workshop (not longer than four hours) with City, OA and Design Engineer. This workshop will be used to describe the Contractor's approach to competitive bidding of the work, and will also detail Contractor's process for receiving, evaluating and recommending bids and quotations used to establish the basis for each GMP. This workshop will also provide an opportunity to discuss any other aspects of the cost model and contracting plan.

##### 8.2.2 Construction Price Proposal Presentation Workshop

Within 21 calendar days after receipt of bids and quotations for preparation of the GMP Proposal, the Contractor will convene an additional GMP workshop (not longer than four hours) to present the GMP Proposal to City. The purpose of this workshop is to 1) familiarize City with the proposal contents and 2) identify the Contractor's basis of selection of trade subcontractor bids and supplier quotations used to establish the GMP. The Contractor will conduct such Workshop for each GMP.

##### 8.2.3 GMP Negotiation Workshop(s)

Within 14 calendar days of the GMP Proposal Presentation Workshop with City, the Contractor will participate in up to three, 4-hour meetings to negotiate the GMP Proposal with City.

### 8.3 Early Work Packages

The Contractor shall provide Cost Estimate, perform procurement activities, prepare a commercial proposal for an Early Work Package, and negotiate amendments with City for up to two (2) Early Work Packages that may include but not be limited to site preparation/excavation, concrete/structural construction, demolition, storm drain diversion, administration building, and major electrical equipment.

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## **ATTACHMENT A COST MODEL REQUIREMENTS**

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### **ARTICLE 1 – INTRODUCTION**

As part of performance of the Preconstruction Services, the Contractor shall prepare, at each design milestone a Cost Estimate Submittal for Construction Services. This Attachment A describes the requirements that the Contractor shall follow to prepare its Cost Model and the Cost Estimate Submittals. Each Cost Estimate Submittal shall represent an “open-book” cost estimate detailing both the direct and indirect cost components. The Cost Estimate Submittal at each milestone will be submitted to the City for review and comment. The City shall either:

1. Accept the Cost Estimate Submittal;
2. Accept the Cost Estimate Submittal with exceptions that the Contractor will need to incorporate in subsequent Cost Estimate Submittal (i.e., the cost estimate with the next design submittal); or
3. Reject the Cost Estimate Submittal for additional refinement or development to meet the City’s requirements.

Cost Estimate Submittal Review Memorandum will be provided from the City to Contractor that will include the City’s comments regarding the Cost Estimate Submittal, and whether the City accepts, accepts with exceptions, or rejects the Cost Estimate Submittal. A meeting will be held to discuss the City’s review comments, as well as how the Contractor intends to address such comments and incorporate those comments into either a revised Cost Estimate Submittal or the subsequent Cost Estimate Submittal (i.e., the cost estimate with the next design submittal).

### **ARTICLE 2 - COST ESTIMATE SUBMITTAL REQUIREMENTS**

#### **2.1 Organization of the Cost Estimate Submittal**

Contractor shall prepare each Cost Estimate Submittal containing the following components in the following order:

- Cost Estimate Summary Memorandum
- Attachment 1 – Cost Model
- Attachment 2 – Assumptions and Exclusions
- Attachment 3 – Subcontractor and Supplier Estimates and/or Bids
- Attachment 4 – Allowance Items
- Attachment 5 – Contractor Contingency Costs Support Information
- Attachment 6 – General Conditions Information
- Attachment 7 – Updated Letter from Surety
- Attachment 8 – Updated Project Schedule

Contractor shall submit to City and Owner’s Advisor an electronic copy in Adobe PDF format. The following subsections describe in detail the information to be provided within each Cost Estimate Submittal component.



## 2.2 Cost Estimate Summary Memorandum

The Cost Estimate Summary Memorandum shall consist of a narrative summary of the cost estimate that includes, at a minimum, the following:

- A. Summary of costing activities since the previous Cost Estimate Submittal.
- B. Changes subsequent to the previous cost estimate and reasons for the changes. Changes should be clearly denoted between the current cost estimate and the prior cost estimate. Contractor shall address outcome of estimated Work items relative to its escalation trend tracking efforts.
- C. Response to City's comments on prior Cost Estimate Submittal.
- D. List of proposed major equipment with the procurement status for each. The procurement status should include supplier pre-qualification activities and suppliers pre-qualified to-date.
- E. Identify long lead equipment or materials and associated plan for procurement.
- F. List of proposed construction package subcontracts with the procurement status for each. The procurement updates should include subcontractor pre-qualification activities and subcontractors pre-qualified to-date.
- G. Describe process for selecting and including subcontractor, materials, and equipment prices in cost model, and impact of such pricing on project costs.
- H. Current contingency value and the approach to determining the value. Describe basis for escalation value and provide support information that justifies escalation value. Discuss any opportunities to mitigate the impacts of escalation.
- I. Provide overview of work to be self-performed, reasons/rationale/benefits for self-performed work, description of what is included in self-performed work areas, and explanation of how Contractor meets requirements for self-performance.
- J. A cost summary table similar to Table A-1.

<b>Table A-1 – Contractor Cost Summary</b> CITY OF MEDFORD – REGIONAL WATER RECLAMATION FACILITY (RWRF) UPGRADE PROJECT			
<b>Cost Element</b>	<b>30% Design</b>	<b>60% Design</b>	<b>90% Design</b>
<b>Construction Cost of Work</b>			
Construction Costs			
Allowances			
Taxes			
<i>Subtotal Construction Cost of Work (A)</i>			
<b>Contractor Contingency</b>			
Escalation of Labor and Material			
Contractor Risks			
Scope Gap/Exclusions			
<i>Subtotal Contractor Contingency (B)</i>			
<b>General Conditions (C)</b>			
<b>Contractor's Fee (D)</b>			
<b>Guaranteed Maximum Price (GMP) (A+B+C+D)</b>			
<b>Preconstruction Services</b>			

## 2.3 Attachments

The Contractor shall update the attachments described below at each milestone to reflect design progression and refinement of Project during Preconstruction Services. Such attachments shall be included in the GMP Proposal.

### ***Attachment 1 – Cost Model:***

1. Attachment 1 shall include a line item cost breakdown of all Contractor costs, including all labor, materials, subcontractor, and supplier cost elements consistent with Association for the Advancement of Cost Engineering - International (AACEi) practices. The organization of the Contractor's cost model should follow the organization of Table A-1 such that all costs are accurately accounted for.
2. The Cost of Work shall be organized by each designated facility/area. The facility/area designations will be agreed upon by the City and Contractor.
3. For work performed by the Contractor (i.e., self-performance), Cost of Work should be distinguished as such and should be presented in conformance with Construction Specifications Institute (CSI) MasterFormat 2018 Edition, with a category for each Division.
4. The Divisions may change depending on the CSI MasterFormat Edition being used for the Project and as approved by the Design Engineer and City.
5. An example cost model format is provided in Table A-2 below. The cost model format by Contractor does not need to match the example exactly but rather the level of detail and intent reflected in the example.
6. General Conditions Costs (typically considered Division 01 Specifications (City's Requirements)).
7. For work not performed by the Contractor (e.g., competitively bid, subcontracted or vendor supplied), corresponding Construction Cost of Work should be delineated as such and do not have to be presented in the CSI format. If a quote or bid is received for a particular cost element (e.g., major equipment, subcontracted work package), the cost model line item shall correspond to the quotes and bids provided in Attachment 3 of the Cost Estimate Submittal (ex., line item cost for concrete material shall correspond to the bid price provided by selected concrete supplier). Line item costs shall include all applicable taxes and fees.
8. The total cost reflected in the cost model shall equal the GMP provided in the Cost Estimate Summary Memorandum.



<b>Table A-2 – Example of Cost Model Format</b>										
<b>CITY OF MEDFORD – REGIONAL WATER RECLAMATION FACILITY (RWRF) UPGRADE PROJECT</b>										
<b>Item Number</b>	<b>Work Element Description</b>	<b>Takeoff Quantity</b>	<b>Labor Cost/Unit</b>	<b>Labor Quantity</b>	<b>Labor Price</b>	<b>Material Cost/Unit</b>	<b>Material Quantity</b>	<b>Material Price</b>	<b>Subcontractor Cost</b>	<b>TOTAL COST</b>
<b>Facility 210</b>										
<b>Division 03</b>										
<b>03-100</b>	<b>Concrete</b>									
03-101	Concrete Material									
03-102	Reinforcing Steel									
03-103	Formwork									
03-104	Cranes									
03-105	Concrete Pumping									
<b>Subtotal 03-100</b>										
<b>Subtotal Division 3</b>										

**Attachment 2 – Assumptions and Exclusions:**

1. Attachment 2 shall include a list of all assumptions, clarifications, and exclusions that Contractor used to determine the project costs.
2. Assumptions, clarifications and exclusions which are contrary to an express contract term shall not be used in interpreting the rights and obligations of the parties under the Agreement.
3. Provide table of specific items excluded from estimate that are either the responsibility of the City or for other reason.
4. Provide table of assumptions and clarifications (includes identification of scope gap items and other assumptions/clarifications used to develop the cost estimate; include those items that document what is assumed to be included in the estimate that is not necessarily reflected in drawings and specifications; include clarifications on quantities and unit costs utilized).
  - General Assumptions/Clarifications
  - Sitework and Yard Piping Assumptions
  - Concrete Assumptions
  - Metals Assumptions
  - HVAC and Plumbing Assumptions
  - Exposed Process Piping and Mechanical Assumptions
  - Electrical and I&C
  - SCADA/Programming

**Attachment 3 – Subcontractor and Supplier Estimates and/or Bids:**

1. Attachment 3 shall include a copy of all subcontractor and supplier quotes or bids received by Contractor. The quotes and bids shall be organized by facility/area and/or bid package. A summary sheet shall be provided for each bid package listing the supplier/subcontractor that provided quotes/bids, the price from each quote/bid, the supplier/subcontractor selected or recommended, the reason for selection (i.e., low bid, best-value, etc.), and any scope deficiencies (scope gap/exclusions) and corresponding cost estimate for the deficiencies (as estimated by the Contractor). One summary sheet can be used for each bid package. Quotes and bids from respective subcontractors and suppliers shall explicitly describe the scope of services associated with the quote or bid (including assumptions, exclusions, and clarifications), and shall include a quantity and unit price breakdown of primary work elements.
2. It is expected that as the design progresses (e.g., 60% Design to 90% Design) most supplier and subcontractor bids will be obtained by Contractor, rather than estimates/quotes, and will be used as the basis for the Cost Estimate Submittal.

**Attachment 4 – Allowances:**

1. Attachment 4 shall include a detailed description of each allowance item proposed by Contractor along with a proposed cost for each allowance item. Each allowance item description shall consist of a summary description of the allowance item, an itemized list of scope items included within allowance item, and any specific and applicable exclusions to allowance item.

**Attachment 5 – Contractor Contingency Support Information:**

1. Attachment 5 shall include a breakdown of Contractor contingencies consisting of:
  - a) Escalation of materials and goods;
  - b) Contractor risks; and
  - c) Scope gap/exclusions not included as part of the construction costs (i.e., direct costs for self-performance, subcontracted, or supplier work).

Attachment 5 shall contain all financial and probability-of-occurrence analysis and other support information that was used by Contractor to determine the value of the contingencies.

2. For escalation contingencies, the Contractor shall detail the escalation approach and methodology used for determining materials and goods escalation over the project duration. Escalation for equipment, supply contracts, and subcontracts should not be included within the escalation contingency if such costs were included within the subcontract and equipment packages (e.g., proposers were required to include escalation in its pricing).
3. For Contractor risk contingencies, a risk register in accordance with Scope for Preconstruction Services and/or risk model of all project risks assumed by Contractor shall be included with a corresponding monetary value associated with each risk. The risk register and/or model shall include risk description, risk likelihood/probability, consequence of occurrence (monetary value/cost), mitigation approach, and risk assignment. A copy of the risk model will be provided to the City.
4. For scope gap/exclusions contingencies, the Contractor shall detail omissions not included within equipment or subcontracted packages. Scope gap/exclusions may include known deficiencies or issues with a package that do not conform to Contractor or City specifications/requirements. Scope gap/exclusions should be delineated by facility/area and/or bid package.
5. The monetary value of the contingencies shall equal the Contractor Contingency amount provided in the Cost Estimate Summary Memorandum.

***Attachment 6 – General Conditions Costs Support Information:***

1. This attachment shall include information to support the general conditions costs provided in the cost model.
2. The Contractor shall provide an organizational chart of its construction services staff and a person-hour analysis including costs of base wages or salaries of supervisory and administrative personnel of the Contractor (includes Contractor and all its subsidiaries that will perform Work). Supervisory and administrative personnel include the Project Manager, Project Superintendent(s), Project Engineer(s), Scheduler, and Field Engineer.
3. The Contractor shall include the following cost information, at a minimum, for developing the Field Office and Construction Supply Costs for construction services staff:
  - Facilities for drinking water and sanitation to support field offices (drinking water system will be metered)
  - Provide fire protection, site security, power generation, communications, and appropriate lighting for temporary facilities.
  - Traffic control equipment rental
  - Temporary weather protection facilities
  - Fencing, barricades, partitions, and protected walkways
  - Site erosion control
  - Contractor field office mobilization and demobilization
  - Office trailer rental
  - Office furniture and equipment
  - Office janitorial
  - Document reproduction services (off-site or custom)
  - Copy machines, fax machines, printers, scanners, and paper shredders
  - Office computers, software, and maintenance
  - Office telephones, and telephone and internet service
  - Accounting and data processing costs
  - Jobsite radios/cellular phones
  - Postage, courier, and express delivery

- Scheduling expenses and job meeting expenses
  - Job travel, including fuel and vehicle
  - Temporary parking and laydown areas
  - Storage facilities, both on and off site, as appropriate
  - Tools and toolshed
  - Surveying equipment and supplies
  - Office supplies
  - Project specific signage
  - Reference manuals
  - Employee identification system
  - Business licenses and fees
4. The Contractor shall include the following cost information, at a minimum, for developing the Temporary Amenities for Contractor Project Site activities:
- Facilities for sanitation to support field offices. Facilities for non-potable water supply (drinking water not available).
  - Provide fire protection, site security, power generation, communications, and appropriate lighting for temporary facilities.
  - Traffic control equipment rental.
  - Temporary weather protection facilities.
  - Fencing, barricades, partitions, and protected walkways.
  - Site erosion control.
5. The Contractor shall include cost information for maintaining a clean Project site through the Project duration, which includes; daily site cleanup and dumpsters, cleanup.
6. The Contractor shall include cost information for developing and maintaining a Construction Trade Training Program and the Health and Safety Program.
7. The Contractor shall include cost information to visually document project progress using photographs and videos.

***Attachment 7 – Updated Letter from Surety:***

1. This attachment shall include an updated letter from the surety (or sureties) verifying that Contractor has sufficient bonding capacity available for the Project based on the current cost estimate.

***Attachment 8 – Updated Final Design and Construction Schedule:***

1. Attachment 8 shall include an updated summary-level (i.e., roll-up) schedule for the Construction Services in accordance with Scope for Preconstruction Services that should be consistent with the completion durations included in the cost model all direct costs (by facility/area) and indirect costs (i.e., Specified General Conditions).

**Exhibit 7.1**  
**Preconstruction Services Compensation**

[TO BE INSERTED]

**Exhibit 14.1**  
**Insurance Requirements**

1. Contractor's Insurance. Contractor shall obtain and maintain the following insurance coverages during the performance of the Work. Policy coverage limits may be achieved through a combination of insurance policies (e.g., primary and/or excess). Owner and all additional insureds identified in Paragraph 6.02.K of the General Conditions shall be included as additional insureds on a primary, non-contributory basis for the coverages set forth in paragraphs (b), (c), (d), and (f) below.

(a) Workers' Compensation and Employer's Liability Insurance. Workers' Compensation insurance to cover the statutory limits of the Workers' Compensation laws in all locations where the Work is to be performed and Employer's Liability coverage with limits of \$1,000,000, which shall cover all of Contractor's employees engaged in the Work.

(b) Commercial General Liability Insurance. Commercial General Liability insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Such insurance shall include coverage for Products-Completed Operations, Broad Form Contractual Liability, Broad Form Property Damage and Personal Injury Liability, Premises/Operations, Explosion, Independent Contractor Liability, and Collapse and Underground Hazards Coverage and Hostile Fire Liability.

(c) Automobile Liability Insurance. Automobile Liability insurance providing liability coverage for claims of bodily injury and property damage arising from the ownership, maintenance or use of all owned/leased, non-owned and hired motor vehicles used in the performance of the Work. Such policy shall provide coverage of \$1,000,000 combined single limit of liability for bodily injury and property damage. Coverage shall include pollution liability arising from overturn and collision.

(d) Umbrella/Excess Liability Insurance. Umbrella/Excess Liability insurance in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$5,000,000 per occurrence and in the aggregate.

(e) Builder's Risk Insurance. Builder's Risk insurance, on an "all risks" completed value basis, including permanent and temporary works, site preparation, and foundations. Covered causes of loss shall include, but not be limited to, fire, explosion, collapse, earth movement (including subsidence, sinkhole and collapse), flood, windstorm, theft, collapse, terrorism and vandalism. The Builder's Risk insurance must be Project-specific and will cover Owner, Contractor and all Contractor-Related Entities prior to Substantial Completion, with a limit equal to the full value of the GMP. Further, the policy shall include extensions of coverage with minimum sub-limits as follows: (1) at least \$15,000,000 for off-site storage and transit; (2) at least \$15,000,000 for debris removal and demolition; and (3) at least \$10,000,000 for increased costs of construction, expediting expenses, soft costs (including Owner's continuing project administration expenses), professional fees and loss adjustment expenses. The policy also will include replacement cost coverage for buildings, structures, materials, supplies, equipment, machinery, and fixtures that are or will be part of the Project. Coverage will include, but not be limited to, the following (provided that commercially reasonable sub-limits will be accepted where typical): right to partial occupancy; London Engineering Group (LEG) 3 type or equivalent coverage for faulty workmanship, and/or faulty materials, testing, and change in ordinance or law.

(f) Contractor's Pollution Liability Insurance. Contractor's Pollution Liability insurance on a project-specific basis to indemnify for bodily injury, property damage, cleanup/remediation costs or other amounts which Contractor or any Contractor-Related Entity is legally obligated to pay arising out of the Work, any transit and/or disposal at non-owned disposal sites. Such insurance will have minimum limits of \$10,000,000 any one claim and in the aggregate and will remain in full force and effect for the period of the Work and a five (5)-year extended reporting period after Final Completion.

(g) Professional Liability Insurance (to be included only if the Contractor has delegated design responsibility). Professional Liability insurance providing coverage for services that are architectural, engineering, design, medical, counseling, accounting, financial, audit, insurance, legal, information technology, software services, environmental consulting or remediation, or hazardous materials handling in nature. Professional Liability Insurance (also known as "Errors and Omissions" or "malpractice liability" insurance for professionally trained, licensed, or certified professionals) with a limit of at least \$2,000,000. Such coverage may be on a "claims made" policy. Should the Professional Liability Insurance policy be terminated for any reason, satisfactory "tail" coverage of an extended claims reporting period of at least two (2) years shall be required and provided at the sole expense of Contractor.

2. Insurance to be Obtained and Maintained by Subcontractors. Contractor will cause all Subcontractors (other than Suppliers) to obtain and maintain the following minimum insurance coverages or be responsible for maintaining such coverages on behalf of each party. Owner and all additional insureds identified in Section 6.02.K of the General Conditions shall be included as additional insureds on a primary, non-contributory basis for the coverages set forth in paragraphs (b), (c) and (d) below.

(a) Workers' Compensation and Employer's Liability Insurance. Workers' Compensation insurance to cover the statutory limits of the Workers' Compensation laws in all locations where the Work is to be performed and Employer's Liability coverage with limits of \$500,000, which shall cover all of Subcontractor's employees engaged in the Work.

(b) Commercial General Liability Insurance. Commercial General Liability insurance with a combined single limit of \$1,000,000 per occurrence and \$1,000,000 annual aggregate for subcontracts valued at less than or equal to \$2,000,000. Such insurance shall include coverage for Products-Completed Operations, Broad Form Contractual Liability, Broad Form Property Damage and Personal Injury Liability, Premises/Operations, Explosion, Independent Contractor Liability, and Collapse and Underground Hazards Coverage and Hostile Fire Liability.

(c) Automobile Liability Insurance. Automobile Liability insurance providing liability coverage for claims of bodily injury and property damage arising from the ownership, maintenance or use of all owned/leased, non-owned and hired motor vehicles used in the performance of the Work. Such policy shall provide coverage of \$500,000 combined single limit of liability for bodily injury and property damage. Coverage shall include pollution liability arising from overturn and collision. Should Contractor implement a CCIP, all Subcontractors shall nevertheless comply with this requirement.

(d) Umbrella/Excess Liability Insurance. Umbrella/Excess Liability insurance in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$1,000,000 per occurrence and in the aggregate. For subcontracts valued at more than \$1,000,000, coverage shall be in the amount of \$4,000,000 per occurrence and in the aggregate.

Should Contractor implement a contractor-controlled insurance program (CCIP) providing compliant insurance for all participants with regard to on-site activities, all Subcontractors enrolled in the CCIP shall still be responsible for procuring and maintaining automobile liability insurance and the other insurance coverages noted above with regard to off-site work. Owner and all additional insureds identified in Section 6.02.K of the General Conditions shall be included as additional insureds on a primary, non-contributory basis for the applicable insurance coverages set forth in paragraphs (b), (c) and (d) above.

3. Insurance to be Obtained and Maintained by Suppliers. Contractor will cause all Suppliers to purchase and maintain commercial general liability, automobile liability and any other insurance that is appropriate for their participation in the Project.

DRAFT



**Exhibit 14.2(a)**  
**Form of Performance Bond**

BOND NO. \_\_\_\_\_

BOND AMOUNT: \$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, THE CITY OF MEDFORD, OREGON ("City") has awarded to \_\_\_\_\_, a \_\_\_\_\_ duly organized and existing under the laws of the State of \_\_\_\_\_ ("Contractor"), a Construction Management Agreement dated \_\_\_\_\_ ("Agreement"); and

WHEREAS, one of the conditions of the Agreement is that Contractor shall provide this duly executed instrument ("Bond").

NOW THEREFORE, We, the undersigned Contractor and \_\_\_\_\_, a corporation duly organized and existing under and by virtue of the laws of the State of \_\_\_\_\_ and authorized to transact business as a surety within the State of Oregon ("Surety"), are held and firmly bound unto the City, as obligee, and its successors and assigns in the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), lawful money of the United States of America, for the payment of which, well and truly be made to the City, Contractor and Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

1. The Agreement is hereby incorporated by reference herein as if said agreement were fully set forth herein. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

2. If Contractor shall at all times promptly, and faithfully perform the Agreement and any alteration in or addition to the obligations of Contractor arising thereunder in strict accordance with the terms and conditions of the Agreement, including the matter or infringement, if any, of patents or other proprietary rights, and all guarantees and warranties, including the guarantee and warranty periods, established by the Agreement, and comply with all of the covenants therein contained, in the manner and within the times provided in the Agreement, and, subject to the terms of the Agreement, shall fully indemnify and save harmless the City from all costs and damages which it may suffer by reason or failure so to do, and shall fully reimburse and repay the City all outlay and expenses which it may incur in making good any default, and reasonable counsel fees incurred in the prosecution of or defense of any action arising out of or in connection with any such default, then Surety's obligations under this Bond shall be void; otherwise such obligations shall remain in full force and effect.

3. This Bond shall cover the cost to perform all the obligations of Contractor arising out of or required under the Agreement, and the obligations covered by this Bond specifically include Contractor's liability for liquidated damages as specified in the Agreement.

4. If the City gives Surety notice of Contractor's default, Surety shall promptly, but in no event later than thirty (30) days, take one of the following actions:

- (a) Arrange, with the consent of the City, for Contractor to complete the Agreement; or
- (b) Undertake completion of the Agreement itself;
- (c) Waive its right to complete the Agreement and reimburse to the City the amount of the City's costs in completing the Work, including all outlay and expenses incurred in responding to the default and reasonable counsel fees incurred in the prosecution of or defense of any action arising out of or in connection with any such default; or.
- (d) Deny liability in whole or in part and notify the City in writing, citing the reasons for denial.

5. Should Surety fail to take the actions set forth in Paragraph 4 within the time specified by Paragraph 4, Surety shall be deemed in default of this Bond and the City may, after having given seven (7) days written notice, pursue and enforce any and all remedies available to it under the Agreement, this Bond or common law, including, but not limited to, completing the Agreement and pursuing Surety for damages and any other relief to which it may be entitled against Surety.

6. No suit or action may be brought by the City under this Bond after the expiration of two (2) years following Final Completion.

7. Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Agreement, or in the Work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Agreement, or any rescission or attempted rescission by Contractor of the Agreement, or this Bond, shall in any way affect its obligations on this Bond, and Surety does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

8. Any provision in this Bond which conflicts with applicable Laws and Regulations shall be deemed modified to conform to applicable Laws and Regulations.

9. *[Note: Use in case of multiple sureties ("Co-Sureties") or, otherwise, delete; If Co-Sureties are used, modify the preceding language accordingly to reflect this]* The Co-Sureties agree to empower and designate a single "Lead Surety" with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the City will have no obligation to deal with multiple sureties hereunder. All correspondence from the City to the Co-Sureties and all claims under this Bond shall be sent to the Lead Surety and shall be deemed served upon all Co-sureties. The Lead Surety may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the City designating a new Lead Surety, signed by all of the Co-Sureties. The initial Lead Surety shall be \_\_\_\_\_.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Correspondence or claims relating to this Bond should be sent to the Lead Surety at the following address:

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(Contractor's name, title, and signature)

## Surety

*[Note: If Co-Sureties are used, then add appropriate number of lines to signature block.]*

NOTE: Surety on this Bond shall be one who is authorized by applicable Laws and Regulations to do business in the State of Oregon, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act for Surety at the time of the signing of this Bond.

**Exhibit 14.2(b)**  
**Form of Payment Bond**

BOND NO. \_\_\_\_\_  
BOND AMOUNT: \$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, THE CITY OF MEDFORD, OREGON ("City") has awarded to \_\_\_\_\_, a \_\_\_\_\_ duly organized and existing under the laws of the State of \_\_\_\_\_ ("Contractor"), a Construction Management Agreement dated \_\_\_\_\_ ("Agreement"); and

WHEREAS, one of the conditions of the Agreement is that Contractor shall provide this duly executed instrument ("Bond").

NOW THEREFORE, We, the undersigned Contractor and \_\_\_\_\_, a corporation duly organized and existing under and by virtue of the laws of the State of \_\_\_\_\_ and authorized to transact business as a surety within the State of Oregon ("Surety"), are held and firmly bound, jointly and severally, unto the City, as obligee, and its successors and assigns, in the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), lawful money of the United States of America, for the payment of which, well and truly be made to the City and Claimants, Contractor and Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

1. The Agreement is hereby incorporated by reference herein as if said agreement were fully set forth herein. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

2. If Contractor shall: (a) make payments of all sums due to all persons and entities having a direct contract with Contractor, or a direct contract with a Subcontractor having a direct contract with Contractor, for supplying labor, material, and/or supplies used directly or indirectly by Contractor in the prosecution of the Work provided in the Agreement, and any other persons and entities defined as claimants under ORS 279C.600 (such persons and entities hereinafter referred to collectively as "Claimants"); and (b) shall fully indemnify and save harmless the City from all costs and damages which the City may suffer by reason of Contractor's failure to fulfill its obligations to Claimants under clause (a) above, including but not limited to, fully reimbursing and repaying the City reasonable counsel fees incurred as a result of any action arising out of or in connection with any such failure, then Surety's obligations under this Bond shall be void; otherwise such obligations shall remain in full force and effect.

3. All Claimants shall have a direct right of action only against Surety and Contractor under this Bond; *provided, however*, that no claim, suit or action shall be brought by any Claimant after the expiration of one (1) year following the date on which Claimant last performed labor or last furnished or supplied materials to the Project. Any suit or action must be brought in a state or federal court of competent jurisdiction located in the State of Oregon.

4. Any Claimant who does not have a direct contractual relationship with Contractor shall, as a condition precedent to bringing such claim, suit or action, provide written notice thereof to Contractor, Surety, and the City, no later than ninety (90) days from the date Claimant last supplied labor or materials, stating with substantial accuracy the amount claimed, the name of the person for whom the work was performed or to whom the material was furnished, and the dates on which such labor or materials were supplied.

5. Surety shall, after receipt of reasonable notice to Surety of any claim, demand, suit or action brought against the City by a Claimant, defend, with counsel approved by the City, such approval not to be unreasonably withheld, indemnify and hold harmless the City from any and all claims, demands, suits or actions brought by any Claimant. The City shall have a direct right of action against Surety and Contractor for any breach by Surety of its obligation to defend, indemnify and hold harmless the City.

6. Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Agreement, or in the Work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Agreement, or any rescission or attempted rescission by Contractor of the Agreement, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of Claimants otherwise entitled to recover under this Bond, shall in any way affect its obligations on this Bond, and Surety does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

7. Surety acknowledges that the amounts owed to Contractor under the Agreement shall first be available for the performance of the Agreement, including the City's superior right to use the funds due for the completion of the Work, and then may be available to satisfy claims arising under this Bond. The City shall not be liable for the payment of any costs or expenses or claims of any Claimant under this Bond and shall have no obligation to make payments to, or give notice on behalf of, any Claimant.

8. Any provision in this Bond which conflicts with applicable Laws and Regulations shall be deemed modified to conform to applicable Laws and Regulations.

9. Contractor or the City shall furnish a copy of this Bond or permit a copy to be made upon request by any person or entity who may be a Claimant as defined above.

10. *[Note: Use in case of multiple sureties ("Co-Sureties") or, otherwise, delete; If Co-Sureties are used, modify the preceding language accordingly to reflect this]* The Co-Sureties agree to empower and designate a single, "Lead Surety" with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the City and Claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the City and Claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated Lead Surety and service of such correspondence or notice upon the Lead Surety shall constitute service upon all co-sureties. The Lead Surety may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the City designating a single new Lead Surety, signed by all of the Co-Sureties. The initial Lead Surety shall be \_\_\_\_\_.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Correspondence or claims relating to this Bond should be sent to the designated Lead Surety at the following address:

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*[Note: If Co-sureties are used, then add appropriate number of lines to signature block.]*

(Contractor's name, title, and signature)

## Surety

By:

NOTE: Surety on this Bond shall be one who is authorized by applicable Laws and Regulations to do business in the State of Oregon, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act for Surety at the time of the signing of this Bond.

**Exhibit 14.3**  
**Key Personnel and Project Organizational Chart**

[TO BE INSERTED]