



595 Main Street, Aumsville, OR 97325
Office: (503) 749-2030 ~ FAX: (503) 749-1852
Email: rharding@aumsville.us

PUBLIC MEETING NOTICE

AUMSVILLE CITY COUNCIL MEETING

In the Community Center and via Zoom Video Conference

MONDAY, MAY 22, 2023

A G E N D A

ZOOM MEETING LINK – [CLICK HERE](#)

MEETING ID 865 0300 3762

PASSCODE 310244

1) CALL TO ORDER: 7:00PM

a) Approve agenda.

2) PRESENTATIONS, PROCLAMATIONS, & VISITORS

a) **Public Comment:** Public Comment will be accepted from online attendees at this time. Comments are limited to 5 minutes for comments on items other than Public Hearings listed below. There is a public comment period within each hearing. You may also submit comments by emailing City Administrator Ron Harding at rharding@aumsville.us by noon on May 22, 2023.

b) **Visitors:** For information about how to attend the meeting online, please call City Hall at 503.749.2030 or email tnichols@aumsville.us to request log in instructions. Information will also be posted on our website [City Council Regular Meeting | City of Aumsville Oregon](#)

3) CONSENT AGENDA

a) Approval of Minutes from April 29, 2023 Special Meeting and Retreat, May 4, 2023 Special Meeting, May 8, 2023 Regular Meeting and May 11, 2023 Special Meeting
b) Accounts Payable and Payroll Register

4) PUBLIC HEARINGS: None.

5) OLD BUSINESS: None.

6) NEW BUSINESS:

a) Boone Well #3 and Mill Creek Well #1 Drilling Project Contract
b) Public Works Shop Building Contract
c) City of Aumsville Park Expansion
d) Wastewater Collection System Design Proposal – Westech Engineering
e) Water Supply Well Project Construction Services
f) Corn Festival Grand Marshal Nominees: Deanna Cox – Rocio Diaz – Colleen Rogers – Richard Schmitz – Mid-Columbia Bus Company
g) Multi-Jurisdictional Letter Sign-On Request from Marion County

7) CITY ADMINISTRATOR REPORT: (Information)

8) MAYOR AND COUNCILORS REPORTS

9) GOOD OF THE ORDER: Other Business May Come Before the Council at This Time

10) CORRESPONDENCE:

11) ADJOURNMENT REGULAR MEETING

12) EXECUTIVE SESSION:

The City of Aumsville does not and shall not; discriminate on the basis of race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations. Anyone wishing to speak on an agenda item should ask to be recognized by the Mayor or Chair at the beginning of that agenda item. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities must be made at least 48 hours prior to the meeting. Please call (503) 749-2030 and leave a message or Oregon Relay Service for TDD at (800) 735-2900.



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AUMSVILLE CITY COUNCIL

April 29, 2023 Work Session Meeting Minutes

Mayor Angelica Ceja called the meeting to order at 9:00AM. Present in-person were Mayor Angelica Ceja, Councilors Scott Lee, Della Seney, Katie Wallace, Douglas Cox and Walter Wick. Council absent: Nico Casarez. Staff present: City Administrator (CA) Ron Harding,

PRESENTATIONS: CA Harding showed the Council a slide presentation that covered a variety of topics.

The first topic was about organizing Council meetings and Council meeting protocols. The Council discussed how they conduct meeting decorum and how to align the meeting process with the Council meeting protocols.

The Council reviewed online Council meetings from other cities to train in situational awareness about how other elected officials have addressed issues in either a right or wrong way. The idea behind this training was to identify where Council meeting protocol and procedures can help reduce disruptive events. We do not want to see personal attacks or arguments, and in fact following meeting protocol is the best way to avoid many situations.

CA Harding discussed code enforcement issues and approach and asked the City Council for guidance. The Council consensus was to continue to be firm but fair and universal in our code enforcement efforts. The goal is to achieve compliance with no sanctions unless necessary. Council was informed that there may be situations where a large group of neighbors are all out of compliance, and Council didn't feel this changed anything.

CA Harding discussed the City's obligations under HB 3115. This legislation requires cities to create opportunities to accommodate people without shelter. The consensus was to continue to maintain no camping or sheltering in parks or residential neighborhood, and the remainder of zones would be open. The Council understands the law is vague and we are taking our best approach.

Franchise agreements: The City will need to approve a new master communication ordinance before approving several franchise renewals. CA Harding discussed the process with Council. Consensus was to continue the process working with the city attorney.

The Council discussed how many AC water lines are still within the City and the potential for water loss from these lines. This still needs to be a priority for the City and future projects will come forward on how we can begin to replace these lines as needed.

CA Harding discussed the newest water meter systems that can provide real time data and improve customer services. Staff is suggesting we install the main system that receives the data and then over time replace the meters until the entire system can be changed over. This allows us to complete the project a little at a time for operational and budgetary reasons. Older meters are being phased out and the new technology will require less staff time. Consensus by Council to move forward and bring back proposals.

Pedestrian safety and county roads had been an ongoing discussion by the Council. They would like to install crosswalks, but the major streets are owned by Marion County. Marion County policies do not really favor crosswalks. The Council discussed researching the possibility of taking over MC roads. They understand this makes the City responsible for the roads but right now there are no active maintenance efforts by the County and the City still doesn't have any say. Council felt understanding the commitment of taking over a road would help them decide next steps. Staff will come back with the process after contacting the County.

The Council discussed the current police vehicle replacement program. The vehicles are showing wear and will need to be replaced. CA Harding outlined his replacement plan that will allow purchasing of two new vehicles this year and increase our vehicle replacement contributions. Consensus was this was a good approach.

CA Harding discussed the programs available to acquire streetlights along main street in the business district. CA Harding informed the council about a program from Pacific Power that could install the lights with a small surcharge to power customers win the city. Council didn't like the idea of charges going to power customers. The Council directed CA Harding to look for grant programs or other programs that could be implemented without this process.

CA Harding went over the City's communication plan and current efforts.

Council agreed we could be reconvened for setting goals at another time.

Council agreed to end the meeting at 12:30PM.

Angelica Ceja, Mayor

Ron Harding, City Administrator

AUMSVILLE CITY COUNCIL

May 4, 2023 Special Meeting Minutes

Mayor Angelica Ceja called the meeting to order at 4:06PM. Present via Zoom were Mayor Angelica Ceja, Councilors Nico Casarez, Della Seney, Douglas Cox, Katie Wallace and Walter Wick. Council absent: Scott Lee. Staff present: City Administrator (CA) Ron Harding, Public Works Director (PWD) Steve Oslie, Assistant Public Works Director (APWD) Matthew Etzel and City Clerk Traci Nichols.

The meeting was video recorded to be released later.

AGENDA APPROVAL: Councilor Seney moved to approve the agenda. Councilor Wallace seconded. Council present unanimously voted to approve the agenda as presented. Agenda approved.

PUBLIC COMMENT: None.

NEW BUSINESS:

a) Recommendation to Award – Public Works Shop Building

City Administrator Ron Harding presented the Staff Report to Council. CA Harding said both PWD Steve Oslie and APWD Matt Etzel were present, and they had largely led this project working with engineers and prospective bidders. He indicated this project began several years ago, and last year the City had obtained \$900,000 in grant funding from the State for the new build. The job went out to bid earlier this year, and the bids came out much higher than expected. The lowest bidder was at a little over \$2 million dollars: \$2,069,000. The highest bidder was \$2.8 million. Staff worked to do 2 things: try to value engineer some of the elements to try and bring price down. Staff was able to bring the price down to \$1,874,000. Bringing the price down didn't change the scope of the job. The second phase was finding fill-in-the-gap funding, which was obtained with the help of Business Oregon by way of a loan with a 15-year term. He said the loan could be paid off before that time. The timing didn't work out as well as anticipated, and Staff was advised if the company was to hold the price at what was bid, the bid would have to be awarded by May 5th.

CA Harding said that the matter before Council now was to award the bid or not. He said that if the job went back out for bid, it was an expensive process to go through and the prices may go up. He said the risk of awarding the bid was that though he has a letter guaranteeing loan of the necessary funds, he doesn't have signed documents in front of him. He said there was little risk there, but still some. He said RA Gray was the company Staff is recommending to

award to. They scored high and are experienced at this kind of work. He added the City had enough money to get the project started, and would be well into it by the time they had to draw on the additional funding. Councilor Cox asked what the risk was. CA Harding said he didn't think it was much – but he hasn't yet seen the contract and terms from Business Oregon on the additional funding. APWD Etzel said they've been working with RA Gray for a while, and they've been good about holding the bid price. He feels it would be in the City's best interest to award them the contract, as they've basically been working with the City for free for the past month trying to help in making the project work. PWD Oslie mirrored APWD Etzel's statement.

Councilor Seney moved to award RA Gray Construction, LLC. in the amount \$1,874,425 for construction of a new Public Works shop. Councilor Wick seconded. Council present unanimously voted to approve the award.

Mayor Ceja adjourned the meeting without prejudice at 4:22PM.

Angelica Ceja, Mayor

Ron Harding, City Administrator



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AUMSVILLE CITY COUNCIL

May 8, 2023 Meeting Minutes

Mayor Angelica Ceja called the meeting to order at 7:00PM. Present in-person were Mayor Angelica Ceja, Councilors Scott Lee, Della Seney, Katie Wallace, Douglas Cox and Walter Wick. Council absent: Nico Casarez. Staff present: City Administrator (CA) Ron Harding, Assistant Public Works Director Matthew Etzel and City Clerk Traci Nichols. The meeting was video recorded to be released later.

AGENDA APPROVAL: Councilor Seney moved to approve the Agenda as presented. Councilor Cox seconded. Council present unanimously voted to approve the Agenda.

PRESENTATIONS: None.

VISITORS: None.

PUBLIC COMMENT: None.

CONSENT AGENDA:

- a) Minutes from April 24, 2023 Work Session
- b) Payroll Register and Accounts Payable

Councilor Seney moved to approve the Consent Agenda as presented. Councilor Cox seconded. Council present unanimously voted to approve the Consent Agenda.

PUBLIC HEARING: None

OLD BUSINESS: None

NEW BUSINESS:

a) TAG – Integrator of Record

Assistant Public Works Director Matthew Etzel addressed Council. He indicated that a few months ago, Westech Engineering put out a request for proposals on the City's behalf for an integrator of record. This is an entity that does the City's telemetry work for the Wastewater Treatment systems and all the City's monitoring and automation. He said the City has worked with TAG for years, and the Integrator was put out to bid so TAG could be used for projects coming up. There is a lot of computer logic going into these programs, and having the same company with all the systems really helps. If something happened in the middle of the night, the City could call TAG who would have a backup of the City's systems to remotely troubleshoot problems. TAG was the only entity that responded to the request for proposals.

They will work at an hourly rate, just like Westech. If the City had a job they wanted TAG to work on, the City would ask TAG to bid on it as any other contractor would. This also gives the City the ability to separate the programming part out of the contracts. A lot of the things going on right now have electronic components, and the components for the Wastewater Treatment Plant and pump stations are very delayed. This agreement would allow the City to contract the electronic portion to TAG, who would order the equipment up front – which would shorten lead times. Councilor Seney moved to authorize the City Administrator to enter into contract with The Automation Group known as 'TAG' for integrator of record for the City. Councilor Wick noted the contract was signed by a party with the last name of 'Wick' of whom he has no relation. Councilor Cox seconded. Council present unanimously voted in favor. Motion passed.

b) Boone Well #3 and and Mill Creek Well #1 Drilling Project

APWD Etzel advised Council that several months ago, the City identified Boone Park and Mill Creek Park as sites for 2 new City municipal wells. That project went out to bid and generated 3 proposals. The low bidder was Jones Drilling. Because of ARPA (American Rescue Plan Act) funding time constraints, it's time to move the project forward. Drilling would be done through the summer, and hopefully end by fall or winter (in Porter Boone Park). Drilling in Mill Creek Park can be done in the winter because it's closer to the asphalt. The City transferred water rights that weren't being used because the wells weren't producing. The wells had been rehabbed previously, which didn't work so the City decided to transfer water rights to a different location and drill the new wells. Councilor Seney moved to approve the award to Jones Drilling Company in the amount of \$516,680 for the drilling of Boone #3 and Mill Creek #1 wells from Fund 028-Water Improvement Fund. Councilor Wick seconded. Council present unanimously voted in favor. Motion passed. AWPD Etzel added that because this was grant funding, and the City wanted to ensure they would be reimbursed accordingly, the contract would be forwarded to Business Oregon to look over.

CITY ADMINISTRATOR REPORT:

City Administrator Ron Harding reminded Council that tomorrow night was the Budget Committee meeting. He would like to complete the budget process in one meeting, following the City's previous trend. He said it was a fairly streamlined process.

There is a special meeting that is an Executive Session on the 11th [of May]. It should be a quick discussion on where we are in contract negotiations, and to obtain guidance from Council on where to go from there.

There are lots of actions going forward from now until the end of June. Multiple ordinances, park master plan updates, and lots of contracts.

CA Harding said the budget would be brought before Council on June 12th for adoption.

CA Harding brought up the Corn Festival Grand Marshal topic. He advised Staff is looking to Council for proposals on this year's Marshal. He encouraged Council to send any further names to Staff.

MAYOR/COUNCIL REPORTS AND INITIATIVES:

Mayor Ceja said she and Councilor Seney had gone to the Ways and Means Committee meeting on Friday to speak on the City’s capital funding request. They were not called to speak, as they had already spoken on Wednesday. Councilor Seney said the City was given 48 hours to submit written testimony to the Legislative website, so if anyone wanted to do so, they had until Tuesday (May 9). Mayor Ceja said the community letter [of support] with citizen names and addresses had been submitted. Councilor Seney said that the citizens she had spoken to were impressed with the number of signatures received. Mayor Ceja said she was very impressed as well with the response from the community.

GOOD OF THE ORDER:

Councilor Wallace indicated she had attended an event with a great community response.

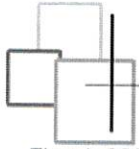
Councilor Seney said there had been a good Arbor Day event at the [elementary] school. Trees (saplings) had been handed out to students. She heard several reports on where trees had been planted.

CORRESPONDENCE: None

Mayor Ceja adjourned the meeting without prejudice at 7:17PM.

Angelica Ceja, Mayor

Ron Harding, City Administrator



Accounts Payable Register

City of Aumsville

Fiscal: 2022-23

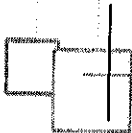
Deposit Period: 2022-23 - May

Check Period: 2022-23 - May - First Council

Number	Name	Print Date	Amount
Riverview Community Bank	9001000967		
Check			
<u>56120</u>	911 SUPPLY	5/8/2023	\$306.60
<u>56121</u>	AIRGAS USA, LLC	5/8/2023	\$990.64
<u>56122</u>	ARETE ADVISORS LLC	5/8/2023	\$275.00
<u>56123</u>	AUMSVILLE ACE HARDWARE	5/8/2023	\$47.73
<u>56124</u>	BATTERIES PLUS	5/8/2023	\$80.00
<u>56125</u>	BMS TECHNOLOGIES	5/8/2023	\$774.53
<u>56126</u>	CASCADE COLUMBIA DISTRIBUTION COMPANY	5/8/2023	\$685.00
<u>56127</u>	HARDEN PSYCHOLOGICAL ASSOCIATES, P.C.	5/8/2023	\$420.00
<u>56128</u>	MARION COUNTY ENVIRONMENTAL HEALTH	5/8/2023	\$32.00
<u>56129</u>	MODERN MARKETING INC	5/8/2023	\$343.63
<u>56130</u>	MOONLIGHT MAINTENANCE	5/8/2023	\$399.00
<u>56131</u>	OFFICE DEPOT, INC	5/8/2023	\$53.08
<u>56132</u>	PACIFIC OFFICE AUTOMATION	5/8/2023	\$134.11
<u>56133</u>	PETROCARD, INC.	5/8/2023	\$2,164.93
<u>56134</u>	R.L. REIMERS COMPANY	5/8/2023	\$62,380.82
<u>56135</u>	STAN BUTTERFIELD P.C.	5/8/2023	\$750.00
<u>56136</u>	WALTER E NELSON	5/8/2023	\$667.34
<u>56137</u>	WILCO	5/8/2023	\$29.99
<u>EFT Payment 5/8/2023 8:43:45 AM - 1</u>	INVOICE CLOUD	5/8/2023	\$213.20
<u>EFT Payment 5/8/2023 8:43:45 AM - 2</u>	PACIFIC POWER	5/8/2023	\$10,473.52
<u>EFT Payment 5/8/2023 8:43:45 AM - 3</u>	VERIZON WIRELESS	5/8/2023	\$38.64
<u>EFT Payment 5/8/2023 8:43:45 AM - 4</u>	WAVE	5/8/2023	\$9.95
<u>EFT Payment 5/8/2023 8:43:45 AM - 5</u>	ZIPLY FIBER	5/8/2023	\$650.21
	Total	Check	\$81,919.92
	Total	9001000967	\$81,919.92
	Grand Total		\$81,919.92

Angeli Aguirre

Donna Seney



Accounts Payable Register

City of Aumsville

Fiscal: 2022-23

Deposit Period: 2022-23 - February

Check Period: 2022-23 - February - Second Council

Riverview Community Bank

9001000967

Check

56008

56138

ABC PRINTERS INC

ABC PRINTERS INC

2/24/2023

5/9/2023

Void

\$80.00

Total Check

\$80.00

Total 9001000967

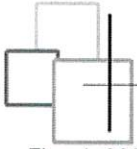
\$80.00

Grand Total

\$80.00

Debra Sperry

Paul Sperry



Accounts Payable Register


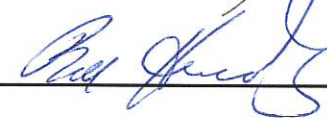
City of Aumsville

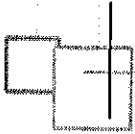
Fiscal: 2022-23

Deposit Period: 2022-23 - May

Check Period: 2022-23 - May - Second Council

Number	Name	Print Date	Amount
Riverview Community Bank	9001000967		
Check			
<u>56140</u>	911 SUPPLY	5/15/2023	\$29.67
<u>56141</u>	AUMSVILLE ACE HARDWARE	5/15/2023	\$306.68
<u>56142</u>	BEERY ELSNER & HAMMOND LLP	5/15/2023	\$12,390.54
<u>56143</u>	BMS TECHNOLOGIES	5/15/2023	\$2,306.50
<u>56144</u>	BRENDA CAMPBELL	5/15/2023	\$110.36
<u>56145</u>	CANYON ROCK PRODUCTS LLC	5/15/2023	\$1,344.00
<u>56146</u>	DAVID W KINNEY	5/15/2023	\$4,512.70
<u>56147</u>	DAVISON AUTO PARTS INC	5/15/2023	\$20.10
<u>56148</u>	DYLAN THOMPSON	5/15/2023	\$53.00
<u>56149</u>	JACKIE BYERS	5/15/2023	\$41.00
<u>56150</u>	LITTAU POWER EQUIPMENT	5/15/2023	\$527.85
<u>56151</u>	OFFICE DEPOT, INC	5/15/2023	\$464.10
<u>56152</u>	SQUAD ROOM EMBLEMS	5/15/2023	\$872.15
<u>56153</u>	STEVE WHEELER TIRE CENTER	5/15/2023	\$183.98
<u>56154</u>	VALLEY 5 ELECTRICAL SERVICES LLC	5/15/2023	\$600.00
<u>56155</u>	WILCO	5/15/2023	\$29.99
<u>EFT Payment 5/15/2023 8:29:20 AM - 1</u>	IDEXX LABORATORIES	5/15/2023	\$282.86
<u>EFT Payment 5/15/2023 8:29:20 AM - 2</u>	REPUBLIC SERVICES #456	5/15/2023	\$60.00
<u>EFT Payment 5/15/2023 8:29:20 AM - 3</u>	RIVERVIEW COMMUNITY BANK	5/15/2023	\$3,461.63
<u>EFT Payment 5/15/2023 8:29:20 AM - 4</u>	WAVE	5/15/2023	\$9.95
	Total	Check	\$27,607.06
	Total	9001000967	\$27,607.06
	Grand Total		\$27,607.06



Payroll Register

City of Aumsville

Fiscal: 2022-23

Deposit Period: 2022-23 - April

Check Period: 2022-23 - April - Second Council

<u>Riverview Community Bank</u>	9001000967		
<u>Check</u>			
<u>Direct Deposit Run - 5/2/2023</u>	Mack, Taylor P	5/2/2023	\$1,623.78
<u>EFT 12946516</u>	EFTPS	5/3/2023	\$583.87
<u>EFT 26370502</u>	Oregon Department of Revenue	5/3/2023	\$165.04
	Total	Check	\$2,372.69
	Total	9001000967	\$2,372.69
	Grand Total		\$2,372.69

Della Seney

[Signature]



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STAFF REPORT

TO: Aumsville City Council
FROM: Matthew Etzel, Aumsville Public Works
SUBJECT: Notice to Award to Jones Drilling Company

Recommendation: Aumsville City Council to approve contract for Jones Drilling Company in the amount of \$516,680 for the drilling of Boone 3 and Mill Creek 1 wells.

Background: The City of Aumsville was awarded \$3.257 million dollars through the State of Oregon Coronavirus State Fiscal Recovery Fund for water system improvements. Staff, Westech, and sub-consultants have identified 2 areas to transfer our water rights that aren't able to be utilized at the current locations. Westech and GSI advertised for the drilling of two new municipal wells one at Porter Boone Park and a second at Mill Creek Park. Water Resources has done the initial groundwater review and determined the drilling specification submitted by Westech and GSI meets the requirements and an official approval letter for the transfer is on its way. This initial groundwater review is providing us with the green light to get started on the drilling.

Business Oregon is administering these grant funds and has approved the bidding documents. They will review the corresponding contract prior to signature.

On May 8th the Council issued a notice to award the project to Jones Drilling Company in the amount of \$516,680. Now, Staff are bringing back the full contract for Council's review and approval. The funds to pay for this project are coming from a capital funded grant from the Oregon State Legislature.

MOTION:

- Move to approve the contract to Jones Drilling Company in the amount of \$516,680 for the drilling of Boone 3 and Mill Creek 1 wells from Fund 028-Water Improvement Fund.
- Move to approve the contract to Jones Drilling Company in the amount of \$516,680 for the drilling of Boone 3 and Mill Creek 1 wells from Fund 028-Water Improvement Fund with the following revisions.
- Move to remand back to staff for revisions as directed.

ARPA DOCUMENTS AND FORMS

- 1. REQUIRED CONTRACT CLAUSES**
- 2. CERTIFICATION REGARDING LOBBYING**

SWORN STATEMENT OF GOOD FAITH EFFORT WITH SMALL, WOMEN, OR MINORITY BUSINESS UTILIZATION REQUIREMENTS

Although this project does not have specific MBE/WBE/SBRA participation requirements, the funding agency requires that the prime contractor must engage in outreach, recruitment or other race/gender-neutral activities as a part of their good faith efforts to achieve a fair share of contracts by minority and women owned businesses as well as small businesses in rural areas. The prime contractor may select various outreach, recruitment or other race/gender neutral activities for a particular contract, but at a minimum, the prime contractor must take six steps:

1. Include qualified MBEs, WBEs and SBRA's on solicitation list;
2. Assure that MBEs, WBEs and SBRA's are solicited whenever they are potential sources;
3. Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of MBEs, WBEs and SBRA's;
4. Establish delivery schedules, where the requirements of the work permit, which will encourage participation by MBEs, WBEs and SBRA's;
5. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency, U.S. Department of Commerce, as appropriate; and
6. If the prime contractor awards subcontracts/procurement, require the subcontractor to take the affirmative steps in numbers 1 through 5 above.

A list of contacted Minority, Women and Small Businesses must be attached to this form indicating which minority, women and small businesses were contacted by the bidder, a phone number, the name of a contact person, , whether or not they are being utilized, along with their reasons for non-participation.

By signing this form, the contractor swears that she or he has taken all the steps listed above to obtain participation by minority, women and small business enterprises.


Signature

4/26/2023
Date

Printed name and title of signer

Bret Jones Vice President

List of Minority, Women and Small Businesses Contacted and/or Utilized

Name of Business	Contact Person	Phone Number	Date of Contact	Utilized or Not? (Yes/No) Reason for Non-participation if No (ie. not low bid, did not submit bid, etc.)
none				

ARPA/SLFRF Required Contract Clauses

Purpose: The purpose of this reference is to assist ARPA grant award recipients by summarizing required contract clauses consistent with the federal Uniform Guidance requirements that are applicable to the State and Local Fiscal Recovery Funds (SLFRF) program as part of the American Rescue Plan Act (ARPA).

As described in this document a "recipient" is a recipient of an APRA funded grant award from Business Oregon.

The SLFRF awards are generally subject to the requirements set forth in the The Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly called "Uniform Guidance"). The "Uniform Guidance" is the set of federal rules (administrative requirements, cost principles, and audit guidelines) that apply to federal money. This includes requirements such as the treatment of eligible uses of funds, procurement, and reporting requirements. Please see the SLFRF Compliance and Reporting Guidance page 12 for full Award terms and conditions.

It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water and sewer infrastructure projects.

Contract Clause Checklist

Directions:

Appendix II of 2 CFR 200 (The Uniform Guidance) outlines the contract provisions that you must place in contracts with your contractors, and in contracts with subrecipients (if any). The checklist below contains these standard clauses for inclusion in contracts needed to utilize ARPA funds.

Clauses for All Contracts:

Creating a contract that complies with ARPA requirements must include the below sections as verbatim:

- Contractor must be registered in SAM.gov.** - The Contractor shall register in the System for Award Management (SAM), which is the primary registrant database for the U.S. Federal Government and shall update the information at least annually after the initial registration and maintain its status in the SAM through the Term of this

Agreement. Information regarding the process to register in the SAM can be obtained at Sam.gov

Whistleblower - Contractor receiving ARPA funds shall under or through this contract post notice of the rights and remedies provided to whistleblowers under No Fear Act Pub. L. 107-174. 29 CFR § 1614.703 (d).

Inspections; Information - Contractor shall permit, and cause its subcontractors to allow the State of Oregon, the federal government and any party designated by them to:

- Examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project.
- Inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursement, contracts, and any other matters relating to the Project, and to its financial standing, and shall supply such reports and information as reasonably requested.
- Interview any officer or employee of the Contractor, or its subcontractors, regarding the Project.

Equal Opportunity - Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

Copeland "Anti-Kickback" Act - Contractor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Prohibition on purchasing telecommunications or surveillance equipment, services, or systems. As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients

are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that "uses any equipment, system, or service that uses covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the System for Award Management exclusion list.

Preference to United States made goods. - As appropriate and to the extent consistent with law, the contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Additional Clauses for Contracts Over \$10,000:

Creating a contract over \$10,000 that complies with ARPA requirements must include the additional below sections as verbatim:

Procurement of recovered materials over \$10,000. - The Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that

maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Termination for cause and for convenience - Contractor shall address termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement.

The Contract Owner shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. The Contract Owner shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

Additional Clauses for Contracts Over \$100,000:

Creating a contract over \$100,000 that complies with ARPA requirements must include the additional below section(s) as verbatim:

Certification form located in Appendix I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Note: Only include for contracts that involve the employment of mechanics or laborers. The Contract Work Hours and Safety Standards Act requires all contractors—prime and sub—to pay laborers and mechanics performing on a federal service contract and federal and federally assisted construction contract over \$100,000, 1.5 times their basic rate of pay for all hours worked over 40 in a workweek. Employers are liable to employees for these unpaid wages. The failure of a contractor to comply with this Act may also result in liability under the False Claims Act. Employees who are due unpaid wages under the Contract Work Hours and Safety Standards Act may file a complaint with the Wage and Hour Division within the U.S. Department of Labor. The DOL may then enforce the provisions of the Act against violators.

Additional Clauses for Contracts Over \$150,000:

Creating a contract over \$150,000 that complies with ARPA requirements must include the additional below section(s) as verbatim:

Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Additional Clauses for Contracts Over \$250,000 (the simplified acquisition threshold as of 2022):

Creating a contract over \$250,000 that complies with ARPA requirements must include the additional below section(s) as verbatim:

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Upon any breach of this Agreement by Contractor, the Contract Owner shall have all remedies available to it both in equity and/or at law.

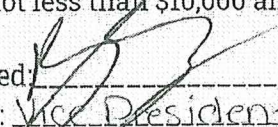
Appendix I

Certification Regarding Lobbying (Awards to Contractors and Subcontractors in Excess of \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed: 
Title: Vice President
Date: 4-20-2023

PART 2:

CONTRACT FORMS

AGREEMENT

THIS AGREEMENT, by and between the **City of Aumsville** hereinafter called the **Owner**, and **Jones Drilling Co, Inc.** hereinafter called the **Contractor**.

WITNESSETH, that the Contractor and the Owner, for the consideration hereinafter named, agree as follows:

ARTICLE I - SCOPE OF THE WORK: The Contractor hereby agrees to furnish: All materials, labor and equipment and incidentals, and to perform all work described in the bidding documents for the project prepared by **WESTECH ENGINEERING, INC.**, Salem, Oregon, hereinafter referred to as **Engineer**; entitled:

Boone Well No. 3 and Mill Creek Well #1 Drilling Project

The work shall include those items listed in the Schedule of Prices on the Bid Form dated **April 20, 2023**, as follows:

Bid Items A1 through C3

and shall be in accordance with the requirements and provisions of the Contract Documents as defined in Article IV of this Agreement, which Contract Documents are enclosed herewith, and are hereby made a part of this Agreement. The Contractor also agrees to comply with all applicable federal, state, and local laws, municipal ordinances, and rules and regulations of all authorities having jurisdiction over the construction, and specifically, the applicable provisions of Oregon law relating to public contracts (ORS Chapter 279C) which by this reference are incorporated in the Contract Documents and made a part hereof.

ARTICLE II - CONTRACT TIME AND LIQUIDATED DAMAGES:

The work to be performed under this contract shall be commenced within **ten (10)** calendar days after the date of written notice by the Owner to the Contractor to proceed. All work shall be substantially complete prior to September 30, 2023, and all work entirely complete (*i.e., Final Completion, including completion of all punchlist items and submittal of all invoices*) by no later than October 15, 2023.

Liquidated Damages: The Owner and the Contractor recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss if the work is not substantially completed within the time specified in the paragraph above, plus any extensions thereof allowed in accordance with the General Conditions of the Contract Documents. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the work is not substantially completed on time. Accordingly, instead of requiring any such proof, the Owner and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay the Owner the amounts listed below for each and every day that expires after the time specified for Substantial Completion.

Liquidated damages shall apply against the Contractor and accrue to the Owner at the rate of **five hundred dollars (\$500)** for each calendar day that expires after the time specified for Substantial Completion until the work is substantially complete.

After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract Time or any proper extension thereof granted by the Owner, the Contractor shall pay the Owner **five hundred dollars (\$500)** for each calendar day that expires after the time specified for Final Completion until the work is complete and ready for payment.

The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the liquidated damages above, the Contractor shall reimburse the Engineer for the cost incurred for engineering, inspection and project management services required beyond the Contract Time limit as outlined herein. The Contractor shall also reimburse the Engineer for all costs incurred for inspection and project management services required due to punch list items which are not completed within the Contract Time limit or the date specified on the Certificate of Substantial Completion, whichever is later. If the Contractor fails to reimburse the Engineer directly, the Owner will deduct the cost from the Contractor's final pay request.

ARTICLE III – PAYMENT: The Owner shall pay to the Contractor for the performance of the work the total amounts determined by lump sum and unit prices listed in the Bid Form. Based on the estimated quantities and the stated units & prices, the total Contract sum is **five-hundred sixteen thousand, six-hundred eighty dollars and no cents (\$516,680.00)**. Progress payments shall be made in accordance with Article 14 of the "General Conditions" of the Contract. The required submittal date for pay requests will be as determined by the Owner, and shall be far enough prior to the end of each month to meet the Owner's established review & processing timelines. Retainage shall be as specified in the Information to Bidders.

Owner may retain additional off-sets from the amount due as summarized under General Conditions 14.02.B.5 & D.2, or GC 14.07.C.1, to such extent as may be necessary to protect the Owner from loss due to any of the enumerated conditions (*including but not limited to liability for liquidated damages*).

ARTICLE IV - CONTRACT DOCUMENTS: The Contract Documents which comprise the entire agreement between the Owner and Contractor are attached to this Agreement, made a part hereof, and consists of the following: Bidding Documents, including but not limited to Invitation to Bid, Information for Bidders, Instructions to Bidders, Supplementary Instructions to Bidders, Bid Form including bid forms & Schedule of Prices, Subcontractor Disclosure Forms, Bid Bond, Agreement, Performance Bond, Payment Bond, Conditions of the Contract (General, Supplemental General and other conditions), Addenda No. **0** through **0**, Notice of Award, Notice to Proceed, Technical Specifications & Appendices, as well as proof of insurance (insurance certificates) and applicable Prevailing Wage Rates.

The Contract Documents are complementary and what is called out by any portion of the Contract Documents (drawings, specifications, or any contract forms) shall be as binding as if called for by all.

In construing this Agreement, it is understood that: (1) if the context so requires: (a) the singular pronoun shall be taken to mean and include the plural pronoun; (b) the masculine pronoun shall be taken to mean the feminine and neuter pronoun; and (2) all captions used herein are intended solely for the convenience of

reference and shall in no way limit any of the provisions of this Agreement.

ARTICLE V - PREVAILING WAGE. Contractor must pay the current prevailing wage rates as established by the Bureau of Labor and in accordance with ORS 279C.800 – 279C.870 and contained herein, including daily, weekly, weekend and holiday overtime as required. Contractor is responsible for submitting any required notifications and copies of certified payrolls to BOLI, and also directly to the Owner.

ARTICLE VI – TAX CERTIFICATION. The Contractor hereby certifies in writing, under penalty of perjury, that he/she is, to the best of his/her knowledge, not in violation of any tax laws described in ORS 305.380(4).

ARTICLE VII – INSURANCE CERTIFICATES. Evidence of insurance coverage must be submitted on current “ACORD” forms (or other insurance certificate containing the same information) that **EITHER** includes a statement that “30 days cancellation notice shall be provided” **OR** the Contractor’s insurance agent shall submit a written letter stating that copies of insurance certificates will be sent to the Owner and the Owner’s Representative a minimum of every 30 days, throughout the term of the required insurance under the contract. The Owner and Westech Engineering must be included as additional insured, with the Owner being named as certificate holder. In addition, insurance or bond riders must be provided if required under the terms of any permit that the Contractor must obtain from any City, County, service district or state agency with jurisdiction over the work

ARTICLE VIII - OTHER PROVISIONS. This Agreement shall be binding on all parties hereto and their respective heirs, executors, administrators, successors, and assigns. Pursuant with City Rule 137-049-0200(2), the Contractor shall not assign, sell, dispose of, or a transfer rights, or delegate duties under this Agreement, either in whole or in part, without the Owner’s prior written consent. Unless otherwise agreed by the Owner in writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Agreement. If Owner consents in writing to an assignment, sale, disposal, or transfer of the Contractor’s rights or delegation of Contractor’s duties, the Contractor and its surety, if any, shall remain liable to Owner for complete performance of the Contract as if no such assignment, sale, disposal, transfer, or delegation had occurred, unless Owner agrees otherwise in writing.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in **four (4)** copies each of which shall be deemed an original. Each party represents by signing below that he/she has authority to sign this agreement and to fully bind the principals thereto.

Dated 5/12, 2023 (Contractor to fill in date, must match the date on bond forms)

Jones Drilling Co, Inc. (Contractor)

By _____

Title _____

Type/Print Name: Bret Jones

City of Aumsville (Owner)

By: _____

Title: _____

Type/Print Name: _____

Attest (ie. to City Signature): _____

City Recorder (if required by City Charter)



PAYMENT BOND

Any singular reference to Contractor, Surety, Oblige, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address):

Jones Drilling Co, Inc.

MARKEL INSURANCE COMPANY

29400 Santiam Highway

2103 CITY WEST BLVD, SUITE 1300

Lebanon, OR 97355

HOUSTON TX 77042

OWNER City of Aumsville
595 Main Street
Aumsville, Oregon 97325

CONTRACT

Date: 5-17-03 (Contractor to fill in to match date on signature page of Agreement)
Amount: \$516,680.00
Project Name: Boone Well No. 3 & Mill Creek Well No. 1 Drilling Project

BOND

Date: 5-17-03 (Contractor to fill in, match date on signature page of Agreement):
Amount: \$516,680.00
Modifications to this Bond: None

CONTRACTOR AS PRINCIPAL JONES DRILLING CO., INC

SURETY MARKEL INSURANCE COMPANY

Company: (Corporate Seal)

Company: (Corporate Seal)

Signature: [Handwritten Signature]

Signature: [Handwritten Signature]

Name: Bret Jones

Name: ROBIN BAIRD

Title: Vice President

Title: ATTORNEY-IN-FACT

FOR INFORMATION ONLY - Name, Address and Telephone

Agent Or Broker, Name & Address:

KPD INSURANCE
1111 GATEWAY LOOP
SPRINGFIELD OR 97477

ROBIN BAIRD/541-741-0550
Agent/Broker Phone #

OWNER'S REPRESENTATIVE

Westech Engineering, Inc
3841 Fairview Industrial Dr. SE, Suite 100
Salem, OR 97302-1192
(503) 585-2474

ARTICLES

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, and administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference. The Contractor and Surety, jointly and severally, agree that this Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Construction Contract not increasing the Contract Price more than twenty-five percent (25%). The term "amendment" wherever used in this Bond, and whether referring to this Bond, the Construction Contract or the loan documents, shall include any alteration, extension, or modification of any character whatsoever.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Claimant is defined as persons claiming to have supplied labor or materials for the prosecution of the work provided for in the Construction Contract, including any person having a direct contractual relationship with the Contractor furnishing the Bond or direct contractual relationship with any subcontractor, or an assignee of such person, or a person claiming monies due to the State Accident Insurance Fund Corporation, the State Department of Employment Trust Fund, or the Department of Revenue, in connection with the performance of the Construction Contract, has a right of action on the Contractor's Bond as provided in ORS 279C.380 and 279C.400 only if:
 - 4.1 the person or the assignee of the person has not been paid in full; and
 - 4.2 the person gives written notice of claim, as prescribed in ORS 279C.600, to the Contractor and the Secretary of State, if the Construction Contract is with a state agency, or the clerk or auditor if the public body is other than a state agency.

The intent of this Bond shall be to include without limitation, the terms 'labor, materials or equipment, that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

5. The Contractor and Surety hereby jointly and severally agree with the Owner that every Claimant, who has not been paid in full before the expiration of a period of one hundred eighty (180) days (200 days for the filing of fringe benefit claims) after the date on which the last of such Claimant's work or labor was done or performed, or materials were furnished by such Claimant, for which claim is made, may have a right of action on this Bond. The Owner shall not be liable for the payment of any costs or expenses including attorneys' fees, which the Owner may incur in connection with its defense of any such right of action.

6. No suit or action shall be commenced on this Bond by any Claimant:
 - 6.1 Unless Claimant shall have given written notice to the Contractor and the Secretary of State, if the Construction Contract is with a state agency, or the clerk or auditor of the public body which let the Construction Contract if the public body is other than a state agency, within one hundred eighty (180) days (200 days for the filing of fringe benefit claims) after such Claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, or hand delivered in an envelope addressed to the Contractor, and such other entity who is to receive notice, at any place where that party maintains an office, conducts business, or at its residence, or delivered to that location.
 - 6.2 After the expiration of two (2) years from the date on which the Claimant last performed labor, materials or equipment. Any limitation embodied in this Bond, which is prohibited by any law controlling the project, shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by law.
7. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond and any amendments thereto as outlined in Paragraph 1, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
12. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
13. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
14. **DEFINITIONS**
 - 14.1 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

None.

PERFORMANCE BOND

Any singular reference to Contractor, Surety, Obligee, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address):

Jones Drilling Co, Inc.
29400 Santiam Highway
Lebanon, OR 97355

MARKEL INSURANCE COMPANY
2103 CITY WEST BLVD, SUITE 1300
HOUSTON TX 77042

OWNER City of Aumsville
595 Main Street
Aumsville, Oregon 97325

CONTRACT

Date: 5-12-23 (Contractor to fill in to match date on signature page of Agreement)
Amount: \$516,680.00
Project Name: Boone Well No. 3 and Mill Creek Well No. 1 Drilling Project

BOND

Date: 5-12-23 (Contractor to fill in, match date on signature page of Agreement);
Amount: \$516,680.00
Modifications to this Bond: None

CONTRACTOR AS PRINCIPAL JONES DRILLING CO., INC **SURETY** MARKEL INSURANCE COMPANY

Company: (Corporate Seal)

Company: (Corporate Seal)

Signature: [Signature]

Signature: [Signature]

Name: Bret Jones

Name: ROBIN BAIRD

Title: Vice President

Title: ATTORNEY-IN-FACT

FOR INFORMATION ONLY—Name, Address and Telephone

Agent Or Broker, Name & Address:

KPD INSURANCE
1111 GATEWAY LOOP
SPRINGFIELD OR 97477
ROBIN BAIRD/541-741-0550
Agent/Broker Phone #

OWNER'S REPRESENTATIVE

Westech Engineering, Inc
3841 Fairview Industrial Dr. SE, Suite 100
Salem, OR 97302-1192
(503) 585-2474

ARTICLES

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executor, administrators, successors and assigns to the Owner for the performance of the Construction Contract and any extension thereof, and during the twenty-four (24) month warranty/guaranty period, which contract, extension and guaranty are incorporated herein by reference. This bond shall remain in full force and effect as a maintenance/warranty bond during the entire guaranty/warranty period, unless replaced with a separate warranty/maintenance bond acceptable to the Owner.
2. If the Contractor performs the Construction Contract (including any repairs required during the warranty period), the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
 - 3.1 The Owner has notified the Contractor and the Surety at its address described on the signature page herein, that the Owner is considering declaring the Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen (15) days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and;
 - 3.2 The Owner has declared Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty (20) days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and;
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors, which agents or independent contractors shall be acceptable to the Owner; or
 - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

- 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 - 4.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or
 - 4.4.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two (2) years after Contractor Default or within two (2) years after the Contractor ceased working or within two (2) years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed by certified or registered mail or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. **DEFINITIONS**

- 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
- 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
- 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

None.

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Michelle Bench, Robin Baird, Kyle Hudson, Keith Yam, Ken Price, William Kaufmann

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Fifty Million and 00/100 Dollars (\$50,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, any Senior Vice President, Vice President, Assistant Vice President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 3rd day of September, 2021.

SureTec Insurance Company

By: [Signature]
Michael C. Keimig, President



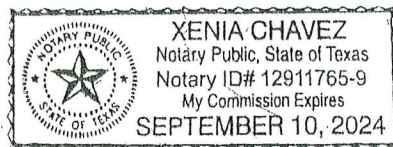
Markel Insurance Company

By: [Signature]
Lindy Jennings, Vice President

State of Texas
County of Harris:

On this 3rd day of September, 2021 A. D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.



By: [Signature]
Xenia Chavez, Notary Public
My commission expires 9/10/2024

We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 12th day of May, 2023.

SureTec Insurance Company

By: [Signature]
M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By: [Signature]
Andrew Marquis, Assistant Secretary



STATE OF OREGON
STATUTORY PUBLIC WORKS BOND

Surety bond #: 65137875

CCB # (if applicable): _____

We, Jones Drilling Co., Inc., as principal, and

WESTERN SURETY COMPANY, a corporation qualified and authorized to do

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

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

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

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

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

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

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

SIGNED, SEALED AND DATED this 13th day of July, 2020

<p>Surety by:</p> <p><u>WESTERN SURETY COMPANY</u> (Seal) <i>Company Name</i></p> <p><u><i>Paul T. Bruflat</i></u> <i>Signature</i></p> <p><u>Paul T. Bruflat, Vice President</u> <i>Title (e.g. Attorney-in-Fact)</i></p> <p><u>P.O. Box 5077</u> <i>Address</i></p> <p><u>Sioux Falls, SD 57117-5077</u> <i>City State Zip</i></p>	<p>Principal by:</p> <p><u>Jones Drilling Co., Inc.</u> <i>Name</i></p> <p>_____ <i>Signature</i></p> <p>_____ <i>Title</i></p> <p><u>29400 Santiam Hwy</u> <i>Address</i></p> <p><u>Lebanon, OR 97335</u> <i>City State Zip</i></p>
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SEND BOND TO: Construction Contractors Board
PO Box 14140
Salem, OR 97309-5052
Telephone: (503) 378-4621

Western Surety Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That WESTERN SURETY COMPANY, a corporation organized and existing under the laws of the State of South Dakota, and authorized and licensed to do business in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the United States of America, does hereby make, constitute and appoint

Paul T. Bruflat of Sioux Falls,
State of South Dakota, its regularly elected Vice President,
as Attorney-in-Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, the following bond:

One Statutory Public Works Prevailing Wage

bond with bond number 65137875

for Jones Drilling Co., Inc.

as Principal in the penalty amount not to exceed: \$ 30,000.00.

Western Surety Company further certifies that the following is a true and exact copy of Section 7 of the by-laws of Western Surety Company duly adopted and now in force, to-wit:

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys-in-Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

In Witness Whereof, the said WESTERN SURETY COMPANY has caused these presents to be executed by its Vice President with the corporate seal affixed this 13th day of July, 2020.

ATTEST

L. Nelson

L. Nelson, Assistant Secretary

WESTERN SURETY COMPANY

By

Paul T. Bruflat

Paul T. Bruflat, Vice President



STATE OF SOUTH DAKOTA }
COUNTY OF MINNEHAHA } ss

On this 13th day of July, 2020, before me, a Notary Public, personally appeared Paul T. Bruflat and L. Nelson

who, being by me duly sworn, acknowledged that they signed the above Power of Attorney as Vice President and Assistant Secretary, respectively, of the said WESTERN SURETY COMPANY, and acknowledged said instrument to be the voluntary act and deed of said Corporation.



My Commission Expires June 23, 2021

J. Mohr

Notary Public

To validate bond authenticity, go to www.cnasurety.com > Owner/Obligee Services > Validate Bond Coverage.



PART 3:

CONDITIONS OF THE CONTRACT

GENERAL CONDITIONS

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents. In case of inconsistency between the Contract Documents and any Addenda, the Addenda supersede other Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Allowance*—a specified monetary sum, specified quantity or time not otherwise defined by the specifications and drawings, but which the Contractor is required to include in the bid or price. An Allowance may be either a cash allowance or a quantity allowance.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 5. *Approve*—Where used in conjunction with the Owner's response to submittals, requests, applications, inquiries, reports, and claims by the Contractor, the meaning of the term "approved" will be held to the limitations of the Owner's and Engineer's responsibilities and duties as specified in the General Requirements. In no cases will "approval" by the Owner or Engineer be interpreted as a release of the Contractor from responsibilities to fulfill requirements of the Contract Documents.
 6. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 7. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 8. *Bidder*—The individual or entity who submits a Bid directly to Owner. The term "Proposer" shall be used interchangeably with the term "Bidder," and the term "Proposal" shall be used interchangeably with the term "Bid."
 9. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 10. *Bidding Requirements*—The advertisement or invitation to bid, Information for Bidders, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements or attachments.
 11. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 12. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 13. *Consultant*—An individual or entity having a direct contract with the Engineer, Engineer's Consultant and/or Owner for performance of work on the Project.
 14. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 15. *Construction Submittals*—See "Shop Drawings" definition.
 16. *Contract Documents*—Those items so designated in the Agreement. Only the printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals are not Contract Documents. The reports and drawings of subsurface and physical conditions are not Contract Documents unless specifically identified as such in the Supplementary Conditions, if any.
 17. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject

- to the provisions of Paragraph 11.03 in the case of Unit Price Work).
18. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
 19. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
 20. *Cost of the Work*—See Paragraph 11.01 for definition.
 21. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
 22. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver. However, the Contractor shall have no rights or remedies arising from execution of the Agreement prior to receiving a Notice to Proceed from Owner.
 23. *Engineer*—The individual or entity retained by the Owner to act as engineer of record during the construction of the work.
 24. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
 25. *Final Completion*—The point at which the Owner has determined that all Work is complete, the facilities are operating as specified and according to applicable design criteria, all other contract requirements have been satisfied, and final payment has been made in accordance with the requirements of the Contract Documents.
 26. *General Requirements*—Sections of Division 1 of the Specifications.
 27. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
 28. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
 29. *Latent Defect*—A defect in the Work of which the Owner has no actual knowledge.
 30. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
 31. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
 32. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
 33. *Notice of Award*—The written notice by Owner (or Owner's Representative) to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner (if Owner decides to proceed with the work) will sign and deliver the Agreement to the apparent successful bidder. However, the Notice of Award shall not be construed as an agreement, meeting of the minds, contract or any other legal obligation between Owner and Contractor. The Contractor shall have no rights or remedies arising from execution of the Agreement prior to receiving a Notice to Proceed from Owner.
 34. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
 35. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
 36. *PCBs*—Polychlorinated biphenyls.
 37. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
 38. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities

- comprising the Contractor's plan to accomplish the Work within the Contract Times.
39. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
40. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
41. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
42. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
43. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
44. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
45. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
46. *Shop Drawings*—All construction submittals, drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
47. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
48. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
49. *Stipulated Price Work*—Work to be paid at unit or lump sum prices established by Owner in the Bidding Documents, as distinguished from unit or lump sum prices submitted, or bid, by the Bidder.
50. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
51. *Substantial Completion*—Unless additional requirements are included in the Supplementary Conditions, Substantial Completion is that degree of completion of the project's facilities and operating systems sufficient to provide Owner the full time, uninterrupted, and continuous beneficial use and operation of the Work, and (i) all required functional, performance and acceptance or startup testing has been successfully demonstrated for all components, devices, equipment, and instrumentation and control to the satisfaction of Engineer in accordance with the requirements of the Specifications (including test operation of equipment, electrical and control systems to demonstrate that the total system operates as specified, and that all system components operate correctly and communicate with all other system components as necessary for a complete and operable system); (ii) all final building, plumbing, mechanical and electrical inspections required have been completed and any identified critical defective or incomplete Work replaced or corrected; (iii) occupancy permits and certifications (if any) have been issued by jurisdictions having authority; (iv) all appurtenant operations and maintenance features and safety features (ie. handrails, motor guards, safety signs & notices, emergency eye-wash/showers, etc.) have been installed and are fully functional; and (v) all required record drawings and/or O&M manuals/information (where applicable) have been submitted and accepted by the Owner. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
52. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
53. *Supplementary Conditions*—That part of the Contract Documents which amends or

supplements these General Conditions.

54. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

55. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

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

57. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or

adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

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

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Final Completion (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used (in connection with services, materials, or equipment) in a context clearly requiring an obligation of Contractor, “provide” is implied. Provide” shall be understood to mean “provide complete in-place,” that is, “furnish and install, complete”.

- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor shall deliver to the Owner and Engineer, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor is required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the day indicated in the Notice to Proceed. Owner will provide a Notice to Proceed at a reasonable time after the effective date of the Agreement. In no event will the Owner have any obligations or duties to Contractor under the Agreement until the Notice to Proceed is given to Contractor, and the Contractor shall have no rights or remedies arising from execution of the Agreement prior to receiving a Notice to Proceed from Owner.

2.04 *Starting the Work*

- A. Unless otherwise specified in the Information for Bidders or the Agreement, Contractor shall start to perform the Work within ten (10) days of the date indicated in the Notice to Proceed. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Per the requirements in the Specifications, Contractor shall submit to Engineer for timely review copies of a Project Schedule, Schedule of Submittals and Preliminary Schedule of Values as applicable. Unless otherwise required in the Specifications, these shall be submitted prior to the Preconstruction Conference, or within five (5) days after the date

of the Notice to Proceed, whichever is sooner.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Unless otherwise approved by the Owner, before any Work at the Site is started a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Acceptance of Schedules*

- A. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer as required in the Specifications.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

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

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

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work.* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements at the site, including but not limited to grades, elevations, dimensions, locations, and/or interconnection of new work with existing or other work. Contractor shall immediately report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby. Any errors due to Contractor's failure to verify all such field measurements shall be promptly rectified by Contractor without additional cost to Owner or extension of Contract Time.
2. *Contractor's Review of Contract Documents During Performance of Work.* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall immediately report it to

Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. Field Orders and Engineer's written interpretation & clarifications will take precedence over all other Contract Document components referenced herein. Figure dimensions on Drawings take precedence over scaled dimensions. Drawings with the higher level of detail take precedence over less detailed Drawings. Greater number, amount or size takes precedence over lesser number, amount or size.
3. Where a conflict occurs between or within the specifications and drawings, the more stringent or higher quality requirements shall apply (Engineer shall decide which stipulation will provide the best installation). In resolving other inconsistencies among two or more components of the Contract Documents, precedence shall be given in the following order:
 - a. Permits from outside agencies as may be required by law
 - b. Change Order(s)
 - c. Addenda
 - d. Agreement
 - e. Supplementary Conditions
 - f. General Conditions

- g. Bidding Documents, including Contractor's Bid Form
- h. Specifications—Division 01
- i. Drawings.
- j. Specifications—Division 02-16
- k. Bonds

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents can only be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by a written Change Order.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways (any variations or deviations in the Work arising from any of the methods set forth in Paragraph 3.04.B will not authorize any change in the Contract Price or Contract Time. The sole method to amend the Contract Price or Contract Time is pursuant to Paragraph 3.04.A):
 - 1. A Field Order;
 - 2. Engineer's approval of a Shop Drawing or Sample (including Engineer's review comments); or
 - 3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

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

3.06 *Electronic Data*

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

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

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien

against such lands in accordance with applicable Laws and Regulations.

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

4.02 *Subsurface and Physical Conditions*

- A. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the site conditions and limitations under which the Work is to be performed, including, without limitation, (1) the location, condition, layout, and nature of the project site and surrounding areas; (2) generally prevailing climatic conditions; (3) anticipated labor, supply, and costs; (4) availability and cost of materials, tools, and equipment; and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the project site or any improvement located on the project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make adjustments in either the Contract Price or Contract Times arising from a failure by the Contractor or any Subcontractor to comply with the requirements of this Paragraph 4.02.A.

- B. *Reports and Drawings:* The Supplementary Conditions identify (if any):

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

- C. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

- 1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety

precautions and programs incident thereto; or

- 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
- 3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

- A. *Notice:* If Contractor discovers or should have discovered that any subsurface or physical condition that is uncovered or revealed either:

- 1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
- 2. is of such a nature as to require a change in the Contract Documents; or
- 3. differs materially from that shown or indicated in the Contract Documents; or
- 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, within 24 hours after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

- C. *Possible Price and Times Adjustments:*

- 1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more

of the categories described in Paragraph 4.03.A; and

- b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
 3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others.
 1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

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

4.05 *Reference Points*

- A. Unless otherwise specified in the Contract

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

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings (if any) known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may reasonably rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental

Condition created with any materials brought to the Site by, or released as a result of the intentional or negligent act or failure to act of Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer,

and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend, hold harmless and reimburse Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. Except as provided otherwise by the Information for Bidders or by Laws or Regulations, these bonds shall remain in effect until completion of the correction period specified in Paragraph 13.07, or a minimum of one year after the date when final payment becomes due, whichever is later. Contractor shall also furnish such other bonds as are required by the Contract Documents or by agencies with jurisdiction.
- B. All bonds shall be in the form prescribed by the

Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within ten (10) days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies from which bonds and insurance are furnished by the Contractor shall have a rating of not less than A- in the most current edition of Best's Rating Guide, in addition to such additional requirements and qualifications as may be provided in the Supplementary Conditions. Owner shall have the right of final approval of sureties and insurers.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner and Engineer, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain. Owner and Engineer shall be included as additional insureds (as required by Paragraph 5.04.B.1), as well as any other parties or entities identified in the Supplementary Conditions or required as a condition of permits or approvals obtained by Contractor.
- B. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to

identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

- C. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- D. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 Contractor's Insurance

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

- B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds Owner and Engineer (subject to any customary exclusion regarding professional liability), and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days prior written notice has been given to Owner, Engineer and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
 - a. Evidence of insurance coverage submitted on the "ACORD" form, or any other insurance certificate containing the language regarding cancellation of coverage, shall be revised to strike out the words "endeavor to", and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives";
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a

certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. Unless otherwise provided in the Supplementary Conditions or required by Laws and Regulations, the deductible shall not exceed \$10,000. This property insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
3. include expenses that may be incurred in the repair or replacement of any existing property or structures included in or affected by the Work (including but not limited to fees and charges of engineers and architects);
4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being

incorporated in the Work;

5. allow for partial utilization of the Work by Owner;
6. include testing and startup; and
7. be maintained in effect until final payment is made.

- B. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 shall contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty (30) days prior written notice has been given to Owner and Engineer, as well as other additional insureds that may be listed in the Supplementary Conditions.

1. Evidence of insurance coverage submitted on the "ACORD" form, or any other insurance certificate containing the language regarding cancellation of coverage, shall be revised to strike out the words "endeavor to", and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives".

- C. If Owner requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Contractor shall, if possible, include such insurance, and the cost thereof will be incorporated by appropriate Change Order.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Contractor waives all rights against Owner and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against

Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

5.08 *Receipt and Application of Insurance Proceeds*

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

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

- A. If Owner has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by Contractor in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the Owner shall so notify the Contractor in writing within ten (10) days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Contractor shall provide Owner with such additional information in respect of insurance provided as Owner may reasonably request.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to

Substantial Completion of all the Work as provided in Paragraph 14.05, the Contractor shall, prior to such use or occupancy, be solely responsible to notify his insurer(s) providing the property insurance pursuant to Paragraph 5.06, and ensure that any changes in coverage necessitated thereby are made. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy. Failure by Owner to require submittal of such endorsements prior to such use or occupancy shall not be construed as a waiver of Contractor's obligation to ensure that such endorsements are provided.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall be responsible for ensuring that the finished work complies accurately with the Contract Documents.
- B. For purposes of giving or receiving notice, directives, change orders, or any other information from the Engineer or Owner to the Contractor, the Contractor shall designate one person as Project Manager to receive such notice, directives, change orders, or other information.
- C. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor. The Contractor's superintendent shall be present at the Site at all times while Work is in progress and shall be available by phone for emergencies 24 hours per day, 7 days per week. If at anytime the superintendent leaves the Site while Work is in progress, Engineer shall be notified and provided with the name of the Contractor's representative having responsible charge.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, well qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain

good discipline and order at the Site.

- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Unless otherwise allowed or required in the Contract Documents, Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

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

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in

Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

- 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances and conditions described below. Requests for review of substitute or "or-equal" items of material and/or equipment will not be accepted by Engineer from anyone other than Contractor.

The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents. The materials and equipment described in the Bidding Documents establish a standard of required type, function, and quality to be met by any proposed "or-equal" item. Unless otherwise specifically provided in the contract documents for specific material or equipment, no requests for approval of substitute materials or equipment will be permitted during the bidding process. Substitutes will be considered only after the Effective Date of the Agreement, in accordance with the procedures in the Contract Documents.

Reimbursement by the Contractor for costs associated with review by Engineer of proposed substitute items will be as summarized under Paragraph 6.05.E, whether or not the substitute item is approved for use. Engineer may preclude the use of certain alternate or substitute materials or equipment in cases where, in the opinion of Engineer or Owner, efficient utilization of existing materials or supplies requires the acquisition of compatible equipment or supplies, or where there is only one manufacturer or seller of the product of the quality required.

- 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to

that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service;
 - 4) the alternate material or equipment proposed is not precluded under Paragraph 6.05.A;
 - 5) it will not materially increase anticipated maintenance or operating costs;
 - 6) it is compatible with existing system components.
- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item, provided that the proposed substitute material or equipment is not precluded under Paragraph 6.05.A..

- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

- 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish at Contractor's expense additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. The amount, form and duration of any such guarantee or bond shall be acceptable to Owner.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer and Engineer's consultants for

evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer and Engineer's consultants 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. Reimbursement rates for Engineer or related entities for evaluation of proposed substitutes shall be on the basis as established in the Supplementary Conditions.

- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 Concerning Subcontractors, Suppliers, and Others

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Contract Documents require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement or issuance of the Notice to Proceed, and if Contractor has submitted a list thereof in accordance with the Contract Documents, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties

and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

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

6.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Unless otherwise provided in the Contract Documents, Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the

Agreement, except that Owner shall pay all costs for System Development Charges (SDCs) related to the Work. Unless otherwise provided in the Contract Documents, Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

- 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend, hold harmless and reimburse Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

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

6.10 *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. Costs for all such taxes are to be included in the Contract Price.

6.11 *Use of Site and Other Areas*

- A. *Limitation on Use of Site and Other Areas:*
 - 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all current Drawings, Specifications, Addenda, Change Orders, Field

Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and annotated final Shop Drawings (marked-up to reflect field changes, if any) shall be delivered to Engineer.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3

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

- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable, and such notice has been accepted by Owner (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer written notice immediately, and in no instance more than 24 hours after the alleged emergency, if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order will be issued.

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and

Samples to Engineer for review and approval in accordance with the requirements of the Specifications.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

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

D. *Additional Warranty Provisions.*

1. Contractor further warrants and guarantees to the Owner and Engineer that all Work is guaranteed for a specified period from the date of final acceptance by the Owner. Except for equipment or portions of the work with longer warranties specified in the Contract Documents, the Work shall be guaranteed for warranty period specified in the Contract Documents, measured from the date of final acceptance by the Owner. If no warranty period is specified elsewhere in these Contract Documents, the Work shall be guaranteed for 2 years from the date of final acceptance by the Owner. If, within the warranty period, repairs or changes are required in connection with the Work, the Contractor shall promptly, without expense to the Owner:
 - a. Place in satisfactory condition all guaranteed Work;
 - b. Correct all damage to the building, site, equipment or contents which is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the contract; and,
 - c. Correct any work, material, equipment, or contents of building, structure or site disturbed in fulfilling the guarantee.
2. Repairs, replacements or changes made under the warranty requirements shall be warranted for the remainder of the specified warranty period, or for a minimum of 1 year (whichever is longer), beginning on the date of the acceptance of the repairs, replacements or changes.
3. If the Contractor fails within 10 days to proceed to comply with the terms of this warranty, the Owner may have the defects corrected. The Contractor and the Contractor's surety shall be liable for all expense incurred. In case of an emergency where delay would cause serious loss or damage, repairs may be made without notice to the Contractor, and the Contractor or the Contractor's surety shall pay the cost.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend, hold harmless, and reimburse Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not

limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, and consultants arising out of the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and

design criteria that such services must satisfy.

Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer. The design professional shall be licensed in the state wherein the project is located.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in the Specifications.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

6.22 *Environmental Indemnity*

- A. Contractor shall indemnify and hold Owner harmless, its agents and employees from and against, any and all claims, costs, losses, damage, liabilities, penalties and fines arising out of or resulting from (i) the violation by Contractor of any federal, state or local statute, law, rule, regulation, ordinance, order, permit or governmental approval or authorization relating to the protection of the environment or human health, safety, or welfare ("Environmental Law"); and (ii) any release, spill, discharge, or disposal of any "hazardous material" which shall include, without limitations, any "hazardous substance," "hazardous material," "toxic substance," "pollutant," "contaminant," "oil," or "petroleum," or words of similar impact under any Environmental Law.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or

through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. notice thereof will be given to Contractor prior to starting any such other work; and
 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- D. Should Contractor cause damage to the work or property of any other contractor at the site, or should any claim arising out of or resulting from Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or Engineer's Consultants or any other person, Contractor shall

promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by mediation. If mediation is unsuccessful, Contractor shall still defend against further litigation as follows. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify, defend, hold harmless and reimburse Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, and the successors in interest of the foregoing, from, for and against, suits, actions, claims, damages, penalties, liabilities, losses and expenses (including but not limited to all fees and related costs, disbursements and expenses of engineers, architects, attorneys and expert witness' fees) arising directly or indirectly or consequentially out of or resulting from any action, legal or equitable, brought by a separate contractor against Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them to the extent based on a claim caused by, arising out of, or resulting from Contractor's negligent or other failure of performance in the Work.

7.02 *Coordination*

- A. The Owner will have the authority to contract with other contractors, utility companies or Public Agencies for the performance of other work on the Project at the Site.
- B. Contractor shall have sole responsibility for coordination of his work with any and all activities or construction for or by other contractors, utility companies or Public Agencies at and adjacent to the Project Site.

7.03 *Legal Relationships*

- A. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- B. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer, or provide Engineer with notice of any communications with Contractor.

- 8.02 *Replacement of Engineer*
- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer, whose status under the Contract Documents shall be that of the former Engineer.
- 8.03 *Furnish Data*
- A. Owner shall furnish the data required of Owner under the Contract Documents.
- 8.04 *Pay When Due*
- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.
- 8.05 *Lands and Easements; Reports and Tests*
- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 8.06 *Insurance*
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.
- 8.07 *Change Orders*
- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.
- 8.08 *Inspections, Tests, and Approvals*
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.
- 8.09 *Limitations on Owner's Responsibilities*
- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 8.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

- 8.11 *Evidence of Financial Arrangements*
- A. Prior to issuance of the Notice to Proceed, and upon written request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.
- 8.12 *Compliance with Safety Program*
- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

- 9.01 *Owner's Representative*
- A. Owner's representative during the construction period will be that person or entity who is retained by, authorized and paid by the Owner to represent the Owner's interests. Engineer will be Owner's representative during the construction period only to the extent authorized (and contracted for) by Owner.
- 9.02 *Visits to Site*
- A. Unless otherwise specified in the Contract Documents, and only to the extent authorized (and contracted for) by Owner, Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods,

techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and

Samples, see Specifications.

- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within thirty (30) days of the event giving rise to the question.

- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's written decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

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

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or

from time to time, order additions, deletions, or revisions in the Work by a Change Order. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

- B. Owner or Engineer may, in anticipation of ordering an addition, deletion or revision to the Work, request Contractor to prepare a proposal of cost and times to perform Owner's contemplated changes in the Work. Contractor's written proposal shall be transmitted to the Engineer promptly, but not later than seven (7) days after Contractor's receipt of Owner's written request and shall remain a firm offer for a period of not less than forty-five (45) days after receipt thereof by Engineer. Owner or Engineer's request for proposal or multiple requests for proposals shall not justify a claim for an adjustment in Contract Price or Contract Times (or Milestones), nor obligate the Owner to authorize work under the proposal. Contractor is not authorized to proceed on an Owner contemplated change in the Work prior to Contractor's receipt of a Change Order incorporating such change into the Work, or Owner's written authorization pending execution of a Change Order.
- C. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05.
- D. In Signing a Change Order, the Owner and Contractor acknowledge and agree that:
 - 1. the stipulated compensation (Contract Price or Contract Times, or both) set forth in the Change Order includes payment for: (i) the Cost of the Work covered by the Change Order, (ii) Contractor's fee for overhead and profit, (iii) interruption of progress schedules, (iv) delay and impact, including cumulative impact, on Work under the Contract Documents, and (v) extended overhead;
 - 2. the Change Order constitutes full mutual accord and satisfaction for the change to the Work;
 - 3. no reservation of rights to pursue subsequent claims on the Change Order will be made by either party;
 - 4. no subsequent claim or amendment of the Contract Documents will arise out of or as a result of the Change Order;
 - 5. except as otherwise provided in the Change Order, the Contract, as amended, between

Owner and Contractor remains in full force and effect.

- E. Agreements on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of or related to the Change Order, including but not limited to all direct and indirect costs and impacts associated with such change and any and all adjustments to the Contract Price and the Contract Time. In the event a Change Order increases the Contract Price, the Contractor shall include the Work covered by such Change Order in applications for payment as if such Work were originally part of the contract documents.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.
- B. Extra work will not be considered as authorized additional work or for an adjustment in the Contract Price or the Contract Time unless a Change Order is executed by both Owner and Contractor. Furthermore, the parties agree that under no circumstance will an act or failure to act on the part of the Owner or Engineer constitute a waiver of the written Change Order requirement for extra or changed work. A written Change Order is a strict condition precedent for payment for extra work.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 2. changes in the Contract Price or Contract Times which are agreed to by the parties; and
 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the

Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

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

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:*

1. *By Contractor.* Written notice stating the general nature of each Claim shall be delivered by Contractor to Engineer promptly (but in no event later than seven (7) days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the Contractor. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer within thirty (30) days after the start of such event (unless Owner allows additional time for Contractor to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which Contractor believes it is entitled as a result of said event.

2. *By Owner.* Owner shall provide Engineer with written notice stating the general nature of each claim within a reasonable time after discovering an event giving rise thereto.

- C. *Engineer's Action:* Engineer will review each Claim and, within thirty (30) days after receipt of the last submittal of Contractor or Owner, take one of the following actions in writing:

1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said thirty (30) days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within thirty (30) days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with and within the time periods specified by this Paragraph 10.05.

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

11.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include

social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above only to the extent authorized in writing by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained. Owner reserve the right to furnish such materials as it deems advisable, and Contractor shall have no claims for costs and profit on such furnished materials.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work, but only to the extent authorized and approved in writing by Owner.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including fuel, transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site.

Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, will be considered to be small tools and no payment will be made therefore.

- c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

1) Rentals of construction equipment at rental rates listed for such equipment from rate sheets from established and reputable local rental companies, or other similar source acceptable to the Owner and Engineer. Such rental rates will be used to compute payments for equipment whether the equipment is under the Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment will be the rate resulting in the least total cost to the Owner for the total period of use. If it is deemed necessary by the Contractor to use the equipment not listed by the references specified herein, an equitable rental rate for the equipment will be established by the Engineer. The Contractor may furnish cost data which might assist the Engineer in the establishment of the rental rate. Payment shall be subject to the following:

- a) Payment for equipment which is already on the Project site and which is used in the completion of extra work will not be allowed;
- b) All equipment shall, in the opinion of the Engineer, be in good working condition and suitable for the purpose for which the equipment is to be used;
- c) Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which

has no direct power unit shall be powered by a unit of at least minimum rating recommended by the manufacturer;

- d) Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, will be considered to be small tools and no payment will be made therefore;

e) Rental time will not be allowed while equipment is inoperative due to breakdowns; and

f) Rental time will not be allowed while equivalent Contractor owned equipment is held at standby.

2) The rental time to be paid for equipment of the site will be the time the equipment is in productive operation on the extra work being performed and, in addition, will include the time required to move the equipment to the location of the extra work and return it to the original location or to another location; except, that moving time will not be paid if the equipment is used on other than the extra work, even though located at the site of the extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made for loading and transporting costs when the equipment is used at the site of the extra work on other than the extra work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or

otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or

equipment wrongly supplied, and making good any damage to property.

- 5. Other overhead or general expense costs of any kind, lost opportunity costs and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- 6. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer a detailed and itemized cost breakdown together with supporting data. Supporting data shall include but not be limited to daily submissions of timesheets indicating hours and trades worked (including worker classifications corresponding to Prevailing Wage rate classifications where applicable), equipment and date/time equipment was employed, and materials expended.

11.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances:*

- 1. Contractor agrees that:
 - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for

additional payment on account of any of the foregoing will be valid.

- C. *Contingency Allowance:*
 - 1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs by more than twenty-five percent (25%) from the estimated quantity of such item indicated in the Agreement (unless otherwise provided by the Contract Documents); and
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

**ARTICLE 12 – CHANGE OF CONTRACT PRICE;
CHANGE OF CONTRACT TIMES**

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted in accordance with the provisions of Paragraph 10.05, and delivered to Engineer within seven (7) days of the start of the event giving rise to the claim.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
 - 1. a mutually acceptable fixed fee; or
 - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 10 percent (10%);
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent (5%);
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of ten percent (10%)

of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent (5%) of the amount paid to the next lower tier Subcontractor, limited to a maximum fee of twenty-five percent (25%) including all tiers of subcontractors and Contractor;

- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent (5%) of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted in accordance with the provisions of Paragraph 10.05, and delivered to Engineer within seven (7) days of the start of the event giving rise to the claim.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.
- C. All requests for time extensions shall be supported by Schedule analysis showing the effect on the entire Project taking into account concurrent Work and the critical path, including float. Partial demonstration of impact on particular operations only will not be acceptable to show the criticality of any event on the Project Schedule as a whole.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph

12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Contract Times may be extended because of delays in the completion of the Work due to abnormal weather conditions provided that the Contractor shall, within seven (7) days of the start of the event causing such delay, notify Engineer in writing of the cause of the delay and request an extension of time. The Contractor shall demonstrate that the abnormal weather directly impacted a planned activity on the critical path of the Project Schedule at the time the abnormal weather occurred. Engineer will make recommendations to Owner to extend the Contract Times for completing the Work when, in Engineer's judgment, the findings of facts and extent of delay justify such an extension. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C. Contractor shall not be entitled to any additional compensation of any kind arising out of or relating to abnormal weather conditions.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in

Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor. Failure by Contractor to schedule and obtain any required inspections, testing and/or certifications in a manner so as to allow for the timely progress or completion of the work will not be grounds for an extension of Contract Time.

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer and other agencies with jurisdiction timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Failure by Contractor to schedule and obtain any inspections, testing or certifications (required by the drawings, Contract Documents or agencies with jurisdiction) in a timely manner will not be grounds for an extension of Contract Time.
- B. Except as otherwise required in the Contract Documents, Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in

Paragraph 13.04.C;

- 3. retesting required because of non-conformance to the requirements of the Contract Documents.

- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer. Tests required by Contract Documents to be performed by Contractor that require test certificates be submitted to Owner or Engineer for acceptance shall be made by an independent testing laboratory or agency licensed or certified in accordance with Laws and Regulations and applicable state and local statutes.

- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.

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

- G. Costs of retesting as required in accordance with Paragraph 13.03.B.3 shall be paid by the Contractor.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that

portion of the Work in question, furnishing all necessary labor, material, and equipment.

- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction, unless Contractor fails to provide written notice as required in Paragraph 13.03.F. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

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

13.07 *Correction Period (Warranty Period)*

- A. Unless a longer period is specified in the Information for Bidders, the correction period shall be one year from Substantial Completion. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the restoration of or repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. Where a portion of the work or a particular item of equipment is placed in continuous service for the benefit of Owner before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date only if so provided in the Specifications, or by express written approval by Owner.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed

and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim there-for as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven (7) days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all

or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim there-for as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed, including any required testing.

14.02 *Progress Payments*

- A. *Applications for Payments:*
 - 1. At least twenty-eight (28) days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work

completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing by Owner, the Application for Payment shall also be accompanied by a bill of sale, paid invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 - a. Written consent of any surety is required prior to payment for any materials stored on or off the project site. Contractor shall be responsible for obtaining such consent.
 - b. Owner's Representative(s) shall have the right to make inspections of the storage areas at any time.
 - c. Such materials shall be protected from diversion, destruction, theft and/or damage to the satisfaction of Owner, shall be specifically marked for use on the project, and shall be segregated from other materials at the storage facility.
3. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

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

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

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

- c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
- d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
- e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may recommend that the Owner retain off-sets from the amount due for events which include, but are not limited to, any of the conditions summarized below or under Paragraph 14.02.D.1 or 2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- f. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- g. the Contract Price has been reduced by Change Orders;
- h. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09;
- i. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A; or
- j. liability for liquidated damages has been incurred by the Contractor as set forth in the Agreement.

C. *Payment Becomes Due:*

- 1. Thirty (30) days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. *Reduction in Payment:*

- 1. Owner may refuse to make payment of the full amount recommended by Engineer

because:

- a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended;
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A; or
 - e. Owner has not received the Certified Payrolls from Contractor (if required) and must withhold the additional retainage until Contractor submits its Certified Payrolls.
2. Owner may reduce the amount to be paid for the following items:
- a. Liability for liquidated damages incurred by Contractor as set forth in the Agreement, or
 - b. Owner compensation to Engineer for labor plus expenses because of any the following Contractor-caused events:
 - 1) witnessing retesting of corrected or replaced defective Work;
 - 2) return visits to manufacturing facilities to witness factory testing or retesting;
 - 3) excessive submittal reviews (in excess of two reviews by Engineer) due to Contractor's failure to address all specification requirements and/or previous review comments, or due to providing incomplete submittals, or resubmittal of substantially the same submittal;
 - 4) evaluation of proposed substitutions and in making changes to Contract Documents occasioned thereby;
 - 5) overtime worked by Contractor necessitating Engineer, related entities, Resident Project Representative or site staff, if any, to work overtime; or

- 6) costs incurred for inspection & project management services by Engineer required beyond the end of the Contract Time due to Contractor's failure to complete the work within the Contract Time, as set forth in the Agreement.
- c. Reimbursement rates for Engineer or related entities to be calculated at the rate set forth in the Supplementary Conditions.
- 3. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
- 4. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

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

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work to be complete and ready for its intended use, including acceptable completion of all required testing, inspections and/or certifications (required by the drawings, Contract Documents or agencies with jurisdiction), Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a

tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven (7) days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within fourteen (14) days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said fourteen (14) days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to

be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. If, during final inspection, any of the Work is found to be still incomplete, or does not comply with the Contract Documents and requires correction Work by the Contractor necessitating subsequent Site inspection efforts by the Engineer or Owner to ascertain if the Work has been properly installed and completed, the Contractor shall be liable to the Owner for the cost of such inspection work or any subsequent reinspection as provided by Paragraph 14.02.D.2.b.

14.07 *Final Payment*

A. *Application for Final Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final

inspection and has delivered, in accordance with the Contract Documents, final copies of all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
- b. consent of the surety, if any, to final payment;
- c. a list of all Claims against Owner that Contractor believes are unsettled;
- d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work; and
- e. a waiver of all claims by Contractor against Owner.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten (10) days

after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Acceptance of such written notice by Owner and final payment of Contractor by Owner shall constitute Final Completion. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Final Payment Becomes Due:*

1. Thirty (30) days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

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

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with

the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven (7) days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven (7) days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven (7) days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 1. completed and acceptable Work executed in

accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. all claims, costs, losses, and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others (subject to limitations under Paragraph 15.03.B); and
 4. reasonable expenses directly attributable to termination.
- B. Contractor, subcontractors or suppliers shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination, including lost opportunity costs.
- C. Owner shall be credited for (1) payments previously made to Contractor for the terminated portion of the Work; (2) claims that Owner has against Contractor under the contract; and (3) the value of materials, supplies, equipment or other items that are to be disposed of by Contractor that are part of the Contract Price.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than ninety (90) consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within thirty (30) days after it is submitted, or (iii) Owner fails for thirty (30) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within thirty (30) days after it is submitted, or Owner has failed for thirty (30) days to pay Contractor any sum finally determined to be due, Contractor may, seven (7) days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

15.05 *Environmental Litigation*

- A. If the performance of all or any part of the Work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the Owner, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor or subcontractor at any tier not required by the terms of this Contract, such suspension, delay, or interruption shall be considered as if ordered by the Owner in the administration of this Contract under the terms of this subsection, except that it will not be possible for the Owner to fix the date for resumption of the Work.
- B. The term 'environmental litigation,' as used herein, means a lawsuit alleging that the Work will have an adverse effect on the environment or that the Owner has not duly considered, either substantively or procedurally, the effect of the Work on the environment. Specific laws, ordinances and resolutions regarding pollution prevention and natural resource preservation that may affect this Project are as follows:
 - 1. Federal Clean Water Act.
 - 2. Applicable state or local laws, statutes & regulations.

15.06 *Provisions Relating to Environmental and Natural Resource Laws and Rules; Remedies When Requirements Change*

- A. If the Contractor is delayed or must undertake additional Work by reason of existing regulations or ordinances of agencies not cited in the public contract or due to the enactment of new or the amendment of existing statutes, ordinances or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the successful Bid, the Owner may:
 - 1. Terminate the Contract;
 - 2. Complete the Work itself;
 - 3. Use non-agency forces already under contract with the Owner;
 - 4. Require that the underlying property owner be responsible for cleanup;

- 5. Go out to bid for a new contractor to provide the necessary services under the competitive bid requirements of state law as applicable; or
- 6. Issue the Contractor a Change Order setting forth the additional Work that must be undertaken.

- B. In addition to the obligation imposed under Paragraph 15.06.A to refer to federal, state and local agencies with regulations dealing with the prevention of environmental pollution and the preservation of natural resources, a public bid document must also make specific reference to known conditions at the construction Site that may require the Contractor to comply with the statutes, ordinances or regulations identified under Paragraph 15.06.A.
- C. If the Contractor encounters a condition not referred to in the Bid Documents and not caused by the Contractor and not discoverable by a reasonable prebid visual Site inspection and the condition requires compliance with the regulations referred to under Paragraph 15.06.A, the Contractor shall immediately give notice of the condition to the Owner.
- D. Except in the case of an emergency and except as may otherwise be required by any environmental or natural resource regulation, the Contractor shall not commence Work nor incur any additional job Site costs in regard to the condition encountered and described in Paragraph 15.06.C without written direction from the Owner.
- E. Upon request by the Owner, the Contractor shall estimate the emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition. This cost estimate shall be promptly delivered to the Owner for resolution.
- F. Within a reasonable period of time, the Owner may:
 - 1. Terminate the Contract;
 - 2. Complete the Work itself;
 - 3. Use non-agency forces already under contract with the Owner;
 - 4. Require that the underlying property Owner be responsible for cleanup;
 - 5. Go out to bid for a new Contractor to provide the necessary services under the competitive bid requirements of state law as applicable; or
 - 6. Issue the Contractor a Change Order setting forth the additional Work that must be undertaken.
- G. If the Owner chooses to terminate the Contract

under Paragraph 15.06.F.1, the Contractor shall be entitled to all costs and expenses incurred to the date of termination, including overhead and reasonable profits, on the percentage of the Work completed. The Owner shall have access to the Contractor's Bid Documents when making its determination of the additional compensation due to the Contractor.

- H. If the Owner causes work to be done by another Contractor under Paragraphs 15.06.A.3 or 15.06.A.5, or under Paragraphs 15.06.F.3 or 15.06.F.5, the Contractor shall not be held liable for actions or omissions of the other Contractor.
- I. The Change Order under Paragraph 15.06.A.6 or under Paragraph 15.06.F.6 shall include the appropriate extension of Contract Time and compensate the Contractor for all additional costs, including overhead and profit, reasonably incurred as a result of complying with the applicable regulations. The Owner shall have access to the Contractor's Bidding Documents when making its determination of the additional compensation due to the Contractor.

15.07 *Contractor's Tender Upon Termination*

- A. Upon receiving a written notice of termination of this contract, or if Contractor elects to terminate this Contract, Contractor shall immediately cease all activities under this Contract and take reasonable action to mitigate its losses upon termination, unless, in the case of termination by Owner, Owner expressly directs otherwise in its Notice of Termination. Upon termination of this Contract for any reason, Contractor shall deliver to Owner all documents, information, work in progress and other property that are or would be deliverable had the Contract been completed. Upon Owner's request, Contractor shall surrender to anyone Owner designates, all documents, research or objects or other tangible things prepared previously and needed to complete the Work.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding.. The mediation shall be conducted by a qualified mediator (such as a County Circuit Court judge) located in the County where the project is located, unless otherwise approved by Owner. The request for mediation shall be submitted in writing. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding thirty (30) days after termination of the mediation unless, within that time period, Owner or Contractor:
 - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions (if any); or
 - 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 - 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.
- D. Should litigation proceedings be initiated by Contractor or Owner, the prevailing party is entitled to and shall receive reimbursement for reasonable attorney, engineering and other professional fees incurred from the losing party.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.
- B. Notice shall be considered to have been given on the date that the notice is either delivered in person as provided above, or on the date that the notice is deposited in the United States mail, postage prepaid as registered or certified mail as provided above.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

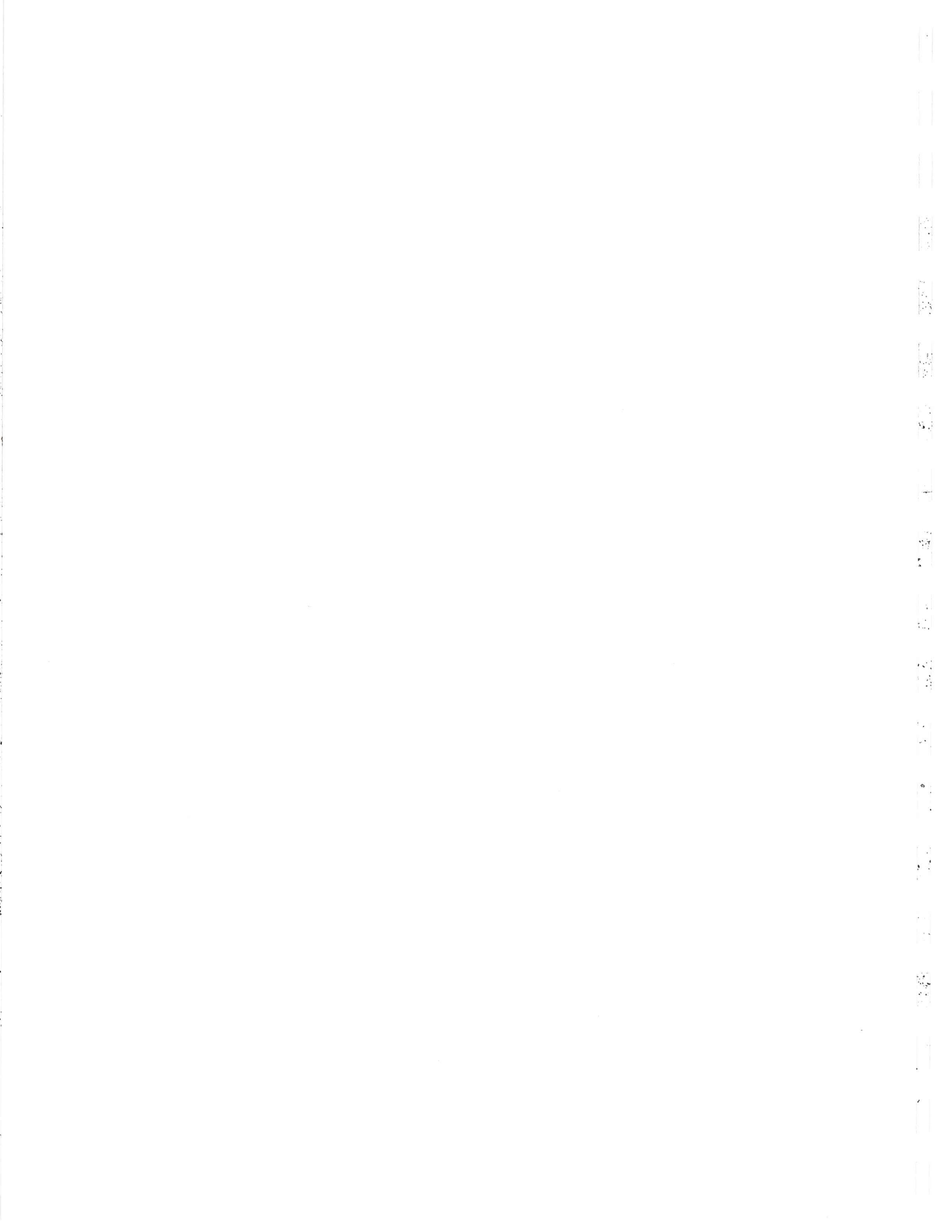
17.05 *Controlling Law*

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

17.06 *Headings*

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

SUPPLEMENTARY GENERAL CONDITIONS



SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

GENERAL

These Supplementary Conditions make additions, deletions or revisions to the General Conditions of the Contract Documents. All provisions which are not so added to, deleted or revised remain in full force and effect. Terms used in these Supplementary Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions.

SC-1.01.A. Modify the first sentence in Paragraph 1.01.A. to read as follows.

“A. Wherever used in the Bidding Requirements or Contract Documents (*including the technical specifications*), the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. ”

SC-1.01.A.11 Add the following language at the end of Paragraph 1.01.A.11:

“Extra Work will not be considered for a Change Order or for an adjustment in the Contract Price or the Contract Time unless the document is executed by both Owner and Contractor. Furthermore, the parties agree that under no circumstance will an act or failure to act on the part of the Owner or Engineer constitute a waiver of the written Change Order requirement for extra or changed work. A written Change Order is a strict condition precedent for payment for extra work.”

SC-1.01.A.18. Add the following language to the end of Paragraph 1.01.A.18.

“18. . . . “Days” as used in this definition shall mean calendar days as defined under GC 1.02.C.”

SC-1.01.A.19 Add the following language after Paragraph 1.01.A.19:

“Contractor Project Manager - For purposes of giving or receiving notice, directives, change orders, or any other information from the Engineer or Owner to the Contractor, the Contractor shall designate one person as Project Manager to receive such notice, directives, change orders, or other information. If the person so identified by the Contractor is not present on the job site during normal working hours for any consecutive 48 hour period, the Contractor shall in writing addressed to the Engineer and the Owner identify the individual who is acting as Project Manager.”

SC-1.01.A.28. Modify Paragraph 1.01.A.28 to add the wording shown below in italics.

“28. Hazardous Waste—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time, *and as further defined in ORS 466.005(7).*”

SC-1.01.A.46. Add the following definition for “shall” after Paragraph 1.01.A.45, and renumber subsequent paragraphs as applicable.

“46. Shall —The term is considered a mandatory obligation, and synonymous with the phrase “has a duty to” when referring to a capable actor, and with the word “must” when referring to a requirement regarding an inanimate object or a status.

SC-1.01.A.51. Modify Paragraph 1.01.A.51 to provide the following clarification under item (iii) within this paragraph.

“51. (iii) occupancy permits and certifications (if any) have been issued by jurisdictions having authority, *which shall include final inspection & acceptance of work by all public agencies with jurisdiction over the road or right-of-way where the work occurred;*

SC-4.02.B.1. Replace Paragraph 4.02.B.1 with the following.

“1. In the preparation of the Contract Documents, the Engineer has relied upon the report(s) of explorations and tests of subsurface conditions at or contiguous to the Site which are included in the Bidding Documents.

- a. Technical Data: “Technical data” shall be limited to facts, measurements, field observations, boring logs, soil type and similar data. “Technical data” shall not include opinions regarding suitability of material, dewatering methodologies, soil stability, slope stabilization methods, and other opinions or professional judgements.
- b. The Contractor is cautioned to make a complete evaluation of site soil conditions. The Contractor shall make his own deductions and conclusions as to the nature of the materials to be excavated and the difficulties that may arise from subsurface conditions.”

SC-4.02.B.2. Replace Paragraph 4.02.B.2 with the following.

“a. In the preparation of the Contract Documents, the Engineer has relied upon the following reports and drawings of existing surface or subsurface structures at the Site:

1. Geotechnical Investigation and Seismic Hazard Study, Prepared by Foundation Engineering Inc, dated September 7, 2022.
- b. These documents are not part of the Contract Documents for construction purposes. However, copies of these documents are included in the Appendix for reference by the Bidders. It is the responsibility of the bidder and the contractor to field verify all conditions shown on these drawings. Drawings may not be plotted to scale.”

SC-4.07 Add the following paragraph:

4.07 Historical or Archaeological Finds.

- A. Where historical objects of archaeological or paleontological nature are encountered during the course of construction, including but not limited to ruins, sites, buildings, artifacts, and fossils, the Contractor shall suspend operations in the area, preserve all such objects from disturbance and shall notify the Resident Project Representative and Engineer of the nature and location of such finds. The Engineer will notify the Contractor when to proceed with construction in the affected area. The officials to be contacted by the Resident Project Representative should cultural or archaeological resources be encountered are:
 1. Oregon State Historical Preservation Office Archaeologist (503 986-0674).
 2. Any applicable tribal representatives.

SC-5.03.A. Add the following to Paragraph 5.03.A (Certificates of Insurance):

“As noted above and in GC paragraph 5.04.B.1, the Owner and Engineer shall be included as additional insured (with the exception of the worker’s compensation coverage, and subject to any customary exclusion regarding professional liability, errors & omissions coverage).

In addition to Owner and Engineer, the following parties or entities shall also be included as additional insureds under the contract, as a minimum:

1. All agencies or entities required under the terms of permits which must be obtained for work performed under the contract.

Options. The insurance certificate and/or separate Accord schedule(s) may include language certifying that “any and all entities required by written contract are additional insureds”, **OR** all of the required “additional insured” entities may be listed individually on the insurance certificate.

Coverage shall be primary and non-contributory with any other insurance and self-insurance. Policies shall be written on an occurrence basis, and include coverage for respective officers, directors, members, partners, employees, agents, consultants and subconsultants of each additional insured (GC5.04.B.1).

Insurance certificates shall include notations or language noting the coverage limits specified herein. Insurance certificates shall include notations, language or additional schedule(s) specifically noting job site pollution coverage, and specifically noting that there are no XCU exclusions.”

SC-5.04.B.4.a. Notice of Insurance Cancellation (Liability Insurance). Replace Paragraph 5.04.B.4 with the following:

“4. Evidence of insurance coverage submitted on current “ACORD” forms (or other insurance certificate containing the same information) shall **EITHER** include a statement that “30 days cancellation notice will be provided”; **OR** the Contractor’s insurance agent shall provide a written letter (*to be submitted with the insurance certificates*) stating that copies of insurance certificates will be sent to the Owner and the Owner’s Representative a minimum of every 30 days, throughout the term of the required insurance under the contract.”

SC-5.04.C. Add the following new paragraph immediately after Paragraph 5.04.B.

“C. The limits of liability for liability insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers’ Compensation, and related coverages under Paragraphs 5.04.A.1 and A.2 of the General Conditions:
 - a. State: Statutory
 - b. Applicable Federal (e.g., Longshoremen’s)..... Statutory
 - c. Employer’s Liability \$ 500,000
 - d. In accordance with ORS 279C.530, Contractor shall promptly, as due, make payment to any entity furnishing care incident to sickness or injury, to employees of Contractor, of all sums which Contractor agrees to pay for such care and all moneys which Contractor deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.
 - e. Contractor and Subcontractors that employ workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide 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.
2. Contractor’s General Liability under Paragraphs 5.04.A.3 through A.6 of the General Conditions which shall show the following limits as a minimum, and shall also include:
 - Completed operations and product liability coverages.
 - No exclusion with respect to property under the care, custody, and control of the Contractor.
 - Job site pollution coverage based on scope under Paragraph 6.22.A of the General Conditions.
 - a. Each Occurrence (Bodily Injury and Property Damage).. \$ 1,000,000
 - b. Personal and Advertising Injury \$ 1,000,000
 - c. General Aggregate \$ 2,000,000
 - d. Products & Completed Operations Aggregate..... \$ 2,000,000
 - e. Property Damage liability insurance shall NOT exclude Explosion, Collapse, and Underground (XCU) coverages (no XCU exclusion).
 - f. Excess or Umbrella Liability
General Aggregate..... \$ 2,000,000

- Each Occurrence.....\$ 2,000,000
- 3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:
 - a. Bodily Injury
 - Each Person\$ 1,000,000
 - Each Accident.....\$ 1,000,000
 - b. Property Damage
 - Each Accident.....\$ 1,000,000
 - c. Combined Single Limit of\$ 1,000,000

SC-5.06.B.1. Insurance Certificates (for Property Insurance/Builder’s Risk “all-risk” policy per GC 5.06.A). Replace Paragraph 5.06.B.1 with the following:

- “1. Evidence of property insurance coverage (Builder’s Risk “all-risk” policy) submitted on current “ACORD” forms (or other insurance certificate containing the same information) shall **EITHER** include a statement that “30 days cancellation notice will be provided”; **OR** the Contractor’s insurance agent shall provide a written letter (*to be submitted with the insurance certificates*) stating that copies of insurance certificates will be sent to the Owner and the Owner’s Representative a minimum of every 30 days, throughout the term of the required insurance under the contract.”

SC-5.06.D through F. Add the following new paragraphs immediately after Paragraph 5.06.C.

- “D. Property insurance furnished under this Contract shall have deductibles no greater than \$5,000 for all sub-limits except for earthquake, which shall have a maximum deductible of \$50,000.
- E. The Builder’s Risk “all-risk” property insurance coverage shall provide coverage and deductibles as listed in Paragraph 5.06.A, including but not limited to “full replacement cost” coverage”. The policy shall NOT exclude the perils or causes of loss listed under Paragraph 5.06.A.2 (ie. “*fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage other than that caused by flood*”).
- F. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work relating to any deductible amounts. The risk of loss within such deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser’s own expense.”

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

“The contract drawings and specifications represent the finished project and/or finished structures. Except as specifically noted, they do not dictate the means or methods of construction. The Contractor shall provide all measures necessary to protect the work and/or the structures during construction. Such measures shall include, but not be limited to, bracing, shoring for loads due to construction equipment, water & moisture protection & control, drying, etc. The Owner and the Owner’s Representative shall not be responsible for the Contractor’s means, methods, techniques, procedures, or sequence of construction. Any information provided on the drawings or in the specifications regarding sequence of operations shall be interpreted as being for the purpose of illustrating some of the issues which must be considered and addressed by the Contractor in order to achieve the specified finish project and/or structures within the specified contract timeframes, and does not modify the Contractor’s responsibility in this regard.”

SC-6.01 Add the following new Paragraph D:

“D. Contractor shall designate a qualified and experienced “competent person” at the site whose duties and responsibilities shall include, without limitation, enforcement of State of Oregon and federal OSHA regulations regarding excavations, the prevention of accidents, and the maintenance and supervision of construction site safety precautions and programs.”

SC-6.02.B Add the following sentence at the beginning of Paragraph 6.02.B:

“Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.”

And add the following language to the end of Paragraph 6.02.B:

”In accordance with ORS 279C.520, no person shall be employed for more than 10 hours in any 1 day, or 40 hours in any 1 week, except in cases of necessity, emergency, or where the public policy absolutely requires it. In such cases, the person so employed shall be paid at least time and a half the person’s regular rate of pay for all time worked in excess of 40 hours in one week; when work week is 8 hours for 5 consecutive days or 10 hours for 4 consecutive days, and for time worked on Saturday and on any legal holiday specified in ORS 279C.540.”

SC-6.03.B Replace the first sentence with the following:

“All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents.”

SC-6.05.A.2.e Add the following paragraphs after Paragraph 6.05.A.2.d:

“e. Responsibility for Substitute Products or Equipment. The Contractor is responsible for reviewing all plans and specifications prior to bidding the project, and accepts responsibility for changes of whatsoever nature caused by the use of products or equipment different from that shown or specified (regardless of whether or not such different or substitute products or equipment are reviewed or approved by the Owner’s Representative). The bid documents and subsequent contract agreement are based upon the materials, equipment and systems required by the Bidding Documents without exception.

1. If products or equipment other than that shown, noted or named in the Specifications or on the contract Drawings differ to the extent that their proper incorporation into the work requires changes to the structural, piping, mechanical, electrical, instrumentation or any other changes of whatsoever nature, the Contractor shall be entirely responsible for any such changes (whether or not such changes are required prior to or during incorporation of the substitute into the work, or are required to correct problems identified at a later date).
2. The Contractor shall be responsible for all costs associated with design changes or construction changes required to any part of the project to make use of the substitute products or equipment, or to any part of the project which is impacted to such substitute products or equipment.”

SC-6.14.B Add the following new Paragraph B:

“B. Where required by OSHA, Contractor shall designate a qualified and experienced “competent person” at the site whose duties and responsibilities shall include, without limitation, enforcement of State of Oregon and federal OSHA regulations regarding excavations, the prevention of accidents, and the maintenance and supervision of construction site safety precautions and programs.”

SC-6.19.D Replace Paragraph 6.19.D with the following:

“D. Additional Warranty Provisions.

1. Contractor further warrants and guarantees to the Owner and Engineer that all Work is guaranteed for a specified period from the date of final acceptance by the Owner. If no warranty period is specified elsewhere in these Contract Documents, the Work shall be guaranteed for 2 years from the date of final acceptance by the Owner. If, within the warranty period, repairs or changes are required in connection with the Work, the Contractor shall promptly, without expense to the Owner:
 - a. Place in satisfactory condition all guaranteed Work;
 - b. Correct all damage to the building, site, equipment or contents which is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the contract; and,
 - c. Correct any work, material, equipment, or contents of building, structure or site disturbed in fulfilling the guarantee.
2. Repairs, replacements or changes made under the warranty requirements shall be warranted for the specified warranty period, or for 2 years, beginning on the date of the acceptance of the repairs, replacements or changes.
3. If the Contractor fails within 10 days to proceed to comply with the terms of this warranty, the Owner may have the defects corrected. The Contractor and the Contractor’s surety shall be liable for all expense incurred. In case of an emergency where delay would cause serious loss or damage, repairs may be made without notice to the Contractor and the Contractor or the Contractor’s surety shall pay the cost.”

SC-7.04 Add the following new paragraph immediately after Paragraph 7.03:

“7.04. Claims Between Contractors

- A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor’s performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the construction coordinator, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law.
- B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, the Construction Coordinator (if applicable) and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all Claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against Owner, Engineer, Related Entities, or the Construction Coordinator (if applicable) to the extent said Claim is based on or arises out of Contractor’s performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, or the Construction Coordinator (if applicable) or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, or the Construction Coordinator (if applicable) on account of any such damage or Claim.

- C. If Contractor is delayed at any time in performing the Work by any act or neglect of another contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, and Construction Coordinator (if applicable) for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or Construction Coordinator (if applicable) for activities that are their respective responsibilities."

SC-8.11.A Delete this paragraph A in its entirety.

SC-10.01.A Add the following to the end of Paragraph 10.01.A:

"A change in the Contract Price or the Contract Time shall be accomplished only by a written amendment, a written Change Order, or a written Work change directive. Accordingly, no course of conduct or dealings between the parties, no expressed or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alterations or additions to the Work shall be the basis of any claim for an increase in any amount due under the Contract Documents or a change in any time period provided for in the Contract Documents."

SC-10.01.B Add the following to the end of Paragraph 10.01.B:

"Agreements on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and the Contract Time. In the event a Change Order increases the Contract Price, the Contractor shall include the Work covered by such Change Order in applications for payments as if such Work were originally part of the Contract Documents."

SC-10.01.B Add the following wording after the end of Paragraph 10.01.B:

1. Nothing in this paragraph shall obligate Contractor to undertake requested change order work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or under applicable local, state or federal Laws and Regulations.
 - a. If the Contractor concludes this is the case (*ie. that the work cannot be performed as noted above*), the Contractor shall present the Owner and Engineer with written findings (*within the timeframe required above*) which summarizes the reasons as to why it is not possible for the requested work to be performed safely, or would violate applicable local, state or federal Laws and Regulations.
2. Liquidated Damages for Failure to Provide Written Proposal as Requested. Unless such findings (*ie. that the work cannot be performed*) are presented and accepted by the Owner and Engineer, failure by the Contractor to provide the Engineer with a written proposal (*cost & time*), for work anticipated to be added, deleted or revised, within the timeframe specified above, will result in the Contractor being subject to Liquidated Damages in the amount of \$300 per day or the amount specified under the Contract (*whichever is greater*), which liquidated damages shall continue to accrue until such written proposal is submitted. This provision does not obligate the Owner to access these liquidated damages, but these may be accessed at the sole discretion of the Owner (*not as a penalty*)."

SC-11.01.A.5.c Add the following to Paragraph 11.01.A.5.c.2:

- "The rental time of equipment on the Work site will be computed subject to the following:
- 1) When hourly rates are listed, any part of an hour less than 30 minutes of operation will be considered to be half-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation;

- 2) When daily rates are listed, any part of a day less than 4 hours operation will be considered to be half-day of operation. When owner-operated equipment is used to perform extra work to be paid from on time and materials basis, the Contractor will be paid for the equipment and operator, as set forth in Paragraphs a), b) and c) following:
 - a) Payment for the equipment will be made in accordance with the provisions in Paragraph c above;
 - b) Payment for the cost of labor and subsistence or travel allowance will be made at the rates established in Paragraphs SC-11.01.A.1; and
 - c) To the direct cost of equipment rental and labor, computed as provided herein, will be added the allowances for equipment rental and labor as provided in Section 00700 – Paragraph 12.01.C.

SC-13.07.A Replace Paragraph 13.07.A with the following (*to correct a text conflict with 6.19.D regarding the default length of the warranty period*):

“A. Unless a different period is specified in the Information for Bidders, the correction period shall be two years from Substantial Completion. If within two years after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the restoration of or repair of any damages to the land or areas made available for Contractor’s use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner’s written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting there-from..”

SC-14.02.B.5 Re-number the body paragraph after 14.02.B.4.e to be subparagraph 5 (*ie. 14.02.B.5*), and re-number subsequent sub-paragraphs as applicable (*ie. renumber from “f” thru “j” to “a” thru “e”*). The text of these paragraphs and sub-paragraphs remains the same (*ie. provisions regarding Engineer’s recommendation that the Owner retain additional offsets to address specified conditions, including to account for Contractor liability for liquidated damages*).

SC-14.07.A.2.f Add the following new paragraph immediately after Paragraph 14.07.A.2.e:

“f. In accordance with ORS 279A.120, when an out-of-state Contractor is awarded a Contract, Contractor is required to report to the Department of Revenue the Contract Price, terms of payment, length of Contract, and other information as Department of Revenue may require. Contractor shall provide Owner with verification that Contractor has satisfied this requirement prior to requesting final payment.”

SC-14.02.D.2.c Modify Paragraph 14.02.D.2.c to add the language indicated below in italics

“c. Reimbursement rates for Engineer or related entities to be calculated as follows. *Owner compensation to Engineer will be calculated at an average rate of \$130 per each extra personnel hour for labor plus expenses and/or consultant costs.*

END OF SUPPLEMENTARY CONDITIONS



595 Main St. Aumsville, Oregon 97325
(503) 749-2030 • TTY 711 • Fax (503) 749-1852
www.aumsville.us

STAFF REPORT

TO: Aumsville City Council
FROM: Matthew Etzel, Aumsville Public Works
SUBJECT: Public Works Shop and Office Building.

Recommendation: Approval of the Contract between RA Gray Construction LLC and the City of Aumsville for \$ 1,874,425.00 for the construction of a new Public Works Shop and Office Building.

Background: On May 4th in a special meeting City Council approved the Notice to Award to RA Gray Construction LLC for the construction of the Public Works Shop and Office Building. Before you are the contracts for the construction of the Public Works Facility. These are pulled directly from the bidding documents that the council has previously reviewed.

RA Gray scored the best with 395 out of 400 possible points during the bidding process. Their proposal showed a lot of previous jobs very similar to ours while staying on budget, completing on time, and without any complaints or claims on their bonds. We have been impressed with their flexibility and help to get the most savings out of this project while still keeping it high quality and something that will work well for the City for many years to come.

The staff has reviewed these documents and the funding agency will receive a copy of the contracts as well.

RA Gray has been great to work with so far, and timely in providing bonding information along with insurance and signing of this contract. These documents are ready for signatures and once they are signed the project will be underway shortly.

MOTION:

- Move to approve the Contract between RA Gray Construction, LLC and the City of Aumsville for \$ 1,874,425.00 for the construction of a new Public Works Shop and Office Building.
- Move to approve the Contract between RA Gray Construction LLC and the City of Aumsville for \$ 1,874,425.00 for the construction of a new Public Works Shop and Office Building with the following revisions.
- Move to remand back to staff for revisions as directed.

**CITY OF AUMSVILLE, OREGON
NEW CITY PUBLIC WORKS SHOP**

INFORMATION FOR PROPOSERS

PART 1: GENERAL INFORMATION

- 1.1 **Project Name:** New City Public Works Shop
- 1.2 **Facility Location:** Aumsville, Oregon
- 1.3 **Facility Owner:** City of Aumsville, Oregon.
- 1.4 **Owner's Engineer:** Westech Engineering, Inc., Project Manager: Steven A. Ward, P.E.
3841 Fairview Industrial Dr. SE, Suite 100
Salem, Oregon 97302
Phone (503) 585-2474.
- 1.5 **Project Financing:** Local funds.
- 1.6 **Project Scope:** The Proposer shall provide a complete turnkey Public Works Shops Building conforming to the requirements of these RFP documents, with the exception of the following items:
- Civil Site Work Design
 - Exterior Signage
 - Telephone System
 - Security System
 - SDC Fees
 - File Cabinets
 - Window Coverings
 - Furnishings
 - Computers Including UPS
 - Building Permit Fees
 - Refrigerator/Microwave
 - Audio-Visual Equipment

The Proposer shall coordinate with the Owner for installation of the above Owner-furnished items. The Proposer shall be responsible to take the design contained herein and finalize the documents and submit and receive a building permit from Marion County except for the final designs and performance specifications provided herein. the Engineer has no responsibility of any kind of arising out of the design or construction of the work required by the proposer to provide a complete turnkey project.

Proposers shall provide a list of alternatives that deviate from this RFP and associated cost impacts in order for the Owner to complete evaluations of proposals.

- 1.7 **Project Starting and Completion Times:** Work is to commence within **ten (10)** days of the date of issuance of the Notice to Proceed and shall be completed no later than **March 31, 2024**. The milestone dates for proposal evaluation and contract execution are as follows.

Milestone	Date
Proposals Due	February 23, 2023
Proposal Evaluation, Proposer Selection, and Notice of Intent to Award	March 16, 2023
City Council Authorization to Award	March 28, 2023
Contract Execution	April 11, 2023
Notice to Proceed	April 17, 2023
Submit for Building Permit	July 7, 2023
Substantial Completion	February 28, 2024
Final Completion	March 31, 2024

Minor revisions to the civil site work and landscape plans to accommodate the final design will be paid by the owner. **Major** revisions to the civil site work and landscaping plans requested by the Proposer will be paid by the Proposer. The Proposer that requests major revisions to the civil site work and landscaping plans shall demonstrate that the Proposer can still meet the project milestone dates contained herein.

- 1.8 In anticipation of the Proposer wanting to start construction of the civil site work improvements, the City has submitted to the building official the civil site work improvements for permits. It is anticipated that the building permits will be available by June 1, 2023.
- 1.9 **Liquidated Damages:** The completion of this work is important to the City since they must vacate their current Shops Building. If completion is not timely, the City will be damaged. The parties, therefore, agree that liquidated damages in the amounts listed in the Agreement, accruing on a daily basis, are part of the consideration for the proposal and that this amount is a reasonable sum for such damages.

Liquidated damages shall apply against the successful proposer (the Proposer) and accrue to the Owner at the rate(s) specified in the Agreement for each day that expires after the completion date specified above. The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one, which is impossible or very difficult to estimate.

In addition to the liquidated damages, the Proposer shall reimburse the Engineer for cost incurred for inspection and project management services required beyond the time outlined above. If the Proposer fails to reimburse the Engineer directly, the cost will be deducted from the Proposer's final pay request by the Owner.

- 1.10 **Application for Payment & Certification:** With each application for payment, the Proposer will be required to complete and submit the "Application for Payment Cover Sheet & Certification" included at the end of this section. If required by the Contract Documents, additional documentation required shall be submitted with this cover sheet.
- 1.11 **Performance and Payment Bonds:** Prior to execution of the Agreement, the Proposer shall furnish separate bonds covering the faithful performance of the Contract, and the payment of all obligations arising there under, each in an amount equal to one hundred percent (100%) of the Contract sum. The cost of furnishing such bonds shall be included in the price proposal. The bonds shall remain in effect for two years after final payment.
- The surety issuing such bonds shall be duly authorized and licensed to issue bonds in the State of Oregon. The bonds shall be executed by an attorney-in-fact, principal or other authorized representative for the surety company, showing the Oregon agent for service, and bears the seal of the surety company. Where the bond is executed by a person outside the state of Oregon, his authority to execute bonds shall be shown.
- 1.12 **Asbestos Abatement Notice** This project does not include any known asbestos abatement work, and therefore, the Proposer does not need to be licensed under ORS 468A.720 in order to submit a proposal for this project. This does not eliminate the requirement that any such work subsequently required due to differing conditions discovered (i.e., differing site conditions) must be done by an appropriately licensed contractor or subcontractor.
- 1.13 **Incurring Costs.** The City is not liable for any costs incurred by the Proposer in the preparation or presentation of the Proposal.

- 1.14 **Notice of Intent to Award, Protests:** Award will be issued to all proposers and any protests must be submitted in writing and received no later than 4:00 p.m. seven (7) calendar days after issuance of the notice of intent to award. Award will not become final until the latter of seven (7) calendar days following the issuance of the notice of intent to award, or until the Owner provides written response to all timely filed protests that denies the protest and affirms the award. Solicitation protests must be submitted prior to the closing of the solicitation. Award protests must be submitted and will be processed in accordance with ORS 279B.410.
- 1.15 **Availability of Proposals:** Per ORS 279C.410, proposals will not be available for public inspection until after the notice of intent to award is issued. If any party desires copies of any specific proposal after the Notice of Intent to Award has been issued, a written (and signed) request for such copies shall be submitted to the Owner, and copies will be made available at the cost of reproduction. If the Owner decides to reject all proposals, prior to issuing a Notice of Intent to Award, the proposals will be returned to each respective proposer and will not be available for public inspection.
- 1.16 **Responsibilities for Existing Facilities.** Proposer shall promptly remedy all damage or loss to existing facilities caused by proposers activities and shall assume all costs and be responsible for all the work, materials, equipment, other real or personal property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of the project, prior and up to completion of the contract work.
- 1.17 **Proposals to Remain Open.** The Owner reserves the right to postpone the award for up to 30 days from the date and time of the closing of the solicitation (all proposals shall remain open for this period), to delete certain items from the proposal, and to award the contract to the highest scoring proposer. The Owner may, in his sole discretion, release any proposal and return the Proposal Security prior to that date.
- 1.18 **Oregon Public Contracting Code Requirements.** The Oregon Public Contracting Code by reference, and specific provisions of the Oregon Public Contract Code by exhibit shall be made an integral part of this Project's agreement. Public contracting code requirements for Public Improvement Contracts over \$50,000 using State and Federal funds are attached immediately behind the Supplemental General Conditions, which contain additional contract provisions. In the event of a conflict between the provisions of the Oregon Public Contracting Code and other provisions of the contract documents, the Oregon Public Contracting Code shall control.
- 1.19 **Contract Form.** The services and responsibilities described in this Request for Proposals, together with any documents required herein, shall be included within the agreement executed by the successful proposer, as indicated in the attached agreement form, general conditions, supplementary general conditions and the Oregon Public Contracting Code Requirements. Any open terms in the attached agreement will be completed based upon City negotiation, if any, and Awardees' Proposal. Submittal of a Proposal indicates Proposer's agreement to execute the attached agreement subject to the attached conditions.
- 1.20 **Prevailing Wage Rates (PWR):** In accordance with ORS 279C.365(1)(g), no proposal will be received or considered by the Owner unless the proposer's proposal includes a certification that the provisions of ORS 279C.840 (relating to Oregon prevailing wages) will be complied with, as applicable.
- 1.21 **BOLI Public Works Bond:** Pursuant to ORS 279C.830(3), the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting work on the project. This bond is in addition to performance bond and payment bond requirements. A copy of the Contractor's BOLI Public Works bond shall be provided with the executed contract documents.
- 1.22 **Retainage.** To ensure the proper performance of this Contract, the Owner shall retain five percent (5%) of the amount of each progress payment until final completion and acceptance of all work covered by this Contract.

- 1.23 **Warranty Period:** The warranty period for this project will be 24 months from the date of substantial completion. The period of the performance bond shall match the length of the warranty period in order to avoid the need for a separate warranty/maintenance bond.

PART 2: PROPOSAL REQUIREMENTS

- 2.1 **General Information.** The Proposer must submit six (6) copies of their Proposal as set forth in this RFP. The Proposer must have demonstrated experience in this type of contract. The staff necessary to perform the required services must have demonstrated availability to complete the work with the schedule constraints. Subcontractors proposed to be used by the Proposer shall be listed in the proposal and shall be subject to the approval of the City.
- 2.2 **Required Information.** Proposers shall submit (6) copies of their proposal by the specified due date and time to the location specified in the Invitation to Propose. Electronic or faxed copies of the proposal will not be accepted and will be considered non-responsive. The submittals shall include the information as set forth in Sections 2.3 through 2.12 below.
- 2.3 **Letter of Interest. Two (2) Page Limit.** A letter of interest shall be included with each proposal, which must specifically include the following information.
- a. Statement that the Proposer will comply with all terms and conditions contained in this Request for Proposals.
 - b. Verification of the proposer's ability to complete all phases of the project within the schedule identified in the RFP.
 - c. Identification of the names(s) of the person(s) authorized to sign a contract between the City and the Proposer.
 - d. Signature by a legal representative of the proposing firm, authorized to bind the firm in contractual matters.
- 2.4 **Project Understanding and Approach. Five (5) Page Limit.** This section should contain the following information.
- a. Demonstration that the Proposer understands of the Project.
 - b. The Proposer's proposed project approach and methodology.
 - c. A description of the facilities and equipment that the Proposer will make available for performing the work.
 - d. Percentage of the work self-performed by the Proposer.
- 2.5 **Schedule. One (1) Page Limit.** The proposal shall include a time schedule for completing the various tasks in the scope of services. The schedule may be in the form of a table or chart and shall identify all major tasks and key sub-tasks such as anticipated City reviews and approvals.
- 2.6 **Proposer Qualifications, Resources and Experience. Five (5) Page Limit.** This section shall describe the Proposer's specific qualifications and experience with public projects. Contact information for a minimum of three references shall be provided. In addition, Proposer's resources, including staff, equipment and facilities, shall be summarized.
- 2.7 **Firm Description. Five (5) Page Limit.** A description of the Proposer's company, proof of insurance, and sample insurance certificates (see general conditions and supplementary general conditions for required insurance limits) shall be provided. A listing of enforcement or legal actions involving Proposers operations shall be summarized.

- 2.8 **Project Team. Five (5) Page Limit.** This section shall describe the experience of key personnel on the Proposer's proposed project team, including subcontractors. Certifications of key staff should be listed. References for key personnel and subcontractors shall be provided. This section shall include complete contact information for the project manager that will be assigned to this project including a resume of his or her experience. The individual's education, training, certifications and experience should be identified. Indicate whether experience is with current or former employers.
- 2.9 **Proposal Form.** Provide a completed, signed copy of the proposal form included in this RFP. The Proposer shall, at a minimum list the following subcontractors / suppliers and the value of their work proposed for the project:
1. Architectural firm;
 2. Civil Site work contractor;
 3. Framing contractor;
 4. HVAC contractor;
 5. Plumbing contractor;
 6. Electrical contractor;
 7. Roofing contractor;
 8. Painting contractor;
 9. Masonry contractor;
 10. Building materials supplier(s)
- 2.10 **Proposal Security.** All proposals shall be accompanied by a proposal bond equal to ten percent (10%) of the total proposed price, to be forfeited to the Owner in the event of failure of the Proposer to execute the contract. A one hundred percent (100%) Performance and Payment Bond will be required to guarantee the faithful performance of the contract. It is required that the surety issuing such bonds be duly authorized and licensed to transact surety business in the state of Oregon.
- 2.11 **Contractor Registration.** No proposal will be received or considered by the Owner unless the Proposal includes a certification that the Proposer is registered and in good standing with the Construction Contractors Board or licensed and in good standing with the State Landscape Board.
- 2.12 **Subcontractor Registration.** Per ORS 701.005(5)(a), ORS 701.021(1) and ORS 701.026(1), it is the bidder's responsibility to ensure that all subcontractors comply with the statutory requirement to be licensed through the Oregon Construction Contractor Board (CCB) in order to "undertake, offer to undertake or submit a bid to do work" in the State of Oregon.

PART 3: PROPOSAL EVALUATIONS

- 3.1 **General Information.** A selection Committee will be appointed to evaluate the Proposals received. Each of the criteria listed below will be evaluated by the Committee for ranking Proposals.
- 3.2 **The Contract:** The Contract will be awarded to only a qualified Proposer. Minimum standards for qualification are as follows.
- a. Having the resources for the performance of the Contract, or the ability to obtain such resources.
 - b. Having the necessary experience, organization, technical and managerial staff, and equipment and facilities to carry out the work.
 - c. Having an adequate past record of performance on similar projects, verifiable through references.
 - d. Being an Equal Opportunity Employer and being otherwise qualified by law to enter into this contract.

3.3 **The Proposal.** Each proposal will be judged as a demonstration of the Proposer’s capabilities and understanding of the project. The factors used to determine this will be as follows:

- a. Understanding the project.
- b. Proposed approach.
- c. Prior experience on similar projects. Qualifications of personnel assigned to the project.
- d. Pricing.
- e. Proposals with a pre-engineered steel building will be awarded additional points over proposals using pole structure.

While proposed prices will be a consideration, it will not be the sole determining factor. The proposal evaluation process implemented by the City will take into consideration the following criteria and associated maximum possible weights:

Criteria	Points Available
Proposal substantially complies all RFP requirements and is legally qualified to contract with the City	10pts
Reference check and experience of the design build team	10 pts
Qualifications and experience of the design build team	10 pts
Project approach, understanding and schedule	20 pts
Cost	50 pts.
Total	100 pts

3.4 **Selection.** Total scores will be tabulated and a recommendation to award the contract to the highest scoring proposer will be presented to the Aumsville City Council for approval. Following selection of a Proposer, an Agreement in the form included in this RFP will be prepared and executed. The City reserves the right to reject any and all proposals and terminate the selection process at any time if, at its sole discretion, it determines such action would be in the best interest of the City.

CONTRACTOR APPLICATION FOR PAYMENT & CERTIFICATION

Application for Payment No. _____

To: The City of Aumsville, 595 Main Street, Aumsville, OR 97325

From: _____ (Contractor name & address)

Contract: **Agreement Dated** _____, **2023**

Project: New City Public Works Shop

Engineer's Project No. JO 2599.1200.0

For Work accomplished for the period of: _____, 2023 to _____, 2023.

- 1. Original Contract Total: \$ _____
- 2. Net change by Change Orders & Written Amendments (+ or -) (thru CO __):..... \$ _____
- 3. Current Contract Total (sum of lines 1 & 2): \$ _____
- 4. Total Amount Requested to Date:..... \$ _____
- 5. Total from Previous Applications for Payment: \$ _____
- 6. DUE THIS APPLICATION (line 4 minus 5): \$ _____**

Accompanying Documentation:

- Attach additional sheets if necessary with a detailed summary of requested payment (i.e., of all payment items for unit price contracts, or a detailed breakdown based on a schedule of values for lump sum contracts), or detailed summary of claims).

Contractor's Certification:

The undersigned Contractor certifies that:

- (1) All previous progress payments received from Owner on account of Work done under the Contract referred to above have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment, including payment of all subcontractors & material suppliers; and
- (2) Title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Lien, security interest or encumbrance); and,
- (3) All Work covered by this Application for Payment is in accordance with the Contract Documents and not defective; and
- (4) In consideration for the payment referenced above, and upon receipt of such payment, Contractor hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through the date of this application, with the exception that this release does not cover retainage; and
- (5) Contractor represents that receipt of said payment constitutes full and complete payment for all work, and all costs or expenses incurred (including, but not limited to, costs for supervision, field office overhead, interest on capital, profit and conditions costs) relative to the work or improvements as of the date of this application; and
- (6) The insurance policies, coverage amounts, and coverage requirements required by the Contract are in full effect; and
- (7) Contractor specifically waives, quitclaims and releases any claim for damages due to delay, hindrances, interference, acceleration, inefficiencies or extra work, or any other claim of any kind it may have as of the date of this application, except as follows: _____

Dated _____

By: _____
Contractor signature

By: _____
(Print or type name)

Payment of the above amount is recommended.

Dated _____ 2023

Westech Engineering, Inc.

By: _____
Steven A. Ward, P.E., Project Manager

INSTRUCTIONS TO PROPOSERS

1. DEFINED TERMS

- a. Terms used in these Instructions to Proposer are defined in the General Conditions of the Contract. The term "Successful Proposer" means the qualified, responsible Proposer with the highest score to whom the Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award. The term "Proposal Documents" means the Solicitation Documents and includes all documents listed as "Contract Documents" in the Agreement, which are issued prior to the proposal solicitation closing time.

2. COPIES OF PROPOSAL DOCUMENTS

- a. Complete sets of the Proposal Documents for the fee, if any, stated in the Invitation to Propose may be obtained from the Engineer.
- b. Owner and Engineer in making copies of the Proposal Documents available on the above terms do so only for the purpose of obtaining proposals for the services and do not confer a license or grant for any other use.

3. EXAMINATION OF PROPOSAL DOCUMENTS AND SITE

- a. Before submitting a proposal, each proposer must: (a) examine the Proposal Documents thoroughly; (b) visit the site to familiarize himself with local conditions that may affect cost, progress or performance of the work; (c) familiarize himself with Federal, State and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the work and (d) study and carefully correlate proposer's observations with the Proposal Documents.
- b. On request, Owner will provide each proposer access to the site to conduct investigations and test as each proposer deems necessary for submission of his proposal.
- c. The lands upon which the work is to be performed, rights-of-way for access thereto and other lands designed before use by the Contractor in performing the work are identified in the Proposal Documents.
- d. The submission of a proposal will constitute an incontrovertible representation by the proposer that he has complied with every requirement of this Article 3 and that the Proposal Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the work.

4. INTERPRETATIONS AND ADDENDA

- a. All questions about the meaning or intent of the Proposal Documents shall be submitted to the Engineer in writing. Questions received less than five (5) days prior to the closing date for the proposal solicitation will not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications are not binding unless confirmed by written Addendum, including discussions at preproposal conferences.
- b. Addenda may be issued to clarify, correct or change the Proposal Documents as deemed advisable by Owner or Engineer. Addenda will be issued a minimum of 72 hours prior to the closing of the proposal solicitation period unless the Addendum also extends the closing date.
- c. Addendums are considered to be issued at the time copies of the Addendum document are available to prospective proposers at the office of the Engineer. The addendum will be mailed or delivered to all parties recorded by Engineer as having received the Proposal Documents from the Engineer and will be made available for pickup at the office of the Engineer by any interested party. Mailing of the Addendum shall be considered notice.
- d. Each prospective proposer shall be responsible for verifying the number of addenda issued 72 hours prior to closing date for the proposal solicitation. Failure by the prospective proposer to verify the number of Addendum issued, or failure of the Addendum to be delivered in a timely manner to prospective proposers, shall not be grounds for a protest.

5. PROPOSAL SECURITY

- a. Proposal Security shall be made to the Owner, in an amount of ten percent (10%) of the proposer's maximum proposed price and in the form of a certified bank check or a Proposal Bond issued by a Surety meeting the requirements of paragraph 5.01 of the General Conditions.
- b. The Proposal Security of the successful proposer will be retained until such proposer has executed the Agreement and furnished the required Contract Security, whereupon it will be returned. If the successful proposer fails to execute and deliver the Agreement and furnish the required Contract Security within ten (10) calendar days of the Notice of Award, Owner may annul the Notice of Award and the Proposal Security of that proposer will be forfeited. The Proposal Security of any proposer whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the "effective date of the Agreement" (which term is defined in the General Conditions) by Owner to Contractor and the required Contract Security is furnished or the thirty-first day after the closing of the proposal solicitation period. Proposal Security of other proposers will be returned within seven days of the closing date for the proposal solicitation period.
- c. Default of Proposer shall occur upon the failure of the Proposer to deliver within the time required by the Proposal Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Proposal Documents and any payment and performance bonds required by the Proposal Documents, or the Proposer notifies Owner in writing of the intent to withdraw his Proposal, except as authorized under paragraph 13 herein.

6. CONTRACT TIME

- a. The number of days within which, or the date by which, the work is to be completed (the Contract Time) will be included in the Agreement.

7. NOT USED

8. NOT USED

9. NOT USED

10. NOT USED

11. NOT USED

12. NOT USED

13. PROPOSAL FORM

- a. The Proposal Form is attached hereto; additional copies may be obtained from the Engineer.
- b. The Proposal Form must be completed in ink or by typewriter. The price of each item on the form must be stated. In case of conflict between unit price and total price, unit price will take precedence.
- c. A Proposal Form submitted by corporations must be executed in the corporate name by the president or vice-president (or other corporate officer accompanied by evidence of authority to sign) and must be attested by the secretary or assistant secretary. The corporate address and state of incorporation shall be shown in conjunction with the signature.
- d. A Proposal Form submitted by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown in conjunction with the signature.
- e. All names must be typed or printed below the signature.
- f. The Proposal Form shall contain an acknowledgement of receipt of all Addenda (the number of which shall be filled in on the Proposal Form).
- g. The address to which communications regarding the Proposal are to be sent must be shown.

14. NOT USED

15. MODIFICATION AND WITHDRAWAL OF PROPOSALS PRIOR TO CLOSING DATE

- a. Proposals may be modified or withdrawn by an appropriate document duly executed and delivered to the place where proposals are to be submitted at any time prior to the closing date for the proposal solicitation.
- b. Any proposal modification must be submitted in a sealed envelope (marked with all information listed in the Invitation to Propose, except that it is to be marked as a "Proposal Modification), and shall include a statement that the modification amends and supersedes the prior Proposal.
- c. A proposal may be withdrawn by written notice submitted on the Proposer's letterhead, signed by an authorized representative, delivered to the location specified for proposal submittal in the Invitation to Propose.

16. MISTAKES

- a. If, within forty-eight (48) hours after proposals are opened, any proposer files a duly signed written notice with the Owner and promptly thereafter demonstrates to the reasonable satisfaction of the Owner that there was a material and substantial mistake in the preparation of his proposal, that Owner may allow the proposer to withdraw his proposal and the Owner may return all or a portion of the Proposal Security. Thereafter, that proposer will be disqualified from submitting a future proposal for the same work.

17. NOT USED

18. NOT USED

19. NOT USED

20. AWARD OF CONTRACT

- a. If the contract is to be awarded, it will be awarded to the highest-scoring proposer whose evaluation by Owner indicates to Owner that the award will be in the best interest of the project and the Owner.
- b. If the contract is to be awarded, Owner will give the successful proposer a Notice of Award within thirty (30) days after the day of the closing of the solicitation period unless otherwise provided in the Invitation to Propose or the Information for Proposers.

21. PERFORMANCE AND OTHER BONDS

- a. Paragraph 5.01 of the General Conditions and the Supplementary Conditions set forth Owner's requirements as to performance and other bonds. When the successful proposer delivers the executed Agreement to Owner, it shall be accompanied by the required Contract Security.
- b. Prior to execution of the Contract, the proposer shall furnish separate bonds covering the faithful performance of the contract and the payment of obligations arising there under, each in an amount to one hundred percent (100%) of the Contract sum. The cost of furnishing of such bonds shall be included in the proposed prices. The surety issuing such bonds shall be licensed to issue bonds in the State in which the work occurs.

22. SIGNING OF AGREEMENT

- a. When Owner gives a Notice of Award to the successful proposer, it will be accompanied by at least three (3) unsigned counterparts of the Agreement and all other Contract Documents. Within ten (10) calendar days thereafter, contractor shall sign and deliver at least three (3) counterparts of the Agreement to the Owner with all other Contract Documents attached. Within twenty (20) days thereafter, Owner will deliver all fully signed counterparts to Contractor. Engineer will identify those portions of the Contract Documents not fully signed by Owner and Contractor and such identification shall be binding on all parties.

LA 6 MAY

PROPOSAL FORM

City of Aumsville
595 Main Street
Aumsville, OR 97325

TO ALL PROPOSERS:

The RFP Documents include the proposed Contract Documents, consisting of the Invitation to Propose, Information for Proposers, this Proposal Form, the Schedule of Prices, other sample RFP and contract forms, the proposed Contract between the Owner and Contractor, Conditions of Contract (General, Supplemental General, and other conditions), the Description of Services, and all addenda.

The undersigned declares that it is the only party interested in this Proposal, and that this Proposal is in all respects fair and without fraud and that it is made without collusion with any representative of the Owner, and that the prices have been arrived at independently without collusion, communication, or agreement with any other proposer or with any competitor, as to any matter relating to prices for the purpose of restricting competition.

THE PROPOSER, BY FURNISHING A PROPOSAL, REPRESENTS THAT:

1. The Proposer has examined and understands the Request for Proposal (RFP) Documents and the Proposal is made in accordance therewith.
2. The Proposer has examined and understands the RFP, to the extent that such documentation relates to the work for which the Proposal is submitted.
3. The Proposer has personally visited the site, become familiar with local conditions under which the proposed work is to be performed, has determined the extent, character and location of the proposed work, the nature and type of excavation to be done, the location and condition of existing streets and roadways giving access to the site of the work, the topography of the site of the work, and has correlated the Proposer's personal observations with the requirements of the proposed Contract Documents.
4. The Proposer is satisfied that the conditions of the work and materials as included herein is brief and is intended to identify the said quantities with the detailed requirements of the proposed Contract Documents.

PROPOSER CERTIFICATION:

The undersigned Proposer certifies that:

- (a) The Proposer has examined the site of the work;
- (b) The Proposer understands the manner of payment for the cost of the project;
- (c) The Proposer has received and duly considered the following Addenda to RFP:

Addenda: No. 1 to No. 1, inclusive.

Prior to submitting a proposal, the Proposer shall be responsible for verifying the number of addendum.

- (d) The undersigned certifies that it is registered and in good standing with the Construction Contractors Board or licensed and in good standing by the State Landscape Board at the time of proposal submittal, and that all subcontractors whose are to be utilized by the undersigned are also registered and in good standing at the time of proposal submittal.
- (e) As required by ORS 279A.110 (4) the undersigned certifies that it has not and will not discriminate against a subcontractor for this project because the subcontractor is a minority, woman, or emerging small business enterprise certified under ORS 200.055 or against a business enterprise that owned or controlled by, or that employs a disabled veteran as defined in ORS 408.255
- (f) The undersigned certifies that the surety issuing all required bonds is duly authorized and licensed to transact surety business in the State of Oregon.
- (g) The provisions of ORS 305.385, relating to Oregon tax laws will be complied with.
- (h) The undersigned, its subcontractors, if any and all employers which will work on this project are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers Compensation coverage for all their subject workers.
- (i) All subcontractors performing work as described in ORS 701.005(2) will be registered and in good standing with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time of proposal submittal, and during the entire time that subcontractors perform work under this Contract.
- (j) The undersigned acknowledges that in the event that any or all proposals are rejected or deemed non-responsive, that proposer, its subcontractors, or suppliers shall have no claim for recovery of costs associated with the preparation of the proposal, or loss of anticipated profits or revenue or other economic loss arising out of or resulting from such rejection, including lost opportunity costs (see also GC 15.03.B).

ACCEPTANCE OF PROPOSAL (AWARD):

The undersigned agrees that on written acceptance of this proposal, it will, within ten (10) days of receipt of such notice, execute a formal contract agreement with the Owner in the form attached hereto and that it will provide acceptable Performance Bond, Payment Bond, and certificates of insurance.

It is the intent of the Owner to award the Contract to the successful proposer in accordance with the evaluation criteria listed in the Information for Proposers. The Owner shall have the right to waive informalities or irregularities in a proposal received and to accept the proposal which, in the Owner's judgement, is in the Owner's own best interests.

In submitting this Proposal, it is understood that the Owner reserves the right to reject any and all Proposals, to adjust the scope of the work within reasonable limits, and to postpone award for a reasonable time.

Proposal dated this 23rd day of February, 2023

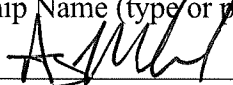
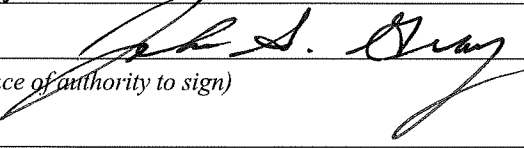
Communications concerning this Proposal shall be addressed to:

Name of Entity Submitting Proposal: RA Gray Construction
Contact Person: AJ Michaud
Business Address: 12705 SW Herman Rd Tualatin, OR 97062 (Resident Bidder)
Mailing: PO Box 1000 Sherwood, OR 97140
Telephone Number: 503-692-4675 Fax Number: 503-692-9292

If Proposer is an Individual:

By: _____
(Individual's Signature)
Name (type or print): _____
Doing business as: _____
Contractor Registration #: _____ Federal Tax ID #: _____

If Proposer is a Partnership:

Partnership Name (type or print): RA Gray Construction
By:  
(Signature of General Partner – attach evidence of authority to sign)
Name (type or print): AJ Michaud
Title: VP
Contractor Registration #: 198759 Federal Tax ID #: 84-4191881

If Proposer is a Corporation:

Corporation Name (type or print): _____
State of Incorporation (type or print): _____
Type of Corporation (General Business, Profession, Service, LLC, etc): _____
By: _____
(Signature– attach evidence of authority to sign if other than president or vice-president)
Name (type or print): _____
Title: _____
Attest: _____
(Signature of Corporate Secretary)
Contractor Registration #: _____ Federal Tax ID #: _____

City of Aumsville, Oregon
 New City Public Works Shop
 JO 2599.1200.0

Schedule of Prices

1. Base Building Price \$ 1,867,888.00

ONE MILLION EIGHT HUNDRED SIXTY SEVEN THOUSAND
 EIGHT HUNDRED EIGHTY EIGHT

(Base Building Price in Writing)

2. Civil Sitework Price \$ 202,000.00

TWO HUNDRED AND TWO THOUSAND

(Civil Sitework Price in Writing)

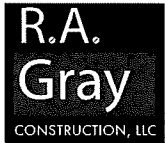
~~3. Landscaping Price \$ _____~~

(Landscaping Price in Writing)

Total Bid \$ 2,069,888.00

Service/Trade	Name of Contractor Supplying Services
1 Architectural Firm	<u>\$9,500.00</u>
2 Civil Site Work Contractor	<u>\$202,000.00</u>
3 Framing Contractor	<u>\$805,784.00</u>
4 HVAC Contractor	<u>\$66,000.00</u>
5 Plumbing Contractor	<u>\$93,000.00</u>
6 Electrical Contractor	<u>\$343,000.00</u>
7 Roofing Contractor	<u>Included in metal building</u>
8 Painting Contractor	<u>\$15,000.00</u>
9 Masonry Contractor	<u>\$12,000.00</u>
10 Building Material Supplier(s)	<u>\$523,604.00</u>

* PLEASE SEE ESTIMATE SHEET FOR MORE ACCURATE BREAKDOWN *

Title:	Aumsville PW Shop	Estimator:	BG	PO Box 1000	
Client:	City of Aumsville	Date:	2/23/2023	Sherwood, OR 97140	
Location:	Aumsville, OR	Duration:	10 MO	Ph. 503-692-4675	
Option:	Bid	Bldg Size:	8,000	Fax. 503-692-9292	
				CCB# 198759	

Item	Description	Unburden Labor Costs	Materials Costs	Subcontract Costs	Total Costs	Vendor	Per Sq. Ft.
1	General Conditions	51,670	20,820	3,250	75,740	RA Gray	9.47
2	Equipment	4,575	27,680		32,255	RA Gray	4.03
3	Excavation	22,213	38,740	2,000	62,953	RA Gray	7.87
4	Concrete - Vapor Barrier	6,390	36,140		42,530	Knife River	5.32
5	Forms	3,920	4,000		7,920	RA Gray	0.99
6	Cement Finish	5,276	600	4,500	10,376	RA Gray	1.30
7	Rebar	3,800	10,200		14,000	DCB Industries	1.75
8	Masonry	50	248	9,674	9,972	Mark Sabins	1.25
9	Bollards	2,498	7,543	1,200	11,241	RA Gray	1.41
10	Steel Building & Metal Panel Roofing	72,400	710	282,994	356,104	Nucor Buildings	44.51
11	Entry Overhang	1,500	1,000	40,000	42,500	RA Gray	5.31
12	Bolts	984	1,280		2,264	RA Gray	0.28
13	Metal Wall Panels	Included	11,695	1,754	13,449	Taylor Metals	1.68
14	Insulation Steel Building	17,775	24,615		42,390	Service Partners	5.30
15	Carpentry	14,478	25,000		39,478	Shelter Products	4.93
16	HM Frames - Doors - Hardware	2,250	14,472		16,722	Baxter & Flaming	2.09
17	Overhead Doors w/ Operators			104,400	104,400	Jacks Overhead Door	13.05
18	Windows	800	1,146	200	2,146	Window Less	0.27
19	Insulation Walls	800	2,289		3,089	RA Gray	0.39
20	Sheetrock	6,238	6,238	6,238	18,714	Knez	2.34
21	Painting			13,500	13,500	Boles Brothers	1.69
22	WP - Caulking - Floor Joints	1,700	1,650		3,350	Mason Supply	0.42
23	Toilet Accessories - Mirros	1,600	950	150	2,700	WH Cress	0.34
24	Fire Extinguisher & Cabinet (3)	80	355		435	RA Gray	0.05
25	Cabinetry	1,125	5,400		6,525	RA Gray	0.82
26	Floor Sealing @ Office	310	1,108		1,418	RA Gray	0.18
27	Signage - Striping - ADA	660	1,125	700	2,485	RA Gray	0.31
28	Paving			64,745	64,745	Pacific	8.09
29	Curbs - Wheel Stops - Paving Prep	5,150	11,700		16,850	RA Gray	2.11
30	Landscape Irrigation Sleeves	875	1,575		2,450	RA Gray	0.31
31	Chain Link Fencing			14,448	14,448	Fence Master	1.81
32	Site Drainage	8,760	32,221	5,730	46,711	RA Gray	5.84
33	Oil Water Seperator - Sewer	2,500	2,120	15,000	19,620	Old Castle	2.45
34	Erosion Control	1,800	1,750	300	3,850	RA Gray	0.48
35	Plumber	1,640	1,600	85,000	88,240	Hood Coast Plumbing	11.03
36	Fire Sprinkler	2,000	1,600	95,088	98,688	Wyatt Fire Protection	12.34
37	HVAC		600	59,000	59,600	Santiam Heating	7.45
38	Electrical - Fire Alarm	1,800	2,400	303,038	307,238	Gore Electric	38.40
39							
40							
41	Special Inspections			5,600	5,600	Carlson Testing	0.70
42	Architectural - Structural Engineering			8,000	8,000	KM Consulting	1.00
43	Building Permits - Fees				By Owner		0.00
44							
45							
Subtotal Project Total		247,617	300,570	1,126,509	1,674,696		209.34

50.00%	Benefits				123,809		15.48
12.00%	Overhead & Fee				215,821		26.98
Tax					11,482		
Yes	Bond				44,081		5.51
Total Project					2,069,888		258.74

HOME

OREGON SECRETARY OF STATE
Corporation Division

Business Xpress **business name search** oregon business guide

license directory business registry/renewal forms/fees notary public

uniform commercial code uniform commercial code search documents & data services



Business Name Search

[New Search](#)

[Printer Friendly](#)

Business Entity Data

02-22-2023

15:05

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
901901-91	DLLC	ACT	OREGON	12-18-2012	12-18-2023	
Entity Name	R. A. GRAY CONSTRUCTION, LLC					
Foreign Name						

[New Search](#)

[Printer Friendly](#)

Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS				
Addr 1	12705 SW HERMAN RD					
Addr 2						
CSZ	TUALATIN	OR	97062	Country	UNITED STATES OF AMERICA	

Please click [here](#) for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	11-03-2022	Resign Date
Name	AMY	TAYLOR			
Addr 1	12705 SW HERMAN RD				
Addr 2					
CSZ	TUALATIN	OR	97062	Country	UNITED STATES OF AMERICA

Type	MAL	MAILING ADDRESS			
Addr 1	PO BOX 1000				
Addr 2					
CSZ	SHERWOOD	OR	97140	Country	UNITED STATES OF AMERICA

Type	MEM	MEMBER	Resign Date
Name	AJ	MICHAUD	
Addr 1	10875 SW AVOCET CT		
Addr 2			
CSZ	BEAVERTON	OR	97007
Country	UNITED STATES OF AMERICA		

Type	MEM	MEMBER	Resign Date
Name	JOHN	GRAY	
Addr 1	1991 FURLONG CT		
Addr 2			

PROPOSAL BOND

(minimum ten percent (10%) of the total proposed price)

KNOW ALL MEN BY THESE PRESENT, that we R.A. Gray Construction, LLC
(Name of Contractor)

as Principal, hereinafter called the Principal, and Employers Mutual Casualty Company
(Name of Surety)

a corporation duly organized under the laws of the State of Iowa as Surety, hereinafter called the Surety, are held and firmly bound unto the **City of Aumsville, Oregon** as Obligee, hereinafter called the Obligee, in the full sum of Ten Percent of the Total Amount Bid Dollars (\$ 10% TAB), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a proposal for the **New City Public Works Shop**

NOW, THEREFORE, if the Obligee shall accept the proposal of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such proposal, and give such bond or bonds as may be specified in the Request for Proposals Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the full sum set forth on the face of this Proposal Bond, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 20th day of February 2023.

Principal: R.A. Gray Construction, LLC
AS Michaud
(signature)

Surety: Employers Mutual Casualty Company
Amanda C. Webb
(signature)

By: AS MICHAUD
(print name)

By: Amanda C. Webb
(print name)

Title: VP

Title: Attorney-in-Fact



P.O. Box 712 • Des Moines, Iowa 50306-0712

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

- 1. Employers Mutual Casualty Company, an Iowa Corporation
- 2. EMCASCO Insurance Company, an Iowa Corporation
- 3. Union Insurance Company of Providence, an Iowa Corporation
- 4. Illinois EMCASCO Insurance Company, an Iowa Corporation
- 5. Dakota Fire Insurance Company, a North Dakota Corporation
- 6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

Amanda C. Webb

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the Bid Bond

In an amount not exceeding Two Million Five Hundred Thousand Dollars\$2,500,000.00

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

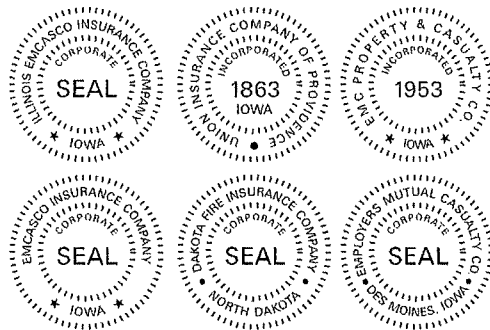
AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 22nd day of September, 2022.

Seals



Scott R. Jean

Scott R. Jean, President & CEO
of Company 1; Chairman, President
& CEO of Companies 2, 3, 4, 5 & 6

Todd Strother

Todd Strother, Executive Vice President
Chief Legal Officer & Secretary of
Companies 1, 2, 3, 4, 5 & 6

On this 22nd day of September, 2022 before me a Notary Public in and for the State of Iowa, personally appeared Scott R. Jean and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President, Executive Vice President, Chief Legal Officer and/or Secretary, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Scott R. Jean and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2025.

Kathy Loveridge

Notary Public in and for the State of Iowa



CERTIFICATE

I, Ryan J. Springer, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 22nd day of September, 2022, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 20th day of February, 2023.

Ryan J. Springer

Vice President

AGREEMENT

THIS AGREEMENT, by and between the **City of Aumsville, Oregon**, party of the first part, hereinafter called the **Owner**, and **R.A. Gray Construction, LLC** party of the second part, hereinafter called the **Contractor**.

WITNESSED, that the Contractor and the Owner, for the consideration hereinafter named, agree as follows:

ARTICLE I - SCOPE OF THE WORK: The Contractor hereby agrees to furnish: All materials, labor and equipment and incidentals, and to perform all work described in the Request for Proposals prepared by **WESTECH ENGINEERING, INC.**, Salem, Oregon, hereinafter referred to as **Engineer**; entitled:

New City Public Works Shop

The work shall include those items listed in the Schedule of Prices in the Proposal Form dated **February 23, 2023, including Value Engineering Items**, and shall be in accordance with the requirements and provisions of the Contract Documents as defined in Article IV of this Agreement, which Contract Documents are enclosed herewith, and are hereby made a part of this Agreement.

The Contractor also agrees to comply with all applicable federal, state, and local laws, municipal ordinances, and rules and regulations of all authorities having jurisdiction over the construction, and specifically, the applicable provisions of Oregon law relating to public contracts as set forth within the Oregon Public Contracting Code ORS Chapter 279C, and as more specifically set forth and **Exhibit A**, attached hereto and incorporated herein by this reference. In the event of a conflict between the provisions of the Oregon Public Contracting Code and other provisions of the Contract Documents, the Oregon Public Contracting Code shall control.

ARTICLE II - CONTRACT TIME

The work to be performed under this contract shall be commenced within **ten (10)** calendar days after the date of written notice by the Owner to the Contractor to proceed (NTP). The work shall be completed by no later than **March 31, 2024**.

Liquidated Damages: The Owner and the Contractor recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss if the work is not substantially completed within the time specified in the paragraph above, plus any extensions thereof allowed in accordance with the General Conditions of the Contract Documents. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the work is not substantially completed on time. Accordingly, instead of requiring any such proof, the Owner and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay the Owner **Five Hundred dollars (\$500)** for each day that expires after the specified time until the work is complete.

The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any beach and that this harm is one, which is impossible or very difficult to estimate. In addition to the liquidated damages above, the Contractor shall reimburse the Engineer for the cost incurred for engineering, inspection and project management services required beyond the Contract Time limit as outlined herein. The Contractor shall also reimburse the Engineer for all costs incurred for inspection and project management services required due to punch list items not completed within the Contract Time limit or the date specified on the Certificate of Substantial Completion, whichever is later. If the Contractor fails to reimburse the Engineer directly, the Owner from the Contractor's final pay request will deduct the cost.

ARTICLE III – PAYMENT: The Owner shall pay to the Contractor for the performance of the work the total amounts determined by lump sum and unit prices listed in the Schedule of Prices. Based on the estimated quantities and the stated unit prices, the total Contract sum is **one million, eight-hundred seventy-four thousand, four-hundred twenty-five dollars, and no cents (\$1,874,425.00)**. Progress payments shall be made in accordance with Article 14 of the “General Conditions” of the Contract.

ARTICLE IV - CONTRACT DOCUMENTS: The Contract Documents which comprise the entire agreement between the Owner and Contractor are attached to this Agreement, made a part hereof, and consists of the following: Request for Proposals, including but not limited to Invitation to Propose, Information for Proposers, Instructions to Proposers, Proposal Form, Schedule of Prices, Proposal Bond, Agreement, Performance Bond, Payment Bond, Conditions of the Contract (General, Supplemental General and other conditions), Oregon Public Contracting Code requirements, as set forth in Exhibit A, Addenda **No. 1 through 1**, Notice of Award, Notice to Proceed, Description of Services, proof of insurance.

In construing this Agreement, it is understood that: (1) if the context so requires: (a) the singular pronoun shall be taken to mean and include the plural pronoun; (b) the masculine pronoun shall be taken to mean the feminine and neuter pronoun; (2) all captions used herein are intended solely for the convenience of reference and shall in no way limit any of the provisions of this Agreement; and (3) anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both..

ARTICLE V – PREVAILING WAGE. Contractor must pay the current prevailing wage rates as established by the Bureau of Labor and in accordance with ORS 279C.800 – 279C.870 and contained herein, including daily, weekly, weekend and holiday overtime as required.

ARTICLE VI – TAX CERTIFICATION. The Contractor hereby certifies in writing, under penalty of perjury, that he/she is, to the best of his/her knowledge, not in violation of any tax laws described in ORS 305.380(4).

ARTICLE VII – INSURANCE CERTIFICATES. Evidence of insurance coverage must be submitted on the “ACORD” form (or other insurance certificate containing similar language regarding cancellation of coverage) that is **EITHER** revised to strike out the words “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” so as to conform with General Conditions 5.03, **OR** the Contractor’s insurance agent shall submit a written letter certifying that new insurance certificates will be issued and sent to the Owner and the Owner’s Representative a minimum of every 30 days, throughout the term of the required insurance. The Owner and Westech Engineering must be named as additional insured, with the Owner being named as certificate holder. In addition, insurance or bond riders must be provided as required under the terms of any permit that the Contractor must obtain from any City, County, service district or state agency with jurisdiction over the work.

ARTICLE VIII - OTHER PROVISIONS. This Agreement shall be binding on all parties hereto and their respective heirs, executors, administrators, successors, and assigns. The Contractor shall not assign, sell, dispose of or a transfer rights, or delegate duties under this Agreement, in either whole or in part, without the Owner’s prior written consent. Unless otherwise agreed by the Owner in writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Agreement. If Owner consents in writing to an assignment, sale, disposal, or transfer of the Contractor’s rights or delegation of Contractor’s duties, the Contractor and its surety, if any, shall remain liable to Owner for complete performance of the Contract as if no such assignment, sale, disposal, transfer, or delegation had occurred, unless Owner agrees otherwise in writing.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in **four (4)** copies each of which shall be deemed an original on the date first above written. Each party represents by signing below that he/she has authority to sign this agreement and to fully bind the principals thereto.

Dated this 12 day of May, 2023 (Contractor to fill in, match date on bond forms)

RA GRAY (Contractor)
CONSTRUCTION

By AS Michaud

Title VP

Type/Print Name: AS MICHAUD

City of Aumsville, Oregon

By: _____

Title: _____

Type/Print Name: _____

Approved as to Form: _____ (if modified)

(Attorney of Owner)

PAYMENT BOND

Any singular reference to Contractor, Surety, Obligee, or other party shall be considered plural where applicable.

CONTRACTOR

SURETY (Name and Address):

RA Gray Construction, LLC

Employers Mutual Casualty Company

12705 SW Herman Rd

PO Box 712

Tualatin, OR 97062

Des Moines, IA 50306

City of Aumsville
595 Main Street
Aumsville, OR 97325

CONTRACT

Date: _____ (Contractor to fill in, match date on signature page of Agreement)
Amount: \$1,874,425.00
Description of Project: New City Public Works Shop

BOND

Date: May 12, 2023 (Contractor to fill in, match Contract Date):
Amount: \$1,874,425.00
Modifications to this Bond: None

CONTRACTOR AS PRINCIPLE

SURETY

Company: (Corporate Seal)
RA Gray Construction, LLC

Company: (Corporate Seal)
Employers Mutual Casualty Company

Signature: *AS Michaud*

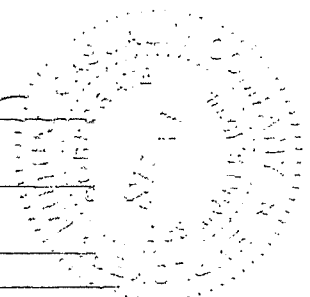
Signature *Amanda C Webb*

Name AS MICHAUD

Name Amanda C. Webb

Title VP

Title Attorney-in-Fact



FOR INFORMATION ONLY – Name, Address and Telephone

Agent Or Broker, Name & Address:

LaPorte & Associates
5515 SE Milwaukie Avenue
Portland, OR 97202

OWNER'S REPRESENTATIVE

Westech Engineering, Inc
3841 Fairview Industrial Dr. SE, Suite 100
Salem, OR 97302-1192
(503) 585-2474

Agent/Broker Phone # 503.239.4116

- 6.1 Unless Claimant shall have given written notice to the Contractor and the Secretary of State, if the Construction Contract is with a state agency, or the clerk or auditor of the public body which let the Construction Contract if the public body is other than a state agency, within one hundred eighty (180) days (200 days for the filing of fringe benefit claims) after such Claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, or hand delivered in an envelope addressed to the Contractor, and such other entity who is to receive notice, at any place where that party maintains an office, conducts business, or at its residence, or delivered to that location.
- 6.2 After the expiration of two (2) years from the date on which the Claimant last performed labor, materials or equipment. Any limitation embodied in this Bond, which is prohibited by any law controlling the project, shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by law.
7. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire at or the Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond and any amendments thereto as outlined in Paragraph 1, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

- 1. Employers Mutual Casualty Company, an Iowa Corporation
- 2. EMCASCO Insurance Company, an Iowa Corporation
- 3. Union Insurance Company of Providence, an Iowa Corporation
- 4. Illinois EMCASCO Insurance Company, an Iowa Corporation
- 5. Dakota Fire Insurance Company, a North Dakota Corporation
- 6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

Amanda C. Webb

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the following Surety Bond(s):

Surety Bond	Principal:	Obligee:
Number	R.A. Gray Construction, LLC	City of Aumsville

S037423

In an amount not exceeding Two Million Five Hundred Thousand Dollars\$2,500,000.00

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

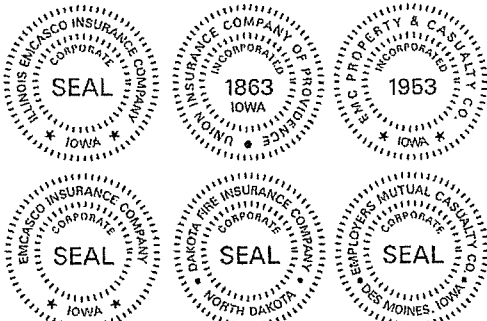
AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 22nd day of September, 2022.

Seals



Scott R. Jean
 Scott R. Jean, President & CEO
 of Company 1; Chairman, President
 & CEO of Companies 2, 3, 4, 5 & 6

Todd Strother
 Todd Strother, Executive Vice President
 Chief Legal Officer & Secretary of
 Companies 1, 2, 3, 4, 5 & 6

On this 22nd day of September, 2022 before me a Notary Public in and for the State of Iowa, personally appeared Scott R. Jean and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President, Executive Vice President, Chief Legal Officer and/or Secretary, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Scott R. Jean and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2025.

Kathy Loveridge
 Notary Public in and for the State of Iowa



CERTIFICATE

I, Ryan J. Springer, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 22nd day of September, 2022, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 12th day of May, 2023.

Ryan J. Springer
 Vice President

PERFORMANCE BOND

Any singular reference to Contractor, Surety, Obligee, or other party shall be considered plural where applicable.

CONTRACTOR

SURETY (Name and Address):

RA Gray Construction, LLC

Employers Mutual Casualty Company

12705 SW Herman Rd

PO Box 712

Tualatin, OR 97062

Des Moines, IA 50306

City of Aumsville
595 Main Street
Aumsville, OR 97325

Contract

Date:

(Contractor to fill in, match date on signature page of Agreement)

Amount:

\$1,874,425.00

Description of Project: New City Public Works Shop

Bond

Date

May 12, 2023

(Contractor to fill in, match Contract Date)

Amount:

\$1,874,425.00

Modifications to this Bond:

None

CONTRACTOR AS PRINCIPLE

SURETY

Company: (Corporate Seal)

Company: (Corporate Seal)

RA Gray Construction, LLC

Employers Mutual Casualty Company

Signature: AS Michaud

Signature Amanda C Webb

Name AS MICHAUD

Name Amanda C. Webb

Title VP

Title Attorney-in-Fact

FOR INFORMATION ONLY - Name, Address and Telephone

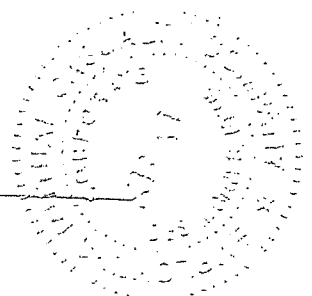
Agent Or Broker, Name & Address:

LaPorte & Associates
5515 SE Milwaukie Avenue
Portland, OR 97202

OWNER'S REPRESENTATIVE

Westech Engineering, Inc
3841 Fairview Industrial Dr. SE, Suite 100
Salem, OR 97302-1192
(503) 585-2474

Agent/Broker Phone # 503.239.4116



4.4.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two (2) years after Contractor Default or within two (2) years after the Contractor ceased working or within two (2) years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed by certified or registered mail or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

- 1. Employers Mutual Casualty Company, an Iowa Corporation
- 2. EMCASCO Insurance Company, an Iowa Corporation
- 3. Union Insurance Company of Providence, an Iowa Corporation
- 4. Illinois EMCASCO Insurance Company, an Iowa Corporation
- 5. Dakota Fire Insurance Company, a North Dakota Corporation
- 6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

Amanda C. Webb

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the following Surety Bond(s):

Surety Bond	Principal:	Obligee:
Number	R.A. Gray Construction, LLC	City of Aumsville

S037423

In an amount not exceeding Two Million Five Hundred Thousand Dollars\$2,500,000.00

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

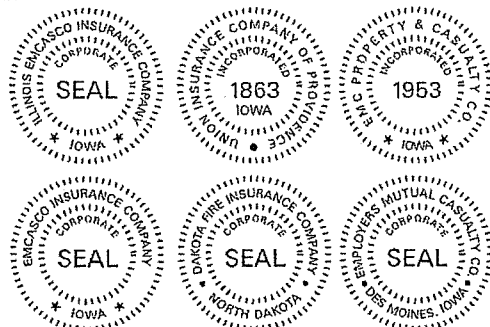
AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 22nd day of September, 2022.

Seals



Scott R. Jean
 Scott R. Jean, President & CEO
 of Company 1; Chairman, President
 & CEO of Companies 2, 3, 4, 5 & 6

Todd Strother
 Todd Strother, Executive Vice President
 Chief Legal Officer & Secretary of
 Companies 1, 2, 3, 4, 5 & 6

On this 22nd day of September, 2022 before me a Notary Public in and for the State of Iowa, personally appeared Scott R. Jean and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President, Executive Vice President, Chief Legal Officer and/or Secretary, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Scott R. Jean and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2025.

Kathy Loveridge
 Notary Public in and for the State of Iowa



CERTIFICATE

I, Ryan J. Springer, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 22nd day of September, 2022, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 12th day of May, 2023.

Ryan J. Springer
 Vice President



STATE OF OREGON
STATUTORY PUBLIC WORKS BOND

Surety bond #: 65136678

CCB # (if applicable): 198759

We, R A Gray Construction LLC, as principal, and
WESTERN SURETY COMPANY, a corporation qualified and authorized to do

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

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

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

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

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

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

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

SIGNED, SEALED AND DATED this 8th day of July, 2020

<p>Surety by:</p> <p><u>WESTERN SURETY COMPANY</u> (Seal) <i>Company Name</i></p> <p><u><i>Paul T. Bruflat</i></u> <i>Signature</i></p> <p><u>Paul T. Bruflat, Vice President</u> <i>Title (e.g. Attorney-in-Fact)</i></p> <p><u>P.O. Box 5077</u> <i>Address</i></p> <p><u>Sioux Falls, SD 57117-5077</u> <i>City State Zip</i></p>	<p>Principal by:</p> <p><u>R A Gray Construction LLC</u> <i>Name</i></p> <p><u></u> <i>Signature</i></p> <p><u></u> <i>Title</i></p> <p><u>PO Box 1000</u> <i>Address</i></p> <p><u>Sherwood, OR 97140</u> <i>City State Zip</i></p>
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SEND BOND TO: Construction Contractors Board
PO Box 14140
Salem, OR 97309-5052
Telephone: (503) 378-4621

Western Surety Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That WESTERN SURETY COMPANY, a corporation organized and existing under the laws of the State of South Dakota, and authorized and licensed to do business in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the United States of America, does hereby make, constitute and appoint

Paul T. Bruflat of Sioux Falls,
State of South Dakota, its regularly elected Vice President,
as Attorney-in-Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, the following bond:

One Statutory Public Works Prevailing Wage

bond with bond number 65136678

for R A Gray Construction LLC

as Principal in the penalty amount not to exceed: \$ 30,000.00

Western Surety Company further certifies that the following is a true and exact copy of Section 7 of the by-laws of Western Surety Company duly adopted and now in force, to-wit:

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys-in-Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

In Witness Whereof, the said WESTERN SURETY COMPANY has caused these presents to be executed by its
Vice President with the corporate seal affixed this 8th day of July,
2020.

ATTEST

L. Nelson

L. Nelson, Assistant Secretary

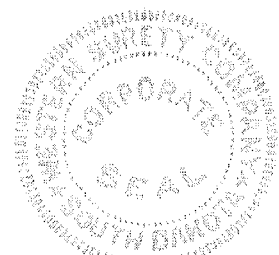
WESTERN SURETY COMPANY

By

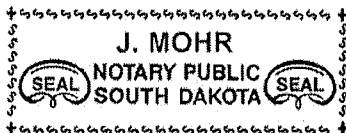
Paul T. Bruflat

Paul T. Bruflat, Vice President

STATE OF SOUTH DAKOTA }
COUNTY OF MINNEHAHA } ss



On this 8th day of July, 2020, before me, a Notary Public, personally appeared
Paul T. Bruflat and L. Nelson
who, being by me duly sworn, acknowledged that they signed the above Power of Attorney as Vice President
and Assistant Secretary, respectively, of the said WESTERN SURETY COMPANY, and acknowledged said instrument to be the
voluntary act and deed of said Corporation.



My Commission Expires June 23, 2021

J. Mohr

Notary Public

To validate bond authenticity, go to www.cnasurety.com > Owner/Obligee Services > Validate Bond Coverage.



PREVAILING WAGE RATES FOR PUBLIC WORKS CONTRACTS IN OREGON

Contractor is responsible for submitting any required notifications and copies of certified payrolls to BOLI, and also directly to the Owner.

Per OAR 839-025-0020(5)b&c, Oregon BOLI wage rates are included by reference.

For complete copies of the referenced wage rate publication(s), see

http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx

As allowed under OAR 839-025-0020(5)c, the webpage(s) accessed with the URL above include the title (*and full text*) of each applicable wage rates publication or determination and the date of each publication or determination as well as the date of any applicable amendments.



CITY OF AUMSVILLE
595 Main Street | Aumsville, Oregon 97325
(503) 749-2030 | www.aumsville.us

STAFF REPORT

DATE: May 22, 2023
TO: City of Aumsville City Council
FROM: Ron Harding, City Administrator
SUBJECT: Eastside Park UGB project

RECOMMENDATION: Approve the professional service memorandum with Winterbrook Planning Services to develop and submit the applications and supporting materials to apply for inclusion of the Eastside Park into the City's Urban Growth Boundary.

BACKGROUND: The City approved a contract in 2019 with the Mid-Willamette Valley Council of Governments to complete this work. Shortly after the project began, the MWVCOG experienced staff changes including management, director and planners who were assigned and working on the project. The project was funded by DLCD with a grant to the MWVCOG on the City's behalf.

The project was later assigned to a new planner the COG hired and we began the process of developing a Housing Needs Analysis (HNA) and a Buildable Land Inventory (BLI).

The City formed a technical advisory committee and held several public meetings, developed the raw data and worked with the assigned planner to create the application materials.

This is where the project started to evolve from a Park project into pressure to change the Council-approved growth policies. I attempted to work with the planning staff but it became clear to me that they were not working on the City's projects but fulfilling the grant's tasks from DLCD. Those tasks may have conflicted with the City's long-term goals. The draft report created assumptions and conclusions that our previous BLI and HNA didn't conclude, and the results created a conflict with the City's 2017 report. We attempted to inquiry to reconcile the 2017 and 2019 conclusions and the reply simply didn't make sense.

In coordination with the Mayor, Council President and Planning Commission chair we ultimately came to the conclusion that we could not continue the project further using the MWVCOG. We considered the product to be flawed, or at the very minimum unreconcilable with previous work. The project was cancelled, and we asked for all the relevant materials which were provided.

After several professional inquiries, I interviewed Winterbrook Planning Services. We had previously contracted them to lead the planning effort for the Interchange Development Zone project and they have been professional and responsive. I asked Jesse Winterowd to look over the project and build a scope of work to accomplish the City's goals to include the park in the city UGB but without compromising Council's vision or current policies.

CURRENT SITUATION:

Winterbrook Planning has successfully assisted many cities with UGB projects, and most recently the cities of Turner and Sublimity. They have also assisted many cities in local planning services, and I feel this is our best chance for a successful application.

The City currently has an agreement with Winterbrook Planning for professional services. The City would simply need to approve the scope of work and memorandum, and the project will be completed under our current agreement.

MOTION:

- I move to approve the professional service scope for the Eastside Park expansion project in the amount of \$25,000.
- I move to approve the professional service scope for the Eastside Park expansion project in the amount of \$25,000 with the following conditions.
- Remand back to staff to provide additional research or modification.

Memorandum



To: Ron Harding, City Manager
From: Jesse Winterowd, AICP, PMP
Date: May 12, 2023
Re: **City of Aumsville Park Expansion**

Introduction

The proposed scope is to prepare an Urban Growth Boundary (UGB) amendment package to include a community park within the Aumsville UGB, consistent with the updated City of Aumsville Parks Master Plan and Comprehensive Plan Goal 8 (Recreation) element. Winterbrook will act as staff planner and be responsible for preparation of process materials, with assistance from City Attorney as necessary for legal documentation (e.g., final ordinance).

Anticipated Scope of Work

Coordination Tasks

- Maintain communication with City Manager for each process step.
- Coordinate with David Kinney regarding updates to the Parks Master Plan and Comprehensive Plan Article VI (addressing Statewide Planning Goal 8) to establish park siting requirements usable in an OAR 660-024 public facility expansion analysis.
- Coordinate with Marion County to prepare for County co-adoption and identify County comprehensive plan policies.
- Coordinate with DLCD to re-establish relationship and framework for proposed park expansion.
- Coordinate with advocacy groups as needed and authorized.

Process Tasks

- Prepare DLCD 35-day notice package.
- Prepare and present (one hearing) UGB expansion Planning Commission staff report and supporting materials package.

- Prepare and present (one hearing) City Council Staff Report, supporting materials package, and draft ordinance.
- Prepare City Council Decision, Findings and updated ordinance.
- Track and respond to comments from public agencies, citizens, potential opposition groups.
- Coordinate with County planning on County process needs; prepare testimony, additional information as required.
- Prepare DLCD notice of Adoption.

Analysis and Findings

- Prepare relevant maps to OAR 660-024 Public Facility expansion.
 - Prepare inside UGB analysis – based on park siting requirements from Comprehensive Plan.
 - Prepare alternatives analysis – based on park siting requirements from Comprehensive Plan.
- Prepare UGB expansion findings for public facility (park) need, based on Comprehensive Plan direction.
 - Statewide Planning Goal Findings.
 - OAR 660-024 Findings.
 - City Comprehensive Plan Findings.
 - County Comprehensive Plan Findings.
 - Updated and relevant public facilities findings (public facilities work is good, but needs to be framed more effectively).

Proposed Budget and Timeframe

Coordination and process tasks are difficult to define, as they may adapt and evolve during the project. Winterbrook proposes a task order under the existing T&M contract planning contract, not to exceed \$25,000 for the scope described above, unless specifically authorized by City Manager.

Winterbrook will be able to start the project as soon as authorized and anticipates City and County processes extending to approximately May 2024.



595 Main St. Aumsville, Oregon 97325
(503) 749-2030 • TTY 711 • Fax (503) 749-1852
www.aumsville.us

STAFF REPORT

TO: Aumsville City Council
FROM: Matthew Etzel, Aumsville Public Works
SUBJECT: Wastewater Collection System Design Proposal – Westech Engineering

Recommendation: Approval of the Wastewater Collection System Improvements Design and Engineering Services proposal from Westech with a Not to Exceed amount of \$121,000.

Background: In the Wastewater Facilities Plan that was adopted by City and DEQ, Westech identified six areas of our collection system that are undersized or appear to be infiltrating a large amount of groundwater. These parts of the collection system need to be upgraded to prevent sanitary sewer overflows which can create health hazards if raw sewage is overflowing into our streets and homes.

These collection system improvements were also recently added to a USDA application the City submitted for the Wastewater Treatment Facility upgrades. If the City were to receive a funding source that was favorable with this design work done, these projects could be shovel-ready. This means the City could start with some of these projects while design and engineering were being finalized on the treatment plant.

As you are aware, there are several parts of the Wastewater System improvements that need to be completed and Staff is preparing the necessary background work for these projects to try and seize any grant or funding opportunities that are favorable to the community.

MOTION:

- Move to approve the proposal for the Wastewater Collection System Improvements Design and Engineering Services by Westech with a not to exceed amount of \$121,000 from fund 019-604 Sewer Improvement.
- Move to approve the proposal for the Wastewater Collection System Improvements Design and Engineering Services by Westech with a not to exceed amount of \$121,000 from fund 019-604 Sewer Improvement with the following revisions.
- Move to remand back to staff for revisions as directed.

May 8, 2023

Mr. Matt Etzel
Aumsville Public Works
595 Main Street
Aumsville, Oregon 97325

RE: Wastewater Collection System Improvements – Proposal for Design Engineering Services

Dear Matt:

Westech Engineering is pleased to offer this proposal for consulting services to assist with the City with the design for the sewer collection system improvements that are described in the USDA Preliminary Engineering Report for the Wastewater Treatment Plant Improvement project. This proposal is only for the design of the collection system improvements. We are currently working on a task order to complete preliminary design work for the wastewater treatment plant improvements and the final design for the wastewater treatment plant improvements will be completed as part of a separate task order. The remainder of this letter proposal is divided into the following sections.

- Background Information
- Scope of Work
- Project Schedule
- Assumptions and Exclusions
- Fee Schedule

Short discussions on these items follow.

BACKGROUND INFORMATION

In 2022, the City adopted a new wastewater facilities plan. This plan recommended the replacement of several sections of the existing gravity collection piping serving the community. The particular segments are undersized and collect large amount of groundwater infiltration. As such, it is appropriate to improve these facilities in the coming years. This collection system has been included in the overall scope of work for the larger wastewater treatment plant improvement project. However, the collection system work is a different class of project that would typically be performed by a different type of contractor than the treatment plant work. Therefore, it makes sense to break the collection system work into a separate project for design and bidding purposes. We understand that the City would like complete the design work for the collection system work as soon as possible so that the project can be considered shovel-ready. This will allow the City to quickly seize on any funding assistance opportunities that may arise. The specific line segments are located in the following areas.

- Olney Street from 4th to 9th Streets
- 9th Street from Olney Street to Del Mar Drive
- 4th Street from Olney Street to Del Mar Drive
- Del Mar Drive from 4th Street to 1ST Street
- 5th Street from Clover to Cleveland Streets
- Clover Street from 5th to 4th Streets

In general the proposed improvements will include replacing these sewer segments with larger piping using open cut construction. The project will also include replacing the manholes and service laterals in these areas. The service

laterals will only be replaced from the mainline to the right of way. No improvements to the service laterals on private property will be included in the design.

At this time, Westech hereby proposes to assist the City with the preparation of the plans and specifications for these improvements. Specific work tasks are described in the following section.

SCOPE OF WORK

Our proposed scope of work includes the design of the following work tasks.

Task 1: Obtain Topographic Survey

Our first task will include the preparation of a topographic survey of the proposed work area. The area to be surveyed include the right of ways along the areas listed above. We propose to use Barker Surveying as a subconsultant to Westech for this work.

Task 2: Prepare Draft Design Drawings

With the completion of the topographic survey, we can then prepare the draft design plans and specifications. These plans will show the horizontal and vertical alignment of each sewer mainline including all manhole locations. The plans will also show the service lateral replacements from the mainline to the right of way line. The plans will be prepared at a scale of one-inch equals 20 feet in accordance with City's Design Standards. We will provide draft plans for review by the City and revised the plans as needed to address the City's comments.

Task 3: Prepare Final Plans and Specifications

Upon completion of the City's review of the draft plans it will be appropriate to complete the design documents. We will prepare final plans and specifications in accordance with the City's design standards. The final deliverable will include bid-ready drawings and specifications.

Task 4: DEQ Approval

Upon completion of the final plans and specifications we will submit the documents to the Oregon Department of Environmental Quality (DEQ) for review and approval. We will revise the documents as needed to address any comments from DEQ.

Since the timing of the project and funding source are not known at this time, we have not included bidding or construction phase services in this proposal. These services will be provided at a future date under a separate contract when the time is appropriate.

PROJECT SCHEDULE

A project of this nature typically requires about 12 months from notice to proceed to complete all of the tasks listed above. We can accelerate this schedule if desired. But, 12 months is a typical timeframe.

ASSUMPTIONS AND EXCLUSIONS

All design will be in accordance with the Aumsville PWDS and industry standards. Not included in our scope are the following services.

- Agency review fees
- Easement and/or ROW negotiations.
- Addition topographic survey beyond project limits
- Material Testing or Construction Staking
- Sewer or Storm TV Inspection
- Landscape or irrigation design
- Cultural, Wetlands, or T&E Species Investigations
- Geotechnical Studies
- Vacuum excavation or potholing for design verification
- Services During the Bidding Phase
- Services During the Construction Phase
- Funding applications and funding agency coordination

Any of the above services can be provided on a time and material basis as needed and requested, or we can assist the City with these additional tasks only to the extent requested or required by the City.

FEE SCHEDULE

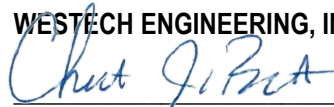
We propose to perform the work described above on a time & materials basis at our current hourly rates with total fees not to exceed \$121,000. We understand that this work is being funded by the ARPA funds (Assistance Listing Number 21.027) that are administered by Marion County. As such, all work will be completed in accordance with attachments B through G that are included at the end of this letter proposal for formatting purposes.

If the City decides to proceed with the work scope summarized herein, we assume that the City will authorize us to proceed with these services under our existing city engineering contract (we will provide separate invoices for this work to allow the City to accurately track costs). Upon your authorization to proceed, we are prepared to start immediately on the proposed work. This proposal is valid for 6 months from today's date

We appreciate the opportunity to present this proposal to the City and look forward to continuing to work with the City on this very important project. If you have any questions or need additional information regarding this matter, please contact us at (503) 585-2474.

Sincerely,

WESTECH ENGINEERING, INC.



Christopher J. Brugato, P.E.

The parties hereto agree to the work effort and conditions described above with all terms and conditions in accordance with the City Engineer of Record Services Contract between the City of Aumsville and Westech Engineering, Inc. dated 3/9/2019.

The City of Aumsville

Organization

Signature

Date

Typed or Printed Name

cjb

EXHIBIT B
**APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL
ENTITY CONTRACTS UNDER FEDERAL AWARDS**

- Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian County Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
- Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These

requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387),** as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- **Debarment and Suspension (Executive Orders 12549 and 12689)**—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- See §200.322 Domestic preference for procurements.
- **Audit Requirements of 2 CFR §200.5XX (Subpart F)**
 - Subrecipient must comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
 - If Subrecipient expends federal awards in excess of \$750,000 in a fiscal year, Subrecipient is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to the County within 30 days of completion.
 - Subrecipient must save, protect and hold harmless the County from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement

under this or any other agreement between Subrecipient and the County.

- System for Award Management. Subrecipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. Subrecipient must also comply with applicable restrictions on subawards ("subgrants") to first tier subcontractors (first-tier "Subcontractors"), including restrictions on subawards to entities that do not acquire and provide (to the County) the unique entity identifier required for SAM registration.
- Whistleblower Protection Act. Subrecipient must comply and ensure the compliance by subcontractors, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Subrecipient must inform subcontractors, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC § 4712.
- See § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.
- See § 200.323 Procurement of recovered materials.
- Recordkeeping Requirements. Subrecipient must maintain records and financial documents for five years after all funds have been expended or returned to the County. The County may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.
- Subrecipient must agree to provide or make available such records to the County upon request, and to the Government Accountability Office ("GAO"), U.S. Treasury's Office of Inspector General ("OIG"), and their authorized representative in order to conduct audits or other investigations.
- Civil Rights Compliance. Recipients of Federal financial assistance from the U.S. Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the U.S. Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Subrecipient's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Subrecipient's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Subrecipient implementing regulations at 31 CFR part 23.
- In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, U.S. Treasury will collect and review information from non-Tribal recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. U.S. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). U.S. Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. This collection does not apply to Tribal

governments.

- Real Property, Equipment and Other Capital Expenditures. County shall, and shall cause its Subrecipients to, maintain policies and procedures for the management of property and equipment that comply with all requirements of the applicable Uniform Guidance at 2 CFR Part 200, Subpart D, 2 CFR Part 200.310 – 200.316 and 200.439, and specific requirements of the source of funds. These regulations shall apply to all real property, equipment, and other capital expenditures purchased with the federal funding.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

Exhibit C – Federal Funding Information For Subrecipients

As Required By 2 CFR 200.331(a)¹

1. Federal Award Identification	
(i) Subrecipient Name:	Aumsville
(ii) Unique Entity ID #:	WA43NUV4LPF1
(iii) Federal Award Identification Number (FAIN):	
(iv) Federal Award Date:	3/11/2021
(v) Subaward Period of Performance (Start & End Date):	3/3/21 - 12/31/26
(vi) Amount of Federal Funds Obligated by this Agreement:	
(vii) Total Amount of Federal Funds Obligated to Subrecipient by Pass-Through Entity (PTE), including this agreement:	\$1,000,000
(viii) Total Amount of Federal Award committed to Subrecipient by PTE:	\$1,000,000
(ix) Federal Award Project Description:	5-Water, Sewer, and Broadband Infrastructure
(x) Identify the following:	
a) Federal awarding agency	U.S. Treasury
b) Pass-Through Entity,	Marion County, Oregon
c) Contact info for awarding official:	Jan Fritz, CAO
(xi) Identify Program Information	
a) Assistance Listing #:	21.027
b) Program Name:	Coronavirus State and Local Fiscal Recovery Funds
c) Is the award Research & Development? (Yes/No)	No
d) Indirect Cost Rate for Federal award:	None
2. Subrecipient Indirect Cost Rate	
Indirect cost rate passed through to subrecipient:	N/A
3. Additional Requirements or Comments (if any)	
Monitoring Requirements are included in Section 15 of this agreement.	
<p>¹Subrecipient will comply with Federal statutes, regulations and terms and conditions of the Federal award in accordance with 2 CFR 200.331 (a)(2). Subrecipient will permit the pass-through entity and auditors to have access to subrecipient's records and financial statements as necessary for the PTE to meet requirements of 2 CFR 200.331 (a)(5). Subrecipient will also permit the pass-through entity to have access to subrecipient's records for monitoring the activities of the subrecipient, as necessary, to ensure that the subaward is used for the authorized purposes. Such monitoring will include reviewing the financial and performance reports required by the pass-through entity as well as following up and ensuring the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient in order to meet the requirements of 2 CFR 200.331(d).</p>	

Exhibit D

Federal Funding Accountability and Transparency Act (FFATA) Certification*

Organization Name:	City of Aumsville	CMS Number:	BO-4565-22
---------------------------	-------------------	--------------------	------------

Did your organization have a gross income, from all sources, of less than \$300,000 in your previous tax year?

- Yes (Skip questions "A" and "B" and finish the certification)
- No (Proceed to questions "A" and "B")

A. Certification Regarding % and Amount of Annual Gross Revenue from Federal Awards

Did you organization (1) receive 80% or more of its annual gross revenue **AND** (2) \$25 million or more from federal awards and contracts during the preceding fiscal year?

- Yes If "Yes," proceed to question "B".
- No If "No," skip question "B" and finish the certification.

B. Certification Regarding Public Access to Compensation Information.

Does the public have access to information about the compensation of the senior executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

- Yes If "Yes", where can this information be accessed?
- No If "No", you must provide the names and total compensation of the top five highly compensated executives below. (For example: *John Blum: \$500,000; Mary Redd: \$50,000; etc.*)

1 _____	\$ _____
2 _____	\$ _____
3 _____	\$ _____
4 _____	\$ _____
5 _____	\$ _____

As the duly authorized representative (Signor) for the Organization, I hereby certify that the statements made by me in this certification form are true, complete and correct to the best of my knowledge.

Print Name of Authorized Representative

Print Title of Authorized Representative

Signature of Authorized Representative

Date

*Organizations that receive first tier subawards or subcontracts >\$30,000 are required to comply with FFATA requirements per 2 CFR Part 170 and FAR 52.204-10.

Exhibit D

Federal Funding Accountability and Transparency Act (FFATA) Certification*

Background on FFATA Requirements

Under the requirements of the Federal Funding Accountability and Transparency Act (Pub. L. No. 109-282), as amended by Section 6202 of Public Law 110-252, that are codified in 2 CFR Part 170, direct recipients of federal grants or cooperative agreements are required to report first-tier subawards and subcontracts of \$30,000 or more to the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS).

Organizations that are requested to complete the FFATA Certification have been identified by Marion County as either a first tier subaward or subcontract and therefore, FFATA requirements are applicable.

Definition of Compensation

Total compensation means the cash and noncash dollar value earned by the executive during the Organizations preceding fiscal year and includes the following: (1) Salary and bonus; (2) Awards of stock, stock options, and stock appreciation rights; (3) Earnings for services under non-equity incentive plans; (4) Change in pension value; (5) Above-market earnings on deferred compensation which is not tax-qualified; and (6) Other compensation, as further defined in FAR 52.204-10(a) and 17 CFR 229.402(c)(2).

**Organizations that receive first tier subawards or subcontracts >\$30,000 are required to comply with FFATA requirements per 2 CFR Part 170 and FAR 52.204-10.*

Exhibit E

**American Rescue Plan Act (ARPA) /
Coronavirus State and Local Fiscal Recovery Funds (SLFRF)
Capital Expenditure Justification Form**

Purpose: To ensure recipient complies with the terms, conditions and requirements of the U.S. Treasury 31 CFR Part 35 SLFRF Final Rule. Recipients must complete and meet the requirements of a written justification for capital expenditures equal to or greater than \$1 million.

Capital Expenditures: Per the Uniform Guidance 2 CFR 200.1, the term "capital expenditures" means "expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life."

Organization Name:	City of Aumsville
Organization Contact Completing Form:	
Date:	
Project Name:	Wastewater Treatment System
Expenditure Category:	5.1 Clean Water: Centralized Wastewater Treatment
Type of Capital Expenditure ¹ :	
Specify "Other" Expenditure Type:	
Project Amount:	\$ 1,000,000
Project Threshold Per Table 1:	\$1M to < \$10M
CMS # (Marion County to Complete)	4565

Black shaded cells DO NOT need to be filled out.

1 Describe the harm or need to be addressed.

2 Explanation of why a capital expenditure is appropriate. (For example, recipients should include an explanation of why existing equipment and facilities, or policy changes or additional funding to pertinent programs or services, would be inadequate.)

3 Was there a comparison performed of the approved capital project against at least two alternative capital expenditures?

YES NO

a) If yes, please demonstrate why the approved capital expenditure is superior.

b) If no, please explain why.

¹ Coronavirus State and Local Fiscal Recovery Funds Project and Expenditures Report User Guide - Appendix H

Marion County to complete this section	
Grant Reviewer:	
Date Reviewed:	
Comments:	

Exhibit E

Table 1 (U.S. Treasury Final Rule, General Provisions: Other, b. Capital Expenditures)

If a project has total expected capital expenditures of	and the use is enumerated in (b)(3), then	and the use is not enumerated in (b)(3), then
Less than \$1 million	No Written Justification required	No Written Justification required
Greater than or equal to \$1 million, but less than \$10 million	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury	Written Justification required and recipients must submit as part of regular reporting to Treasury
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury	

EXHIBIT F

ARPA/SLFRF REPORTING REQUIREMENTS FORM

A.1 Project and Expenditure Report

Department shall complete the Project and Expenditure Report as outlined in the Project and Expenditure Report User Guide dated April 1, 2022, according to the awarded eligibility category. The Board and Designee shall provide the Project and Expenditure Report template to the Department no later than June 15, 2022. Once the Department's total project expenditures have been occurred and the project has completed, a final report shall be submitted, and quarterly reporting requirements will no longer be required.

Project and Expenditure Reports are due according to the following table:

Report	Year	Quarter	Period Covered	Due Date
1	2022	2	Project Commence - June 30	July 15, 2022
2	2022	3	July 1 - September 30	October 15, 2022
3	2022	4	October 1 - December 31	January 15, 2023
4	2023	1	January 1 - March 31	April 15, 2023
5	2023	2	April 1 - June 30	July 15, 2023
6	2023	3	July 1 - September 30	October 15, 2023
7	2023	4	October 1 - December 31	January 15, 2024
8	2024	1	January 1 - March 31	April 15, 2024
9	2024	2	April 1 - June 30	July 15, 2024
10	2024	3	July 1 - September 30	October 31, 2024
11	2024	4	October 1 - December 31	January 15, 2025
12	2025	1	January 1 - March 31	April 15, 2025
13	2025	2	April 1 - June 30	July 15, 2025
14	2025	3	July 1 - September 30	October 15, 2025
15	2025	4	October 1 - December 31	January 15, 2026
16	2026	1	January 1 - March 31	April 15, 2026
17	2026	2	April 1 - June 30	July 15, 2026
18	2026	3	July 1 - September 30	October 15, 2026
19	2026	4	October 1 - December 31	March 15, 2027

A.2 Recovery Plan Performance Report

Department shall complete the Recovery Plan Performance Report. The Board and designee shall provide the Recovery Plan Performance Report template to the Department no later than June 15, 2022.

Recovery Plan Performance Reports are due according to the following table:

Report	Period Covered	Due Date
1	Award Date - June 30, 2022	July 15, 2022
2	July 1, 2022 - June 30, 2023	July 15, 2023
3	July 1, 2023 - June 30, 2024	July 15, 2024
4	July 1, 2024 - June 30, 2025	July 15, 2025
5	July 1, 2025 - June 30, 2026	July 15, 2026
6	July 1, 2026 - December 31, 2026	March 15, 2027

A.3 Federal Funding Accountability and Transparency Act Certification

Department shall require its contractor(s) and subcontractor(s), to complete and include Exhibit D. Federal Funding Accountability and Transparency Act Certification as part of the contract.

A.4 ARPA/SLFRF Capital Expenditure Justification Form

Department shall require its contractor(s) and subcontractor(s) to complete and include Exhibit E. ARPA/SLFRF Capital Expenditure Justification Form as part of the contract.

Exhibit G - Marion County Disbursement Request



Recipient:
 Project Name:
 Funding Program:
 Assistance Listing (CFDA#):

Project Number:

Date:

Final Draw? Yes No

Reporting Period: _____ to _____

(A) Category	Marion County Funds				(E) = [B-C-D]	Other / Matching Funds			(I) = [C+D+G+H]	(J) = [C+D+G+H]
	(B) Approved Budget (Whole Dollars)	(C) Prior Disbursements	(D) Current Request (Linked to Detail)	Balance		(F) Approved Budget (Whole Dollars)	(G) Prior Expenditures	(H) Current Expenditure		
Personnel Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Materials and Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Equipment or Capital Purchases	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Administrative	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Certification: I certify that the data is correct and that the amount requested is not in excess of current needs, nor has been already reimbursed by federal, state, or other resources.

 Authorized Signature and Title

 Date

 Authorized Signature and Title (if necessary)

 Date

 Project Contact for Payment Notification

 Phone Number

 Email Address

For Marion County Use Only: I have reviewed this request and approve payment to the above mentioned recipient in the amount(s) listed below.

Dollar Amount	Costing	PO #
		CMS #
\$ -		
_____ Authorized Signature and Title		_____ Date
_____ Authorized Signature and Title		_____ Date
_____ Authorized Signature and Title		_____ Date

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject us to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Additional Information Required:
 Supporting documentation (e.g. invoice(s), GL reports, timekeeping records, etc.) must be recorded on Detail worksheet.
 Upon completion, print Disbursement Request and Detail to PDF, sign electronically, and attach copies of supporting documentation.
 Submit to ARPArecovery@co.marion.or.us for review and processing of disbursement.
 Questions about this form can also be directed to ARPArecovery@co.marion.or.us.



595 Main St. Aumsville, Oregon 97325
(503) 749-2030 • TTY 711 • Fax (503) 749-1852
www.aumsville.us

STAFF REPORT

TO: Aumsville City Council

FROM: Matthew Etzel, Aumsville Public Works

SUBJECT: Water Supply Well Project Construction Services - Westech Engineering.

Recommendation: Approval of the Water Supply Well Project Construction Services by Westech Engineering with a Not to Exceed amount of \$125,000.

Background: On May 8th City Council approved the Notice to Award to Jones Drilling for the two new municipal wells at Boone 3 and Mill Creek 1 locations. As part of this project, we will need to have GSI Water Solutions, Inc. and Westech provide technical guidance, review specifications, and provide the proper documentation to OHA and Water Resources for approval through those agencies once the wells have been drilled and developed.

This is common practice with these sorts of projects as there are several approval agencies that all have different requirements. It is also good practice to have a company like GSI that provided the drilling specifications to be available to review the drilling at multiple stages of the project. Once drilling is started, if any changes need to be made based on soil findings in the drilling process, GSI and Westech would be able to review those findings and advise the City of the best direction. Drilling of wells is never a guaranteed outcome and having GSI and Westech help guide the City through this process will be beneficial.

There will also be another proposal that comes after or possibly during the ending stages of drilling that will be for Westech to design the actual connection to the drinking water system along with pumping and electrical equipment needed at each site. We have the funding agencies at Business Oregon reviewing both the construction contracts and this proposal to get final approval before reimbursement requests are made.

MOTION:

- Move to approve the proposal for the Water Supply Well Project Construction Services by Westech with a not to exceed amount of \$125,000 from fund 028-836.
- Move to approve the proposal for the Water Supply Well Project Construction Services by Westech with a not to exceed amount of \$125,000 from fund 028-836 with the following revisions.
- Move to remand back to staff for revisions as directed.

May 11, 2023

Mr. Matt Etzel
Aumsville Public Works
595 Main Street
Aumsville, Oregon 97325

RE: Water Supply Well Project – Construction Phase Services Proposal
JO 2599.4040.0

Dear Matt:

As you are aware, the well drilling project is moving into the construction phase. Westech's current contract is for design and bidding services only and does not include engineering services for the construction phase of the project. As such, we are writing this letter proposal to present our scope of work and fee estimate for services during the construction phase of the project.

The remainder of this letter proposal is divided into the following sections. Short discussions on these items follow.

- Background Information
- Scope of Work
- Fee Schedule

BACKGROUND INFORMATION

The City of Aumsville has completed the design for two near water supply wells. The first well will be located in Boone Park and the second well will be located in Mill Creek Park. The project is being funded with a combination of City funds and ARPA funds. Bids for the project have been obtained and the contract for the construction work has been awarded to Jones Drilling. Construction is anticipated to start in June of 2023. In order to assist the City during the bidding and construction phase of the project, Westech proposes the scope of work listed below.

SCOPE OF WORK

The following scope of engineering services during the construction phase of the project is fairly standard for our municipal clients for publicly bid projects. Please note that the scope of services provided by Westech can be modified as desired best meet the City's needs.

Task 1: Construction Administration Services

This task includes the day to day management and administration duties that are typically performed by the project engineer during the construction phase of public works project. Listed below are services that will be provided as desired by the City. Please note that the scope of services provided by Westech can be modified as desired by the City to best meet the City's needs.

1. Preconstruction conference. Organize and conduct the preconstruction conference. We assume that the preconstruction conference will be held at City Hall or at the Public Works office. Issue the Notice to Proceed to the Contractor.
2. Contract & drawing questions. Answer Contractor questions, and interpret the contract documents on behalf of the City and to best represent the City's interests.

3. Coordinate/Correspond with City & Contractor. Coordinate and correspond with the Contractor, the City's Public Works Department and City Hall as appropriate during construction.
4. Meetings & construction observation. Meet with City staff periodically as necessary during construction. Provide periodic construction observation to monitor the contractor's progress. The detailed day to day construction work is described in below for Task 2. As noted below, the bulk of the day to day inspection work will be completed by GSI Water Solutions, Inc. (GSI) as a subconsultant to Westech. In addition to the work described below. We have also include 6 site visits by Westech project engineer for this project.
5. Review of construction submittals. Review construction submittals to ensure that proposed equipment & materials comply with the Contract Documents and City standards.
6. Materials testing review. Coordinate with the contractor to ensure that the required materials testing as required under the contract documents (i.e., compaction, etc) is completed and acceptable.
7. Changes to the work. Review reports of changed conditions from the Contractor or change requests from the City, and prepare change order documents as appropriate.
8. Monthly payment requests. Prepare and submit to the City monthly payment requests and a cover letter/ report outlining the contractor's progress during the preceding month.
9. Substantial and final completion walkthroughs. Conduct walkthrough inspections with City representatives as well as the contractor. Prepare a punch list of items to be completed and verify that they have been completed. Verify that the required project closeout paperwork is completed by the Contractor.
10. Record drawings. Prepare record drawings of the improvements (based on marked up field record built drawings provided by the contractor) and submit them to the City. Incorporate final records drawings into the City's existing as-built database.

Task 2: Well Drilling, Construction, and Testing Support

This task includes providing oversight during the drilling, construction, and testing phases of the project to ensure that the new water supply wells are successfully installed in accordance with the project's specifications. This task includes the following work activities, deliverables, and assumptions. We proposed to utilize the services of GSI Water Solutions, Inc. as a subconsultant to Westech to perform the bulk of this work. Westech will provide oversight and will manage GSI's activities on the City's behalf.

11. Coordinate the schedule and sequencing of work activities with Westech and the selected contractor and communicate progress and any impending key activities/decision points to the City.
12. Provide the following levels of field oversight throughout the project to ensure conformance with the project's specifications and the contractor's submittals. Our proposed fee is based on the final completion of each well within 4 months of mobilization by the selected drilling contractor (8 months for two wells), and does not include allowances for lost tooling, collapsed boreholes, or other unexpected construction deficiencies that may extend the duration of the project.
 - Mobilization / Site Prep: One site visit per well to ensure proper setup and initiation of drilling at each well site location.
 - Drilling: Up to ten site visits per well to collect and process soil samples to keep pace with the drilling process and determine the final depth of the well.

- Casing and Well Screen Assembly Installation: One site visit per well to perform an initial QAQC of the well casing and screen and two site visits to observe and document the fabrication and installation of the well screen assembly and filter pack envelope.
 - Seal Installation: On-site visit to observe and document grout seal placement procedure
 - Well Development: Two site visits per well to observe and document the development activities (including water management) and determine when the wells have been sufficiently developed.
 - Plumbness and Alignment Testing: One site visit per well to observe and document the testing.
 - Aquifer Testing: For the entirety of the step-rate test and the startup and shutdown of the constant-rate test to deploy water level monitoring equipment, collect water quality samples (as required by the OHA-DWS plan review process), and observe and document the aquifer testing (including water management).
 - Video Surveying: One site visit per well to verify proper construction and document the baseline condition of the well.
 - Well Disinfection: One site visit per well to QAQC materials and to observe and document the disinfection procedure.
13. In addition to the field oversight outlined above, Westech/GSI will provide the following deliverables/services for this task. Our proposed fee includes allowances for outside laboratory analytical fees (\$5,885 for two wells) and sieve analyses (\$1,260 for two wells).
- Process soil samples, develop a geologic log and chip tray of the boreholes, coordinate grain size analyses with the drilling contractor, and determine the final depths for the wells.
 - Develop a final well design for each well in conjunction with the City and drilling contractor and provide final well design diagrams and as-built diagrams of the wells.
 - Documentation of the seal installation, well development, video survey, and well disinfection.
 - Process plumbness and alignment testing data and provide associated data and results.
 - Deploy water level monitoring equipment, process aquifer testing data, and provide estimations for aquifer parameters, design pumping rates, durations, pumping water levels, well efficiency, and other operational considerations.
 - Collect and submit water quality samples for laboratory analyses of Safe Drinking Water Act constituents and general geochemical parameters, per the requirements of the OHA Plan Review process (Westech/GSI to pay associated laboratory fees). Summarize the results of the water quality analyses relative to applicable drinking water maximum contaminant levels (MCLs).

Task 3: Well Completion Reporting

This task includes documenting the drilling, construction, and testing of each well and also providing recommendations related to design pumping rates, pumping water levels, and other operational considerations. Westech/GSI will develop a report that documents the project and also prepare the second OHA Plan Review submittal for the wells. This task includes the following work activities.

14. Develop report that documents the drilling, construction, and testing of each well including recommendations related to design pumping rates, pumping water levels, and other operational considerations.
15. Prepare and submit the second OHA Plan Review submittal documenting the construction and testing of the wells, including raw groundwater chemistry results.

FEE SCHEDULE

We propose to perform the work described above on a time & materials basis at our current hourly rates with total fees not to exceed \$125,000.

Not included in our scope are the following services.

- Agency review fees
- Prevailing wage review, certification, or interviews.
- Grant and loan management including disbursement requests
- Vacuum excavation or potholing
- Cultural, Wetlands, or T&E Species Investigations

Any of the above services can be provided on a time and material basis as needed and requested, or we can assist the City with these additional tasks only to the extent requested or required by the City.

If the City decides to proceed with the work scope summarized herein, we assume that the City will authorize us to proceed with these services under our existing city engineering contract. We will provide separate invoices for this work to allow the City to track costs.

Upon your authorization to proceed, we are prepared to start immediately on the proposed work. This proposal is valid for 6 months from today's date.

Sincerely,

WESTECH ENGINEERING, INC.



Christopher J. Brugato, P.E.

The parties hereto agree to the work effort and conditions described above with all terms and conditions in accordance with the City Engineer of Record Services Contract between the City of Aumsville and Westech Engineering, Inc. dated 3/9/2019.

The City of Aumsville

Organization

Signature

Date

Typed or Printed Name

cjb

Good morning,

The Marion County Board of Commissioners are reaching out to local jurisdictions to request them to sign onto a letter to Governor Kotek and OHA Interim Director David Baden regarding the Mossman Order and its impacts on our communities.

On September 1, 2022, federal judge Michael Mosman issued an order in a civil rights case changing Oregon aid and assist law by drastically shortening the period during which criminal defendants may receive restoration services at the Oregon State Hospital (OSH). This order also essentially ended all civil commitments to the state hospital and has left more individuals with untreated behavioral health needs requiring a hospital level of care in our communities. Since the order took effect, numerous individuals who have been charged with violent felony offenses in restoration services in Marion County alone have simply walked off their placements.

This letter to Governor Kotek provides some solutions that the State can implement that will comply with the federal order while helping us to keep our communities safe. Please consider signing on to this letter in a show of solidarity to express our concerns and to provide some potential solutions. If your jurisdiction would like to sign on, or if you have any questions, please email your logo to Alvin Klausen at aklausen@co.marion.or.us. Thank you for your time and consideration.



Alvin Klausen

Government Relations

Marion County Board of Commissioners

Email: Aklausen@co.marion.or.us

Cell: 503-302-8440



Marion County

OREGON

Board of Commissioners

March 17, 2023

(503) 588-5212
(503) 588-5237-FAX

Honorable Tina Kotek
Office of the Governor
900 Court St NE, Suite 254
Salem, OR 97301

Mr. David Baden
Oregon Health Authority
500 Summer Street NE, E-20
Salem, Oregon 97301

BOARD OF COMMISSIONERS

Colm Willis, Chair
Kevin Cameron
Danielle Bethell

CHIEF ADMINISTRATIVE OFFICER

Jan Fritz

Re: Adverse Consequences to Local Communities Arising from the Federal Court Order Limiting Admissions and Services at the Oregon State Hospital

Dear Governor Kotek and Mr. Baden,

On September 1, 2022, federal judge Michael Mosman issued an order in a civil rights case changing Oregon aid and assist law by drastically shortening the period during which criminal defendants may receive restoration services at the Oregon State Hospital (OSH). This order also essentially ended all civil commitments to the state hospital and has left more individuals with untreated behavioral health needs requiring a hospital level of care in our communities.

Marion and Washington counties, along with three district attorneys and five circuit court judges, have been granted amici status in this lawsuit and been very vocal regarding the negative impact this order has on counties. The parties in the case continue to push their agenda limiting OSH admissions, however, with little regard for local input.

The September 1, 2022, order has, and will continue, to impact public safety and the overall health and livability of our communities. Our local communities need support from the State of Oregon in advocating for solutions to the additional public safety and community resource problems caused by this order.

These problems are serious and will not be resolved on their own. For example, because many individuals currently being placed on community restoration would have previously been treated at OSH, more individuals who present a higher-than-normal level of both safety risk and behavioral health concerns now remain in our communities. Community restoration involves service in offices or unsecured residential treatment facilities. Since September of 2022, numerous individuals who have been charged with violent felony offenses in restoration services in Marion County alone have simply walked off their placements.

DRO and the Metropolitan Public Defenders are pushing to have the court order that OSH cannot admit individuals charged with misdemeanor crimes. Many person-on-

BOC: AMK

person crimes are misdemeanors. If these individuals require a hospital level of care but cannot be admitted, their charges will not be prosecuted, and they will be released untreated back into our communities.

Below are solutions we continue to seek:

- 1) Return individuals in community restoration to the Oregon State Hospital for additional services if there is a risk to community safety and it is possible that further treatment may restore their ability to stand trial;
- 2) Require the State to develop a long-term plan which would include providing sufficient secure in-patient restoration services for the anticipated need in the next twenty years;
- 3) Require the State to modify its expedited admissions policy so that more individuals can be admitted through the civil commitment process;
- 4) Require the state to retain liability for individuals on community restoration if, under state law, they would have been released from the State Hospital;
- 5) Limit the amount of time an individual may remain in community restoration;
- 6) Allow for a “safety valve” to allow for longer stays at the state hospital if, upon petition by the district attorney, a trial court finds by clear and convincing evidence that a defendant presents specifically identifiable and significant public safety or victim safety concerns; and
- 7) Continue admission of individuals charged with misdemeanor crimes to OSH.

Of these asks, the most pressing is the need for the state to provide more inpatient beds so that severely ill individuals can receive involuntary medication, a process the legislature has authorized only the State to provide. This process would assist in stabilizing individuals so that they are able to begin participating in their own treatment and recovery.

The above list provides some relief to local communities from the impact of the federal order. Getting traction on them continues to be an uphill battle, however, and the State needs to step in to protect our communities.

Thank you for considering our letter. We look forward to working with you on these issues.

Sincerely,

Colm Willis
Chair

Kevin Cameron
Commissioner

Danielle Bethell
Commissioner

(Jurisdiction logos here)