



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, DECEMBER 11, 2023

A G E N D A

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 December 11, 2023.
- b) **Visitors:** For information about how to attend the meeting online, please call City Hall at 503.749.2030 or email kpizzuto@aumsville.us to request login instructions. Information will also be posted on our website [City Council Regular Meeting | City of Aumsville Oregon](#)
 - 1) **Corn Festival Proceeds:** Proceeds from the 2023 Corn Festival will be presented to representatives from the service organizations that helped at this year's Corn Festival. Representatives will have the opportunity to provide information on the services provided by their organization. (Organizations not able to have a representative present at the meeting will arrange to pick up their funds at City Hall at a later date.)

3) CONSENT AGENDA: (Action)

- a) Minutes from the November 13, 2023 Regular Meeting
- b) Accounts Payable and Payroll Register

4) PUBLIC HEARINGS:

- a) **Open PacifiCorp Franchise Extension Hearing**
 - 1) Staff Report
 - 2) Testimony/Public Comment
 - 3) Close Public Hearing
 - 4) Council Deliberations
 - 5) Council Decision (Action)
 - a) First Reading of Ordinance 723
 - b) Second Reading and Adoption

5) OLD BUSINESS: None

6) NEW BUSINESS:

- a) Resolution 12-23 Adopting a Specific Policy for System Development Charge Calculations
- b) RL Reimers Contract for Water Storage Tank & Pump Station Improvements
- c) Utility Rate Study – Recommendation to Award to FCS Group

7) CITY ADMINISTRATOR REPORT: (Information)

- a) Police Department Monthly Report
- b) Public Works Monthly Report & SDC Annual Report

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.



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

AUMSVILLE CITY COUNCIL

November 13th, 2023 Meeting Minutes

Mayor Angelica Ceja called the meeting to order at 7:03 PM. Present in person were Mayor Angelica Ceja, Councilors Nico Casarez, Della Seney, Scott Lee, Doug Cox, Katie Wallace, and Walter Wick. Council absent: None. Staff present: City Administrator (CA) Ron Harding, Assistant Public Works Director Matthew Etzel, and Assistant Administrator Kirsti Pizzuto. The meeting was video recorded to be released later.

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

PRESENTATIONS:

Jayne Downing and Paige Clarkson: Information on the Center for Hope and Safety
Accompanied by service dog Maxwell, Downing and Clarkson presented on Domestic Violence within Marion County.

VISITORS: None.

PUBLIC COMMENT: None.

CONSENT AGENDA Councilor Seney moved to approve the consent agenda as presented. Councilor Wick seconded the motion. Council present voted unanimously to approve the consent agenda. Motion passed.

OLD BUSINESS: None.

NEW BUSINESS:

a) Westech Engineering, Recommendation for Award to R.L. Reimer- Water Storage Tank and Pump Station Improvements

CA Harding presented a brief overview of the Water Tank actions before Council heard from Assistant Public Works Director Matthew Etzel. CA Harding explained that the project did go up in cost, but the project received 3.6 million in grants from the state. CA Harding stated that this project is not one that impacts the Aumsville resident utility rate.

Etzel presented the staff report for the recommendation to award R.L. Reimer the contract for the water storage tank and pump station improvements. Etzel stated that working with R.L. Reimer on other projects with the City had been pleasant so far.

Councilor Casarez moved to approve R.L. Reimers Co.'s bid of \$3,170,250.00 for the Water Tank and Pump Station Improvements as presented by staff. Councilor Wick seconded. Council present voted unanimously to approve the motion. Motion passed.

b) Westech Engineering, Construction Services Proposal- Water Storage Tank and Pump Station Improvements

Etzel continued with the staff report for the services proposal. Etzel explained that the City received bids on two different kinds of tank materials. The City ended up choosing glass glass-fused bolted steel tank. Public Works will be on-site to do day-to-day inspections for this project to make sure the city's water system isn't impacted during construction.

Councilor Wallace asked where the tank will be located. Etzel explained it will be where the existing tank is, near Republic Services.

Councilor Seney moved to approve the Aumsville Water Tank and Pump Station Construction Services Proposal from Westech with a not-to-exceed amount of \$154,600.00 as presented by staff. Councilor Casarez seconded. Council present voted unanimously to approve the motion. Motion passed.

c) The Automation Group (TAG) Integrator of Record, Integrated Equipment and Programming Quote- Water Storage Tank and Pump Station Improvements

Etzel went on to present the staff report. Etzel explained it's important to have one integrator providing all automation and equipment for the project so pumps will turn on and run based on water pressure and usage in the city.

Councilor Casarez moved to approve the TAG Task Order for the Water Tank and Pump Station Integration in the amount of \$249,978.00 as presented by staff. Councilor Seney seconded. Council present voted unanimously to approve the motion. Motion passed.

d) Resolution 11-23 Authorizing the City to Distribute Funds Donated and Raised by the Corn Festival Event to Local Community Groups Providing Services within the City of Aumsville Service Area.

CA Harding presented the resolution for distributing funds to local service groups that volunteered at City events. CA Harding stated the distribution depends on the number of volunteers and hours they put in as well as manual labor vs hospitality volunteers. CA Harding reminded Council that in years past, the corn bagging event had roughly 25 volunteers, whereas in 2023 there were over 75 volunteers.

Councilor Seney moved to approve Resolution 11-23 Authorizing the City to Distribute Funds Donated and Raised by the Corn Festival Event to Local Community Groups Providing Services within the City of Aumsville Service Area as presented by staff. Councilor Casarez seconded. Mayor Ceja and Councilors Casarez, Seney, Lee, Cox, and Wick voted to approve the motion. Councilor Wallace abstained from voting. Motion passed.

CITY ADMINISTRATOR REPORT:

CA Harding presented his Administrator report. DEQ approved the 20% design for the wastewater facility, which allows the City to move into 100% design phase. CA Harding discussed the recent tour to a nearby wastewater treatment facility and offered to provide another tour for anyone who was unable to attend. Councilor Lee requested a weekend tour with Councilors Casarez and Cox to see the facility.

CA Harding stated there are two class action lawsuits for PFAS, which the City has not registered any contaminants. CA Harding doesn't recommend joining the lawsuit as it doesn't necessarily apply to the City currently. Etzel and Councilor Cox made inaudible comments. CA Harding stated the consensus of Council was to not join the lawsuit.

The next update CA Harding gave was that the new Public Works facility is making progress in its build. The build is moving fast and CA Harding encouraged Council to drive by.

CA Harding reminded Council that city staff asked to cancel the last council meeting in November and the last council meeting in December since they are so close to holidays. CA Harding stated the consensus of Council was to cancel those meetings.

CA Harding gave an overview of what to expect for Christmas in the Park this year.

MAYOR/COUNCIL REPORTS AND INITIATIVES:

Councilor Wallace informed Council of the Christmas Store event the Exchange Club puts on for free for local children.

Councilor Casarez invited everyone to the Aumsville Rural Fire District Turkey Shoot event that raises funds.

Mayor Ceja summarized her week starting with the wastewater tour and a Blazer Industries tour, as well as attending a Historical Society meeting.

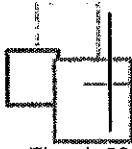
GOOD OF THE ORDER: None.

CORRESPONDENCE: None.

Mayor Ceja adjourned the meeting without prejudice at 7:55 PM.

Angelica Ceja, Mayor

Ron Harding, City Administrator



Payroll Register

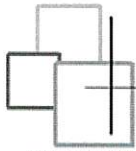
City of Aumsville

Fiscal: 2023-24
 Deposit Period: 2023-24 - November
 Check Period: 2023-24 - November - Second Council

Number	Name	Payment Date	Amount
Riverview Community Bank	9001000967		
Check			
<u>Direct Deposit Run - 11/28/2023</u>	Payroll Vendor	11/30/2023	\$41,998.14
<u>EFT 12052023</u>	CIS TRUST	11/30/2023	\$24,379.14
<u>EFT 12122023</u>	PERS	11/30/2023	\$15,805.91
<u>EFT 12152023</u>	AFLAC	11/30/2023	\$188.58
<u>EFT 48371129</u>	Oregon Department of Revenue	11/30/2023	\$4,212.98
<u>EFT 75755563</u>	EFTPS	11/30/2023	\$15,471.41
<u>EFT HSA11302023</u>	HSA Bank	11/30/2023	\$1,365.75
<u>EFT OSGP11302023</u>	VOYA - STATE OF OREGON - LG#:2234	11/30/2023	\$585.00
<u>EFT V11302023</u>	Valic	11/30/2023	\$25.00
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	Grand Total		\$104,031.91

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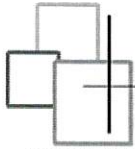


Accounts Payable Register

City of Aumsville

Fiscal: 2023-24
 Deposit Period: 2023-24 - November
 Check Period: 2023-24 - November - Second Council

Number	Name	Print Date	Amount
Riverview Community Bank	9001000967		
Check			
<u>56511</u>	911 SUPPLY	11/30/2023	\$2,049.74
<u>56512</u>	ARETE ADVISORS LLC	11/30/2023	\$341.00
<u>56513</u>	AUMSVILLE ACE HARDWARE	11/30/2023	\$151.32
<u>56514</u>	AUMSVILLE HISTORICAL SOCIETY	11/30/2023	\$1,500.00
<u>56515</u>	BEERY ELSNER & HAMMOND LLP	11/30/2023	\$1,149.50
<u>56516</u>	CANYON CONTRACTING LLC	11/30/2023	\$7,425.00
<u>56517</u>	CASCADE SCHOOL DISTRICT	11/30/2023	\$750.00
<u>56518</u>	C-MORE PIPE SERVICES, CO.	11/30/2023	\$3,410.00
<u>56519</u>	EXCHANGE CLUB OF AUMSVILLE	11/30/2023	\$6,500.00
<u>56520</u>	FRERES BUILDING SUPPLY	11/30/2023	\$175.98
<u>56521</u>	GIRL SCOUTS OF OREGON AND SW WASHINGTON, INC	11/30/2023	\$3,250.00
<u>56522</u>	GOVERNMENT ETHICS COMMISSION	11/30/2023	\$945.68
<u>56523</u>	Marion County Sherriff's Office	11/30/2023	\$3,000.00
<u>56524</u>	MARION COUNTY TREASURY DEPARTMENT	11/30/2023	\$2,618.29
<u>56525</u>	METCOM 9-1-1	11/30/2023	\$8,467.48
<u>56526</u>	MID-WILLAMETTE VALLEY COUNCIL OF GOVERNMENTS	11/30/2023	\$1,361.25
<u>56527</u>	MOTION & FLOW	11/30/2023	\$64.35
<u>56528</u>	OFFICE DEPOT, INC	11/30/2023	\$79.58
<u>56529</u>	PETROCARD, INC.	11/30/2023	\$382.44
<u>56530</u>	PLATT ELECTRIC SUPPLY	11/30/2023	\$56.61
<u>56531</u>	RON HARDING	11/30/2023	\$131.93
<u>56532</u>	SALEM OCCUPATIONAL HEALTH CLINIC	11/30/2023	\$170.00
<u>56533</u>	SANTIAM MEMORIAL HOSPITAL	11/30/2023	\$5,000.00
<u>56534</u>	STEVE WHEELER TIRE CENTER	11/30/2023	\$1,991.76
<u>56535</u>	WATERLAB CORP	11/30/2023	\$200.00
<u>56536</u>	ZUMAR INDUSTRIES, INC.	11/30/2023	\$149.90
<u>EFT Payment 11/30/2023 3:24:30 PM - 1</u>	AT&T MOBILITY	11/30/2023	\$120.12
<u>EFT Payment 11/30/2023 3:24:30 PM - 2</u>	CIS TRUST	11/30/2023	\$762.10
<u>EFT Payment 11/30/2023 3:24:30 PM - 3</u>	NW NATURAL	11/30/2023	\$171.71
<u>EFT Payment 11/30/2023 3:24:30 PM - 4</u>	OREGON DEPARTMENT OF REVENUE	11/30/2023	\$58.18
<u>EFT Payment 11/30/2023 3:24:30 PM - 5</u>	WAVE	11/30/2023	\$9.95
<u>EFT Payment 11/30/2023 3:24:30 PM - 6</u>	ZIPLY FIBER	11/30/2023	\$662.02
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	Grand Total		\$53,105.89



Accounts Payable Register

City of Aumsville

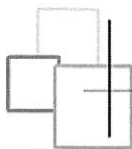
Fiscal: 2023-24
 Deposit Period: 2023-24 - November
 Check Period: 2023-24 - November - Second Council

Number	Name	Print Date	Amount
Riverview Community Bank	9001000967		
Check			
<u>56469</u>	911 SUPPLY	11/15/2023	\$609.72
<u>56470</u>	AIRGAS USA, LLC	11/15/2023	\$1,070.68
<u>56471</u>	ANGELA ROBINSON	11/15/2023	\$180.00
<u>56472</u>	BATTERIES PLUS	11/15/2023	\$25.50
<u>56473</u>	BEERY ELSNER & HAMMOND LLP	11/15/2023	\$2,097.75
<u>56474</u>	BMS TECHNOLOGIES	11/15/2023	\$725.64
<u>56475</u>	BRANDON BLYTHE	11/15/2023	\$180.00
<u>56476</u>	BRENDA CAMPBELL	11/15/2023	\$651.88
<u>56477</u>	CITY OF SALEM	11/15/2023	\$1,842.50
<u>56478</u>	COMPLETE WIRELESS SOLUTIONS	11/15/2023	\$4,739.27
<u>56479</u>	CORE & MAIN LP	11/15/2023	\$927.00
<u>56480</u>	DAMIAN FLOWERS	11/15/2023	\$300.00
<u>56481</u>	DAVISON AUTO PARTS INC	11/15/2023	\$62.72
<u>56482</u>	GREYSTONE TACTICAL	11/15/2023	\$59.50
<u>56483</u>	JONES DRILLING CO., INC.	11/15/2023	\$306,770.00
<u>56484</u>	JPLATA FARM LABOR CONTRACTOR, INC	11/15/2023	\$10,000.00
<u>56485</u>	KATHLEEN M. BIEDE	11/15/2023	\$106.00
<u>56486</u>	MARION COUNTY TREASURY DEPARTMENT	11/15/2023	\$945.00
<u>56487</u>	MATTHEW ETZEL	11/15/2023	\$300.00
<u>56488</u>	MATTHEW WINANS	11/15/2023	\$180.00
<u>56489</u>	METCOM 9-1-1	11/15/2023	\$8,467.48
<u>56490</u>	MOONLIGHT MAINTENANCE	11/15/2023	\$601.00
<u>56491</u>	OAWU	11/15/2023	\$710.00
<u>56492</u>	OFFICE DEPOT, INC	11/15/2023	\$132.46
<u>56493</u>	ONE CALL CONCEPTS INC	11/15/2023	\$5.60
<u>56494</u>	OREGON DEPARTMENT OF REVENUE	11/15/2023	\$3,008.00
<u>56495</u>	PACIFIC OFFICE AUTOMATION	11/15/2023	\$69.25
<u>56496</u>	PACIFIC POWER	11/15/2023	\$7,864.00
<u>56497</u>	PETROCARD, INC.	11/15/2023	\$2,979.18
<u>56498</u>	PHILLIP WRIGHT	11/15/2023	\$180.00
<u>56499</u>	PLATT ELECTRIC SUPPLY	11/15/2023	\$7.56
<u>56500</u>	POWER SYSTEMS PLUS	11/15/2023	\$4,555.00
<u>56501</u>	RASMUSSEN SPRAY SERVICE, INC.	11/15/2023	\$101.75
<u>56502</u>	RON HARDING	11/15/2023	\$300.00
<u>56503</u>	SHANE BIRD	11/15/2023	\$300.00
<u>56504</u>	STAN BUTTERFIELD P.C.	11/15/2023	\$750.00
<u>56505</u>	STEVE OSLIE	11/15/2023	\$300.00
<u>56506</u>	STEVE WHEELER TIRE CENTER	11/15/2023	\$1,985.52
<u>56507</u>	TAYLOR MACK	11/15/2023	\$120.00
<u>56508</u>	THAYNE CROWTHER	11/15/2023	\$180.00
<u>56509</u>	WESTECH ENGINEERING INC	11/15/2023	\$48,897.46
<u>56510</u>	ZIONS BANK CORPORATE TRUST	11/15/2023	\$118,931.51
<u>EFT Payment 11/15/2023 11:47:05 AM - 1</u>	INVOICE CLOUD	11/15/2023	\$233.80
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<u>EFT Payment 11/15/2023 11:47:05 AM - 3</u>	REPUBLIC SERVICES #456	11/15/2023	\$60.00
<u>EFT Payment 11/15/2023 11:47:05 AM - 4</u>	RIVERVIEW COMMUNITY BANK	11/15/2023	\$8,026.70

Number	Name	Print Date	Amount
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	Grand Total		\$540,636.08

Della Sperry

Paul Howard



Payroll Register

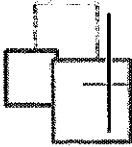
City of Aumsville

Fiscal: 2023-24
 Deposit Period: 2023-24 - November
 Check Period: 2023-24 - November - First Council

Number	Name	Print Date	Amount
Riverview Community Bank	9001000967		
Check			
<u>56468</u>	CASCADE SCHOOL DISTRICT	11/15/2023	\$302.43
<u>Direct Deposit Run - 11/13/2023</u>	Payroll Vendor	11/15/2023	\$41,843.28
<u>EFT 11292023</u>	PERS	11/15/2023	\$15,785.88
<u>EFT 94634898</u>	EFTPS	11/15/2023	\$15,410.99
<u>EFT 99371114</u>	Oregon Department of Revenue	11/15/2023	\$4,179.30
<u>EFT HSA11152023</u>	HSA Bank	11/15/2023	\$1,365.75
<u>EFT OSGP11152023</u>	VOYA - STATE OF OREGON - LG#:2234	11/15/2023	\$585.00
<u>EFT V11152023</u>	Valic	11/15/2023	\$25.00
	Total	Check	\$79,497.63
	Total	9001000967	\$79,497.63
	Grand Total		\$79,497.63

Angelia G. Allen

[Signature]



Payroll Register

City of Aumsville

Fiscal: 2023-24
 Deposit Period: 2023-24 - October
 Check Period: 2023-24 - October - Second Council

Number	Name	Payment Date	Amount
Riverview Community Bank	9001000967		
Check			
<u>Direct Deposit Run - 10/27/2023</u>	Payroll Vendor	10/31/2023	\$40,438.60
<u>EFT 11062023</u>	CIS TRUST	10/31/2023	\$24,380.22
<u>EFT 11132023</u>	PERS	10/31/2023	\$15,317.72
<u>EFT 11152023</u>	AFLAC	10/31/2023	\$188.58
<u>EFT 31371030</u>	Oregon Department of Revenue	10/31/2023	\$4,096.98
<u>EFT 62512469</u>	EFTPS	10/31/2023	\$15,109.54
<u>EFT HSA10312023</u>	HSA Bank	10/31/2023	\$1,365.75
<u>EFT OSGP10312023</u>	VOYA - STATE OF OREGON - LG#:2234	10/31/2023	\$585.00
<u>EFT V10312023</u>	Valic	10/31/2023	\$25.00
	Total Check		\$101,507.39
	Total 9001000967		\$101,507.39
	Grand Total		\$101,507.39

Angela G. J. ...

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

STAFF REPORT

DATE: December 11, 2023
TO: City of Aumsville City Council
FROM: Ron Harding, City Administrator
SUBJECT: Ordinance No. 723, Extension of PacifiCorp Franchise Agreement

BACKGROUND:

On July 9, 2012 the City Council approved Ordinance No. 619 which granted a non-exclusive franchise agreement for PacifiCorp (dba Pacific Power) for a period of ten years, effective August 13, 2012. The purpose of Ordinance 619 was to authorize the continued development and operation of an electric utility system to serve the citizens of Aumsville, with an intent to contribute significantly to meeting the electrical needs and desires of many individuals, associations, and institutions in the city. In December 2022, Aumsville City Council passed Ordinance 710 to extend the franchise agreement to December 31, 2023.

The approved franchise agreement granted Pacific Power the right, privilege, and franchise authority to:

1. Own, construct, expand, upgrade, maintain, operate, and relocate an electric utility system within the city.
2. Install, maintain, and operate in, under, along, over and across the Public Ways within the City, Electric Facilities; for PacifiCorp's own use for the purpose of supplying and transmitting electric power and energy to be distributed to the city and to its inhabitants, and persons and corporations.

CURRENT SITUATION:

The previous extension granted by Ordinance 710 expires on December 31, 2023, and a new franchise agreement has not yet been finalized. PacificCorp wants to rewrite the agreement to be standardized with other agreements, however, the City has had concerns over some of their language. It is our agreement to provide, so the City has insisted on using our language, which has been the point of disagreement.

Ordinance No. 723 would further extend the franchise agreement to ensure that the terms of the existing franchise between the City and Pacific Power remain in place until December 31, 2024. This would allow for additional time to negotiate the terms of a new franchise agreement to be finalized.

RECOMMENDATION:

Power utilities are necessary for the peace, health, and safety of the people of the City of Aumsville. Staff recommends that the City Council approve Ordinance No. 723 to extend the franchise granted to PacifiCorp dba Pacific Power via Ordinance No. 619.

COUNCIL OPTIONS – 1ST ACTION:

- Move to approve the first reading by title only of Ordinance No. 723, an ordinance extending the franchise granted to PacifiCorp dba Pacific Power via Ordinance 619; declaring an emergency, as presented by staff.
- Move to approve the first reading by title only of Ordinance No. 723, an ordinance extending the franchise granted to PacifiCorp dba Pacific Power via Ordinance 619; declaring an emergency, as amended by
- Remand back to staff to provide additional research or modification.

**If passing vote is unanimous for first action, Council may move to approve second reading and adopt.*

COUNCIL OPTIONS – 2nd ACTION:

- Move to approve the second reading by title only and adopt Ordinance No. 723, an ordinance extending the franchise granted to PacifiCorp dba Pacific Power via Ordinance 619; declaring an emergency, as presented by staff
- Move to approve the second reading by title only and adopt Ordinance No.723, an ordinance extending the franchise granted to PacifiCorp dba Pacific Power via Ordinance 619; declaring an emergency, as amended by
- Remand back to staff to provide additional research or modification.

ORDINANCE NO. 723

AN ORDINANCE EXTENDING THE FRANCHISE GRANTED TO PACIFICORP dba PACIFIC POWER VIA ORDINANCE 619; DECLARING AN EMERGENCY

WHEREAS, the City Council approved Ordinance No. 619 on July 9, 2012 (with an effective date of August 13, 2012), granting a non-exclusive electric franchise to PacifiCorp dba Pacific Power ("Pacific"); and

WHEREAS, the franchise for Pacific was granted for a period of ten years from and after the effective date noted above of August 13, 2012; and

WHEREAS, the City and Pacific are negotiating toward a new franchise agreement but have not as of yet finalized its terms; and

WHEREAS, the City and Pacific extended the term of the franchise through December 31, 2023 via Ordinance 721 and wish to further extend the franchise approved via Ordinance No. 619 until December 31, 2024 to provide both the City and Pacific time to negotiate and finalize a new franchise; and

WHEREAS, the City Council finds it is in the public interest to extend the terms of the franchise approved via Ordinance 619; and

WHEREAS, the City Council finds that an emergency should be declared so this Ordinance may take effect immediately as a result of the expiration of the Pacific franchise approved via Ordinance 619 so that its terms are effective and remain in place for the period between December 31, 2023 and December 31, 2024 to ensure the terms of the existing franchise between the City and Pacific relative to Pacific's use of the City's rights of way remain in place.

NOW, THEREFORE, the City of Aumsville ordains as follows:

Section 1. Extension of Electric Franchise. The City hereby extends the terms of the Franchise approved by the City via Ordinance No. 619 until 11:59 p.m. December 31, 2024.

Section 2. Emergency Clause. Because it is necessary for the peace, health, and safety of the people of the City of Aumsville, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect immediately upon its passage by the Council.

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PRESENTED AND PASSED the first reading by title only on the 11th day of December 2023. **ADOPTED AND PASSED** the second reading by the Aumsville City Council on the 11th day of December 2023.

Angelica Ceja, Mayor

Attest:

Ron Harding, City Administrator



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

STAFF REPORT

DATE: December 11, 2023
TO: City of Aumsville City Council
FROM: Ron Harding, City Administrator
SUBJECT: Resolution 12-23 Adopting a Policy for SDC Calculations

BACKGROUND:

There have been a number of legislative bills approved this year that have an impact on the Aumsville community. In some cases, previous bills targeted cities with a population base above 10,000 in how they are allowed to administer their development standards. This year some new bills moved the threshold from 10,000 to 2,500 in population. Thinking about the effects of these state laws and how they impact our community should be strategic.

House Bill 2984 ("HB 2984") amended ORS 197.308 to require local governments to allow the conversion of buildings from commercial to residential use within urban growth boundaries of cities with a population of 10,000 or greater, under certain conditions.

HB 2984, Section 1(5)(c) permits cities to charge system development charges ("SDCs") in connection with a commercial to residential use conversion for a contemplated housing development if "(A) the charge is calculated pursuant to a specific adopted policy for commercial to residential conversions adopted on or before December 31, 2023; or (B) the charge is for water or wastewater and includes an offset for at least 100 percent of the water or wastewater system development charges paid when the building was originally constructed

The restriction on charging SDCs in HB 2984 would not impact us today as it addresses a population above 10,000, however as we have seen this year with HB 3395, once adopted these population thresholds can easily be changed. If it were changes in the future then we would have already forfeited our ability to set a policy. This is why we are attempting to position Aumsville in a position to have as much local control as possible.

CURRENT SITUATION:

The city has a policy that growth should not be subsidized by current ratepayers in general and we have extremely expensive capital needs so to ensure in the future the city can collect system development charges should a commercial/housing conversion occur in the future, staff recommends approving resolution.

RECOMMENDATION:

Approve Resolution 12-23, setting an SDC policy related to HB 2984.

COUNCIL OPTIONS:

- Move to approve Resolution 12-23 Adopting a Specific Policy for System Development Charge Calculations in Connection with Commercial to Residential Conversions as Required by House Bill 2984, as presented by staff.
- Move to approve resolution 12-23 Adopting a Specific Policy for System Development Charge Calculations in Connection with Commercial to Residential Conversions as Required by House Bill 2984, as amended by
- Remand back to staff to provide additional research or modification.

RESOLUTION NO. 12-23

A RESOLUTION ADOPTING A SPECIFIC POLICY FOR SYSTEM DEVELOPMENT CHARGE CALCULATIONS IN CONNECTION WITH COMMERCIAL TO RESIDENTIAL CONVERSIONS, AS REQUIRED BY HOUSE BILL 2984

WHEREAS, House Bill 2984 (“HB 2984”) amended ORS 197.308 to require local governments to allow the conversion of buildings from commercial to residential use within urban growth boundaries of cities with a population of 10,000 or greater, under certain conditions; and

WHEREAS, although the current population of the City of Aumsville (the “City”) is less than 10,000, the City anticipates it may grow beyond 10,000; and

WHEREAS, HB 2984, Section 1(5)(c) permits cities to charge system development charges (“SDCs”) in connection with a commercial to residential use conversion for a contemplated housing development if “(A) the charge is calculated pursuant to a specific adopted policy for commercial to residential conversions adopted on or before December 31, 2023; or (B) the charge is for water or wastewater and includes an offset for at least 100 percent of the water or wastewater system development charges paid when the building was originally constructed;” and

WHEREAS, if the City’s population reaches 10,000 or greater, the City desires to be able to charge all applicable SDCs in connection with such commercial to residential use conversions; and

WHEREAS, the City Council believes that the Aumsville Ordinance No. 678 sufficiently addresses all SDC methodology, rates, and other applicable terms and conditions needed to calculate SDC charges in connection with commercial to residential conversions pursuant to HB 2984.

NOW, THEREFORE, BE IT RESOLVED BY THE AUMSVILLE CITY COUNCIL AS FOLLOWS:

Section 1. The City Council hereby Aumsville Ordinance No. 678, as currently in effect and as may be amended from time to time, as the City’s specific policy for SDC calculations in connection with all residential development, including commercial to residential conversions pursuant to HB 2984.

Section 2. This Resolution shall become effective upon adoption by the City Council.

Resolution adopted by the Aumsville City Council this 11th day of December 2023.

ATTEST:

Angelica Ceja, Mayor

Ron Harding, City Administrator

Date



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

STAFF REPORT

DATE: December 11, 2023
TO: City of Aumsville City Council
FROM: Matthew Etzel, Assistant Public Works Director
SUBJECT: RL Reimers Contract Approval – Water Storage Tank and Pump Station Project

RECOMMENDATION: Approve RL Reimers Contract for the Water Storage Tank and Pump Station Project.

BACKGROUND: Earlier this month at the November 13th Aumsville City Council meeting Staff presented a recommendation to award RL Reimers the Water Storage and Pump Station Project.

RL Reimers was low bid and the bid was reviewed by the City Engineer. RL Reimers is in the process of providing the bonding information for the contracts and, once they do so, will sign the contracts.

As you are aware the Aumsville City Council is the Contract Review Board for the City and contracts need to be approved by the council. This contract was previously included in the bidding documents for your review and now for final review before signing. Once we receive the bonding information and the contractor's signatures, we will have Westech review the bond information and submit executed copies to the funding agency and have set on file at City Hall.

If we receive updated copies with bonding and contractor's signatures before the council meeting on December 11th we will update the council with the most current version.

CURRENT SITUATION: The contract for the Water Storage and Pump Station Improvements will need to be signed for the contractor to start work. This project is funded with ARPA funds that have a completion deadline of 2026. Although we are well ahead of the deadline on this project, it is important to keep these projects moving forward with supply chain issues and the continued escalation of cost on materials and equipment.

COUNCIL OPTIONS:

- Move to approve the RL Reimers Contract for the Water Storage Tank and Pump Station Project as presented by staff
- Move to approve the contracts for the RL Reimers Contract for the Water Storage Tank and Pump Station Project as amended by
- Remand back to staff to provide additional research or modification

PART 2:
CONTRACT FORMS

AGREEMENT

THIS AGREEMENT, by and between **the City of Aumsville**, hereinafter called the **Owner**, and **R.L. Reimers Company** 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 shown on the drawings and described in the specifications for the project prepared by **WESTECH ENGINEERING, INC.**, Salem, Oregon, hereinafter referred to as **Engineer**; entitled:

Water Storage Tank and Pump Station Improvements

The work shall include those items listed in the Schedule of Prices on the Bid Form dated **October 17, 2023** as follows:

Bid Items 1 through 10 and Alternate A1

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:

All construction shall be substantially complete prior to December 24, 2024, and all work entirely complete (*ie. Final Completion, including completion of all punchlist items and submittal of all invoices*) prior to January 31, 2025.

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 timeframes specified in the paragraphs above (*or elsewhere in the Contract Documents*), 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 or Final Completion.

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 punchlist 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.

Liquidated damages shall apply against the successful bidder (the Contractor) and accrue to the Owner at the rate of **five hundred dollars (\$500)** for each 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 for Final Completion 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 above for the work to be complete and ready for final payment.

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 **three million, one-hundred seventy thousand, two-hundred fifty dollars and no cents (\$3,170,250.00)**. 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 & Offsets. Retainage shall be as specified in the Information for 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 Contractor 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. **1** through **3** Notice of Award, Notice to Proceed, Technical Specifications & Appendices, and full size Construction Drawings, containing **sixty four (64)** sheets, 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 gender neutral 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. 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 OAR 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 _____, 2023 (*Contractor to fill in date, must match the date on bond forms*)

R.L. Reimers Company (*Contractor*)

By _____

Title _____

Type/Print Name: _____

City of Aumsville (*Owner*)

By: _____

Title: _____

Type/Print Name: _____

Attest (ie. to City Signature): _____

City Recorder (if required by City Charter)

Bond No. _____

PAYMENT 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):*

R.L. Reimers Company

3939 Old Salem Road NE, Suite 200

Albany, OR 97321

OWNER *(Name and Address):*

The City of Aumsville
595 Main Street
Aumsville, OR 97325

CONTRACT

Date: _____ *(Contractor to fill in, match date on signature page of Agreement)*

Amount: **\$3,170,250.00**

Project Name: Aumsville Water Storage Tank and Pump Station Improvements

BOND

Date _____ *(Contractor to fill in, match date on signature page of Agreement):*

Amount: **\$3,170,250.00**

Modifications to this Bond: None

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corporate Seal)

Company: (Corporate Seal)

Signature: _____

Signature _____

Name _____

Name _____

Title _____

Title _____

FOR INFORMATION ONLY — Name, Address and Telephone

Agent Or Broker, Name & Address:

OWNER'S REPRESENTATIVE

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

Agent/Broker Phone #

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 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.

Bond No. _____

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):*

R.L. Reimers Company

3939 Old Salem Road NE, Suite 200

Albany, OR 97321

OWNER:

The City of Aumsville
595 Main Street
Aumsville, OR 97325

CONTRACT

Date: _____ *(Contractor to fill in, match date on signature page of Agreement)*

Amount: **\$3,170,250.00**

Project Name: Aumsville Water Storage Tank and Pump Station Improvements

BOND

Date _____ *(Contractor to fill in, match date on signature page of Agreement):*

Amount: **\$3,170,250.00**

Modifications to this Bond: None

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corporate Seal)

Company: (Corporate Seal)

Signature: _____

Signature _____

Name _____

Name _____

Title _____

Title _____

FOR INFORMATION ONLY — Name, Address and Telephone

Agent Or Broker, Name & Address:

OWNER'S REPRESENTATIVE

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

Agent/Broker Phone #

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.



STATE OF OREGON

STATUTORY PUBLIC WORKS BOND

Surety bond #: _____ CCB # (if applicable): _____

We, _____, as principal, and _____, 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 _____ day of _____, 20 _____

Surety by:

Principal by:

(Seal)
Company Name

Name

Signature

Signature

Title (e.g. Attorney-in-Fact)

Title

**SEND BOND TO: Construction Contractors Board
PO Box 14140
Salem, OR 97309-5052
Telephone: (503) 378-4621**

Address

City State Zip

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.

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.

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.

2.07 *Acceptance of Schedules*

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

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.

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.

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.

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,

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

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.

- 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.

4.04 *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

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.

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.

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

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.

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.

- 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.

6.11 *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.

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.

- 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.

10.04 *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.

10.02 *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.

10.05 *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.

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

- 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.

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.

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

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.

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

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.

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.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-2.01 Add the following paragraph immediately after 2.01.B:

“C. Public Works Bond: Before starting any Work on the project, Contractor shall have a public works bond filed with the Construction Contractors Board, unless exempt under 279C.836(7), 279C.836(8), or 279C.836(9). Contractor shall also include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project unless exempt under 279C.836(7), 279C.836(8), or 279C.836(9). Contractor shall include copies of both its public works bond (and the public works bonds from any subcontractors listed in the first tier subcontractor disclosure form) with the copies of the bonds required in 2.01.A above.”

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-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-5.03.A. Additional Insured. Add the following to Paragraph 5.03.A:

“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. Insurance Limits. Add the following new paragraph immediately after Paragraph 5.04.B.

“C. The limits of liability for commercial liability insurance (*workers comp & general liability*) 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 (*or the minimums listed on the sample insurance certificate included in the bidding documents, whichever is higher for each category of coverage*), 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. Medical Expense (any one person)..... \$10,000
 - 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
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 - c. Combined Single Limit of \$ 1,000,000

If each of the categories listed above does not include the full listed limits, the umbrella coverage shall be increased to \$8,000,000 and include coverage for all auto categories.

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. Except as otherwise specified above, 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-6.06.H Add the following two new paragraphs immediately after Paragraph 6.06.G.

- "H. The Contractor shall not award work valued at more than fifty percent (50%) of the Contract Price to Subcontractor(s), without prior written approval of the Owner (ie. Contractor must self perform at least 50% of the work).
- I. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor or Supplier."

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-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 Renumber the body paragraph after 14.02.B.4.e to be subparagraph 5 (*ie. 14.02.B.5*), and renumber 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 \$150 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

DATE: December 11, 2023
TO: City of Aumsville City Council
FROM: Ron Harding, City Administrator
SUBJECT: Utility Rate Study

BACKGROUND:

The City of Aumsville's wastewater system is in the process of being upgraded to a sequencing batch reactor system, with an estimated cost of \$28,000,000. The potable water system also has multiple projects in progress to expand the current capacity by connecting a new well to the city water lines, and to construct a new water reservoir. To keep pace with these upgrades and provide additional storage, a new public works facility is also being constructed. These projects are necessary in order to keep up with population growth and to meet EPA and DEQ standards.

While the City has been able to secure over \$16,000,000 in grant funding for the wastewater project, the City will also be required to finance \$11,000,000 to fully fund the completion of this much-needed upgrade. In order to cover the costs of this financing, it will be necessary to increase utility rates for the residents of Aumsville.

CURRENT SITUATION:

While no residents want to pay more on their utility bills, regular annual increases are necessary to keep up with increased costs in operations and maintenance. With this much larger expense, a specialized view from an external party will help justify utility increases, verify the rate increase amounts and trajectory over time, and provide a neutral perspective from experienced professionals in rate increases.

City staff has reached out to three different agencies (Toth & Associates, EES Consulting, and FCS Group) to request proposals for a utility rate study process. The proposal request (Exhibit A), proposals from FCS Group (Exhibit B) and Toth & Associates (Exhibit C), and a comparison table (Exhibit D) are included in this packet. EES Consulting did not respond to the request. Based on the details offered, FCS Group's proposal is the lowest at \$22,780 compared to Toth & Associates' \$25,825 (a difference of \$3,345).

FCS Group provided a detailed task list, and options for reducing the cost of their services such as by holding workshops remotely. They also provided the option to obtain more detailed reports in addition to the Excel-based toolkit, which can be added on at a later time. FCS Group

is a local agency with offices in Washington and Oregon and is well-reviewed by several cities in Oregon. Toth & Associates also has offices in Oregon, but the proposal provided was less personalized, provided little explanation of their process, and no detailed task list. Toth & Associates left their tasks and associated costs in a more lump-sum style breakdown, with no explanation or mention of customizing the project to fit the City's needs.

City staff has worked with FCS Group in the past. As FCS Group provided a detailed, customizable task list and cost breakdown in their bid submittal which indicates a clear understanding of the City's needs, staff would recommend awarding this project to FCS Group.

RECOMMENDATION:

With the level of communication provided by FCS, and the flexibility offered to further tailor the project to the City's needs, staff recommends approving the FCS Group rate study project proposal in the amount of \$22,480 to conduct research and assemble a financial plan and 20-year rate forecast.

COUNCIL OPTIONS:

- I move to approve the FCS Group utility rate forecasting proposal as presented by staff
- I move to approve the FCS Group utility rate forecasting proposal as amended by

- Remand back to staff to provide additional research or modification.

EXHIBIT A

CITY OF AUMSVILLE

WASTEWATER SYSTEM FINANCIAL PLAN AND RATE FORECAST

PROJECT BACKGROUND

Brief History of Aumsville's Wastewater Treatment

During a compliance inspection in 2018, DEQ notified the City that DEQ would begin enforcing ammonia limit violations adopted in 2010, but not previously enforced. A mutual agreement order (MAO) was put into place, requiring the City to upgrade its wastewater system.

A compliance schedule was agreed upon between the City and DEQ, and the MAO was dissolved. The compliance schedule requires the City to construct a mechanical processing system to sufficiently treat the wastewater according to DEQ ammonia and TMDL limits.

Current Situation

The City has been working closely with its contracted engineering team to create a plan to proceed with the project. Funding has been secured through several sources, including a combination of grants and loans from USDA, ARPA, DEQ, Business Oregon, state budgeted appropriations, and congressionally directed spending. Estimated project costs are \$28,000,000. Approximate funding so far generally includes:

- \$11,000,000 in loans
- \$16,181,000 in grants
- \$1,200,000 City budgeted funds

Additional Resources

For further details, you may reference the Wastewater Project page on the [City's website](#). Included there are a brief (4-minute) informational video on the project, a brief timeline of preceding events, and FAQ for the City's residents.

For any other questions you may contact:

Kirsti Pizzuto

Assistant City Administrator

503-749-2030 x303

kpizzuto@aumsville.us

GENERAL SCOPE OF WORK

Task 1 | Project Initiation Meeting

A project initiation meeting with the consultant team and Aumsville's project team will be scheduled at the start of the project to establish goals and objectives of the project. To be reviewed in this meeting:

- Scope of work
- Project objectives
- Expectations
- Deliverables
- Project schedule
- Key milestones
- Communications methods

Task 2 | Data Collection

Provide a data needs list encompassing historical and projected revenue, expenses, fiscal policies, capital plans, fund balances, and system planning data. The data should be reviewed, analyzed, and validated for inclusion in the study process.

Task 3 | Historical Budget vs. Actual Validation

Review and validate actual revenues received and expenses incurred against budgeted values.

Task 4 | Financial Plan and Rate Forecast

Establish a sustainable, multi-year (20-year) financial management plan that meets the projected total financial needs of the utility through the generation of sufficient, sustainable revenue. Annual cash flow needs should be developed by identifying expenses incurred to operate and manage the system including:

- Capital investment funding (improvements, expansion, and replacement)
- Expenses incurred to operate, maintain, and manage the system
- Debt repayment
- Cash flow needs
- Fiscal policy achievement Tasks should include, for example:
 - » Develop a forecast of operating revenues and expenses to reflect the most recently approved budget, adjusting for any known future changes in annual non-capital costs associated with the operation, maintenance, and administration of the system. Reasonable proposed changes may include additional staffing

needs and other operating costs associated with maintaining the system along with initiating new or enhanced program activities.

- » Incorporate the anticipated capital needs identified in the city budget CIP and/or other comprehensive system planning documents into a capital planning module. Develop a capital funding analysis that balances available funding from internal resources such as rate revenue and reserve funds with external funding from connection charges, contributions, and additional debt, if needed.
- » Evaluate the level of annual system reinvestment and/or depreciation funding. Develop a target level for consideration based on depreciation expense. Calculate the financial impact on rate levels of meeting this target.
- » Evaluate cash flow needs to meet existing and anticipated new annual debt service requirements and debt coverage requirements. Identify financial impacts of alternative funding mechanisms (e.g., bonds, USDA loan and/or other low interest loans).
- » Provide a fiscal policy review that compares existing policies to industry practices to determine whether there are enhancements that would strengthen the financial health of the system. We will recommend new policies or benchmark ratios, as warranted.
- » Develop a fund balance tracking analysis to track existing City funds such as operating reserves and capital reserves. The analytical module will include annual inflows and outflows of funds and monitor target balances for compliance with established fiscal policies.
- » Test the sufficiency of current revenues in meeting all annual system obligations. Identify any projected shortfalls over the forecast period. Rate revenue sufficiency will be tested from two perspectives: the ability to meet all cash obligations, and the attainment of any debt coverage requirements.
- » Design a rate implementation strategy that meets the wastewater system's financial obligations over the twenty-year planning horizon and provides smooth and moderated impacts to ratepayers.
- » Develop rate scenarios to evaluate the impact of changes to key variables such as funding sources, growth rates, capital project need and timing, or others identified by the City.
- » At the end of the engagement, deliver an electronic copy of the financial planning model for internal use.

Task 5 | Rate Design

Perform a comparative survey with neighboring jurisdictions and determine necessary rate adjustments. No rate structure changes are anticipated for this effort. Any needed adjustments will be applied equally to each rate class and rate component.

Task 6 | Review Meetings

Review project financial plan and rate forecast findings as necessary/relevant throughout the project.

Task 7 | Workshops/Presentations

As necessary, project team may be asked to present information to staff and/or Council on the rate study process and provide important updates as they surface. Workshops may include discussions of key assumptions, methodology, and proposed rate developments for input and discussion. Proposed workshops:

- Workshop 1 – Present initial findings and receive feedback
- Workshop 2 – Final recommendations (remote)
 - » Include updated presentation of findings with initial input/feedback incorporated, development of final recommendations.

Task 8 | Documentation

Provide an executive level report documenting the rate study process, methodology, key assumptions, results, and recommendations. All technical exhibits and datasets developed as part of the study should be delivered to the City for internal use as Excel documents or another agreed upon format.

SCHEDULE

A financial plan and rate forecast study such as this is expected to take approximately three to six months to complete. A specific project schedule that meets the City's needs will be developed during the project initiation meeting.

EXHIBIT B

CITY OF AUMSVILLE

WASTEWATER SYSTEM FINANCIAL PLAN AND RATE FORECAST

FCS GROUP is pleased to submit this proposed scope of services and budget for a Wastewater System Financial Plan and Rate Forecast. The City's needs were discussed with Ron Harding City Administrator along with Josh Hoyer and Kirsti Pizzuto on September 29, 2023. The financial analysis will evaluate the sufficiency of existing revenue to meet the total annual obligations of the wastewater system including fiscal policy obligations, operation, and maintenance (O&M) costs, capital needs and anticipated new loan obligations required to execute the wastewater treatment plant upgrades for regulatory compliance. The resulting plan will serve to establish a blueprint for achieving revenue stability, sufficiency, and cost-based utility rates.

The tasks noted below are proposed as part of this effort.

TASK PLAN

Task 1 Project Initiation Meeting

A project initiation meeting will be scheduled at the commencement of the project with the consultant team and City project team. This meeting will establish the goals and objectives of the overall project and focus the efforts of the project team. The items covered at the meeting include review of the scope of work, identify project objectives, expectations, and deliverables, outline the project schedule and key milestone review points, and discuss appropriate lines of communication. This meeting is proposed as remote using the application of the City's choice.

Task 2 | Data Collection

Provide a data needs list encompassing historical and projected revenue, expenses, fiscal policies, capital plans, fund balances, and system planning data. The data will be reviewed, analyzed, and validated for inclusion in the study process.

Task 3 | Historical Budget vs. Actual Validation

Accurate revenue and expense forecasting are the building blocks of a successful rate study. Validation of the actual revenues received, and expenses incurred, against budgeted values is critical as it is the foundation for developing the multi-year revenue forecast. This process has proven beneficial in identifying over/under spending against budget values to arrive at the most realistic forecast basis underlying the forward-looking financial plan.

Task 4 | Financial Plan and Rate Forecast

This task establishes a sustainable, multi-year (20 year) financial management plan that meets the projected total financial needs of the utility through the generation of sufficient, sustainable revenue. Annual cash flow needs are developed by identifying expenses incurred to operate and manage the system including:

- Capital investment funding (improvements, expansion, and replacement)
- Expenses incurred to operate, maintain, and manage the system
- Debt repayment
- Cash flow needs
- Fiscal policy achievement

Tasks are as follows:

- » Develop a forecast of operating revenues and expenses to reflect the most recently approved budget. Adjust for any known future changes in annual non-capital costs associated with the operation, maintenance, and administration of the system. Changes may include additional staffing needs and other operating costs associated with maintaining the system along with initiating new or enhanced program activities.
- » Incorporate the anticipated capital needs identified in the city budget CIP and/or other comprehensive system planning documents into a capital planning module. Develop a capital funding analysis that balances available funding from internal resources such as rate revenue and reserve funds with external funding from connection charges, contributions, and additional debt, if needed.
- » Evaluate the level of annual system reinvestment and/or depreciation funding. Develop a target level for consideration based on depreciation expense. Calculate the financial impact on rate levels of meeting this target.
- » Evaluate cash flow needs to meet existing and anticipated new annual debt service requirements and debt coverage requirements. Identify financial impacts of alternative funding mechanisms (e.g., bonds, USDA loan and/or other low interest loans).
- » Provide a fiscal policy review that compares existing policies to industry practices to determine whether there are enhancements that would strengthen the financial health of the system. We will recommend new policies or benchmark ratios, as warranted.
- » Develop a fund balance tracking analysis to track existing City funds such as operating reserves and capital reserves. The analytical module will include annual inflows and outflows of funds and monitor target balances for compliance with established fiscal policies.
- » Test the sufficiency of current revenues in meeting all annual system obligations. Identify any projected shortfalls over the forecast period. Rate revenue sufficiency will be tested from two perspectives: the ability to meet all cash obligations, and the attainment of any debt coverage requirements.
- » Design a rate implementation strategy that meets the wastewater system's financial obligations over the twenty-year planning horizon and provides smooth and moderated impacts to ratepayers.

- » Develop rate scenarios to evaluate the impact of changes to key variables such as funding sources, growth rates, capital project need and timing, or others identified by the City. The budget includes three (3) alternative scenarios.
- » At the end of the engagement, we will deliver an electronic copy of the financial planning model for internal use.

Task 5 | Rate Design

Rate design determines how the target revenue will be generated for the utility. No rate structure changes are anticipated for this effort. Any needed adjustments will be applied equally to each rate class and rate component (fixed and/or variable).

A comparative survey will also be performed with up to five (5) neighboring jurisdictions.

Task 6 | Review Meetings

This task includes three (3) staff project team meetings to review the financial plan and rate forecast findings.

- Meetings include one (1) meeting @ 2 hours and two (2) meetings @ 1 hour each.

To minimize costs, we have planned for all project review meetings to be conducted via remote session. We are happy to provide additional meetings as requested. The additional meetings will be billed on time and materials.

Task 7 | Workshops/Presentations

The success of a rate study relies on an open and involved process for informing staff and Council on the rate study process and to clearly define the cost basis for the fees imposed on customers by linking the financial requirements to costs.

We propose two (2) presentations to the City Council conducted in a workshop or work session format to maximize interaction and collaboration. These workshops will discuss key assumptions, methodology, and proposed rates developed for input and discussion. To minimize costs, we have planned for one (1) workshop onsite and the second via remote session.

- Workshop 1 – Present initial findings and obtain feedback (onsite)
 - » Includes presentation development.
- Workshop 2 – Final recommendations (remote)
 - » Includes update presentation with initial input/feedback incorporated, development of final recommendations.

Task 8 | Documentation

An executive level report documenting the rate study process, methodology, key assumptions, results, and recommendations. All technical exhibits developed as part of the study will be contained in the Excel based financial planning toolset delivered to the City for internal use.

SCHEDULE

A financial plan and rate forecast study such as this generally takes three to six months to complete. Completion of the studies within the City's schedule is based on a variety of issues. These issues

include timeliness of receipt of requested data/information; quality of data; ability to schedule meetings in a timely manner; and the ability of the City to provide policy direction for the study to move forward at key study milestones. A specific project schedule that meets the City’s needs will be developed during the project initiation meeting.

BUDGET

The total proposed level of effort to complete the Wastewater Financial Plan and Rate Forecast is summarized below. The technical analysis and review meetings total \$15,105. The process tasks (Task 7-8) account for the remaining budget. This is an area the City can adjust to accommodate any budget limitations. Currently there are two council workshops included (one-onsite, one-remote). As an example, the City can reduce the budget by conducting both workshops remote for a savings of ~\$2,200. Another option is to eliminate the written documentation if the excel toolkit and presentation materials are sufficient documentation – savings of \$4,685. We would be more than happy to negotiate the appropriate level of effort for this project if we have scaled our approach out of line with the City’s needs and/or expectations.

TASK	Principal	Proj Mgr.	Analyst	Admin	Total Hours	Labor Budget
Project Initiation Tasks						
Task 1: Project Initiation Meeting (remote)	1	1	2	1	5	\$930
Task 2: Data Collection (data request and review/validation)			4	1	5	775
Technical Analysis Tasks						
Task 3: Historical Budget vs. Actual Validation		1	4		5	880
Task 4: Financial Plan and Rate Forecast (3 scenarios)	4	8	40		52	9,580
Task 5: Rate Design (no rate structure changes)		2	4		6	1,080
Process Tasks						
Task 6: Meetings/Presentations						
- Project Review Meetings (1@2 hrs, 2@1 hrs each, remote)	4		4		8	1,860
Task 7: Workshops/Presentations						
- Workshop #1 (presentation development, review)	2	2	8	2	14	2,540
- Workshop #1 (presentation time -onsite)	8		1		9	2,530
- Workshop #2 (presentation edits/changes)	1	2	4		7	1,375
- Workshop #2 (presentation time - remote)	2		2		4	930
Task 8: Documentation	1	4	20	2	27	4,685
TOTAL ALL TASKS	23	20	93	6	138	\$27,165
Expenses (onsite travel)						\$600
TOTAL ALL (including expenses)						\$27,765
Optional:						
Additional Meetings						
Additional Onsite Meetings (w/ modified presentation) - expenses not included	8		4		12	\$3,040
Additional Remote Meetings	2		2		4	\$930

EXHIBIT C

November 22, 2023

Attn: Kirsti Pizzuto, Assistant City Manager
City of Aumsville
595 Main Street
Aumsville, Oregon 97325

RE: RFP Response – Financial Plan & Rate Forecast

Toth and Associates, Inc. (TOTH) is delighted to present this proposal in response to the City of Aumsville's (the CITY) invitation.

With a rich history of collaborating closely with various clients in cost of service studies and rate design, including municipalities, public utility districts, electric cooperatives, and other utility providers. TOTH brings a wealth of experience to this project. Over the years, our firm has successfully completed thousands of cost of service studies, rate studies, and other financial analyses for clients nationwide.

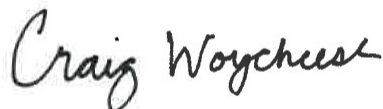
Our team is equipped with skilled professionals, featuring Certified Public Accountants (CPAs), dedicated rate specialists focused exclusively on your rate project, and 71 engineers, including 39 Professional Engineers (PEs). This robust team is prepared to deliver the highest level of service. Our rates team possesses extensive insights into the intricacies of the utility sector, while our engineers are proficient in accounting principles, ensuring a thorough approach to your project.

This proposal demonstrates our proficiency and mastery in conducting comprehensive cost of service analyses and crafting effective rate designs. Furthermore, our footprint in the Northwest, specifically in Oregon, is marked by a portfolio of engineering services. This experience has afforded us intimate familiarity with the region's regulatory landscape and compliance standards.

We are well-versed in the many software tools commonly employed by utilities, maintaining confidence in our capacity to seamlessly generate compatible, exportable, and importable datasets within your system. We propose an estimated project cost not to exceed \$25,825.

Our vast experience positions us to accomplish your General Scope of Service and work within your three to six month schedule. Feel free to contact me to discuss any of this information further. We appreciate the opportunity to participate in this bidding process and look forward to a potential collaboration.

Respectfully,

A handwritten signature in black ink that reads 'Craig Woycheese'.

Craig Woycheese, CPA
Senior Rate Analyst

INTRODUCTION

Company Profile

Toth & Associates, Inc. is a multi-disciplinary engineering consulting firm specializing in electric utility, structural, and civil engineering, utility rate studies and analysis, land surveying, grant writing, and GIS. TOTH is committed to providing high-caliber, professional expertise and endeavors to provide easy access to our team on each project. TOTH has experience in large-scale transmission & distribution line design, substation design, and construction projects, including multi-million-dollar wastewater systems and various buildings, including schools and FEMA safe rooms, and performing cost of service studies for as few as 500 meters to well over 100,000.

TOTH was founded in 2003 and has grown into a large consulting engineering company. A chief advantage of using TOTH is that while we are a large firm, we are not a mega-firm. That allows us to give you personalized attention from our senior analysts, top-level engineers, and technical staff, and we still have a broad spectrum of resources available in-house, which can be tapped for any project. Therefore, you can be confident that TOTH has the capacity and the high-level expertise available to provide the services for the scope of work.

We invest our specialized knowledge and experience in building enduring relationships with clients for the good of our communities. We work to develop healthy working relationships with local utilities, contractors, engineers, regulatory agencies, and materials vendors. This collaborative approach to project design and administration demonstrates our firm's agility and willingness to understand and accommodate the requirements of other project stakeholders.

Key Contact & Senior Analyst

Craig Woycheese, CPA
Senior Rate Analyst
cwoycheese@tothassociates.com
Phone: (417) 888-0645
Fax: (417) 888-0657
Web: tothassociates.com

Company Information

Toth & Associates, Inc.
Formed in 2003

Offices

Portland, OR
Springfield, MO
Hermiston, OR
Kennewick, WA
Billings, MT

Availability/Staffing

TOTH has experienced in-house staff to complete your COSA within your timeline. **We do not need to bring in subcontractors.**

Organizational Structure

TOTH was organized in 2003 as a corporation in the State of Missouri. Nine principals form the executive leadership and board of directors.

Adam Toth, PE – President

Louis Toth, PE – Director Emeritus

Lewis Wiles, PE – Vice President, Transmission & Distribution Line Design Department Manager

Brian Orr, PE – Vice President, Structural Engineering Department Manager

Joe Tierney, PE – Vice President, Substation Engineering Department Manager

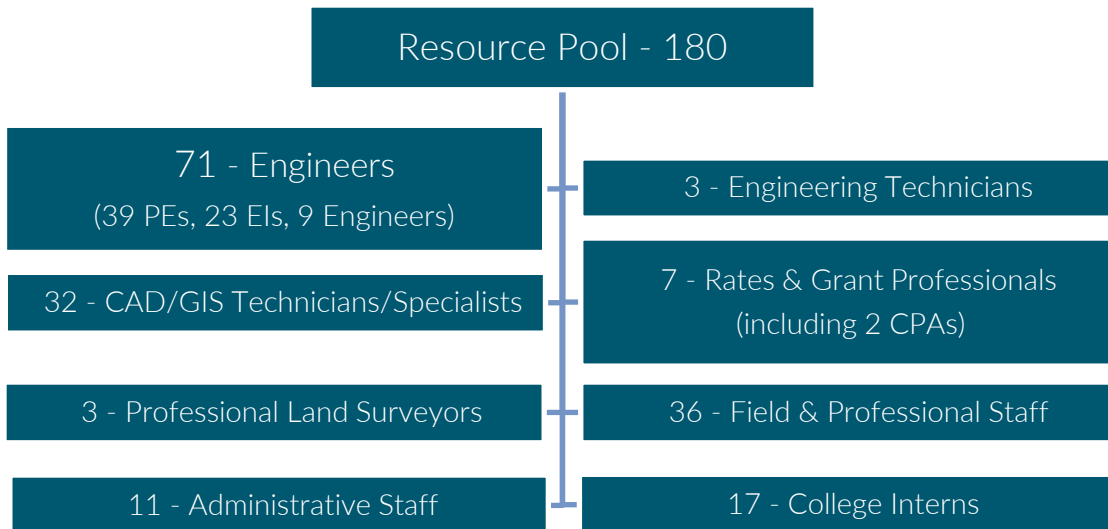
Jeff Mueller, PE – Vice President, Electrical System Planning Department Manager

Matt Miller, PE – Vice President, Civil Engineering Department Manager

Shawn Barry, PE, CFM – Vice President, Civil Engineering Department Manager

Jess Moran, PE – Vice President (Pacific Northwest Operations)

Staffing Levels



FIRM QUALIFICATIONS & EXPERIENCE

Our team has extensive experience in cost of service analysis and rate design with a proven track record in working with utility providers to perform rate analyses. Having performed well over a thousand cost of service studies, rate studies, and other financial analyses, we have assisted numerous municipalities, public utility districts, and electric cooperatives and developed rate structures that support the utility while still meeting its customer's needs. Our COSA services include but are not limited to the following:

- Cost of Services Analysis for Regulated and Unregulated Utilities
- Revenue Requirements Analysis
- Line Extension Policy Development (System Capacity Charges)
- Testimony & Filing Experience with Public Services
- Commissions in Multiple States
- Wholesale Purchase Power Agreement Negotiation
- Development of Rates and Terms for Distributed Generation
- Load Forecasting
- Fiber Grant Writing
- Financial Forecasting
- Solar and Other Renewable Cost Feasibility Studies
- Fiber to the Home Feasibility Studies
- Contract Negotiation with New Customers
- Other Rate Concepts
 - Residential Demand Rates
 - Power Cost Adjustment
 - Time of Use Rates
 - Seasonal Rates
 - Agricultural Rates

Quick Glance


- Over A 1,000 Utility Cost of Service Studies and Other Financial Analyses
- Performed COSA Projects Ranging From 500 to 100,000+ Meters
- Senior Level Analyst Assigned
- Utilities Experienced CPA Dedicated to Your Project
- Experienced Financial Staff Engaged On Your Project
- In-House Team Has The Capacity to Complete Your Project on Time
- TOTH Is an Experienced Engineering Firm Offering COSA as a Full, In-House Service

TOTH has experience with the family of rate concepts for power, wastewater, and water utilities. **We show the results in a concise and easily understood manner.** Our experience has also consisted of performing cost of service study workshops for utility management and boards. In all facets of the study, we will communicate with management and work with you to meet all items in the scope of services.


Our Rates Department's past performance demonstrates our ability to develop complex rate study analyses and special contract rates for many consumers. Those consumers have ranged from food processing plants to irrigation and grain bins to campgrounds, mining operations, sales for resale installations, and many others, including service to 500 MW of steel plant loads.


TEAM MEMBER ROLES – RÉSUMÉS

Craig Woycheese, CPA, Senior Rate Analyst, will manage and complete much of the study, including project lead and quality control. The DISTRICT will work directly with the project lead and have access to our team. In addition to standard technology, including email communication, TOTH will employ a secure website, Microsoft OneDrive and/or Microsoft SharePoint, to electronically exchange large data files with RGEC.

Senior Rate Analyst & Project Lead (Rate Analyst 3)	
Name	Craig Woycheese, CPA
 <p><u>Affiliations and Honors:</u></p> <ul style="list-style-type: none"> • National Society of Accountants for Cooperatives • Missouri Society of CPAs <p><u>Publications:</u></p> <ul style="list-style-type: none"> • A. L. Toth, C. R. Woycheese and J. B. Chapman, "Rate Considerations Related to Solar Distributed Generation," 2018 IEEE Rural Electric Power Conference (REPC), Memphis, TN, USA, 2018, pp. 50-60. doi: 10.1109/REPC.2018.00017 	<p>Craig is a Certified Public Accountant whose role at TOTH is as a Senior Rate Analyst. His work experience with planning for electric power systems has included all facets of load forecasting, customer usage data verification, analyzing purchase power contracts, and economic analysis. His other responsibilities in rate analysis and cost of service analysis include plant and expense allocations, revenue projections, determination of the rate of return by rate class, and final rate design.</p> <p>He has provided cost of service and rate assistance for cities across the country. Craig is skilled in presenting study results to utility management, city councils, and boards in document preparation and supporting testimony for Public Utility Commissions.</p>
Education	<p><i>Bachelor of Arts – Business & Accounting</i> Drury University (1995-1999)</p> <p><i>Master of Business Administration</i> Missouri State University (2006-2007)</p>
License(s)/Certification(s)	Certified Public Accountant – Missouri License # 2009007473
Years Experience	11 years
Role/Responsibilities	<p>Senior Rate Analyst, Project Lead, and QA/QC</p> <p>Craig will be the key contact, provide project management, and perform QA/QC of all work.</p>

President, Electrical Engineer			
Name	Adam Toth, PE		
 <p><u>Affiliations and Honors:</u></p> <ul style="list-style-type: none"> • Board of Directors – Big Brothers Big Sisters of the Ozarks • Leadership Springfield Signature Class 32 Member • Rotary Club of Springfield Southeast Member • Greater Ozarks Leadership Development Certificate <p><u>Publications:</u></p> <ul style="list-style-type: none"> • A. L. Toth, C. R. Woycheese and J. B. Chapman, "Rate Considerations Related to Solar Distributed Generation," 2018 IEEE Rural Electric Power Conference (REPC), Memphis, TN, USA, 2018, pp. 50-60. doi: 10.1109/REPC.2018.00017 	<p>Adam is the Executive President and partner with TOTH and has been with the company since its inception. He has over 18 years of experience as an engineer. Adam has been responsible for all phases of electrical system work, including planning, rate design, contract negotiation, distribution system design, load flow analysis, fault analysis, software design, CAD and GIS work, and information systems. He works primarily with electric cooperatives and municipalities. Adam has represented clients before multiple State Public Service Commissions. He oversees the distribution department, which includes several electric line design professionals. He also has experience performing analyses for nearly every electrical system component, including Arc Flash Studies, Flicker Studies, Load Flow Studies, Capacitor Studies, Sectionalizing Studies, Load Capacity Studies, Cost of Service Studies, Distributed Generation, and Net Metering.</p> <p><u>Presentations:</u></p> <ul style="list-style-type: none"> • Analysis of Impact of Mass Implementation of DER Presentation, National Rural Electric Cooperative Association (NRECA), TechAdvantage Conference, 2018. • Rate Considerations Related to Solar Distributed Generation Presentation, IEEE Rural Electric Power Conference, 2018. • Overview of Electric Utility Planning, Arkansas Electric Cooperative Corporation Engineering Workshop, Little Rock, Arkansas, 2014 • Overview of Electric Utilities Presentation, Missouri Society of Professional Engineers, Missouri, 2014 • Arc Flash for Distribution Cooperatives Presentation, Association of Illinois Electric Cooperatives, IT and Engineering Conference, Illinois, 2015 		
Education	<p><i>Bachelor of Science - Electrical Engineering</i> University of Missouri</p> <p><i>Master of Business Administration</i> Missouri State University</p>		
License(s)/Certification(s)	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> Arkansas P.E. #13971 Colorado P.E. # 0056618 Florida P.E. # 86747 Idaho P.E. #17330 Illinois P.E. #062.062417 Iowa P.E. #20073 Missouri P.E. #2009001133 </td> <td style="width: 50%; vertical-align: top;"> Nebraska P.E. # E-17590 North Dakota P.E. # PE-29184 Oklahoma P.E. #24385 Oregon P.E. #93232PE South Carolina P.E. # 37830 Washington P.E. #57310 </td> </tr> </table>	Arkansas P.E. #13971 Colorado P.E. # 0056618 Florida P.E. # 86747 Idaho P.E. #17330 Illinois P.E. #062.062417 Iowa P.E. #20073 Missouri P.E. #2009001133	Nebraska P.E. # E-17590 North Dakota P.E. # PE-29184 Oklahoma P.E. #24385 Oregon P.E. #93232PE South Carolina P.E. # 37830 Washington P.E. #57310
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Role/Responsibilities	<p>Principal, Electric Utility Planning, Cost of Service Studies, Distributed Generation, and Net Metering will provide additional QA/QC of work performed, especially from the engineering perspective.</p>		

Rate Analyst 2	
Name	Lalita Handwerker
	Lalita has been a Rate Analyst at TOTH for four years. Her work experience with planning for water, sewer, and electric power systems has included customer usage data verification, economic analysis, rate analysis, cost of service analysis, plant and expense allocations, revenue projections, determination of the rate of return by rate class, and final rate design.
Education	<i>Bachelor of Science - Mathematics</i> College of the Ozarks (2000-2004)
Years Experience	4 years
Role/Responsibilities	Project Analyst for Rate Projects Lali will be working with RGEC staff for some gathering of data and will perform analysis.

Rate Analyst 1	
Name	Paul Ruban
	Paul has been a Rate Analyst/Grants Specialist at TOTH for over two years. His work experience with planning for water, sewer, and electric power systems has included customer usage data verification, economic analysis, rate analysis, cost of service analysis, and plant and expense allocations.
Education	<i>Bachelor of Science - Accounting</i> Missouri State University (2016-2019)
Years Experience	1 year in the rate department, 3 years at TOTH
Role/Responsibilities	Project Analyst for Rate Projects Paul will work with RGEC staff to collect data, assist in data analysis, and prepare deliverables.

PROJECT COST

The project will be billed at our standard rates for all work required: hourly time by Craig Woycheese and supporting staff, overhead, data collection, report preparation, report copies, virtual meeting attendance, scheduled reporting, and two (2) in-person meetings for a workshop and to present to the City Council. This proposal includes TOTH’s development of a financial plan and rate forecast as requested in the General Scope of Work within the RFP. The project will be invoiced monthly with Net 30 terms.

Fee Schedule:

Engineer Principal (EP)	\$255/hr
Rate Analyst-3 (RA3).....	\$210/hr
Rate Analyst-2 (RA2).....	\$160/hr
Rate Analyst-1 (RA1).....	\$120/hr

Cost Estimate:



Est. Cost = \$1,400	Est. Cost = \$8,175	Est. Cost = \$9,250	Est. Cost = \$5,500	Total Cost: \$25,825 Cost Not to Exceed
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This fee **does** include travel and accommodations to attend an in-person workshop and a second visit for a City Council presentation. All other meetings will be held virtually. Additional in-person trips can be scheduled at the current cost of travel and meals if required. The cost includes the cost of hard copies for distribution during the City Council meeting.

24,300
1,500

REFERENCES & RELEVANT PROJECTS

TOTH has performed similar requested services for hundreds of clients. Here is a select set of references and project profiles.

Client: Carthage Water and Electric Plant	
Service: Comprehensive Utility Rate Study	
Description of Services Performed	Rate Analysis for Water, Wastewater, Electric Systems TOTH recently conducted a comprehensive utility rate study for Carthage Water & Electric Plant. The study included Carthage’s electric, water, and wastewater. Each utility has approximately 7,000 metered connections.
Personnel Assigned to Service/Contract	Craig Woycheese, Project Manager Lalita Handwerker, Project Analyst
Reference/Contact Person	Chuck Bryant General Manager (417) 237-7300
Address	627 W Centennial Ave. Carthage, MO 64836

Client: City of West Plains	
Service: Water, Wastewater, and Electric Analyses	
Description of Services Performed	Rate Analysis for Water, Wastewater, and Electric Toth and Associates is completed a comprehensive cost of service and rate analyses for the City of West Plain’s Utility Department. This service was for approximately 6,500 customers and covers utilities of water, wastewater, and electric.
Personnel Assigned to Service/Contract	Craig Woycheese, Project Manager Lalita Handwerker, Project Analyst
Reference/Contact Person	Shayne Eades Utilities Director (417) 256-7176
Address	1910 Holiday Lane PO Box 710 West Plains, MO 65775

Client: Hermiston Energy Services – Hermiston, Oregon	
Service: Comprehensive Cost of Service and Rate Study	
Description of Services Performed	<p>TOTH has recently completed a full cost of service study and rate design for Hermiston Energy Services (HES), which consisted of approximately 5,300 metered connections. For this study, TOTH’s professionals:</p> <ul style="list-style-type: none"> • Evaluated the existing member-customer classes and developed a list of member-customer classes that included the cost of service model (including Small User Service, Seasonal Service, Commercial Service, Industrial Service, Area and Street Lighting Service). • Completed revenue requirement analysis based on the operating budget for the proposed calendar year. • Classified costs as distribution-customer related, distribution-demand related, purchase power-energy related, and purchase power-demand related to non-purchase power distribution costs. • Prepared a cost of service model allocating costs to rates classes. • Recommended adjustments based on the cost of service study results using the unit costs derived from the model. • Completed a comprehensive report summarizing the results of the cost of service and rate design and presented to the Board of Directors.
Personnel Assigned to Service/Contract	<p>Craig Woycheese, Senior Analyst, Project Manager Lalita Handwerker, Project Analyst</p>
Reference/Contact Person	<p>Nate Rivera, General Manager 750 W Elm Ave, Hermiston, OR 97838 (541) 289-2000 nrivera@hermiston.or.us</p>



Client: Canby Utility – Canby, Oregon	
Service: Cost of Service Study and Rate Analyses	
Description of Services Performed	<p>TOTH performed a cost of service study and rate analyses for Canby Utility’s electric system, consisting of approximately 7,700 metered connections. This encompassed examining revenues and expenses and allocating expenses across various customer classes. The study evaluated the appropriateness of existing rates, rate design, customer classifications, and the adequacy of current revenues. Additionally, it established the revenue requirements necessary for Canby Utility to sustain its operations, fund capital improvements, and facilitate the expansion of its infrastructure.</p> <p><u>System Information:</u> Canby's electric distribution system receives capacity, energy, and transmission services from the Bonneville Power Administration (BPA).</p> <p><u>Basis for the Study:</u> The study was grounded in several key sources of information:</p> <ul style="list-style-type: none"> • Historical and Budgeted Data: Information provided by Canby Utility's administrative staff was instrumental in understanding past financial performance and forecasting future needs. • Operating Characteristics: Actual and assumed operating characteristics of the Electric Department and each customer class were considered to ensure accurate cost allocation. • Stakeholder Engagement: Discussions with City representatives provided valuable insights into the electric system's operations and the community's requirements. • Data Timeframe: The study was based on the determined test year, load data, and incorporated BPA's forecasted rates for the power cost portion of the expenses. <p><u>Structure of the Study:</u> For the COSA and Rate Design we employed a structured approach:</p> <ul style="list-style-type: none"> • Revenue and Expense Analysis: The study initiated with the calculation of system revenues and expenses. Revenues were categorized into sales of power and other revenue sources, while expenses were divided into non-supply operating expenses and purchase power. • Segmentation of Expenses: Non-supply expenses were further categorized into customer and demand components, while purchase power was segmented into energy and demand expenses. This segmentation allowed for a granular evaluation of cost components. • Customer Class Analysis: Operating expenses were allocated to each rate class to calculate the margin for each class based on present rates. The returns for each class are compared to each other to determine if there were subsidies between rate classes. This step was critical in structuring rates to ensure fair returns for the total system and individual customer classes. • Unit Cost Analysis: Allocated costs for each class are divided by relevant billing unit. For example, customer-related costs are divided by the number of bills in the class to determine the monthly cost to service. The analysis is used to determine benchmarks for the monthly customer charge, demand charge(s), and energy charge(s).
Personnel Assigned to Service/Contract	Craig Woycheese, Senior Analyst, Project Manager Lalita Handwerker, Project Analyst Paul Ruban, Project Analyst
Reference/Contact Person	Mike Schelske, Financial Manager 1265 Southeast 3rd Avenue, Canby, OR 97013 (503) 266-1156 mschelske@canbyutility.org



Past Performance:

The following table outlines select clients that TOTH has performed financial analysis, cost of service studies, capital plans, funding, and rates studies in the past five years.

Client Name	Contact Name	Address	Phone Number	Date Finished
Hermiston Energy Services	Nate Rivera	750 W Elm Ave. Hermiston, OR 97838	(541) 289-2000	2020
Canby Utility	Mike Schelske	1265 Southeast 3rd Ave., Canby, OR 97013		2023
City of Plummer	Bill Weems	PO Box B Plummer, Idaho 83851	(208) 686-1641	2020
Umatilla Electric Cooperative	Robert Echenrode	750 W Elm Ave Hermiston, OR 97838	(541) 564-4348	2019
City of Waynesville	Daniel Sheldon	100 Tremont Center Waynesville, MO 65583	(573) 774-6171	2021
City of Monett	Skip Schaller	217 5 th Street Monett, Missouri 65708	(417) 235-3763	2021
City of West Plains	Shayne Eades	1910 Holiday Lane PO Box 710 West Plains, MO 65775	(417) 257-5433	2021
Carthage Water and Electric Plant	Chuck Bryant	627 W Centennial Ave. Carthage, MO 64836	(417) 237-7337	2020
City of Marshall	Jeff Bergstrom	214 N Lafayette Ave # A Marshall, MO 65340	(660) 886-6966	2021
City of Trenton	Ron Urton	1100 Main St. Trenton, Missouri 64683	(660) 359-2283	2022
City of Harrisonville, Missouri	Andy Pollard	300 E. Pearl St. P. O. Box 367. Harrisonville, MO 64701	(816) 380-8900	2022
City of Lebanon	Richard Shockley	401 S. Jefferson Ave. City Hall Lebanon, MO 65536	(417) 532-2156	2022
Northeast Power	Tracy Golden	1410 W 7th St. Wayne, NE 68787	(402) 375-1360	2021
Ozark Border Electric Cooperative	David Schremp	3281 S Westwood Blvd Poplar Bluff, MO 63901	(573) 785-4631	2022
Three Rivers Electric Cooperative	Roger Kloepfel	1324 E Main St, Linn, MO 65051	(573) 897-2251	2022
Carroll Electric Cooperative	Rob Boaz	920 US-62 Spur Berryville, AR 72616	(870) 423-2161	2019
Mississippi County Electric Cooperative	Brad Harrison	510 N Broadway St. Blytheville, AR 72315	(870) 763-4563	2019
North Arkansas Electric Cooperative	Mel Coleman	225 S Main St. Salem, AR 72576	(870) 895-3221	2022
Grundy Electric Cooperative, Inc.	Scott Wilson	4100 Oklahoma Ave. Trenton, MO 64683	(660) 359-3941	2018
United Electric Cooperative	Jim Bagley	401 US-71 BUS Savannah, MO 64485	(816) 324-3155	2022
Woodruff Electric Cooperative	Michael Swan	3201 Highway 1 North Forrest City, AR 72335	(870) 633-2262	2018
North Central MO Electric Cooperative	Loren Haines	1098 State Hwy E Milan, MO 63556	(660) 265-4404	2018
Farmers' Electric Cooperative	Rod Cotton	201 US-36 BUS Chillicothe, MO 64601	(660) 646-4281	2022

Client Name	Contact Name	Address	Phone Number	Date Finished
Sac Osage Electric Cooperative	Jim Davis	4815 E Highway 54 El Dorado Springs, MO 64744	(417) 876-2721	2018
Lewis County Rural Electric Cooperative	Shawn Walling	18256 MO-16 Lewistown, MO 63452	(573) 215-4000	2019
Gascosage Electric Cooperative	Carmen Hartwell	803 S Ellen St. Dixon, MO 65459	(573) 759-7146	2023
Arkansas Valley Electric Cooperative	Lauren Robinson	1811 W Commercial St. Ozark, AR 72949	(479) 667-2176	In Progress
West Central Electric Cooperative	Michael Newland	506 N Broadway St. Oak Grove, MO 64075	(816) 565-4942	In Progress
City of Seymour	Sam Burt	114 E. Washington PO Box 247 Seymour, MO 65746	(417) 935-4401	2018
C & L Electric Cooperative	Greg Smith	900 Church St Star City, AR 71667	(870) 628-4221	2021
Rich Mountain Electric Cooperative	Brad Caster	515 Janssen Ave Mena, AR 71953	(479) 394-4140	2022
Northeast Oklahoma Electric Cooperative	Daniel Webster	27039 S 4440 Rd Vinita, OK 74301	(918) 256-6405	2022
Petit Jean Electric Cooperative	Michael Kirkland	270 Quality Drive Clinton, Arkansas 72031	(501) 745-2493	2022
Central Missouri Electric Cooperative	Brian Jacoby	22702 US-65 Sedalia, MO 65301	(660) 826-2900	2021
City of Farmington	Greg Beavers	110 West Columbia Farmington, MO 63640	(573) 756-1701	2022
City of Fayette	Tyler Griffith	117 South Main Fayette, MO 65248	(660) 248-2214	2022
City of Gallatin	Lance Rains	112 East Grand Street Gallatin, MO 65640	(660) 663-2013	2021
City of Lamar	Russ Worley	1104 Broadway Lamar, MO 64759	(417) 682-5554	2021
City of Nixa	Doug Colvin	1111 W Kathryn Nixa, MO 65714	(417) 724-5670	2021
Co-Mo Electric Cooperative	Aaron Bradshaw	PO Box 220 Tipton, MO 65081	(660) 433-6109	2022
City of Fredericktown	Ashley Baudendistal	124 West Main St Fredericktown, MO 63645	(573) 783-3683	2021
City of St. James	James Fleming	150 S Jefferson St. James, MO 65559	(573) 265-7013	2021
City of Lockwood	Ken Snider	400 Main Street Lockwood, MO 65682	(417) 232-4221	2022
City of Macon	Stephanie Wilson	106 W Bourke Street Macon, Mo 63552	(660) 385-3173	2022
City of Rolla	Rodney Bourne	102 W Ninth Street Rolla, MO 65401	(573) 364-1572	2022
Craighead Electric Cooperative	Jeremiah Sloan	4314 Stadium Blvd Jonesboro, AR 72403	(870) 932-8301	2022
Southwest Arkansas Electric Cooperative	Kecia Wolf	2904 E Ninth Street Texarkana, AR 71854	(870) 772-2743	2018
Clay County Electric Cooperative	David Smith	3111 Hwy 67 Corning, AR 72422	(870) 857-3521	2022
MJM Electric Cooperative	Joe Heyen	18300 Shipman Rd Carlinville, IL 62626	(217) 707-6156	2019

Client Name	Contact Name	Address	Phone Number	Date Finished
Tri-County Electric Cooperative	Michael Scheib	16894 US Hwy 63 Lancaster, Mo 63548	(660) 457-3733	In progress
Jo-Carroll Energy	Chuck Woods	793 US 20 Elizabeth, IL 61028	(800) 858-5522	2023
Monroe County Electric Cooperative	Alan Wattles	6132 IL-3 Waterloo, IL 62298	(618) 939-7171	In progress
Menard Electric Cooperative	Alisha Anker	14300 IL-97 Petersburg, IL 62675	(800) 872-1203	2023
Pemiscot-Dunklin Electric Cooperative	Jamie Vaughn	805 First Street Kennett, MO 63857	(573) 757-6641	2023
Howard Electric Cooperative	Amber Overfelt	205 N Cleveland Ave Fayette, Mo 65248	(660) 248-3311	2022
Callaway Electric Cooperative	Tom Howard	1313 Cooperative Drive Fulton, Mo 65251	(573) 642-3326	2022
Ralls County Electric Cooperative	Lynn Hodges	17594 RT-19 New London, Mo 63459	(573) 985-8711	2023
Ozark Electric Cooperative	Pat Oehlschlager	10943 Highway 39 Mt. Vernon 65712	(417) 466-2144	2018
Macon Electric Cooperative	Tim Korman	31571 Business Hwy 36 East	(660) 385-3157	2022
Consolidated Electric Cooperative	Lynn Thompson	3940 E Liberty Mexico, Mo 65265	(573) 581-3630	2023
Howell-Oregon Electric Cooperative	Dan Singletary	6327 US Hwy 63 West Plains, MO 65775	(417) 256-2131	2023
United Electric Cooperative	Jim Bagley	401 North Hwy 71 Savannah, Mo 64485	(800) 748-1488	2022
McKenzie Electric Cooperative	Matt Hanson	908 Fourth Ave NE Watford City, ND 58854	(701) 444-9288	In progress
Northeast Oklahoma Electric Cooperative	Daniel Webster	27039 S 4440 Rd Vinita, OK 74301	(918) 256-6405	In Progress
Berkeley Electric Cooperative, Inc.	Mike Fuller	1732 US-52 W Moncks Corner, SC 29461	(800) 327-9615	In Progress

Exhibit D

Utility Rate Study Proposal Comparison			
Project Task		FCS Group	Toth Associates
Phase 1	Project Initiation and Data Collection	\$1,705	
	Data Validation	\$880	\$1,400
Phase 2	Financial Plan/Analysis and Rate Forecast	\$9,580	\$8,175
Phase 3	Rate Design	\$1,080	\$9,250
	Workshops/Delivery and Presentation	\$9,235	\$5,500
Total		\$22,480	\$25,825
Difference		\$3,345	

City of Aumsville November 2023 Monthly Police Report

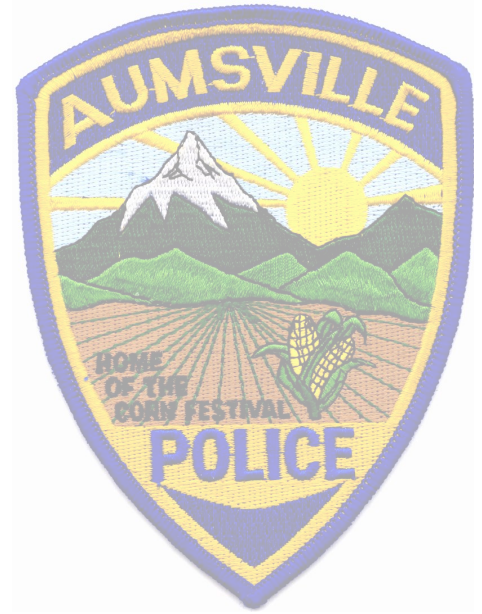
DEPARTMENT MESSAGE:

The reserves worked a total of 46 hours during the month of November: 46 volunteer hours and 0 paid hours.

On the 11th, Chief Flowers attended the awards ceremony for the Special Olympics to hand out awards to the recipients.

The 17th was the 53rd Annual OPOA (Oregon Police Officers Association) Awards Banquet at Spirit Mountain Casino. Officer Phillip Wright was awarded the Life Saving Award for an incident that occurred in 2022. His actions directly resulted in saving the life of a citizen experiencing a mental health crisis.

Officer Taylor Mack is scheduled to graduate the Department of Public Safety Standards and Training Academy on December 15th. He will be back in the city finishing his field training.



Traffic Violation	Cites
Driving While Suspended	3
Driving Uninsured	4
No Operator's License	1
Fail to Install Internal Ignition Dev.	2
Speeding	1
Illegal Alteration of Plates	1
Fail to Register Vehicle	1
Fail to Carry Proof of Insurance	2
Total	15

Crime	#	Arrested
Strangulation	1	1
Assault IV	1	1
Criminal Mischief	3	0
Fraud	2	0
Warrant Arrest	3	3
Harassment	4	0
Probation Violation	1	1
Disorderly Conduct	2	2
DUII	1	1
Driving While Suspended / Misdemeanor	2	2
Hit and Run	1	0
Total	21	11

Calls for Service	#
Assist Other-Turner PD	7
Assist Other-Fire	0
Assist Other-DHS	7
Assist Other-MCSO	2
Assist Other-Stayton PD	6
Assist Other-Other	2
Citizen Contact	20
Area Check	11
Welfare Check	2
Suicide / Attempt	0/1
Traffic Complaint	2
Civil Dispute	6
False Alarm	6
Noise Complaint	5
Traffic Stops	81
Suspicious Person/Vehicle/Circumstance	17
Animal Complaint	5
Ordinance Violation	6
Emotionally Disturbed Persons	2
Property: Found/Lost/Seized	1
Person: Missing/Found/Runaway	0/0/1
Total	190



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

TO: Mayor and City Council
 FROM: Steve Oslie, Public Works Director
 SUBJECT: Public Works Report

December 4, 2023

Water: The wells pumped as follows:

Boone #1	Boone #2	Tower	Reservoir	Church	Total
862,100	2,389,000	1,624,000	0	3,770,200	8,645,300

We had problems with our chlorine analyzer for about 6 months. We finally got an answer to the problem when the representative came out to do some troubleshooting for us.

The on-site chlorine generator now has some age and parts are difficult to find to contune rebuilds. We are getting quotes right now to replace it with the newest version.

Found a faulty pressure switch was backwashing the water filters at every well startup, which happens about 3 times a day. A normal backwash cycle happens every 3 or 4 days.

Sewer: Influent flows are way up and we are monitoring the lagoon levels daily.

We had a contractor out to clear a couple mainlines of grease. The lines were also tv'd for collection system improvement planning/design, and to look for leaks in the pipe.

Streets: The crew cleaned many of the catchbasins throughout the city. This was to help with water flow, help keep debris out of the streams, and comply with our TMDL requirements.

A big shout-out to our Pacific Power guy, Curtis. He helped with putting up are street lights and he is always available to answer our power related questions.

The streetsweeper got new flashing lights installed after watching drivers not paying much attention to it, out on the road.

Parks: Getting ready for the Christmas in the Park event. Looks like it's going to be a wet one. The tree was sourced from a property just outside of town. It does take a beating loading and unloading from the trailer.

General: The roof is slowly going on at the new shop building. Freezing temperatures and rain are making it a little slower process. They are working on finishing up the ground work getting the storm and waterlines in.



SYSTEM DEVELOPMENT CHARGE REPORT
FISCAL YEAR 2022-23



**Water System Development Charges
Annual Report**
In Accordance with ORS 223.311
Year Ended June 30, 2023

	SDC %	Water SDC	%	Other City Funds	%	Fund	Total
REVENUES:							
System Development Fees (024-420)		\$ 5,950.74					\$ 5,950.74
Interest Earned (024-402)		\$ 15,123.68					\$ 15,123.68
TOTAL REVENUE		\$ 21,074.42					\$ 21,074.42
EXPENDITURES:							
Materials and Services							
SDC Administrative Services (024-610)		\$ -		\$ -			\$ -
Engineering/Surveying/Misc Project Srvcs (024-626)	100%	\$ 9,630.23	100%	\$ -	0%	028	\$ 9,630
<i>Water Rights Management/Water Supply Planning</i>		\$ -		\$ -			\$ -
		\$ -		\$ -			\$ -
Capital Outlay							
New System Development (024-800)	100%	\$ -	0%	-	0%		\$ -
<i>New MG Reservoir Site Purchase & Development - 190 Klein</i>							
New Wells (024-801)	13%	\$ -	0%	-	0%		\$ -
SDC Administrative Cost							
Transfer to General Fund (024-852)	100%*	\$ 102.15	100%	-	0%	N/A	\$ 102.15
Debt Service Cost							
Transfer to Water Fund	100%	\$ -	0%	-	0%	N/A	\$ -
TOTAL EXPENDITURES		\$ 9,732.38		\$ -			\$ 9,732.38
Summary							
Excess (Deficiency) of Revenues Over Expenditures		\$ 11,342.04					
Beginning Fund Balance		\$ 511,427.94					
ENDING FUND BALANCE		\$ 522,769.98					

*Per ORS 223.307.5



**Sewer System Development Charges
Annual Report**
In Accordance with ORS 223.311
Year Ended June 30, 2023

	SDC %	Sewer SDC	%	Other City Funds	%	Fund	Total
REVENUES:							
System Development Charges (029-421)		\$ 7,386.09					\$ 7,386.09
Interest Earned (029-402)		\$ 22,263.28					\$ 22,263.28
Grants/Reimbursement (029-417)		\$ -					\$ -
TOTAL REVENUE		\$ 29,649.37					\$ 29,649.37
EXPENDITURES:							
Materials and Services							
Engineering/Surveying/Misc Project Svcs (029-626)	100%	\$ 82,843.93	0%	\$ -	0%		\$ 82,843.93
SDC Administrative Services (029-610)			0%	\$ -	0%		\$ -
Capital Outlay							
New System Development (029-800)		\$ -		\$ -			\$ -
Land Acquisition (029-801)		\$ -		\$ -			\$ -
SDC Administrative Cost							
To General Fund/Admn Services Reimbursement (029-852)	100%*	\$ 102.14					\$ 102.14
To Sewer Imp. Fund - Prjct Shr Reimbursement (029-825)	100%*	\$ -					\$ -
Debt Service Cost							
							\$ -
							\$ -
TOTAL EXPENDITURES		\$ 82,946.07		\$ -			\$ 82,946.07
Excess (Deficiency) of Revenues Over Expenditures		\$ (53,296.70)					
Beginning Fund Balance		\$ 801,912.87					
ENDING FUND BALANCE		\$ 748,616.17					

*Per ORS 223.307.5



**Transportation System Development Charges
Annual Report**
In Accordance with ORS 223.311
Year Ended June 30, 2023

	SDC %	Street SDC	%	Other City Funds	%	Fund(s)	Total
REVENUES:							
System Development Fees (030-421)		\$ 5,045.13					\$ 5,045.13
Interest Earned (030-402)		\$ 16,109.98					\$ 16,109.98
TOTAL REVENUE		\$ 21,155.11					\$ 21,155.11
EXPENDITURES:							
Materials and Services							
Engineering/Surveying/Misc Project Srvcs (030-626)		\$ 46,974.65		\$ -	0%	N/A	\$ 46,974.65
SDC Administrative Services (030-610)		\$ -		\$ -	0%	N/A	\$ -
		\$ -		\$ -			\$ -
Capital Outlay							
Transportation Improvements (030-800)		\$ -		\$ -		Streets (014), Spec. Projects (017)	\$ -
		\$ -		\$ -			\$ -
		\$ -		\$ -			\$ -
SDC Administrative Cost							
Transfer to Gen Fund/Admin Services Reimbursement (030-825)	100%*	\$ 102.14	100%	\$ -	0%	N/A	\$ 102.14
TOTAL EXPENDITURES		\$ 47,076.79		\$ -			\$ 47,076.79
Excess (Deficiency) of Revenues Over Expenditures		\$ (25,921.68)					
Beginning Fund Balance		\$ 575,550.64					
ENDING FUND BALANCE		\$ 549,628.96					
*Per ORS 223.307.5							



**Storm Drainage System Development Charges
Annual Report**
In Accordance with ORS 223.311
Year Ended June 30, 2023

	SDC %	Sewer SDC	%	Other City Funds	%	Fund	Total
REVENUES:							
System Development Charges (034-421)		\$ -					\$ -
Interest Earned (034-402)		\$ 10.95					\$ 10.95
TOTAL REVENUE		\$ 10.95					\$ 10.95
EXPENDITURES:							
Materials and Services							
Engineering/Surveying/Misc Project Svcs	100%	\$ -		\$ -			\$ -
SDC Administrative Services		\$ -		\$ -			\$ -
Capital Outlay							
New System Development - Cleveland St. Storm Drainage (Bethel Baptist)		\$ -		\$ -			\$ -
Land Acquisition		\$ -		\$ -			\$ -
SDC Administrative Cost							
To General Fund/Admn Services Reimbursement	100%*	\$ -					\$ -
To Sewer Improvement Fund - Prjct Shr Reimbursement	100%*	\$ -					\$ -
Debt Service Cost							
							\$ -
							\$ -
TOTAL EXPENDITURES		\$ -		\$ -			\$ -
Excess (Deficiency) of Revenues Over Expenditures		\$ 10.95					
Beginning Fund Balance		\$ 365.84					
ENDING FUND BALANCE		\$ 376.79					

*Per ORS 223.307.5



**Park System Development Charges
Annual Report**
In Accordance with ORS 223.311
Year Ended June 30, 2023

	SDC %	Parks SDC	%	Other City Funds	%	Fund	Total
REVENUES:							
System Development Charges		\$ 3,325.00					\$ 3,325.00
Interest Earned		\$ 1,872.44					\$ 1,872.44
Transfer from Park Fund/Project Reimbursement		\$ -					\$ -
TOTAL REVENUE		\$ 5,197.44					\$ 5,197.44
EXPENDITURES:							
Materials and Services							
SDC Administrative Services (032-610)	100%	\$ 13,433.35	0%	\$ -			\$ 13,433.35
Engineering/Surveying/Misc Project Svcs (032-626)	100%	\$ 1,243.25		\$ -			\$ 1,243.25
Capital Outlay							
Park Improvements (032-800) - Wildwood Park Restroom/Shelter	100%	\$ -	0%		0%		\$ -
Land Acquisition (032-801)	100%	\$ -	0%	\$ -			\$ -
SDC Administrative Cost							
Transfer to OPRD Local Government Grant Fund	0%	\$ -					\$ -
Transfer to General Fund/Admn Services Reimbursement (032-852)	100%	\$ 102.15					\$ 102.15
Transfer to Park Fund/PW Labor Reimbursement	100%	\$ -					\$ -
Debt Service							
Land Acquisition Principal (032-870)	100%	\$ -	0%		#DIV/0!		\$ -
Land Acquisition Interest (032-871)	100%	\$ -	0%	\$ -			\$ -
TOTAL EXPENDITURES		\$ 14,778.75		\$ -			\$ 14,778.75
Excess (Deficiency) of Revenues Over Expenditures		\$ (9,581.31)					
Beginning Fund Balance		\$ 67,513.08					
ENDING FUND BALANCE		\$ 57,931.77					
*Per ORS 223.307.5							