

BIDDING DOCUMENTS

**GIBBONS CREEK ALLUVIAL FAN
RESTORATION PROJECT**



May 2019

Clark County, Washington



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**GIBBONS CREEK ALLUVIAL FAN RESTORATION PROJECT
BIDDING DOCUMENTS**

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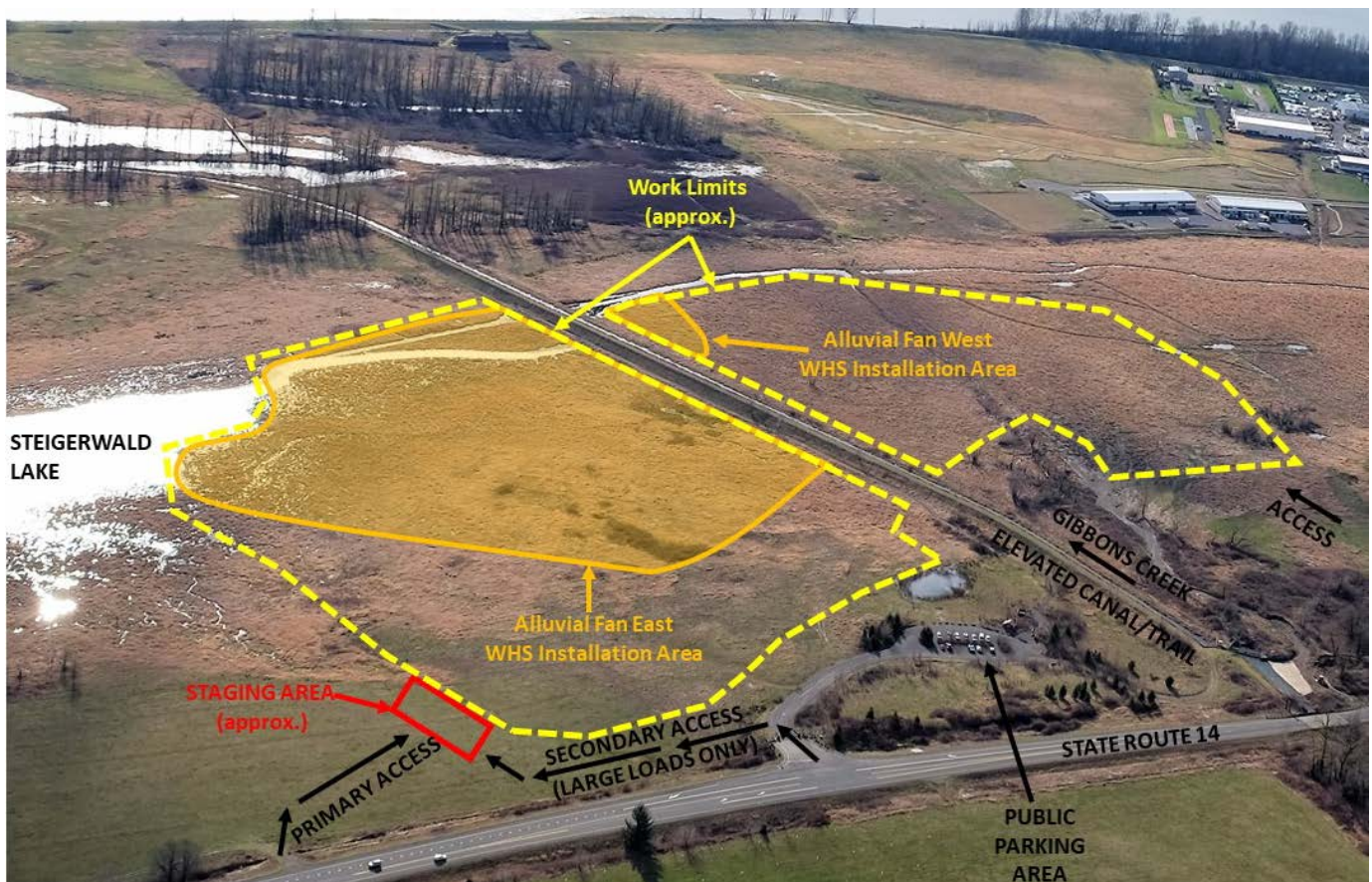
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GIBBONS CREEK ALLUVIAL FAN RESTORATION PROJECT REQUEST FOR BIDS

PROJECT DESCRIPTION

The project consists of installation of woody habitat structures on the historic Gibbons Creek alluvial fan and floodplain channel per the attached Bidding Documents. All project actions are located on land within the Steigerwald Lake National Wildlife Refuge and owned by the U.S. Fish and Wildlife Service. Work consists of the following:

1. Install traffic control measures for construction traffic entering/leaving SR 14;
2. Establish access, staging, and erosion control;
3. Perform seeding of areas disturbed during preparation of the site for native plantings, i.e., mowing, spraying, and disking performed by others;
4. Furnish and install wood habitat structures; and,
5. Incorporate Owner-furnished salvaged logs into the wood habitat structures.



Oblique aerial photograph of the project site identifying key locations. Photo taken looking N/NE.

ANTICIPATED SCHEDULE

Request for Bids Released: May 3, 2019

Mandatory On-Site Pre-Bid Meeting: May 9, 2019 at 11:00 a.m.

Bid Question-Period Closing: May 20, 2019 at 11:00 a.m.

Bid Closing: May 28, 2019 at 4:00 p.m.

Bid Opening: May 28, 2019 at 4:00 p.m. (immediately after bid closing)

Notice of Award: No later than June 11, 2019

Contract Executed: No later than July 9, 2019

Notice to Proceed: No later than July 9, 2019

Pre-Construction Meeting (including site visit and schedule review): No later than August 9, 2019

Construction Operations Plan (including schedule): Due no later than August 16, 2019 (must be approved prior to on-site work beginning)

On-Site Work to Begin (Start Time): No earlier than August 26, 2019

Substantial Completion (seeding): No later than September 6, 2019

Substantial Completion (In-Water Work): No later than October 15, 2019

Substantial Completion (all other Work): No later than October 17, 2019

Project Completion: No later than October 18, 2019

RFB-1 DEFINED TERMS

- 1.01 Terms used in this Request for Bids, which are defined in the Standard General Conditions of the Construction Contract, Engineers Joint Contract Documents Committee (EJCDC) Document C-700 (2018 Edition), as amended by the Supplementary Conditions, have the meanings assigned to them there.

RFB-2 COPIES OF BIDDING DOCUMENTS

2.01 Obtaining and Use of Bidding Documents

- A. Bidding Documents are available for download at www.estuarypartnership.org.
- B. Complete sets of Bidding Documents must be used in preparing Bids. Neither Owner, Engineer, nor Agency assumes any responsibility for errors or misinterpretations resulting from use of the Bidding Documents.
- C. Copies of Bidding Documents available on the above terms are only for the purpose of developing Bids for the Work and do not confer a license or grant to Bidders for any other use.

2.02 Identification of Conceptual Documents

- A. There are no conceptual documents associated with this RFP.

RFB-3 QUALIFICATIONS OF BIDDERS

3.01 Bidder's Qualifications

- A. Pre-qualification is not required for this bid.
- B. Each Bid must contain evidence of Bidder's qualification to do business in Washington.
- C. Upon request of the Owner, each Bidder may be required to show that former work performed by Bidder's company has been handled in such a manner that there are no just or proper claims pending against such work. No Bidder will be considered responsible if it is engaged in other work that impairs its ability to finance this Contract or to provide adequate labor and equipment for the proper execution of the work required. Each Bidder shall demonstrate its ability to meet all requirements of the Contract by evidence satisfactory to the Owner.

- D. Each Bid shall contain three project references for work completed in the past five years. Project references shall include project name, location, description of work completed, and client contact information. Project references should collectively demonstrate the satisfactory execution of the primary tasks listed in the project, including, but not limited to, the following:
 - 1. Implementation and maintenance of erosion control measures;
 - 2. Grading operations and materials management in wetlands and saturated soils;
 - 3. Installation of fish habitat, e.g., large woody debris, structures; and,
 - 4. Managing complex sequencing of construction operations in sensitive environments.

Project experience in all areas listed above is not a requirement for selection but is strongly preferred.

- E. Each Bid shall contain a Statement of Qualifications (SOQ). The SOQ shall briefly summarize the Bidder's experience and qualifications in executing the primary tasks identified in the RFB's Project Description and Section 3.01.D. The SOQ also shall briefly outline proposed construction methods and equipment, including the proposed method for installing pier logs. The SOQ also should summarize the Bidder's diversity in demographics, e.g., gender, race, religion, veteran status, and disability, as well as efforts the Bidder has made (or will commit to making if selected as the Successful Bidder) to ensure a diverse workforce, including policies and practices to promote diversity in hiring.

3.02 Designation of Subcontractors

- A. Any individual or entity (other than a supplier) having a direct contract with Bidder for the performance or furnishing a part of the work at the Site shall be listed in the Bid.

RFB-4 EXAMINATION OF BIDDING DOCUMENTS AND SITE

4.01 Bidder's Responsibilities

- A. It is the responsibility of each Bidder before submitting a Bid to:
 - 1. Examine and carefully study the Bidding Documents and other related data identified in the Bidding Documents.
 - 2. Visit the Site to become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, performance, or furnishing of the Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or that Bidder deems necessary to prepare its Bid for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Bidding Documents. Bidder is expected to visit the Site and conduct an alert, heads-up, eyes-open, reasonable examination of the area and the conditions under which the Work is to be performed.
 - 3. Become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, or furnishing of the Work, including, but not limited to, regulatory permits provided in Exhibit 2.
 - 4. Study and carefully correlate Bidder's knowledge and observations with the Bidding Documents and other related data.
 - 5. Promptly notify Owner of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents.

RFB-5 SITE CONDITIONS

5.01 Subsurface and Physical Conditions

- A. Sediment transport and geotechnical investigation reports encompassing the Site are provided in Exhibit 5. There are no other reports or drawings related to subsurface conditions identified at the Site that were known to the Owner, Engineer, or Agency at the time the Bidding Documents were prepared.

5.02 Work at the Site by Others

- A. Reference is made to the Supplementary Conditions for the identification of the general nature of work that is to be performed at the Site by Owner or others (such as the revegetation contractor) that relates to the Work for which a Bid is to be submitted.

5.03 Hazardous Environmental Conditions

- A. The provisions of Paragraphs 5.01 through 5.02 above do not apply to Hazardous Environmental Conditions covered by Paragraph 5.06 of the General Conditions. Exhibit 5 contains a Sediment Suitability Determination Memorandum, which is the only sediment sampling report related to the potential presence of Hazardous Environmental Conditions located within or adjacent to the Site that were known to the Owner, Engineer, or Agency at the time the Bidding Documents were prepared.

RFB-6 PRE-BID MEETING

- 6.01 A Pre-Bid Meeting will be held on Thursday, May 9, 2019 at 11:00 a.m. at the Steigerwald Lake National Wildlife Refuge parking lot, the entrance to which is located on the south side of State Route 14 approximately 0.1 miles east Gibbons Creek and the Columbia River Gorge National Scenic Area boundary. Representatives of Owner, Engineer, and Agency will be present to discuss the Project. Bidders are required to attend, sign in, and participate in the meeting, which will include a Site visit and will last approximately two hours. Bidders should be prepared to access all portions of the Site, which includes hiking along the existing dirt access road and crossing floodplain wetlands. Owner will transmit to all prospective Bidders of record such Addenda as Owner considers necessary in response to questions arising at the meeting. Oral statements made during the meeting or at any other time may not be relied upon and will not be binding or legally effective. Bids from Bidders who did not attend the Pre-Bid Meeting, sign in, and participate in the entire site visit will not be accepted.

RFB-6 SITE AND OTHER AREAS

- 6.01 The Site and all additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are identified in the Bidding Documents.

RFB-7 INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be directed to Owner in writing via e-mail to Tom Argent at targent@estuarypartnership.org. Interpretations or clarifications considered necessary by Owner in response to such questions will be issued by Addenda sent via e-mail to all parties recorded by Owner as having attended the Pre-Bid Meeting. Questions received after 11:00 a.m. on Monday, May 20, 2019 will not be answered. Only questions answered by formal written Addenda will be binding, i.e., written Addenda are the only means for changes to the Bidding Documents prior to the Bid Closing. Oral comments, statements, instructions and other interpretations or clarifications made by Owner, Agency, or Engineer will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner. Bidder shall acknowledge receipt of Addenda on the Bid Form.

RFB-8 BID SECURITY

- 8.01 A Bid security is not required for this Bid.

RFB-9 CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, the Work is to be (a) Substantially Complete and (b) complete and ready for final payment are set forth in the Agreement.

RFB-10 LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages are set forth in the Agreement.

RFB-11 TECHNICAL EXHIBITS REQUIRED WITH BID

- 11.01 Technical Exhibits prepared by Bidders are not required for this Bid.

RFB-12 PREPARATION OF BID

- 12.01 Bid Form is included with the Bidding Documents.
- 12.02 All blanks on the Bid Form must be completed by printing in ink, by typewriter, or by completing the electronic version, and the Bid signed. A Bid price shall be indicated for each item.
- 12.03 Bid Signatures
- A. A Bid by a corporation must be executed in the corporate name by a corporate officer and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.
 - B. A Bid by a partnership shall be executed in the partnership name and signed by a partner.
 - C. A Bid by a limited liability company shall be executed in the name of the company by a member.
 - D. A Bid by an individual shall show the Bidder's name and shall be signed by that individual.
 - E. A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form.
- 12.04 All names must be typed or printed in ink below the signature.
- 12.05 The Bid shall contain an acknowledgement of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.
- 12.06 The address and telephone number for communications regarding the Bid must be shown.
- 12.07 The Bid shall contain the Bidder's Washington Construction Contractors Board license number.

RFB-13 BID PRICE

- 13.01 Bidders shall submit a Bid broken down by price as set forth in the Bid Form.
- 13.02 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances, if any, named in the Bidding Documents as provided in paragraph 13.02 of the General Conditions.

RFB-14 SUBMITTAL OF BIDS

- 14.01 Bids shall be submitted no later than the following time and at the following place:

Tuesday, May 28, 2019. 4:00 p.m.
Attn: Tom Argent
Lower Columbia Estuary Partnership
811 SW Naito Parkway, Suite 410
Portland, OR 97204

- 14.02 All blanks on the Bid shall be completed and the Bid shall be signed. Bids shall be enclosed in an opaque sealed envelope, marked with the project title, name, and address of Bidder.

14.03 If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it. Such Bids shall be addressed to:

Tom Argent
Lower Columbia Estuary Partnership
811 SW Naito Parkway, Suite 410
Portland, OR 97204

Postmark dates/times do **not** qualify as the Bid Closing date/time.

RFB-15 MODIFICATION AND WITHDRAWAL OF BID

15.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where the Bids are to be submitted prior to the date and time of Bid Closing.

15.02 If by Tuesday June 4, 2019 at 10:00 a.m. any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid.

RFB-16 OPENING OF BIDS

16.01 Bids will be opened in private. An abstract of the Bids (list of the Bidders and range of Bid prices) will be made available to Bidders after the Notice of Award.

RFB-17 BIDS TO REMAIN SUBJECT TO ACCEPTANCE

17.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form.

RFB-18 SELECTION CRITERIA

18.01 In evaluating Bids, Owner will consider the following:

- A. Whether the Bid complies with the prescribed documents, requirements, and other data as may be requested in the Bid Form or prior to the Notice of Award;
- B. The Bid prices as required in the Bid Form;
- C. The proposed construction methods, e.g., method(s) to install pier logs (vibratory hammer, excavation, etc.);
- D. The qualifications, experience, and references of Bidders;
- E. The diversity in demographics of the Bidders' companies and project teams, including race, religion, gender, sexual orientation, veteran status, and disability as well as efforts the Bidders' companies and project teams have made (or will commit to making if selected as the Successful Bidder) to ensure a diverse workforce, including policies and practices to promote diversity in hiring;
- F. The capacity of the Bidder to successfully complete the Work in the timeline specified in the Bidding Documents; and,
- G. The qualifications and experience of Subcontractors, Suppliers, and other individuals and entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals and entities are required to be submitted (as provided in the Supplementary Conditions).

18.02 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of Bidders, Subcontractors, Suppliers, and other individuals and entities to perform and furnish the Work in accordance with the Bidding Documents.

RFB-19 REJECTION OF ALL BIDS AND DISCREPANCIES; AWARD OF CONTRACT

19.01 Rejection of All Bids, Discrepancies

- A. Owner reserves the right to reject any or all Bids, including without limitation nonconforming, non-responsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsive. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder.
- B. No person, firm, or corporation shall be allowed to develop, submit, or be interested in more than one Bid. However, a person, firm, or corporation which has submitted a sub-bid to, i.e., teamed with a Bidder, or which has quoted prices of materials to a Bidder, is not thereby disqualified from submitting a sub-bid or quoting prices to other Bidders.
- C. If the Contract is awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Project.

19.02 Award of Contract

- A. If the Contract is to be awarded, Owner will give Successful Bidder a Notice of Award within fourteen days after the day of the Bid opening.
- B. Owner reserves the right to negotiate contract terms with the Successful Bidder.

RFB-20 CONTRACT SECURITY

- 20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Bidders' requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required Bonds.

RFB-21 SIGNING OF AGREEMENT

- 21.01 When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with the other Bidding Documents that are identified in the Agreement as attached thereto. Within fourteen days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within fourteen days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder.

RFB-22 BID COMPENSATION

- 22.01 Submittal of Bid does not entitle any Bidder to any compensation. Bidder submittals are to be completed entirely at Bidder's own risk.

RFB-23 OWNER FURNISHED EQUIPMENT AND MATERIALS

- 23.01 As shown in the Bidding Documents (Supplementary Conditions, Special Provisions, and Photo Log), the following materials will be furnished by Agency for the use and installation by Successful Bidder on the project:

- 90 salvaged logs (some with rootwads) for incorporating into Wood Habitat Structures.

These logs and logs with rootwads will be located at the staging area shown on page 1 of this document and sheet C3.0 of the Final Design Plan Set (Exhibit 6). Successful Bidder shall transport these logs and logs with rootwads to the Site for installation as detailed in Exhibit 6.



**GIBBONS CREEK ALLUVIAL FAN RESTORATION PROJECT
BID FORM**

B-1 PROJECT IDENTIFICATION

The project consists of installation of woody habitat structures on the historic Gibbons Creek alluvial fan and floodplain channel per the attached Bidding Documents. All project actions are located on land located within the Steigerwald Lake National Wildlife Refuge and owned by the U.S. Fish and Wildlife Service. Work consists of the following:

1. Install traffic control measures for construction traffic entering/leaving SR 14;
2. Establish access, staging, and erosion control;
3. Perform seeding of areas disturbed during preparation of the site for native plantings, i.e., mowing, spraying, and disking performed by others;
4. Furnish and install wood habitat structures; and,
5. Incorporate Owner-furnished salvaged logs into the wood habitat structures.

B-2 THIS BID IS SUBMITTED TO

Tom Argent
Lower Columbia Estuary Partnership
811 SW Naito Parkway, Suite 410
Portland, OR 97204

Bids are due Tuesday, May 28, 2019 by 4:00 p.m.

B-3 BIDDER'S OBLIGATIONS AND REPRESENTATIONS

- 3.01 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the Contract Price and within the Contract Times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.
- 3.02 The Bidder accepts all terms and conditions of the Bidding Documents. This Bid will remain subject to acceptance for 30 days after the day of Bid opening. Bidder will sign and deliver the required number of counterparts of the Agreement with any Bonds and other documents required by the Request for Bid and Bid Form within 14 days after the date of Owner's Notice of Award.
- 3.03 In submitting this Bid, Bidder represents and agrees, as more fully set forth in the Agreement, that:
- A. Bidder has examined and carefully studied the Bidding Documents and the following Addenda (receipt of all which is hereby acknowledged)

Addendum No.	Addendum Date
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

- B. Bidder has visited the Site and become familiar with the general, local, and Site conditions that may affect cost, progress, performance, and furnishing of the Work.

- C. Bidder is familiar with all applicable federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
- D. Bidder has carefully studied the project regulatory permits contained in Exhibit 2 of the Bidding Documents and is familiar with regulatory permit conditions that may affect cost, progress, performance, and furnishing of the Work.
- E. Bidder has carefully studied all available reports, if any, of explorations and tests of subsurface conditions at or contiguous to the Site and all available drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site that have been identified or made available by Owner.
- F. Bidder is aware of the general nature of the work to be performed by Owner and others at the Site that relates to Work for which this Bid is submitted as indicated in the Bidding Documents.
- G. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- H. Bidder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents and the written resolution thereof by Owner is acceptable to Bidder, and the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
- I. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from submitting a Bid; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

B-4 CONTRACT PRICING:

4.01 Bidder will complete the Work in accordance with the Bidding Documents for the following price(s):

PRICE SCHEDULE

Contractor shall provide an all-inclusive quote.

NO.	Spec	ITEM	UNIT	EST. QNTY	UNIT PRICE	TOTAL ESTIMATED PRICE
01	1-09	Mobilization	LS	1		
02	1-07	Work Access	LS	1		
03	1-07	SPCC Plan	LS	1		
04	1-10	Project Temporary Traffic Control	LS	1		
05	2-01	Clearing and Grubbing	LS	1		
06	8-01	TESC Plan	LS	1		
07	8-01	Stabilized Construction Entrance	SY	750		
08	8-01	Straw Wattles	LF	1,360		
09	8-01	Floating Turbidity Curtain	EA	1		
10	8-27	Wood Habitat Structure -Type 1	EA	25		
11	8-27	Wood Habitat Structure -Type 5	EA	6		
12	8-27	Wood Habitat Structure -Type 11	EA	13		
13	8-27	Wood Habitat Structure -Type 12	EA	18		
14	8-27	Wood Habitat Structure -Type 13	EA	16		
15	8-27	Wood Habitat Structure – BNSF Salvaged Logs	LS	1		
		WA State Sales Tax	8.4%	--	--	
		TOTAL OF ALL ESTIMATED BID PRICES (\$)	--	--	--	

TOTAL CONTRACT PRICE (NOT INCLUDING OWNER-OPTION ITEMS)

- 1 _____ (\$ _____)
 (use words) (use figures)
- 2 All specific cash allowances are included in the price(s) set forth above and have been computed in Accordance with paragraph 13.02 of the General Conditions.

OWNER-OPTION PRICE SCHEDULE

NO.	Spec	ITEM	UNIT	ESTIMATED QUANTITY	UNIT PRICE	TOTAL ESTIMATED PRICE
01	8-01	Native Riparian Seeding for Woody Graded Areas	AC	53.0		
		WA State Sales Tax	8.4%	--	--	
		TOTAL OF ALL OWNER-OPTION BID PRICES (\$)	--	--	--	

Proposer acknowledges that all estimated quantities are not guaranteed and are solely for the purpose of comparison of Proposals. Final payment for all Unit Price items will be based on actual quantities provided, determined as provided in the Contract Documents.

B-5 CONTRACT TIMES

5.01 Bidder agrees that the Work will not begin prior to the Start Time (August 26, 2019), and will be Completed and ready for final payment in accordance with paragraph 15.06 of the General Conditions on or before the dates indicated in the Agreement (October 18, 2019).

B-6 EXHIBITS

6.01 The following documents are attached to and made a condition of this Bid:

A. A list of Subcontractors and others required to be identified in this Bid.

1. Seeding subcontracted? YES NO

Seeding subcontractor(s):

2. Log transport subcontracted? YES NO

Log transport subcontractor(s):

3. Log installation subcontracted? YES NO

Type of work:

Subcontractor(s):

4. Other work subcontracted? YES NO

Type of work:

Subcontractor(s):

5. Other work subcontracted? YES NO

Type of work:

Subcontractor(s):

6. Other work subcontracted? YES NO

Type of work:

Subcontractor(s):

B-7 TERMINOLOGY

7.01 The terms used in this Bid, which are defined in the Standard General Conditions of the Construction Contract ("General Conditions") included as part of the Bidding Documents, have the meanings assigned to them in the General Conditions. Terms defined in the Request for Bid are used with the same meaning in this Bid.

B-8 REFERENCES

8.01 The Bidder authorizes the Owner to contact the following references to obtain information regarding the execution of similar projects completed within the past five years by the Bidder. For each reference, provide name of client/owner, name of project completed, client/owner contact person, contact phone number, location of project, and a brief description of work conducted.

Reference #1:

Project Name:

Location of Project:

Client/Owner Name:

Client/Owner Contact Name:

Client/Owner Contact Phone Number:

Brief Description of Work:

Reference #2:

Project Name:

Location of Project:

Client/Owner Name:

Client/Owner Contact Name:

Client/Owner Contact Phone Number:

Brief Description of Work:

Reference #3:

Project Name:

Location of Project:

Client/Owner Name:

Client/Owner Contact Name:

Client/Owner Contact Phone Number:

Brief Description of Work:

B-9 STATEMENT OF QUALIFICATIONS

Bidders shall attach a statement of qualifications (SOQ) to the Bid Form that addresses the requirements of Section 3.01.E of the Request for Bids (RFB). The intent of this SOQ, which should be a maximum of two-pages of text (additional photos and figures may be attached), is (1) to provide an opportunity for Bidders to convey information relating to their qualifications and experience that may not be available through references and to alleviate the burden of proof from their references; (2) to provide detail regarding the Bidder's proposed construction methods, especially as it relates to the installation of pier logs; and (3) to provide detail regarding the Bidder's diversity in demographics and efforts to develop a diverse work force. The Owner will use both the SOQ and information provided by references to evaluate Bids using the criteria outlined in Section 18.01 of the RFB.

B-10 SUBMISSION

Submitted On (day, month, year):

Washington Construction Contractors Board License Number:

If Bidder is an Individual:

Individual's Name:

Doing Business As:

Business Address:

Phone Number:

Email:

Individual's Signature:

If Bidder is a Partnership:

Firm Name:

Business Address:

Phone Number:

Email:

General Partner:

General Partner's Signature:

If Bidder is a Corporation:

Corporation Name:

State of Incorporation:

Date of Qualification to do business as a foreign (out of state) corporation in Washington (if applicable):

Business Address:

Phone Number:

Email:

Name of Person Authorized to Sign:

Title of Person Authorized to Sign:

Signature of Person Authorized to Sign:

Signature of Corporate Secretary Attesting:

If Bidder is a Joint Venture:

Bidder's Name:
Business Name:
Business Address:
Phone Number:
Email:

Bidder's Signature:

Bidder's Name:
Business Name:
Business Address:
Phone Number:
Email:

Bidder's Signature:

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is party to the joint venture should be in the manner indicated above.)

If Bidder is a Limited Liability Company:

Company Name:
Company Address:
Phone Number:
Email:
Printed Name of Member:

Signature of Member:



AGREEMENT

No. XX-2019

This Agreement dated as of _____, 2019 (the "Effective Date") is between the Lower Columbia Estuary Partnership ("Estuary Partnership," also "Owner"), an Oregon nonprofit corporation, and INSERT NAME ("Contractor"). This Agreement, together with any and all attachments hereto and the other Contract Documents (defined below and incorporated herein by this reference) (collectively, as integrated, the "Contract") shall govern the Work (as defined below) and the rights and obligations of the parties hereto.

TERMS & CONDITIONS

Owner and Contractor, in consideration of the mutual covenants hereafter set forth, agree as follows:

ARTICLE 1—THE WORK

- 1.01 The project consists of installation of woody habitat structures on the historic Gibbons Creek alluvial fan and floodplain channel per the attached Bidding Documents. All project actions are located on land within the Steigerwald Lake National Wildlife Refuge and owned by the U.S. Fish and Wildlife Service. Work consists of the following:
- A. Install traffic control measures for construction traffic entering/leaving SR 14;
 - B. Establish access, staging, and erosion control;
 - C. Perform seeding of areas disturbed during preparation of the site for native plantings, i.e., mowing, spraying, and disking performed by others;
 - D. Furnish and install wood habitat structures; and,
 - E. Incorporate Owner-furnished salvaged logs into the wood habitat structures.

ARTICLE 2—CONTRACT TIMES

2.01 Time of the Essence

- A. Time is of the essence with respect to all times and time limits stated for Substantial Completion, completion, readiness for Final Payment, and Milestones, if any.

2.02 Dates for Substantial Completion and Final Payment

- A. Contractor agrees that Work shall be initiated on-site during the Start Time (not earlier than August 26, 2019 and not later than September 5, 2019) and agrees that Contractor shall not mobilize equipment and materials on-site prior to Start Time. Contractor agrees that all In-Water Work shall be Substantially Complete by October 15, 2019 and all other Work shall be Substantially Complete by October 17, 2019, both in accordance with Paragraph 15.03 of the General Conditions. The Contractor agrees all Work shall be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before October 18, 2019. The Contractor agrees that the project window defined by Start Time and the end date of October 18, 2019, shall not be modified for any reason without written agreement between relevant parties.

2.03 Damages for Delay

- A. Owner and Contactor recognize that time is of the essence of this Contract and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 2.02.A above, plus any extensions thereof allowed in accordance with Paragraph 11.08 of the General Conditions (defined below). Contractor shall pay to Owner liquidated damages in the amount of \$500.00 (five hundred dollars) per day for every day after October 15, 2019 that the In-Water Work is not completed and ready for Final Payment in accordance with Paragraph 15.06 of the General Conditions. Contractor shall pay to Owner additional liquidated damages in the amount of \$100.00 (one hundred dollars) per day for every day after October 18, 2019 that the Work is not completed and ready for Final Payment in accordance with Paragraph 15.06 of the General Conditions.

ARTICLE 3—CONTRACT PRICE

- 3.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to the following:

Total Price for all Base Bid Items (no Owner-Option Work included):

INSERT AMOUNT	INSERT AMOUNT
Insert amount in words above.	Insert amount in numerals above.

Owner-Option Work, if any:

ITEM NO.	ITEM DESCRIPTION	UNIT	UNIT PRICE	QNTY	TOTAL
01	Native Riparian Seeding for Woody Graded Areas	AC.			
	WA State Sales Tax				

Total Price for all Owner-Option Work (no Base Bid Items included):

INSERT AMOUNT	INSERT AMOUNT
Insert amount in words above.	Insert amount in numerals above.

Total Contract Price (sum of all Base Bid and Owner-Option Work):

INSERT AMOUNT	INSERT AMOUNT
Insert amount in words above.	Insert amount in numerals above.

All specific cash allowances are included in the above prices and have been computed in accordance with the terms of the General Conditions.

ARTICLE 4—PAYMENT PROCEDURES

- 4.01 Final payment shall be made in accordance with Paragraph 15.06 of the General Conditions.
- A. Progress Payments; Retainage. Progress payments, if requested, shall be made in accordance with this Agreement and Paragraph 15.01 of the General Conditions, as modified by the Supplementary Conditions. Contractor may request progress payments for a portion of the Contract Price via an Application for Payment not more frequently than every 30 days during performance of the Work.

Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage approved by Engineer less 5% retainage but, in each case, less the aggregate of payments previously made and less amounts as Owner may withhold in accordance with Section 15.01.C of the General Conditions. There will be no payment for materials and equipment not incorporated in the Work.

Upon Substantial Completion, Owner shall make payment in an amount sufficient to increase total payments to Contractor to 95 percent of the Contract Price (with the balance being retainage), less such amounts as Owner may withhold in accordance with Section 15.01.C of the General Conditions.

ARTICLE 5—CONTRACTOR’S REPRESENTATIONS

5.01 Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Contract Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulatory Permit Conditions and other miscellaneous conditions of work that may affect cost, progress, and performance of the Work, including, but not limited to, the Project regulatory approvals provided in Exhibit 2 of the Bidding Documents.
- D. In addition to the Laws and Regulations, Regulatory Permit Conditions, and miscellaneous conditions of work referenced above, Contractor is aware that funding for this project is provided by the Washington State Department of Ecology (Ecology), and that the funder may impose certain employment and contracting requirements on contractors and subcontractors benefitting from these funds. Contractor agrees to abide by these requirements and all other applicable laws, regulations, and procedures, and to require its subcontractors, if any, to abide by these laws, regulations, and procedures. Contractor agrees to employ or otherwise hire only persons eligible to work in the United States and to comply with prevailing wage rates.
- E. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site that may affect cost, progress, or performance of the Work or that relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.
- F. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

- G. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, if any, and the written resolution thereof by Owner is acceptable to Contractor.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- I. Contractor acknowledges and agrees that Wolf Water Resources, Inc. is the “Engineer” for purposes of this Contract.
- J. Contractor acknowledges and agrees that the U.S. Fish and Wildlife Service is the “Agency” for purposes of this Contract.

ARTICLE 6—CONTRACT DOCUMENTS

- 6.01 The Contract Documents that comprise the entire Agreement between Owner and Contractor concerning the Work consist of the following, each of which is incorporated by this reference:
- A. This Agreement (pages 1 to 9, inclusive);
 - B. The Performance Bond, consisting of 3 pages;
 - C. The Payment Bond, consisting of 3 pages;
 - D. EJCDC C-700 Standard General Conditions of the Construction Contract (pages 1 to 70, inclusive) (the “General Conditions”);
 - E. Supplementary Conditions to the General Conditions (pages 1 to 13, inclusive);
 - F. Technical specifications bearing the title “Gibbons Creek Alluvial Fan Restoration, Washougal, Washington, Construction Specifications, Amendments and Special Provisions” (pages 1 to 57, inclusive);
 - G. Exhibit 1: Environmental and Natural Resources Laws, Remedies (2 pages);
Exhibit 2: Regulatory Permits (115 pages);
Exhibit 3: U.S. Fish and Wildlife Service (Agency) Conditions of Work (2 pages);
Exhibit 4: Site Photographs (pages 1 to 5, inclusive);
Exhibit 5:
 - Gibbons Creek Hydraulic and Sediment Transport Analysis (pages 1 to 75, inclusive);
 - Geotechnical Analysis: Steigerwald Levee Design – 100% Design Report (pages 1 to 254, inclusive);
 - Sediment Suitability Determination (pages 1 to 10, inclusive);

Exhibit 6: Final Design Plan Set (Contract Plans) consisting of 11 sheets numbered G1.0 to C6.7, with sheet G1.0 bearing the title "Gibbons Creek Alluvial Fan Restoration Project" and all subsequent sheets bearing the general title "Gibbons Creek Restoration Project";

- H. Contractor's Completed Bid Form, to the extent acceptable to Owner;
- I. Addenda numbers X to X, inclusive, consisting of X pages and X pages, respectively; and
- J. The following, if any, which may be delivered or issued after the Effective Date of the Contract and are not attached hereto to the extent that such amendment or supplement is agreed to by Owner and Contractor as evidenced by a written agreement signed by each party:

- Written Amendments,
- Change Orders,
- Work Change Directives,
- Notice to Proceed, and
- Other bonds as may be required.

- 6.02 The documents listed in Paragraph 6.01 above are attached to this Agreement (except as expressly noted otherwise above).
- 6.03 There are no Contract Documents other than those listed above in this Article 6. The Contract Documents may only be amended, modified, or supplemented as provided in Article 11 of the General Conditions.

ARTICLE 7—RELATIONSHIP OF PARTIES

- 7.01 Contractor and Owner understand and acknowledge the following:
 - A. (i) Neither Owner nor Contractor is the agent or partner of the other; (ii) this Contract shall not be construed as creating a joint venture between Owner and Contractor; (iii) neither Owner nor Contractor shall be responsible for the debts or obligations of the other; and (iv) neither Owner nor Contractor has the authority to bind or act on behalf of the other.
 - B. Contractor shall perform all required Work as an independent contractor. Although Owner reserves the right (i) to determine (and modify) the delivery schedule for the Work to be performed, and (ii) to evaluate the quality of the completed performance, Owner cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor shall be responsible for all federal, state, or other taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Owner will not withhold from such compensation or payments any amount(s) to cover Contractor's federal, state, or other tax obligations. Contractor is not eligible for any social security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

ARTICLE 8—MISCELLANEOUS

- 8.01 The Standard General Conditions of the Construction Contract are referred to herein as the General Conditions.

- 8.02 Terms used in this Contract that are defined in Article 1 of the General Conditions will have the meanings indicated therein.
- 8.03 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 8.04 Any provision or part of the Contract Documents held to be void or unenforceable under Laws and Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 8.05 Contractor shall maintain insurance and provide certificates of insurance to named additional insured as described in Article 5 of the General Conditions and as modified in the Supplementary Conditions.
- 8.06 Expiration or termination of this Contract shall not extinguish or prejudice Owner's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.
- 8.07 Contractor will not hold press conferences, issue press releases, or otherwise make public statements regarding this Contract or the Work, or release reports or make presentations without prior review and written approval from Owner. Any such activities as approved by Owner shall require the Contractor to indicate that the Work was made possible by Estuary Partnership.
- 8.08 Contractor's sole and exclusive remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by Owner, less previous amounts paid and any claim(s) which Owner has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall promptly pay any excess to Owner upon demand.
- 8.09 In the event of termination pursuant to Paragraph 16.02 of the General Conditions, without limitation, Owner shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Paragraph 16.02, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to Paragraph 16.03 of the General Conditions.
- 8.10 Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Owner expressly directs otherwise in such notice of termination. Upon termination of this Contract or at Owner request, Contractor shall deliver to Owner all documents, information, research, objects or other tangible components, works-in-progress, and other property that are or would be deliverables had the Work been completed.
- 8.11 Contractor will maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor will maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Owner and its duly authorized representatives will have access to such fiscal records and other

books, documents, papers, plans, and writings of Contractor to perform examinations and audits and make excerpts and transcripts. Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment or other termination of this Contract, whichever date is later.

- 8.12 Contractor agrees that it will not use this Contract to engage in lobbying the Federal Government or litigation against the United States.
- 8.13 With respect to any dispute relating to this Contract, or in the event that a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.
- 8.14 Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract, without Owner's prior written consent, which consent may be withheld in Owner's sole discretion. In addition to any other provisions Owner may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by the terms of this Contract as if the subcontractor were the Contractor. Owner's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 8.15 Owner and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 8.16 Any information provided by Owner is provided As-Is, Where-Is, without representation or warranty of any kind. WITHOUT LIMITATION, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE IS DISCLAIMED.

Information in the Contractor Block on the following page must be provided prior to Contract approval. This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer identification submitted. (See IRS 1099 or 1099-MISC for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to 31 percent backup withholding.

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on the signature page that follows is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) Contractor is a U.S. person (including a U.S. resident alien); (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the Contractor data on the following page are true and accurate.

OWNER:

Lower Columbia Estuary Partnership

By: _____

Name: Debrah Marriott

Title: Executive Director

Date: _____

Address for Giving Notices:

Finance Manager

Lower Columbia Estuary Partnership

811 SW Naito Parkway, Suite 410

Portland, OR 97204

Facsimile: (503) 226-1580

Designated Representative:

Name: Debrah Marriott

Title: Executive Director

Address: 811 SW Naito Parkway,

Suite 410

Portland, OR 97204

Phone: (503) 226-1565 Ext. 227

Facsimile: (503) 226-1580

E-mail address: dmarriott@estuarypartnership.org

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

Tax ID Number: _____

Business Designation (check one): [] Sole Proprietorship
[] Corporation [] Partnership [] Limited Partnership
[] Limited Liability Company
[] Limited Liability Partnership [] Other

Address for Giving Notices:

Facsimile: _____

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

E-mail address: _____

PERFORMANCE BOND

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

CONTRACTOR (*Name and Address*): SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

CONTRACT

Effective Date of Agreement:
Amount:
Description (*Name and Location*):

BOND

Bond Number:
Date (*Not earlier than Effective Date of Agreement*):
Amount:
Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal (Seal)

Surety's Name and Corporate Seal (Seal)

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.

1. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.
2. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 2.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
 - 2.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
 - 2.3 Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract; or
 2. Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.
3. When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:
 - 3.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
 - 3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
 2. Deny liability in whole or in part and notify Owner citing reasons therefor.
4. If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
5. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

- 5.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
- 5.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and
- 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.

6. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the 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 Owner or its heirs, executors, administrators, or successors.

7. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.

8. 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 years after Contractor Default or within two years after Contractor ceased working or within two years after 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.

9. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

10. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory 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.

11. Definitions.

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

FOR INFORMATION ONLY – <i>(Name, Address and Telephone)</i> Surety Agency or Broker: Owner's Representative <i>(Engineer or other party)</i> :
--

PAYMENT BOND

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

CONTRACTOR (*Name and Address*):

SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

CONTRACT

Effective Date of Agreement:

Amount:

Description (*Name and Location*):

BOND

Bond Number:

Date (*Not earlier than Effective Date of Agreement*):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal (Seal)

Surety's Name and Corporate Seal (Seal)

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. Reserved.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. 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.

10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. 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.

12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory 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.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. Definitions

15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms “labor, materials or equipment” that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

15.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract, or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – *(Name, Address, and Telephone)*

Surety Agency or Broker:

Owner’s Representative *(Engineer or other)*:

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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

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

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

- Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
 21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or

communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.

32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *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.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *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.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part

thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
 - a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

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

1.02 *Terminology*

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means 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, means 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, means to furnish and install said services, materials, or equipment complete and ready for intended use.

4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

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

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

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

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take

precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

- a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
- b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

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

3.05 *Reuse of Documents*

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

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. Abnormal weather conditions;
 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the

effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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

5.01 Availability of Lands

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

5.02 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise;

(b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

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

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
 - 2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
 - 3. Technical Data contained in such reports and drawings.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement

to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
- b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
- c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

- a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
- b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
- c. Contractor failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities.

Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;
 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written

statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

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

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;

2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the

required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party’s full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party’s obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. Owner’s liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner’s liability policies for any of Contractor’s obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker’s compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor’s liability policies) on each Subcontractor’s commercial general liability insurance policy; and

2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
 - I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
 - J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
 - K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.
 - L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
 - M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
 - N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 1. include at least the specific coverages required;
 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

4. apply with respect to the performance of the Work, whether such performance is 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; and
 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and
 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.

- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
 - 1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 - 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.

1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at

Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

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

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

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

7.05 "Or Equals"

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
 - b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an “or-equal” item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

- A. *Contractor’s Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in

Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or

otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner 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 will be disclosed in the Contract Documents.

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

7.09 *Permits*

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

7.10 *Taxes*

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

7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to

such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

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

7.12 *Record Documents*

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

7.13 *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.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any

of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. 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.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 Submittals

A. Shop Drawing and Sample Requirements

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

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

1. Shop Drawings

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

2. Samples

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer

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

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

C. Engineer's Review of Shop Drawings and Samples

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two

resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

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

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.

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

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
1. Observations by Engineer;
 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. Use or occupancy of the Work or any part thereof by Owner;
 5. Any review and approval of a Shop Drawing or Sample submittal;
 6. The issuance of a notice of acceptability by Engineer;
 7. The end of the correction period established in Paragraph 15.08;
 8. Any inspection, test, or approval by others; or
 9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity

directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.

- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

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

- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to 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.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be

set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.
- E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

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

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

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will 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 Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

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

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;

3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.
- B. If Owner has issued a Work Change Directive and:
1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving

the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
 - 1. A mutually acceptable fixed fee; or
 - 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;

- c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
- d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
- f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
 4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 - 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal

and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will 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 in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe

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

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which 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 will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
 - c. *Construction Equipment Rental*
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment,

machinery, or parts must cease when the use thereof is no longer necessary for the Work.

- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price (“changed Work”), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed 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 builder’s risk or other property insurance established in accordance with Paragraph 6.04), 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 include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor’s fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:
1. Payroll costs and other compensation of Contractor’s officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor’s principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor’s fee.

2. The cost of purchasing, renting, or furnishing small tools and hand tools.
3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
5. 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.
6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

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

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. *Adjustments in Unit Price*
 - 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

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

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

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

5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

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

14.03 *Defective Work*

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

14.04 *Acceptance of Defective Work*

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

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

14.05 *Uncovering Work*

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

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then

Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.

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

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 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, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

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

- c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. Reductions in Payment by Owner

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
- a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

- e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.

2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment

bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. 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. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. correct the defective repairs to the Site or such adjacent areas;
 2. correct such defective Work;
 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as

to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 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 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 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 are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 2. agree with the other party to submit the dispute to another dispute resolution process; or
 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

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

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be

as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC C-700 (2018 Edition) (the “General Conditions”). All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix “SC” added thereto.

SC-1.01 *Defined Terms*

Delete definition #22 in its entirety and insert the following in its place:

22. *Engineer*—Wolf Water Resources, Inc.

Delete definition #30 in its entirety and insert the following in its place:

30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract. The Owner of the Gibbons Creek Alluvial Fan Restoration Project is the Lower Columbia Estuary Partnership.

Delete definition #38 in its entirety and insert the following in its place:

38. *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 (including locations where Owner-supplied materials are staged) which are designated for the use of Contractor.

Delete definition #43 in its entirety and insert the following in its place:

43. *Successful Bidder*— The Bidder to which the Owner (on the basis of Owner’s evaluation, as provided in the Bidding Documents) makes an award of contract.

Add the following definitions at the end of the last paragraph:

51. *Agency* – U.S. Fish and Wildlife Service.

52. *Agency-Controlled Lands* – Lands owned by the Agency, or controlled by the Agency under lease or agreement, or under the jurisdiction and control of the Agency for the purpose of the Agreement.

53. *Start Time* – No earlier than August 26, 2019.

54. *Large Wood* – Used interchangeably with the terms ‘large woody debris’ (‘LWD’), ‘wood habitat structures’ (‘WHS’), ‘logs’, ‘rootwads’, ‘logs with rootwads’, ‘pilings’, ‘vertical snags’ (‘snags’), ‘pier log’, ‘keyed log’, ‘bank log’, ‘spanning log’, ‘footer log’ (‘footer’), ‘buried log’, ‘salvaged log’, and ‘large woody material’ (‘LWM’), which reference materials of construction, and may refer to these materials either alone or in any combination thereof.

55. *In-Water Work* – That portion of the Work that occurs below the ordinary high water line of any wetland, stream, or floodplain channel.

SC-2.01.B *Evidence of Insurance*

Delete Paragraph 2.01.B *Evidence of Contractor’s Insurance* in its entirety and insert the following in its place:

- B. Before any Work at the Site is started, Contractor shall deliver, with copies to each additional insured identified in paragraph SC-6.03.D.5 of the Supplementary Conditions, certificates of insurance (and other evidence of insurance the Owner may request) that the Contractor is required to purchase and maintain in accordance with Article 6 of the General Conditions as supplemented by these Supplementary Conditions.

SC-2.02 *Copies of Documents*

Delete Paragraph 2.02.A in its entirety and insert the following in its place:

- A. Owner shall furnish to Contractor one copy of the Final Design Plan Set and other Proposal Documents in electronic format. Printed copies will be furnished upon request at the cost of reproduction.

SC-2.03 *Before Starting Construction*

In the first line of paragraph 2.03A, delete “10 days after the Effective Date of the Contract” and replace with “At the pre-construction meeting”.

In the second line of paragraph 2.03.A, delete “Engineer” and replace with “Owner’s Project Representative”.

Add the following paragraph immediately after Paragraph 2.03.A.

- B. The Contract Time will commence on the Effective Date (as defined in the Agreement), but no work shall begin on the Site prior to the Start Time.

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

Delete Paragraph 2.04.A in its entirety and insert the following in its place:

- A. A pre-construction meeting shall be scheduled to occur no later than August 9, 2019. Attendees shall establish a working understanding as to the project design intent, materials requirements, construction approach and sequencing, approach to public safety and access, material sources, construction methods, and other aspects of Work; procedures for obtaining permits; procedures for handling Submittals; processing Applications for Payment; and the schedule of Work. Owner and Agency will attend the pre-construction meeting. The following representatives of Contractor shall be in attendance: Project Manager and On-site Superintendent. Contractor shall work with Owner and Agency to coordinate other attendees for the meeting.

SC-2.05 *Acceptance of Schedules*

Delete Paragraph 2.05.A in its entirety and insert the following in its place:

- A. At the pre-construction meeting, Contractor shall provide to Owner the preliminary schedule. Owner will notify Contractor of required changes or corrections to the preliminary schedule, and Contractor shall make said corrections. Contractor shall return corrected preliminary schedule to Owner within seven days of pre-construction meeting, at same time Contractor submits draft Construction Operations Plan.

SC-3.03 *Reporting and Resolving Discrepancies*

Add the following paragraphs immediately after Paragraph 3.03.B.1.

2. In the event of any conflict or inconsistency between any of the Proposal Documents, the conflict or inconsistency will be resolved by the Engineer and Owner.
3. Conflicts in Dimensioning - In case of conflict between dimensions shown on the Plans or detail drawing and those in the specifications, the dimensions on the Plans shall govern. If the conflict is other than dimensions, the specifications shall govern.

SC-4.02 *Starting the Work*

Delete Paragraph 4.02.A in its entirety and insert the following in its place:

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. The Contractor shall not begin work at the Site prior to the Start Time.

SC-4.03 *Reference Points*

Delete Paragraph 4.03.A in its entirety and insert the following in its place:

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. The Owner also shall complete the staking of the following project features: access routes, staging areas, and wood habitat structures. When staking the Work, the Owner and Engineer may make field-based adjustments to the layout as necessary to meet current site conditions and/or to accommodate Site planting and reforestation. All subsequent surveying needed for or incidental to the layout or construction staking shall be the responsibility of the Contractor. The Contractor shall provide additional stakes and markers as necessary to control the work and assure construction is in conformance with the plans and specifications, and as otherwise directed by the Engineer. Contractor shall protect and preserve the established reference points, property monuments, and stakes 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. Full compensation for conforming to the requirements of this section shall be considered as included in the prices paid for the various Contract items of work involved, and no additional compensation will be made therefore.
- B. The Contractor shall at all times limit work activities to areas within the project limits shown on the plans.

SC-4.05 *Delays in Contractor's Progress.*

Delete paragraph 4.05.C.3 in its entirety.

SC-5.01 *Availability of Lands*

Delete Paragraphs 5.01.A, 5.01.B, and 5.01.C in their entirety and insert the following in their place:

- A. The Contractor shall have no property rights in, or right of occupancy on, Agency-Controlled Land. Nor shall the Contractor have the right to sell, use, remove, or otherwise dispose of any material from Agency-Controlled Lands, areas, or property, except as specified in the Contract Documents or by the written authorization of the Agency.
- B. Unless otherwise authorized in the Contract Documents, the Contractor shall not disturb any material within Rights-of-Way without written authorization from the Engineer.
- C. Unless otherwise specified in the Contract Documents, the ownership of all materials originating on Agency-Controlled Lands will at all times vest in, and remain within control of, the Agency.

SC-5.03 *Subsurface and Physical Conditions*

Delete Paragraphs 5.03.A and 5.03.B in their entirety and insert the following in their place:

- A. Exhibit 5 of the Proposal Documents provides reports of subsurface conditions at or contiguous to the Site.

SC-5.06 *Hazardous Environmental Conditions*

Delete Paragraphs 5.06.A and 5.06.B in their entirety and insert the following in their place:

- A. Exhibit 5 provides sediment sampling results within and adjacent to the Site.

SC-6.02.G *Owner's Liability Insurance*

Delete Section 6.02.G *Owner's Liability Insurance* in its entirety.

SC-6.03 *Contractor's Insurance*

Add the following new paragraph immediately after Paragraph 6.03.C:

- D. The limits of liability for the insurance required by Paragraph 6.02.H.1 and Section 6.03 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 Section 6.03 of the General Conditions:
 - a. State: Statutory
 - b. Applicable Federal: Statutory
 - c. Employer's Liability: \$1,000,000
 - 2. Contractor's General Liability under Section 6.03 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

- a. General Aggregate \$1,000,000
 - b. Products – Completed Operations Aggregate \$2,000,000
 - c. Personal and Advertising Injury \$1,000,000
 - d. Each Occurrence
(Bodily Injury and Property Damage) \$1,000,000
 - e. Property Damage Liability Insurance will provide
Explosion, Collapse, and Under-ground coverages
where applicable.
 - f. Excess or Umbrella Liability
 - General Aggregate \$2,000,000
 - Each Occurrence \$1,000,000
3. Automobile Liability under Section 6.03 of the General Conditions:
- a. Bodily Injury:
 - Each Person \$1,000,000
 - Each Accident \$1,000,000
 - b. Property Damage: Each Accident \$1,000,000
 - c. Combined Single Limit of \$2,000,000
4. The Contractual Liability coverage required by Section 6.03 of the General Conditions shall provide coverage for not less than the following amounts:
- a. Bodily Injury:
 - Each Person \$1,000,000
 - Each Accident \$1,000,000
 - b. Property Damage:
 - Each Accident \$1,000,000
 - Annual Aggregate \$2,000,000
5. The following individuals or entities shall be listed on all indicated policies as additional insureds:
- a. U.S. Fish and Wildlife Service
 - b. Lower Columbia Estuary Partnership
 - c. Wolf Water Resources, Inc.

SC-6.04 Builder’s Risk and Other Property Insurance

Delete Section 6.04 *Builder’s Risk and Other Property Insurance* in its entirety.

SC-6.05 Property Losses; Subrogation

Delete Section 6.05 *Property Losses; Subrogation* in its entirety.

SC-6.06 Receipt and Application of Insurance Proceeds

Delete Section 6.06 *Receipt and Application of Insurance Proceeds* in its entirety.

SC-7.03C *Labor; Working Hours*

In the third line of Paragraph 7.03C, after the words "...during regular working hours," insert "(6:00 a.m. to 7:00 p.m.)".

SC-7.04 *Services, Materials, and Equipment*

Add the following new paragraph immediately after Paragraph 6.03.C:

D. The Owner shall provide approximately 90 salvaged logs (both with and without rootwads), which have been salvaged by Burlington Northern Santa Fe Railroad and transported to the Site by Agency. Contractor shall transport salvaged logs to installation locations and install as part of the Work, generally as shown in Exhibit 6. Contractor shall not cut, trim, or otherwise modify salvaged logs without advance written approval of Owner or Engineer.

SC-7.08 *Patent Fees and Royalties*

Delete the second sentence of Paragraph 7.08.A.

Delete Paragraph 7.08.B in its entirety.

Delete the phrase "not specified in the Contract Documents" from the eighth and ninth lines of Paragraph 7.08.C.

SC-7.09 *Permits*

Delete Paragraph 7.09.A in its entirety and insert the following in its place:

- A. The Contractor is solely responsible for complying with all terms and conditions of all federal, state, and local laws and regulations governing the Work, including, but not limited to, the regulatory approvals (permits) provided in Exhibit 2. The Contractor shall hold the Owner, Agency and Engineer harmless for any fines or sanctions caused by the Contractor's actions or inactions regarding compliance with laws, regulations, and permit conditions.
- B. All meetings with the regulatory agencies, and any federal, state or local authority shall be attended by both the Owner and the Contractor or their representatives.
- C. The Contractor shall immediately notify the Owner of any site visits by regulatory agencies, funding agencies, or any federal, state or local authority.
- D. The Contractor is advised that several regulatory permit approvals apply to the project and are being acquired by the Owner. Regulatory approvals received to date are included in Exhibit 2; other approvals are pending and will be provided when received. Regulatory approvals from the following agencies are outstanding but are required prior to initiating Work:
 - Clark County, Washington
 - U.S. Army Corps of Engineers
 - Washington Department of Ecology

Work shall not begin until all required permits are obtained.

- E. Contractor shall obtain and pay for all permits and licenses not obtained by Owner by the Effective Date of the Agreement. Contractor shall pay all governmental charges and application and inspection fees necessary for the prosecution of the Work that are applicable on the Effective Date of the Agreement.

SC-7.16 Submittals

Add the following new paragraph immediately after paragraph 7.16.A.3.

- 4. Contractor shall make the following submittals to Owner and Engineer for their evaluation consistent with the timing indicated below:

- a. **Construction Schedule**

At the pre-construction meeting, the Contractor shall submit to the Engineer a schedule illustrating the anticipated commencement date and duration of each of the major work tasks. The schedule shall address the phasing of construction in a manner that will provide good project coordination. The Contractor shall update or modify the written construction schedule as necessary to accurately reflect the rate and progress on the project.

- b. **Construction Operations Plan**

Seven (7) days after the pre-construction meeting, the Contractor shall submit to the Engineer a Construction Operations Plan (COP). The COP shall detail the Contractor’s approach to the project, including, but not limited to, access, staging, and stockpile considerations, plans for erosion and pollution control, fire plan, and other details related to the Contractor’s anticipated means and methods. The COP shall be reviewed by the Engineer and Owner and approved if it is deemed acceptable and complete. The Contractor shall not begin any of the Work until the Owner and Engineer have approved the COP.

- c. **Materials and Methods Submittals listed in the table below:**

The Contractor shall provide submittals for items including but not limited to:

Submittal	Required Timing and Description
Construction Operations Plan (COP)	No later than seven (7) days after pre-construction meeting. Approved COP required prior to beginning Work.
<u>Product Data/Samples/Certificates for:</u> Imported logs/large wood (including logs with root wads and pier logs) Seed mixes Fertilizer, mulch/straw, erosion control materials	Deliver at least three (3) weeks prior to installation. Approved submittal required prior to delivery of material to site or implementation of method.

SC-7.18 Indemnification

Delete Paragraph 7.18.A in its entirety and insert the following in its place:

- A. Contractor will defend, hold harmless, and indemnify Agency, Owner, and Engineer and the officers, directors, members, employees, agents, and other representatives of each and any of them from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses arising out of the acts of the Contractor and its officers, employees, contractors, agents, or other representatives in performing the Work.

Add the following new paragraph immediately after Paragraph 7.18.B:

- D. Contractor shall indemnify and hold harmless per Article 7.18 of the General Conditions the following named entities:
 - 1. U.S. Fish and Wildlife Service
 - 2. Lower Columbia Estuary Partnership
 - 3. Wolf Water Resources, Inc.

SC-8.01 *Other Work*

Delete the second sentence of Paragraph 8.01A in its entirety and insert the following in its place:

- A. Such other work may be performed by Owner's employees, Agency, or through contracts between the Owner and third parties.

Delete the first sentence of Paragraph 8.01B in its entirety and insert the following in its place:

- B. If Owner performs other work at or adjacent to the Site with Owner's employees, Agency, or through contracts for such other Work, then Owner shall give Contractor written notice thereof prior to starting any such other work.

SC-9.04 *Pay When Due*

Delete Paragraph 9.04.A in its entirety and insert the following in its place:

- A. Owner shall make payment(s) to Contractor as described in Article 4 of the Agreement, and in Paragraphs 15.01.D and 15.06.E of the General Conditions, as modified by the Supplementary Conditions.

SC-10.01 *Owner's Representative*

Delete Paragraph 10.01 in its entirety.

SC-10.03 *Owner's Project Representative*

Add the following new paragraphs immediately after Paragraph 10.03.B:

- C. The Owner's Project Representative (OPR) will be Owner's agent at the Site, will act as directed by and under the supervision of Owner, and will confer with Owner regarding OPR's actions. OPR's dealings in matters pertaining to the Work in general shall be with Owner, Engineer and Contractor. OPR's dealings with Subcontractors shall be through or with the full knowledge and approval of Contractor. The OPR shall:

1. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Agency, Owner, and Engineer concerning acceptability.
2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction meetings, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. *Liaison:*
 - a. Serve as Owner's liaison with Contractor, working principally through Contractor's authorized representative, assist in providing information regarding the intent of the Contract Documents.
 - b. Serve as Owner's liaison with Engineer.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
 - d. Assist Owner's coordination with Agency and other affected landowners, agencies, and stakeholders.
4. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
5. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor and notify Engineer of availability of Samples for examination.
6. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with OPR's recommendations, to Engineer. Transmit to Contractor, Agency, and Owner in writing decisions as issued by Engineer.
7. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever OPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that OPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
8. *Inspections, Tests, and System Startups:*

- a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof.
 - b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
9. *Records:*
- a. Record names and contact information of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
 - b. Maintain records for use in preparing Project documentation.
10. *Reports:*
- a. Furnish to Agency, Engineer, and Owner periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawings and Sample submittals.
 - b. Draft and recommend to Engineer and Owner proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - c. Immediately notify Agency, Owner, and Engineer of the occurrence of any Site accidents, emergencies, or the discovery of any Hazardous Environmental Condition.
11. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Owner, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
12. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
13. *Completion:*
- a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
 - b. Participate in a final inspection in the company of Engineer, Owner, Agency, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
 - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. The OPR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items) without consent or approval from the Owner or Engineer.
2. Exceed limitations of Owner’s authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor’s superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor’s work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

SC-13.01 *Cost of the Work*

Delete “superintendents” from the third line of Paragraph 13.01.B.1.

Add the following new sentence at the end of Paragraph 13.01.B.1:

Such employees shall not include superintendents and other management personnel above the rank of foreman.

Delete subparagraphs 13.01.B.5.a, 13.01.B.5.b, 13.01.B.5.g, 13.01.B.5.h, 13.01.B.5.i in their entirety.

In the first line of Paragraph 13.01.C.1, after the word “...officers,” add the word “superintendents,”.

Add the following new paragraphs immediately after Paragraph 13.01.C.7

8. Transportation, travel, and subsistence expenses of Contractor’s employees and those of any subcontractor.
9. Cost including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, whether or not consumed in the performance of the Work.
10. The cost of utilities, fuel and sanitary facilities at the site.
11. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, postage and similar petty cash items in connection with the Work.

SC-13.02 *Allowances*

Delete Section 13.02 *Allowances* in its entirety.

SC-15.01 *Progress Payments*

Delete Paragraph 15.01.A. *Basis for Progress Payments* in its entirety and insert the following in its place:

- A. Owner will estimate percent complete, which will serve as the basis for any progress payments.

Replace the first sentence of Subparagraph 15.01.B.1 with the following:

1. In accordance with the schedule specified in Article 4 of the Agreement, Contractor may 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.

Replace the word “Ten” in the first sentence of Subparagraph 15.01.D.1 with the word “Thirty.”

SC-15.08 *Correction Period*

In Paragraph 15.08.A, first line, change the word “Substantial” to “Final.”

SC-16.02 *Owner May Terminate for Cause*

Add the following new paragraphs immediately after Paragraph 16.02.A.4:

5. Contractor no longer holds necessary license or certificate that is required to perform the Work;
6. Estuary Partnership fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient, in its sole judgment, to pay for Contractor’s Work; or
7. Applicable Laws and Regulations are modified or interpreted in such a way that either the Work is prohibited or of less value, or Estuary Partnership is prohibited from paying for such Work from the planned funding source.

In the first line of Paragraph 16.02.B, after the word “...identified,” insert the words “in items 1 through 5 of”.

In the second line of Paragraph 16.02.B, delete the words “10 days”.

Insert the word “Immediately” at the beginning of Paragraph 16.02.B.1.

Insert the word “Immediately” at the beginning of Paragraph 16.02.B.2.

SC-16.04 *Contractor May Stop Work or Terminate*

Delete the following portion of the first sentence in Paragraph 16.04.A: “or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted,”.

SC-17.01 *Methods and Procedures*

Delete Paragraphs 17.01.A and 17.01.B in their entirety and insert the following in their place:

- A. The parties agree that all disputes relating to this Contract will be governed by and construed in accordance with the laws of the State of Washington without regard to principles of conflicts of law. Any claim, action, suit or proceeding relating to this Contract (collectively, a “Claim”) will be brought and conducted solely and exclusively within the Circuit Court of Clark County for the State

of Washington; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Washington. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SC-18.01 *Giving Notice*

Delete Subparagraphs 18.01.A.1 and 18.01.A.2 in their entirety and insert the following in their place:

1. Any notices to be given hereunder shall be given in writing by personal delivery, or mailing the same, postage prepaid, to Contractor or Owner at the address or number set forth on the signature page of the Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Paragraph. Any communication or notice so addressed and mailed Except as otherwise expressly provided in the Contract Documents shall be deemed to be given five days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Estuary Partnership, such facsimile transmission must be confirmed by telephone notice to Estuary Partnership's Finance Manager. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

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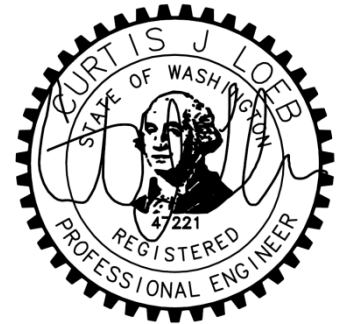


PORTLAND, OR

**GIBBONS CREEK ALLUVIAL FAN RESTORATION
WASHOUGAL, WASHINGTON**

**CONSTRUCTION SPECIFICATIONS
AMENDMENTS AND SPECIAL PROVISIONS**

**100% DESIGN
April 2019**



EXPIRES: 9/25/2019

PREPARED BY



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2 INTRODUCTION

3 The following Amendments and Special Provisions shall be used in conjunction with the 2018
4 Standard Specifications for Road, Bridge, and Municipal Construction.
5

6 AMENDMENTS TO THE STANDARD SPECIFICATIONS

7
8 The following Amendments to the Standard Specifications are made a part of this contract
9 and supersede any conflicting provisions of the Standard Specifications. For informational
10 purposes, the date following each Amendment title indicates the implementation date of the
11 Amendment or the latest date of revision.
12

13 Each Amendment contains all current revisions to the applicable section of the Standard
14 Specifications and may include references which do not apply to this particular project.
15

17 Section 8-01, Erosion Control and Water Pollution Control

18 April 2, 2018

19 8-01.1 Description

20 This section is revised to read:

21

22 This Work consists of furnishing, installing, maintaining, removing and disposing of best
23 management practices (BMPs), as defined in the Washington Administrative Code (WAC)
24 173-201A, to manage erosion and water quality in accordance with these Specifications
25 and as shown in the Plans or as designated by the Engineer.
26

27 The Owner may have a National Pollution Discharge Elimination System Construction
28 Stormwater General Permit (CSWGP) as identified in the Contract Special Provisions.
29 The Owner may or may not transfer coverage of the CSWGP to the Contractor when a
30 CSWGP has been obtained. The Owner may not have a CSWGP for the project but may
31 have another water quality related permit as identified in the Contract Special Provisions
32 or the Owner may not have water quality related permits but the project is subject to
33 applicable laws for the Work. Section 8-01 covers all of these conditions.
34

35 8-01.3(1) General

36 This section is revised to read:

37

38 Adaptive management shall be employed throughout the duration of the project for the
39 implementation of erosion and water pollution control permit requirements for the current
40 condition of the project site. The adaptive management includes the selection and
41 utilization of BMPs, scheduling of activities, prohibiting unacceptable practices,
42 implementing maintenance procedures, and other managerial practices that when used
43 singularly or in combination, prevent or reduce the release of pollutants to waters of the
44 State. The adaptive management shall use the means and methods identified in this
45 section and means and methods identified in the Washington State Department of
46 Transportation's Temporary Erosion and Sediment Control Manual or the Washington
47 State Department of Ecology's Stormwater Management Manuals for construction
48 stormwater.

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The Contractor shall install a high visibility fence along the site preservation lines shown in the Plans or as instructed by the Engineer.

Throughout the life of the project, the Contractor shall preserve and protect the delineated preservation area, acting immediately to repair or restore any fencing damaged or removed.

All discharges to surface waters shall comply with surface water quality standards as defined in Washington Administrative Code (WAC) Chapter 173-201A. All discharges to the ground shall comply with groundwater quality standards WAC Chapter 173-200.

The Contractor shall comply with the CSWGP when the project is covered by the CSWGP. Temporary Work, at a minimum, shall include the implementation of:

1. Sediment control measures prior to ground disturbing activities to ensure all discharges from construction areas receive treatment prior to discharging from the site.
2. Flow control measures to prevent erosive flows from developing.
3. Water management strategies and pollution prevention measures to prevent contamination of waters that will be discharged to surface waters or the ground.
4. Erosion control measures to stabilize erodible earth not being worked.
5. Maintenance of BMPs to ensure continued compliant performance.
6. Immediate corrective action if evidence suggests construction activity is not in compliance. Evidence includes sampling data, olfactory or visual evidence such as the presence of suspended sediment, turbidity, discoloration, or oil sheen in discharges.

To the degree possible, the Contractor shall coordinate this temporary Work with permanent drainage and erosion control Work the Contract requires.

Clearing, grubbing, excavation, borrow, or fill within the Right of Way shall never expose more erodible earth than as listed below:

Western Washington (West of the Cascade Mountain Crest)		Eastern Washington (East of the Cascade Mountain Crest)	
May 1 through September 30	17 Acres	April 1 through October 31	17 Acres
October 1 through April 30	5 Acres	November 1 through March 31	5 Acres

The Engineer may increase or decrease the limits based on project conditions.

1 Erodible earth is defined as any surface where soils, grindings, or other materials may be
 2 capable of being displaced and transported by rain, wind, or surface water runoff.
 3
 4 Erodible earth not being worked, whether at final grade or not, shall be covered within
 5 the specified time period (see the table below), using BMPs for erosion control.
 6

Western Washington (West of the Cascade Mountain Crest)		Eastern Washington (East of the Cascade Mountain Crest)	
October 1 through April 30	2 days maximum	October 1 through June 30	5 days maximum
May 1 to September 30	7 days maximum	November 1 through March 31	10 days maximum

7
 8 When applicable, the Contractor shall be responsible for all Work required for compliance
 9 with the CSWGP including annual permit fees.

10
 11 If the Engineer, under Section 1-08.6, orders the Work suspended, the Contractor shall
 12 continue to comply with this division during the suspension.

13
 14 Nothing in this Section shall relieve the Contractor from complying with other Contract
 15 requirements.

16
 17 **8-01.3(1)A Submittals**
 18 This section's content is deleted.

19
 20 This section is supplemented with the following new subsection:

21
 22 **8-01.3(1)A1 Temporary Erosion and Sediment Control**
 23 A Temporary Erosion and Sediment Control (TESC) plan consists of a narrative section
 24 and plan sheets that meets the Washington State Department of Ecology's Stormwater
 25 Pollution Prevention Plan (SWPPP) requirement in the CSWGP. Abbreviated TESC plans
 26 are not required to include plan sheets and are used on small projects that disturb soil
 27 and have the potential to discharge but are not covered by the CSWGP. The contract
 28 uses the term "TESC plan" to describe both TESC plans and abbreviated TESC plans.
 29 When the Owner has developed a TESC plan for a Contract, the narrative is included in
 30 the appendix to the Special Provisions and the TESC plan sheets, when required, are
 31 included in the Contract Plans. The Owner TESC plan will not include off-site areas used
 32 to directly support construction activity.

33
 34 The Contractor shall either adopt the TESC Plan in the Contract or develop a new TESC
 35 Plan. If the Contractor adopts the Owner TESC Plan, the Contractor shall modify the
 36 TESC Plan to meet the Contractor's schedule, method of construction, and to include off-
 37 site areas that will be used to directly support construction activity such as equipment
 38 staging yards, material storage areas, or borrow areas. Contractor TESC Plans shall
 39 include all high visibility fence delineation shown on the Owner Contract Plans. All TESC
 40 Plans shall meet the requirements of the current edition of the WSDOT Temporary
 41 Erosion and Sediment Control Manual M 3109 and be adaptively managed as needed
 42 throughout construction based on site inspections and discharge samples to maintain

1 compliance with the CSWGP. The Contractor shall develop a schedule for
2 implementation of the TESC work and incorporate it into the Contractor's progress
3 schedule.

4
5 The Contractor shall submit their TESC Plan (either the adopted plan or new plan) and
6 implementation schedule as Type 2 Working Drawings. At the request of the Engineer,
7 updated TESC Plans shall be submitted as Type 1 Working Drawings.
8

9 **8-01.3(1)C Water Management**

10 This section is supplemented with the following new subsections:

11

12 **8-01.3(1)C5 Water Management for In-Water Work Below Ordinary High**
13 **Water Mark (OHWM)**

14 Work over surface waters of the state (defined in WAC 173-201A-010) or below the
15 OHWM (defined in RCW 90.58.030) must comply with water quality standards for surface
16 waters of the state of Washington.
17

18

19 **8-01.3(1)C6 Environmentally Acceptable Hydraulic Fluid**

20 All equipment containing hydraulic fluid that extends from a bridge deck over surface
21 waters of the state or below the OHWM, shall be equipped with an environmentally
22 acceptable hydraulic fluid. The fluid shall meet specific requirements for biodegradability,
23 aquatic toxicity, and bioaccumulation in accordance with the United States Environmental
24 Protection Agency (EPA) publication EPA800-R-11-002. Acceptance shall be in
25 accordance with Section 1-06.3, Manufacturer's Certification of Compliance.

26

27 The designation of environmentally acceptable hydraulic fluid does not mean fluid spills
28 are acceptable. The Contractor shall respond to spills to land or water in accordance with
29 the Contract.

30

31 **8-01.3(1)C7 Turbidity Curtain**

32 All Work for the turbidity curtain shall be in accordance with the manufacturer's
33 recommendations for the site conditions. Removal procedures shall be developed and
34 used to minimize silt release and disturbance of silt. The Contractor shall submit a Type
35 2 Working Drawing, detailing product information, installation and removal procedures,
36 equipment and workforce needs, maintenance plans, and emergency repair/replacement
37 plans.

38

39 Turbidity curtain materials, installation, and maintenance shall be sufficient to comply with
40 water quality standards.

41

42 The Contractor shall notify the Engineer 10 days in advance of removing the turbidity
43 curtain. All components of the turbidity curtain shall be removed from the project.

44

45 **8-01.3(1)C1 Disposal of Dewatering Water**

46 This section is revised to read:

47

48 When uncontaminated groundwater is encountered in an excavation on a project it may
49 be infiltrated within vegetated areas of the right of way not designated as Sensitive Areas
50 or incorporated into an existing stormwater conveyance system at a rate that will not
51 cause erosion or flooding in any receiving surface water.

1 Alternatively, the Contractor may pursue independent disposal and treatment alternatives
2 that do not use the stormwater conveyance system provided it is in compliance with the
3 applicable WACs and permits.
4

5 **8-01.3(1)C2 Process Wastewater**

6 This section is revised to read:
7

8 Wastewater generated on-site as a byproduct of a construction process shall not be
9 discharged to surface waters of the State. Some sources of process wastewater may be
10 infiltrated in accordance with the CSWGP with concurrence from the Engineer. Some
11 sources of process wastewater may be disposed via independent disposal and treatment
12 alternatives in compliance with the applicable WACs and permits.
13
14

15 **8-01.3(1)C4 Management of Off-Site Water**

16 This section is revised to read:
17

18 Prior to clearing and grubbing, the Contractor shall intercept all sources of off-site surface
19 water and overland flow that will run-on to the project. Off-site surface water run-on shall
20 be diverted through or around the project in a way that does not introduce construction
21 related pollution. It shall be diverted to its preconstruction discharge location in a manner
22 that does not increase preconstruction flow rate and velocity and protects contiguous
23 properties and waterways from erosion. The Contractor shall submit a Type 2 Working
24 Drawing consisting of the method for performing this Work.
25

26 **8-01.3(1)E Detention/Retention Pond Construction**

27 This section is revised to read:
28

29 Whether permanent or temporary, ponds shall be constructed before beginning other
30 grading and excavation Work in the area that drains into that pond. Detention/retention
31 ponds may be constructed concurrently with grading and excavation when allowed by the
32 Engineer. Temporary conveyances shall be installed concurrently with grading in
33 accordance with the TESC Plan so that newly graded areas drain to the pond as they are
34 exposed.
35

36 **8-01.3(2)F Dates for Application of Final Seed, Fertilizer, and Mulch**

37 In the table, the second column heading is revised to read:
38

39 **Eastern Washington¹** 40 **(East of the Cascade Mountain Crest)**

41 Footnote 1 in the table is revised to read:
42

43 Seeding may be allowed outside these dates when allowed or directed by the Engineer.
44
45

46 **8-01.3(5) Plastic Covering**

47 The first sentence of the first paragraph is revised to read:
48

49 **Erosion Control** – Plastic coverings used to temporarily cover stockpiled materials,
50 slopes or bare soils shall be installed and maintained in a way that prevents water from
51 intruding under the plastic and prevents the plastic cover from being damaged by wind.

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8-01.3(7) Stabilized Construction Entrance

The first paragraph is revised to read:

Temporary stabilized construction entrance shall be constructed in accordance with the *Standard Plans*, prior to construction vehicles entering the roadway from locations that generate sediment track out on the roadway. Material used for stabilized construction entrance shall be free of extraneous materials that may cause or contribute to track out.

8-01.3(8) Street Cleaning

This section is revised to read:

Self-propelled pickup street sweepers shall be used to remove and collect dirt and other debris from the Roadway. The street sweeper shall effectively collect these materials and prevent them from being washed or blown off the Roadway or into waters of the State. Street sweepers shall not generate fugitive dust and shall be designed and operated in compliance with applicable air quality standards. Material collected by the street sweeper shall be disposed of in accordance with Section 2-03.3(7)C.

When allowed by the Engineer, power broom sweepers may be used in non-environmentally sensitive areas. The broom sweeper shall sweep dirt and other debris from the roadway into the work area. The swept material shall be prevented from entering or washing into waters of the State.

Street washing with water will require the concurrence of the Engineer.

8-01.3(12) Compost Socks

The first two sentences of the first paragraph are revised to read:

Compost socks are used to disperse flow and sediment. Compost socks shall be installed as soon as construction will allow but before flow conditions create erosive flows or discharges from the site. Compost socks shall be installed prior to any mulching or compost placement.

8-01.3(13) Temporary Curb

The second to last sentence of the second paragraph is revised to read:

Temporary curbs shall be a minimum of 4 inches in height.

8-01.3(14) Temporary Pipe Slope Drain

The third and fourth paragraphs are revised to read:

The pipe fittings shall be water tight and the pipe secured to the slope with metal posts, wood stakes, sand bags, or as allowed by the Engineer.

The water shall be discharged to a stabilized conveyance, sediment trap, stormwater pond, rock splash pad, or vegetated strip, in a manner to prevent erosion and maintain water quality compliance.

The last paragraph is deleted.

1 **8-01.3(15) Maintenance**

2 This section is revised to read:

3
4 Erosion and sediment control BMPs shall be maintained or adaptively managed as
5 required by the CSWGP until the Engineer determines they are no longer needed. When
6 deficiencies in functional performance are identified, the deficiencies shall be rectified
7 immediately.

8
9 The BMPs shall be inspected on the schedule outlined in Section 8-01.3(1)B for damage
10 and sediment deposits. Damage to or undercutting of BMPs shall be repaired
11 immediately.

12
13 In areas where the Contractor's activities have compromised the erosion control functions
14 of the existing grasses, the Contractor shall overseed at no additional cost to the Owner.

15
16 The quarry spalls of construction entrances shall be refreshed, replaced, or screened to
17 maintain voids between the spalls for collecting mud and dirt.

18
19 Unless otherwise specified, when the depth of accumulated sediment and debris reaches
20 approximately $\frac{1}{3}$ the height of the BMP the deposits shall be removed. Debris or
21 contaminated sediment shall be disposed of in accordance with Section 2-03.3(7)C.
22 Clean sediments may be stabilized on-site using BMPs as allowed by the Engineer.

23
24 **8-01.3(16) Removal**

25 This section is revised to read:

26
27 The Contractor shall remove all temporary BMPs, all associated hardware and
28 associated accumulated sediment deposition from the project limits prior to Physical
29 Completion unless otherwise allowed by the Engineer. When the temporary BMP
30 materials are made of natural plant fibers unaltered by synthetic materials the Engineer
31 may allow leaving the BMP in place.

32
33 The Contractor shall remove BMPs and associated hardware in a way that minimizes soil
34 disturbance. The Contractor shall permanently stabilize all bare and disturbed soil after
35 removal of BMPs. If the installation and use of the erosion control BMPs have compacted
36 or otherwise rendered the soil inhospitable to plant growth, such as construction
37 entrances, the Contractor shall take measures to rehabilitate the soil to facilitate plant
38 growth. This may include, but is not limited to, ripping the soil, incorporating soil
39 amendments, or seeding with the specified seed.

40
41 At the request of the Contractor and at the sole discretion of the Engineer the CSWGP
42 may be transferred back to the Owner. Approval of the Transfer of Coverage request will
43 require the following:

- 44
45 1. All other Work required for Contract Completion has been completed.
46
47 2. All Work required for compliance with the CSWGP has been completed to the
48 maximum extent possible. This includes removal of BMPs that are no longer
49 needed and the site has undergone all Stabilization identified for meeting the
50 requirements of Final Stabilization in the CSWGP.
51

- 1 3. An Equitable Adjustment change order for the cost of Work that has not been
2 completed by the Contractor.
3
4 4. Submittal of the Washington State Department of Ecology Transfer of Coverage
5 form (Ecology form ECY 020-87a) to the Engineer.
6

7 If the Engineer approves the transfer of coverage back to the Owner, the requirement in
8 Section 1-07.5(3) for the Contractor’s submittal of the Notice of Termination form to the
9 Washington State Department of Ecology will not apply.

10
11 **8-01.4 Measurement**

12 This section’s content is deleted and replaced with the following new subsections:
13

14 **8-01.4(1) Lump Sum Bid for Project (No Unit Items)**

15 When the Bid Proposal contains the item “Erosion Control and Water Pollution
16 Prevention” there will be no measurement of unit or force account items for Work defined
17 in Section 8-01 except as described in Sections 8-01.4(3) and 8-01.4(4). Also, except as
18 described in Section 8-01.4(3), all of Sections 8-01.4(2) and 8-01.5(2) are deleted.
19

20 **8-01.4(2) Item Bids**

21 When the Proposal does not contain the items “Erosion Control and Water Pollution
22 Prevention”, Section 8-01.4(1) and 8-01.5(1) are deleted and the Bid Proposal will contain
23 some or all of the following items measured as noted.
24

25 ESC lead will be measured per day for each day that an inspection is made and a
26 report is filed.

27
28 Biodegradable erosion control blanket and plastic covering will be measured by the
29 square yard along the ground slope line of surface area covered and accepted.
30

31 Check dams will be measured per linear foot one time only along the ground line of
32 the completed check dam. No additional measurement will be made for check dams
33 that are required to be rehabilitated or replaced due to wear.
34

35 Stabilized construction entrances will be measured by the square yard by ground
36 slope measurement for each entrance constructed.
37

38 Tire wash facilities will be measured per each for each tire wash installed.
39

40 Street cleaning will be measured by the hour for the actual time spent cleaning
41 pavement, refilling with water, dumping and transport to and from cleaning locations
42 within the project limits, as authorized by the Engineer. Time to mobilize the
43 equipment to or from the project limits on which street cleaning is required will not
44 be measured.
45

46 Inlet protections will be measured per each for each initial installation at a
47 drainage structure.
48

49 Silt fence, gravel filter, compost berms, and wood chip berms will be measured by
50 the linear foot along the ground line of the completed barrier.
51

1 Wattles and compost socks will be measured by the linear foot.
2
3 Temporary curbs will be measured by the linear foot along the ground line of the
4 completed installation.
5
6 Temporary pipe slope drains will be measured by the linear foot along the flow line
7 of the pipe.
8
9 Coir logs will be measured by the linear foot along the ground line of the completed
10 installation.
11
12 Outlet protections will be measured per each initial installation at an outlet location.
13
14 Tackifiers will be measure by the acre by ground slope measurement.
15

16 **8-01.4(3) Reinstating Unit Items with Lump Sum Erosion Control and**
17 **Water Pollution Prevention**

18 The Contract Provisions may establish the project as lump sum, in accordance with
19 Section 8-01.4(1) and also include one or more of the items included above in Section 8-
20 01.4(2). When that occurs, the corresponding measurement provision in Section 8-
21 01.4(2) is not deleted and the Work under that item will be measured as specified.
22

23 **8-01.4(4) Items not included with Lump Sum Erosion Control and Water**
24 **Pollution Prevention**

25 Compost blanket will be measured by the square yard by ground slope surface area
26 covered and accepted.
27
28 Mulching will be measured by the acre by ground slope surface area covered and
29 accepted.
30
31 Seeding, fertilizing, liming, mulching, and mowing, will be measured by the acre by
32 ground slope measurement.
33
34 Seeding and fertilizing by hand will be measured by the square yard by ground slope
35 measurement. No adjustment in area size will be made for the vegetation free zone
36 around each plant.
37
38 Fencing will be measured by the linear foot along the ground line of the completed fence.
39

40 **8-01.5 Payment**

41 This section's content is deleted and replaced with the following new subsections:
42

43 **8-01.5(1) Lump Sum Bid for Project (No Unit Items)**

44 Payment will be made for the following Bid item when it is included in the Proposal:
45

46 "Erosion Control and Water Pollution Prevention", lump sum.
47

48 The lump sum Contract price for "Erosion Control and Water Pollution Prevention"
49 shall be full pay to perform the Work as described in Section 8-01 except for costs
50 compensated by Bid Proposal items inserted through Contract Provisions as

1 described in Section 8-01.4(2). Progress payments for the lump sum item “Erosion
2 Control and Water Pollution Prevention” will be made as follows:
3

- 4 1. The Owner will pay 15 percent of the bid amount for the initial set up for the
5 item. Initial set up includes the following:
6
7 a. Acceptance of the TESC Plan provided by the Owner or submittal of a
8 new TESC Plan,
9
10 b. Submittal of a schedule for the installation of the BMPs, and
11
12 c. Identifying water quality sampling locations.
13
14 2. 70 percent of the bid amount will be paid in accordance with Section 1-09.9.
15
16 3. Once the project is physically complete and copies of the all reports
17 submitted to the Washington State Department of Ecology have been
18 submitted to the Engineer, and, if applicable, transference of the CSWGP
19 back to the Owner is complete, the remaining 15 percent of the bid amount
20 shall be paid in accordance with Section 1-09.9.
21

22 **8-01.5(2) Item Bids**

23 “ESC Lead”, per day.

24
25 “Turbidity Curtain”, per linear foot.

26
27 “Biodegradable Erosion Control Blanket”, per square yard.

28
29 “Plastic Covering”, per square yard.

30
31 “Check Dam”, per linear foot.

32
33 “Inlet Protection”, per each.

34
35 “Gravel Filter Berm”, per linear foot.

36
37 “Stabilized Construction Entrance”, per square yard.

38
39 “Street Cleaning”, per hour.

40
41 “Silt Fence”, per linear foot.

42
43 “Wood Chip Berm”, per linear foot.

44
45 “Compost Berm”, per linear foot.

46
47 “Wattle”, per linear foot.

48
49 “Compost Sock”, per linear foot.

50
51 “Coir Log”, per linear foot.

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“Temporary Curb”, per linear foot.

“Temporary Pipe Slope Drain”, per linear foot.

“Temporary Seeding”, per acre.

“Outlet Protection”, per each.

“Tackifier”, per acre.

“Erosion/Water Pollution Control”, by force account as provided in Section 1-09.6.

Maintenance and removal of erosion and water pollution control devices including removal and disposal of sediment, stabilization and rehabilitation of soil disturbed by these activities, and any additional Work deemed necessary by the Engineer to control erosion and water pollution will be paid by force account in accordance with Section 1-09.6.

To provide a common Proposal for all Bidders, the Owner has entered an amount in the Proposal to become a part of the Contractor’s total Bid.

8-01.5(3) Reinstating Unit Items with Lump Sum Erosion Control and Water Pollution Prevention

The Contract may establish the project as lump sum, in accordance with Section 8-01.4(1) and also reinstate the measurement of one or more of the items described in Section 8-01.4(2), except for Erosion/Water Pollution Control, by force account. When that occurs, the corresponding payment provision in Section 8-01.5(2) is not deleted and the Work under that item will be paid as specified.

8-01.5(4) Items not included with Lump Sum Erosion Control and Water Pollution Prevention

Payment will be made for each of the following Bid items when they are included in the Proposal:

“Compost Blanket”, per square yard.

“Mulching”, per acre

“Mulching with PAM”, per acre

“Mulching with Short-Term Mulch”, per acre.

“Mulching with Moderate-Term Mulch”, per acre.

“Mulching with Long-Term Mulch”, per acre.

“Seeding, Fertilizing and Mulching”, per acre.

“Seeding and Fertilizing”, per acre.

- 1 "Seeding and Fertilizing by Hand", per square yard.
- 2
- 3 "Second Application of Fertilizer", per acre.
- 4
- 5 "Liming", per acre.
- 6
- 7 "Mowing", per acre.
- 8
- 9 "Seeding and Mulching", per acre.
- 10
- 11 "High Visibility Fence", per linear foot.
- 12

1

2 INTRODUCTION TO THE SPECIAL PROVISIONS

3

4 The following Special Provisions are made a part of this contract and supersede any
5 conflicting provisions of the 2016 Standard Specifications for Road, Bridge and Municipal
6 Construction, and the foregoing Amendments to the Standard Specifications.

7

8 Several types of Special Provisions are included in this contract; General, Region, Bridges
9 and Structures, and Project Specific. Special Provisions types are differentiated as follows:

10

- 11 (date) General Special Provision
- 12 (*****) Notes a revision to a General Special Provision and also notes a
13 Project Specific Special Provision.
- 14 (Regions¹ date) Region Special Provision
- 15 (BSP date) Bridges and Structures Special Provision

16

17 **General Special Provisions** are similar to Standard Specifications in that they typically
18 apply to many projects, usually in more than one Region. Usually, the only difference from
19 one project to another is the inclusion of variable project data, inserted as a “fill-in”.

20

21 **Region Special Provisions** are commonly applicable within the designated Region. Region
22 designations are as follows:

23

- 24 Regions¹
- 25 ER Eastern Region
- 26 NCR North Central Region
- 27 NWR Northwest Region
- 28 OR Olympic Region
- 29 SCR South Central Region
- 30 SWR Southwest Region
- 31
- 32 WSF Washington State Ferries Division

33

34 **Bridges and Structures Special Provisions** are similar to Standard Specifications in that
35 they typically apply to many projects, usually in more than one Region. Usually, the only
36 difference from one project to another is the inclusion of variable project data, inserted as a
37 “fill-in”.

38

39 **Project Specific Special Provisions** normally appear only in the contract for which they
40 were developed.

41

1 **Division 2**
2 **Earthwork**

3
4 **2-01 Clearing, Grubbing, and Roadside Cleanup**

5 **Division 2: 2-01 – Clearing, Grubbing, and Cleanup**

6 2-01.1 Description

7
8 Section 2-01.1 is supplemented with the following:

9
10 (March 13, 1995)

11 Clearing and grubbing on this project shall be performed within the following limits:

12
13 **As shown on the Plans.**

14 (*****)

15 Add the following:

16 “Stripping” means removal and satisfactory disposal of crops, weeds, grass, and other
17 vegetative materials to the ground surface and topsoil to a depth of 6 to 12 inches.

18
19 2-01.3 Construction Requirements

20 2-01.3(1) Clearing

21 (*****)

22 Add the following:

23 8. Follow these requirements for all tree and rootball removal that are within 5 feet
24 from the top, side, or end surface of the levee embankment:

- 25 a. Remove all trees with rootwads intact, stumps, rootballs and roots to a
26 minimum depth of 3 feet below grade. Salvage logs and Slash according
27 to Section 8-27 Wood Habitat Structures.
- 28 b. Trimming of stumps is not allowed within the levee embankment zone.
- 29 c. Backfill all depressions resulting from clearing operations using Setback
30 Levee Material and compaction meeting the requirements of the Special
31 Provision Section 2-03.4(14)C – Compacting Earth Embankments.

32
33 9. Follow these requirements for all tree removal that is within 1 feet from the top, side,
34 or end surface of the Expanded Habitat Areas and Upland Habitat Refugia Areas:

- 35 a. Remove all trees with rootwads intact to be used as Expanded Habitat Wood
36 and Slash per Section 8-27 Wood Habitat Structures.

37
38 2-01.3(2) Grubbing

39 (*****)

40 Add the following:

41 3. Grub levee embankment footprint in the following manner:

- 42 a. Grub deep enough to remove all topsoil, sod, shrubs, stumps, large roots
43 greater than 1 ½ inch diameter, buried logs, and other vegetative material.
- 44 b. Stumps and roots greater than 1 ½ inch diameter, buried logs and other
45 woody debris should be grubbed a minimum of three feet below the new
46 levee embankment.

- 1 c. Reuse topsoil meeting Topsoil Type D requirements on new levee and new
2 fill areas.
3 d. Backfill all depressions resulting from grubbing operations using Setback
4 Levee Material and compaction meeting the requirements of Section 2-
5 03.3(14)C – Compacting Earth Embankments.

6
7 2-01.5 Payment
8 (*****)

9 Replace the first two sentences with the following:
10 Payment will be made for the following Bid items when they are included in the
11 Proposal:
12 “Clearing and Grubbing”, per acre or lump sum.

13
14 Salvaging logs and slash is considered incidental to Clearing, Grubbing, and Roadside
15 Cleanup.

16
17 **2-01.3 Construction Requirements**

18
19 (*****)

20
21 Section 2-01.3 is supplemented with the following:
22 The Contractor shall salvage and stockpile suitable woody debris from within the
23 limits of clearing for the purpose of constructing Wood Habitat Structures throughout
24 the project limits. Salvaged woody debris shall be used in expanded habitat areas
25 and Gibbons Creek Alluvial Fan only and not used in channel locations. Rootwads
26 shall remain intact during removal, transport, and stockpiling. See Special Provision
27 **8-27 WOOD HABITAT STRUCTURES.**

28
29 **Salvaged logs:** logs salvaged during onsite clearing and grubbing shall be used the
30 Expanded Habitat areas, subject to approval from the OPR and Engineer. Salvaged
31 onsite logs shall not be subject to species, size, or length requirements of Keyed,
32 Footer, Floodplain, Buried and Pier Logs.

33
34

35 **Division 8**
36 **Miscellaneous Construction**

37
38 **8-01 Erosion Control and Water Pollution Control**

39
40 **8-01.3 Construction Requirements**

41
42 **8-01.3(2) Seeding, Fertilizing and Mulching**

43
44 **8-01.3(2)A Preparation For Application**
45 Section 8-01.3(2)A is supplemented with the following:
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(*****)
Permanent seeding shall not occur until topsoil have been applied as shown in the Plans, slopes walked, and the seeding areas free from all undesirable vegetation, removal of temporary BMP's including, but not limited to, erosion control blankets, temporary seed, or thick mulch, thatch or other vegetative debris, and repair and removal of rills, ruts, and other surficial erosion marks, trash and other obstructions that could interfere with the application and establishment of seed and fertilizer. Existing natural debris such as fallen logs or branches may remain where designated by the Engineer.

All stockpiles and construction debris shall be removed from temporary stockpile sites, staging areas, and construction access areas, and those areas restored to original grade including the filling of any tire ruts and tilling of compacted soil prior to seeding operations.

8-01.3(2)B Seeding and Fertilizing

Section 8-01.3(2)B is supplemented with the following:

(*****)
Seeding, fertilizing, and mulching shall be applied from two directions so as to provide a complete and uniform cover over the entire seeding area. Bare or thin areas, as determined by the Engineer, shall be reseeded, fertilized, and mulched at no additional cost to the Owner. Hydroseed operations will require the use of hoses capable of applying material on slopes and on both sides of track marks to provide the specified cover.

The Engineer shall observe and verify the correct rate of seed, fertilizer, and mulch for each load prior to application. Loads not verified prior to application shall not be measured or paid for by the Owner.

Seeding and Fertilizing – Seed Mixes

Grass seed, of the following compositions, proportion, and quality shall be hydraulically applied at the specified rates of pure live seed per acre as shown below on all areas requiring permanent erosion control seeding within the project limits.

Native Riparian Seed Mix:

Kind and Variety of Seed in Mixture by Common Name and <u>(Botanical name)</u>	<u>Pounds Pure Live Seed (PLS) Per Acre</u>
Blue Wildrye (<i>Elymus glaucus</i>)	25.1
California Brome (<i>Bromus carinatus</i>)	4.3
Meadow Barley (<i>Hordeum brachyantherum</i>)	11.0
Agrostis exarata (<i>Spike Bentgrass</i>)	1.2

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Deschampsia cespitosa (Tufted Hairgrass)	2.4
Alnus rubra (Red Alder)	<u>0.001</u>
Total	44.0

Source Identified seed shall be generation four or less. Non-Source Identified seed shall meet or exceed Washington State Department of Agriculture Certified Seed Standards and be from within the appropriate genetic zones of the *** Willamette Valley or Cascades *** Ecoregion(s) as defined by the US Environmental Protection Agency (EPA).

The seed certification class shall be Certified (blue tag) in accordance with WAC 16-302 and meet the following requirements:

Prohibited Weed	0% max.
Noxious Weed	0% max.
Other Weed	0.20% max.
Other Crop	0.40% max.

The Contractor shall document all Source Identified seed by providing the Association of Official Seed Certifying Agents (AOSCA) yellow seed label for each species in the mix. Site Identification Logs can be supplied for collections where the AOSCA yellow label is not available.

Based on the certified testing results required by 9-14.2 of the Standard Specifications, the actual pounds of each grass species applied shall be adjusted so as to provide the specified pounds of PLS per species per acre.

Seeds shall be certified "Weed Free," indicating there are no noxious or nuisance weeds in the seed.

Fertilizing

Fertilizer must organic and must be a pelleted or granular form and shall be one of the following products:

Fertilizer

Products	Guaranteed Chemical Analysis (N-P-K)(%)	Company
Biosol Forte™	7-2-1	Rocky Mountain Bioproducts Edwards, CO
Fertil-Fibers™	6-4-1	Quattro Environmental Coronado, CA
Phyta-Grow Leafy Green Special™	7-1-2	California Organic Fertilizers Inc. Fresno, CA
Approved Equal*	N: 6 to 7 P: 1 to 4 K: 1 to 2	_____

*Approved equal must be within the ranges shown for N-P-K. The cumulative N release rate must be no more than 70 percent the first 70 days after incubation (86° F) with 100 percent at 350 days or more.

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All fertilizers shall be furnished in standard unopened containers with weight, name of plant nutrients, and manufacturer's guaranteed statement of analysis clearly marked, all in accordance with State and Federal laws.

Fertilizer shall be applied at the rate of 1800 pounds per acre. The fertilizer formulation shall be approved by the Engineer before use.

(*****)

Add the following section:

8-01.3(9)C Floating Turbidity Curtain

Additional work required for pollution control on this project includes installation of a Type II Turbidity Curtain in the locations indicated on the plans. The turbidity curtain shall be installed prior to beginning construction and maintained in working order for the duration of construction according to the manufacturers specifications.

8-01.5 Payment

Section 8-01.5 is supplemented with the following:

(*****)

"TESC Plan", Lump Sum
"Floating Turbidity Curtain", EA

8-27 Wood Habitat Structures

1 **8-27.1 Description**

2 Work consists of placing wood habitat structures (WHSs) in accordance the Plans and these
3 Special Provisions.

4
5 This work also includes construction of scour pools in the vicinity of WHSs shown on the
6 Plans.

7
8 **8-27.2 Materials**

9 Logs with and without rootwads shall consist of the following:
10

- 11 • Logs without rootwads shall be Douglas fir or Western Red Cedar, full length logs as
12 shown on the Plans.
- 13 • Logs with rootwads shall be Douglas fir or Western Red Cedar, full length logs, and
14 have rootwad intact unless otherwise shown on the Plans.
- 15 • Log sourcing shall be the Contractor’s responsibility unless agreed upon by the OPR
16 and Engineer prior to delivery to the site.
- 17 • Contractor is responsible for haul and transport of logs to the site.
- 18 • Multiple WHS log types, such as pier logs, may be generated from a single imported
19 log.
- 20 • Logs used shall be in the numbers and sizes specified in the Log Summary Table
21 Below.

22
23 Salvaged Logs, also referred to as Expanded Habitat Wood shall consist of the following:

- 24 • **During clearing activities:** salvage large logs for reuse in the Expanded Habitats
25 areas and Gibbons Creek from stations 53+98 to 45+00 as habitat wood. These logs
26 shall have their rootwads intact and be a minimum 6-inch diameter at breast height
27 (DBH). Salvaged logs shall be a minimum of 25 feet and maximum of 80 feet in
28 length from the base of the rootwad to the tip of the trunk. Logs shall be limbed and
29 may be with or without bark.
- 30
31 • **Slash:** Logs and tree limbs smaller than 6 inch DBH shall be reused as slash in the
32 Gibbons Creek Alluvial Fan Structures. These logs may be with or without bark. The
33 length of each log shall be a minimum of 5 feet with a maximum length of 40 feet.
34 Logs shall have a substantial portion of their limbs left intact. Ends and limbs shall
35 not be trimmed as broken ends and limbs are preferred. Logs may be partially hollow
36 and contain cavities as long as they are generally sound and intact.
- 37
38 • **BNSF salvaged logs:** Place stockpiled BNSF logs in the Gibbons Creek Alluvial fan,
39 and in the Expanded Habitat areas as shown on the Plans. Logs with rootwads intact
40 shall be maintained intact and used in the Gibbons Creek Alluvial Fan Structures.

41
42 See the log summary table on **(not applicable)** of the Plans.

43

1 **8-27.3 Construction Requirements**

2 Keyed, footer, and floodplain logs shall have no maximum length.

3

4 Pier log diameters shall be measured at the narrow end of the log.

5

6 WHSs shall be installed as shown on the Plans. The Contractor shall vary the plan view
7 orientation of the logs within the limits shown and as directed by the Engineer. Number of
8 logs in each WHS is shown in the Plans. The Contractor shall install and position the WHS
9 to the satisfaction of the Engineer prior to the placement and compaction of native backfill.
10 Rootwads shall generally be installed with the rootwad facing upstream (north), with
11 exceptions as shown on the Plans or as needed for natural variability in the WHSs.

12

13 WHSs shall be installed after final grades have been met, but prior to final surface
14 preparation. Compost blanket and soil amendment application, seeding, or placement of
15 mulch shall be completed after WHS are installed.

16

17 Key WHS trunks into the bank to a minimum embedment as shown on the Plans. Sharpen
18 the end of the log and push into the existing grade to the final intended positioning as shown
19 on the Plans, if the log cannot be embedded as specified, excavate trenches to install wood
20 into the bank and backfill with native material. Compact the backfill over the WHS in 6 inch
21 lifts to a firm and unyielding condition. Scarify surface of backfill and graded areas to
22 facilitate revegetation.

23

24 Where shown on the Plans, pier logs shall secure adjacent logs in place as generally shown
25 on the Plans. All pier logs shall be driven at a slight angle towards the footer or large log to
26 resist floatation of the adjacent log. Ensure log-to-log contact between pier logs and
27 adjacent logs. Reposition logs and redrive pier logs if necessary to achieve log-to-log
28 contact. Sharpen the driven end of the pier logs prior to driving. Pier logs shall be driven into
29 the ground to a minimum depth of 6 feet or to refusal. Trim the tops of pier logs such that
30 they extend a maximum of 24 to 36 inches above the top of the adjacent log as shown to
31 ensure adequate overlap.

32

33 All undesirable growth from WHSs shall be treated to remove and/or prevent growth,
34 including sprouts, suckers and roots prior to installation in the wetland area in accordance
35 with the approved Weed and Pest Control Plan. All attached root systems shall only be
36 pruned if designated by the Engineer.

37

38 All attached root systems shall not be pruned unless designated by the Engineer. Prune
39 limbs on the top half of the logs as directed by the Engineer or OPR to facilitate installation.
40 When pruning leave approximately two (2) feet of the limbs extending from the trunk to
41 facilitate seating of the logs into the wetland surface. Place all trimmed limbs in a natural
42 manner (small brush pile) along the creek above and around the logs after final placement
43 of the logs.

44

45 Slash shall be placed below and between logs in the Alluvial Fan Structures as shown on
46 the Plans. Slash shall consist of willow cuttings, small limbs, and other native debris.

47

48 Visible log ends shall be broken in a manner that does not compromise the integrity of the
49 log. Ends may be broken prior to installation. No visible saw cut ends will be allowed.

50

51

1 **8-27.4 Measurement**

2 Wood Habitat Structures will be measured per each structure completed in the project area
3 for all structure types.

4
5 **8-27.5 Payment**

- 6 Wood Habitat Structure – Type 1, per each structure installed.
7 Wood Habitat Structure – Type 5, per each structure installed.
8 Wood Habitat Structure – Type 11, per each structure installed.
9 Wood Habitat Structure – Type 12, per each structure installed.
10 Wood Habitat Structure – Type 13, per each structure installed.
11 Wood Habitat Structure – BNSF Salvaged Logs, lump sum.

12
13
14 The unit Contract price per each for Wood Habitat Structures shall be full pay for installing
15 the large wood debris as specified including excavation, backfill and compaction, and any
16 required vegetative control measures. The unit contract price for Wood Habitat Structures
17 may be different for each type of structure.

18
19 Placing slash and construction of scour pools are considered incidental to the Wood Habitat
20 Structures pay items.

21
22 **Appendices**

23
24 **(January 7, 2019)**
25 **Standard Plans**

26 The State of Washington Standard Plans for Road, Bridge and Municipal Construction M21-
27 01 transmitted under Publications Transmittal No. PT 16-048, effective August 6, 2018 is made
28 a part of this contract.

29
30 The Standard Plans are revised as follows:

31
32 A-40.10

33 Section View, PCCP to HMA Longitudinal Joint, callout, was – “Sawed Groove ~ Width 3/16”
34 (IN) MIN. to 5/16” (IN) MAX. ~ Depth 1” (IN) MIN. ~ see Std. Spec. 5-04.3(12)B” is revised to
35 read; “Sawed Groove ~ Width 3/16” (IN) MIN. to 5/16” (IN) MAX. ~ Depth 1” (IN) MIN. ~ see
36 Std. Spec. Section 5-04.3(12)A2”

37 Section View, Transverse Contraction Joint, dimension, was – “D/4” is revised to read: “D/3 to
38 D/4”

39
40 A-50.10

41 Sheet 2 of 2, Plan, with Single Slope Barrier, reference C-14a is revised to C-70.10

42
43 A-50.20

44 Sheet 2 of 2, Plan, with Anchored Barrier, reference C-14a is revised to C-70.10

45
46 A-50.30

47 Sheet 2 of 2, Plan (top), reference C-14a is revised to C-70.1

48

1 B-10.60
2 DELETED
3
4 B-82.20
5 DELETED
6
7 B-90.40
8 Valve Detail - DELETED
9
10 C-2C
11 CASE 9A (typical of 2 callouts): The dimensions were "3'-0" MIN. ~ TO FACE OF
12 GUARDRAIL". are now revised to read "5'-0" MIN ~ TO FACE OF GUARDRAIL".
13
14 C-4b
15 DELETED
16
17 C-4e
18 DELETED
19
20 C-4f
21 Sheet 1, BULLNOSE GRADING PLAN: Slopes shall be not steeper than 10H:1V for the
22 bullnose guardrail system including slopes into the guardrail face to 1 foot behind the guardrail
23 post.
24
25 Sheet 2, POST 1R & 1L, 2R & 2L, 3R TO 8R and 3L TO 8L, 9R TO 12 R and 9L TO 12L
26 elevation view details: Slopes into the guardrail face to 1 foot behind the guardrail post shall
27 not be steeper than 10H:1V.
28
29 Sheet 3, SECTION B, callout – was: "THE NUT SHALL BE ASTM A563D STEEL, AND
30 GALVANIZED ACCORDING TO STANDARD SPEC. 9-16.3(3)." Is revised to read: "THE NUT
31 SHALL BE ASTM A307 STEEL, AND GALVANIZED ACCORDING TO STANDARD SPEC. 9-
32 16.3(3)."
33
34 C-20.14
35 CASE 3-31: The dimension was "5'-0" MIN" from the back of guardrail to the center of railroad
36 signal support is now revised to "5'-0" MIN" from face of guardrail to the front edge of the
37 railroad signal support.
38
39 Note 3, was – "The slope from the edge of the shoulder into the face of the guardrail cannot
40 exceed 10H : 1V when the face of the guardrail is less than 12' – 0" from the edge of the
41 shoulder." is revised to read: "The slope from the edge of the shoulder into the face of the
42 guardrail cannot be steeper than 10H : 1V when the face of the guardrail is less than 12' – 0"
43 from the edge of the shoulder. The slope from the edge of the shoulder into the face of the
44 guardrail cannot be steeper than 6H : 1V when the guardrail is 12' – 0" or more from the edge
45 of the shoulder."
46
47 C-20.18
48 ALL CASES: The dimensions were "3'-0" MIN" from the face of guardrail to the front edge of
49 the fixed feature are now revised to "5'-0" MIN" from the face of guardrail to the front edge of
50 the fixed feature.
51

1 Note 1, was – “The slope from the edge of the shoulder into the face of the guardrail should
2 not exceed 10H : 1V when the guardrail is within 12’ – 0” from the edge of the shoulder.” Is
3 revised to read: “The slope from the edge of the shoulder into the face of the guardrail should
4 not be steeper than 10H : 1V when the guardrail is less than 12’ – 0” from the edge of the
5 shoulder. The slope from the edge of the shoulder into the face of the guardrail should not be
6 steeper than 6H : 1V when the guardrail is 12’ – 0” or more from the edge of shoulder.”

7
8 C-22.14
9 DELETED

10
11 C-22.16
12 Note 3, formula, was: “Elevation G = (Elevation S – D x (0.1) + 31” is revised to read: “Elevation
13 G = (Elevation S – D x (0.1) + 31/12”

14
15 C-22.40
16 PLAN VIEW, MSKT-SP-MGS (TL-3) SHOWN: The dimension was “4’-0” MIN” from the face
17 of the terminal to the edge of the widened embankment is now revised to “4’-0” MIN” from the
18 back of the terminal post to the edge of the widened embankment.

19
20 Elevation View, MSKT-SP-MGS (TL-3), dimension, MSKT-SP-MGS (TL-3) SYSTEM LENGTH
21 = 50’ – 0” , dimension is revised to read: 46’ – 10 1/2”

22
23 Elevation View, SOFTSTOP (TL-3), dimension, SOFTSTOP (TL-3) SYSTEM
24 LENGTH = 50’ – 9 1/2” , dimension is revised to read: 50’ – 10 1/2”

25
26 Note 6, was – “...a maximum taper of 25.4 : 1 or flatter is allowed over the system length of
27 50’ – 9 1/2” with a maximum...” is revised to read: “...a maximum taper of 25.44 : 1 or flatter is
28 allowed over the system length of 50’ – 10 1/2” with a maximum...”

29
30 C-22.45
31 PLAN VIEW, MSKT-SP-MGS (TL-2) SHOWN: The dimension was “4’-0” MIN” from the face
32 of the terminal to the edge of the widened embankment is now revised to “4’-0” MIN” from the
33 back of the terminal post to the edge of the widened embankment.

34
35
36 Elevation View, MSKT-SP-MGS (TL-2), dimension, MSKT-SP-MGS (TL-2) SYSTEM
37 LENGTH = 25’ – 0” , dimension is revised to read 34’ – 4 1/2”

38
39 Elevation View, SOFTSTOP (TL-2), dimension, SOFTSTOP (TL-2) SYSTEM
40 LENGTH = 38’ – 3 1/2” , dimension is revised to read 38’ – 4 1/2”

41
42 Note 6, was – “...flare of 38.29 : 1 or flatter is allowed over the system length of 38’ – 3 1/2”
43 with a maximum...” is revised to read: “...flare of 38.38 : 1 or flatter is allowed over the system
44 length of 38’ – 4 1/2” with a maximum...”

45
46 C-25.26
47 Elevation View, TYPE 23: The guardrail height dimension was 2’-8” from the top of the thrie
48 beam to the top of the bridge curb is now revised to 2’-8” from the top of the thrie beam to the
49 top of the ground line.

50
51 C-25.80

1 Plan View, callout, was – “12” (IN) BLOCKOUT” is revised to read; “12” (IN) or 8” (IN)
2 BLOCKOUT (12” (IN) SHOWN)”
3 Elevation View, add labels to posts (below view); beginning at left side of view – Label Posts
4 as follows; POST 1, POST 2 through POST 6”.
5 General Notes, add Note 6. Note reads as follows; “6. Post 1 shall use an 8 inch blockout,
6 and posts 2 through post 6 shall use 12 inch or 8 inch blockouts.”
7

8 C-40.14
9 DELETED

10
11 C-90.10
12 DELETED

13
14 D-10.10
15 Wall Type 1 may be used if no traffic barrier is attached on top of the wall. Walls with traffic
16 barriers attached on top of the wall are considered non-standard and shall be designed in
17 accordance with the current WSDOT Bridge Design Manual (BDM) and the revisions stated
18 in the 11/3/15 Bridge Design memorandum.

19
20 D-10.15
21 Wall Type 2 may be used if no traffic barrier is attached on top of the wall. Walls with traffic
22 barriers attached on top of the wall are considered non-standard and shall be designed in
23 accordance with the current WSDOT BDM and the revisions stated in the 11/3/15 Bridge
24 Design memorandum.

25
26 D-10.20
27 Wall Type 3 may be used in all cases. The last sentence of Note 6 on Wall Type 3 shall be
28 revised to read: The seismic design of these walls has been completed using a site adjusted
29 (effective) peak ground acceleration of 0.32g.

30
31 D-10.25
32 Wall Type 4 may be used in all cases. The last sentence of Note 6 on Wall Type 4 shall be
33 revised to read: The seismic design of these walls has been completed using a site adjusted
34 (effective) peak ground acceleration of 0.32g.

35
36 D-10.30
37 Wall Type 5 may be used in all cases.

38
39 D-10.35
40 Wall Type 6 may be used in all cases.

41
42 D-10.40
43 Wall Type 7 may be used if no traffic barrier is attached on top of the wall. Walls with traffic
44 barriers attached on top of the wall are considered non-standard and shall be designed in
45 accordance with the current WSDOT BDM and the revisions stated in the 11/3/15 Bridge
46 Design memorandum.

47
48 D-10.45
49 Wall Type 8 may be used if no traffic barrier is attached on top of the wall. Walls with traffic
50 barriers attached on top of the wall are considered non-standard and shall be designed in

1 accordance with the current WSDOT BDM and the revisions stated in the revisions stated in
2 the 11/3/15 Bridge Design memorandum.

3
4 D-15.10

5 STD Plans D-15 series “Traffic Barrier Details for Reinforced Concrete Retaining Walls” are
6 withdrawn. Special designs in accordance with the current WSDOT BDM are required in place
7 of these STD Plans.

8
9 D-15.20

10 STD Plans D-15 series “Traffic Barrier Details for Reinforced Concrete Retaining Walls” are
11 withdrawn. Special designs in accordance with the current WSDOT BDM are required in place
12 of these STD Plans.

13
14 D-15.30

15 STD Plans D-15 series “Traffic Barrier Details for Reinforced Concrete Retaining Walls” are
16 withdrawn. Special designs in accordance with the current WSDOT BDM are required in place
17 of these STD Plans.

18
19 F-10.12

20 Section Title, was – “Depressed Curb Section” is revised to read: “Depressed Curb and Gutter
21 Section”

22
23 F-10.40

24 “EXTRUDED CURB AT CUT SLOPE”, Section detail - Deleted

25
26 F-10.42

27 DELETE – “Extruded Curb at Cut Slope” View

28
29 H-70.20

30 Sheet 2, Spacing Detail, Mailbox Support Type 1, reference to Standard Plan I-70.10 is
31 revised to H-70.10

32
33 I-30.30

34 8” Diameter Wattle Spacing Table, lower left corner, was –“Slope:1H : 1V, Maximum
35 Spacing:10’ – 0”” is revised to read: “Slope:1H : 1V, Maximum Spacing:8’ – 0””.

36
37 J-10.21

38 Note 18, was – “When service cabinet is installed within right of way fence, see Standard Plan
39 J-10.22 for details.” Is revised to read; “When service cabinet is installed within right of way
40 fence, or the meter base is mounted on the exterior of the cabinet, see Standard Plan J-10.22
41 for details.”

42
43 J-10.22

44 Key Note 1, was – “Meter base per serving utility requirements~ as a minimum, the meter
45 base shall be safety socket box with factory-installed test bypass facility that meets the
46 requirements of EUSERC drawing 305.” Is revised to read; “Meter base per serving utility
47 requirements~ as a minimum, the meter base shall be safety socket box with factory-installed
48 test bypass facility that meets the requirements of EUSERC drawing 305. When the utility
49 requires meter base to be mounted on the side or back of the service cabinet, the meter base
50 enclosure shall be fabricated from type 304 stainless steel.”

1 Key Note 4, “Test with (SPDT Snap Action, Positive close 15 Amp – 120/277 volt “T” rated).
2 Is revised to read: “Test Switch (SPDT snap action, positive close 15 amp – 120/277 volt “T”
3 rated).”
4 Key Note 14, was – “Hinged dead front with ¼ turn fasteners or slide latch.” Is revised to read;
5 “Hinged dead front with ¼ turn fasteners or slide latch. ~ Dead front panel bolts shall not
6 extend into the vertical limits of the breaker array(s).”
7 Key Note 15, was – “Cabinet Main Bonding Jumper. Buss shall be 4 lug tinned copper. See
8 Cabinet Main bonding Jumper detail, Standard Plan J-3b.” is revised to read; “Cabinet Main
9 Bonding Jumper Assembly ~ Buss shall be 4 lug tinned copper ~ See Standard Plan J-10.20
10 for Cabinet Main Bonding Jumper Assembly details.”
11 Note 1, was – “...socket box mounting detail, see Standard Plan J-3b.” is revised to read to
12 read: “...socket box mounting detail, see Standard Plan J-10.20.”
13 Note 6, was – “...See door hinge detail, Standard Plan J-3b.” is revised to read: “...See door
14 hinge detail, Standard Plan J-10.20.”
15

16 J-20.10

17 Add Note 5, “5. One accessible pedestrian signal assembly per pedestrian pushbutton post.”
18

19 J-20.11

20 Sheet 2, Foundation Detail, Elevation, callout – “Type 1 Signal Pole” is revised to read: “Type
21 PS or Type 1 Signal Pole”

22 Sheet 2, Foundation Detail, Elevation, add note below Title, “(Type 1 Signal Pole Shown)”
23 Add Note 6, “6. One accessible pedestrian signal assembly per pedestrian pushbutton post.”
24

25 J-20.26

26 Add Note 1, “1. One accessible pedestrian pushbutton station per pedestrian pushbutton
27 post.”
28

29 J-20.16

30 View A, callout, was – LOCK NIPPLE, is revised to read; CHASE NIPPLE
31

32 J-21.10

33 Sheet 1, Elevation View, Round Concrete Foundation Detail, callout – “ANCHOR BOLTS ~
34 ¾” (IN) x 30” (IN) FULL THREAD ~ THREE REQ'D. PER ASSEMBLY” IS REVISED TO READ:
35 “ANCHOR BOLTS ~ ¾” (IN) x 30” (IN) FULL THREAD ~ FOUR REQ'D. PER ASSEMBLY”

36 Sheet 1 of 2, Elevation view (Round), add dimension depicting the distance from the top of
37 the foundation to find 2 #4 reinforcing bar shown, to read; 3” CLR.. Delete “(TYP.)” from the 2
38 ½” CLR. dimension, depicting the distance from the bottom of the foundation to find 2 # 4
39 reinf. Bar.

40 Sheet 1 of 2, Elevation view (Square), add dimension depicting the distance from the top of
41 the foundation to find 1 #4 reinforcing bar shown, to read; 3” CLR. Delete “(TYP.)” from the 2
42 ½” CLR. dimension, depicting the distance from the bottom of the foundation to find 1 # 4
43 reinf. Bar.

44 Sheet 2 of 2, Elevation view (Round), add dimension depicting the distance from the top of
45 the foundation to find 2 #4 reinforcing bar shown, to read; 3” CLR. Delete “(TYP.)” from the 2
46 ½” CLR. dimension, depicting the distance from the bottom of the foundation to find 2 # 4
47 reinf. Bar.

48 Sheet 2 of 2, Elevation view (Square), add dimension depicting the distance from the top of
49 the foundation to find 1 #4 reinforcing bar shown, to read; 3” CLR. Delete “(TYP.)” from the 2
50 ½” CLR. dimension, depicting the distance from the bottom of the foundation to find 1 # 4
51 reinf. Bar.

1 Detail F, callout, "Heavy Hex Clamping Bolt (TYP.) ~ 3/4" (IN) Diam. Torque Clamping Bolts
 2 (see Note 3)" is revised to read; "Heavy Hex Clamping Bolt (TYP.) ~ 3/4" (IN) Diam. Torque
 3 Clamping Bolts (see Note 1)"
 4 Detail F, callout, "3/4" (IN) x 2' - 6" Anchor Bolt (TYP.) ~ Four Required (See Note 4)" is
 5 revised to read; "3/4" (IN) x 2' - 6" Anchor Bolt (TYP.) ~ Three Required (See Note 2)"
 6

7 J-21.15
 8 Partial View, callout, was – LOCK NIPPLE ~ 1 1/2" DIAM., is revised to read; CHASE NIPPLE
 9 ~ 1 1/2" (IN) DIAM.

10
 11 J-21.16
 12 Detail A, callout, was – LOCKNIPPLE, is revised to read; CHASE NIPPLE
 13

14 J-22.15
 15 Ramp Meter Signal Standard, elevation, dimension 4' - 6" is revised to read; 6'-0"
 16 (2x) Detail A, callout, was – LOCK NIPPLE ~ 1 1/2" DIAM. is revised to read; CHASE NIPPLE
 17 ~ 1 1/2" (IN) DIAM.
 18

19 J-40.10
 20 Sheet 2 of 2, Detail F, callout, "12 – 13 x 1 1/2" S.S. PENTA HEAD BOLT AND 12" S. S. FLAT
 21 WASHER" is revised to read; "12 – 13 x 1 1/2" S.S. PENTA HEAD BOLT AND 1/2" (IN) S. S.
 22 FLAT WASHER"
 23

24 J-60.14
 25 All references to J-16b (6x) are revised to read; J-60.11
 26

27 K-80.30
 28 In the NARROW BASE, END view, the reference to Std. Plan C-8e is revised to Std. Plan K-
 29 80.35
 30 Plan Title, was "ALTERNATIVE TEMPORARY CONC. BARRIER (F-SHAPE)" is revised to
 31 read: "CONCRETE BARRIER TYPE F"
 32

33 The following are the Standard Plan numbers applicable at the time this project was
 34 advertised. The date shown with each plan number is the publication approval date shown in
 35 the lower right-hand corner of that plan. Standard Plans showing different dates shall not be
 36 used in this contract.
 37

A-10.10-00.....8/7/07	A-40.00-00.....8/11/09	A-50.30-00.....11/17/08
A-10.20-00.....10/5/07	A-40.10-03.....12/23/14	A-50.40-00.....11/17/08
A-10.30-00.....10/5/07	A-40.15-00.....8/11/09	A-60.10-03.....12/23/14
A-20.10-00.....8/31/07	A-40.20-04.....1/18/17	A-60.20-03.....12/23/14
A-30.10-00.....11/8/07	A-40.50-02.....12/23/14	A-60.30-01.....6/28/18
A-30.30-01.....6/16/11	A-50.10-00.....11/17/08	A-60.40-00.....8/31/07
A-30.35-00.....10/12/07	A-50.20-01.....9/22/09	

B-5.20-02.....1/26/17	B-30.50-03.....2/27/18	B-75.20-02.....2/27/18
B-5.40-02.....1/26/17	B-30.70-04.....2/27/18	B-75.50-01.....6/10/08
B-5.60-02.....1/26/17	B-30.80-01.....2/27/18	B-75.60-00.....6/8/06
B-10.20-02.....3/2/18	B-30.90-02.....1/26/17	B-80.20-00.....6/8/06
B-10.40-01.....1/26/17	B-35.20-00.....6/8/06	B-80.40-00.....6/1/06
B-10.70-00.....1/26/17	B-35.40-00.....6/8/06	B-85.10-01.....6/10/08

B-15.20-01.....2/7/12	B-40.20-00.....6/1/06	B-85.20-00.....6/1/06
B-15.40-01.....2/7/12	B-40.40-02.....1/26/17	B-85.30-00.....6/1/06
B-15.60-02.....1/26/17	B-45.20-01.....7/11/17	B-85.40-00.....6/8/06
B-20.20-02.....3/16/12	B-45.40-01.....7/21/17	B-85.50-01.....6/10/08
B-20.40-04.....2/27/18	B-50.20-00.....6/1/06	B-90.10-00.....6/8/06
B-20.60-03.....3/15/12	B-55.20-02.....2/27/18	B-90.20-00.....6/8/06
B-25.20-02.....2/27/18	B-60.20-01.....6/28/18	B-90.30-00.....6/8/06
B-25.60-02.....2/27/18	B-60.40-01.....2/27/18	B-90.40-01.....1/26/17
B-30.10-03.....2/27/18	B-65.20-01.....4/26/12	B-90.50-00.....6/8/06
B-30.15-00.....2/27/18	B-65.40-00.....6/1/06	B-95.20-01.....2/3/09
B-30.20-04.....2/27/18	B-70.20-00.....6/1/06	B-95.40-01.....6/28/18
B-30.30-03.....2/27/18	B-70.60-01.....1/26/17	
B-30.40-03.....2/27/18		

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C-1.....6/28/18	C-20.15-02.....6/11/14	C-40.18-03.....7/21/17
C-1a.....7/14/15	C-20.18-02.....6/11/14	C-70.10-01.....6/17/14
C-1b.....7/14/15	C-20.19-02.....6/11/14	C-75.10-01.....6/11/14
C-1d.....10/31/03	C-20.40-06.....7/21/17	C-75.20-01.....6/11/14
C-2c.....6/21/06	C-20.41-01.....7/14/15	C-75.30-01.....6/11/14
C-4f.....7/2/12	C-20.42-05.....7/14/15	C-80.10-01.....6/11/14
C-6a.....10/14/09	C-20.45.01.....7/2/12	C-80.20-01.....6/11/14
C-7.....6/16/11	C-22.16-06.....7/21/17	C-80.30-01.....6/11/14
C-7a.....6/16/11	C-22.40-06.....7/21/17	C-80.40-01.....6/11/14
C-8.....2/10/09	C-22.45-03.....7/21/17	C-80.50-00.....4/8/12
C-8a.....7/25/97	C-23.60-04.....7/21/17	C-85.10-00.....4/8/12
C-8b.....2/29/16	C.24.10-01.....6/11/14	C-85.11-00.....4/8/12
C-8e.....2/21/07	C-25.20-06.....7/14/15	C-85.14-01.....6/11/14
C-8f.....6/30/04	C-25.22-05.....7/14/15	C-85.15-01.....6/30/14
C-16a.....7/21/17	C-25.26-03.....7/14/15	C-85.16-01.....6/17/14
C-20.10-04.....7/21/17	C-25.30-00.....6/28/18	C-85.18-01.....6/11/14
C-20.11-00.....7/21/17	C-25.80-04.....7/15/16	C-85.20-01.....6/11/14
C-20.14-03.....6/11/14	C-40.16-02.....7/2/12	

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D-2.04-00.....11/10/05	D-2.48-00.....11/10/05	D-3.17-02.....5/9/16
D-2.06-01.....1/6/09	D-2.64-01.....1/6/09	D-4.....12/11/98
D-2.08-00.....11/10/05	D-2.66-00.....11/10/05	D-6.....6/19/98
D-2.14-00.....11/10/05	D-2.68-00.....11/10/05	D-10.10-01.....12/2/08
D-2.16-00.....11/10/05	D-2.80-00.....11/10/05	D-10.15-01.....12/2/08
D-2.18-00.....11/10/05	D-2.82-00.....11/10/05	D-10.20-00.....7/8/08
D-2.20-00.....11/10/05	D-2.84-00.....11/10/05	D-10.25-00.....7/8/08
D-2.32-00.....11/10/05	D-2.86-00.....11/10/05	D-10.30-00.....7/8/08
D-2.34-01.....1/6/09	D-2.88-00.....11/10/05	D-10.35-00.....7/8/08
D-2.36-03.....6/11/14	D-2.92-00.....11/10/05	D-10.40-01.....12/2/08
D-2.42-00.....11/10/05	D-3.09-00.....5/17/12	D-10.45-01.....12/2/08
D-2.44-00.....11/10/05	D-3.10-01.....5/29/13	D-15.10-01.....12/2/08
D-2.60-00.....11/10/05	D-3.11-03.....6/11/14	D-15.20-03.....5/9/16
D-2.62-00.....11/10/05	D-3.15-02.....6/10/13	D-15.30-01.....12/02/08
D-2.46-01.....6/11/14	D-3.16-02.....5/29/13	

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E-1.....2/21/07	E-4.....8/27/03
E-2.....5/29/98	E-4a.....8/27/03

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F-10.12-03.....6/11/14	F-10.62-02.....4/22/14	F-40.15-03.....6/29/16
F-10.16-00.....12/20/06	F-10.64-03.....4/22/14	F-40.16-03.....6/29/16
F-10.18-01.....7/11/17	F-30.10-03.....6/11/14	F-45.10-02.....7/15/16
F-10.40-03.....6/29/16	F-40.12-03.....6/29/16	F-80.10-04.....7/15/16
F-10.42-00.....1/23/07	F-40.14-03.....6/29/16	

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G-10.10-00.....9/20/07	G-25.10-04.....6/10/13	G-90.10-03.....7/11/17
G-20.10-02.....6/23/15	G-30.10-04.....6/23/15	G-90.11-00.....4/28/16
G-22.10-04.....6/28/18	G-50.10-03.....6/28/18	G-90.20-05.....7/11/17
G-24.10-00.....11/8/07	G-60.10-04.....6/28/18	G-90.30-04.....7/11/17
G-24.20-01.....2/7/12	G-60.20-02.....6/18/15	G-90.40-02.....4/28/16
G-24.30-02.....6/28/18	G-60.30-02.....6/18/15	G-95.10-02.....6/28/18
G-24.40-07.....6/28/18	G-70.10-03.....6/18/15	G-95.20-03.....6/28/18
G-24.50-04.....7/11/17	G-70.20-04.....7/21/17	G-95.30-03.....6/28/18
G-24.60-05.....6/28/18	G-70.30-04.....7/21/17	

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H-10.10-00.....7/3/08	H-32.10-00.....9/20/07	H-70.10-01.....2/7/12
H-10.15-00.....7/3/08	H-60.10-01.....7/3/08	H-70.20-01.....2/16/12
H-30.10-00.....10/12/07	H-60.20-01.....7/3/08	H-70.30-02.....2/7/12

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I-10.10-01.....8/11/09	I-30.20-00.....9/20/07	I-40.20-00.....9/20/07
I-30.10-02.....3/22/13	I-30.30-01.....6/10/13	I-50.20-01.....6/10/13
I-30.15-02.....3/22/13	I-30.40-01.....6/10/13	I-60.10-01.....6/10/13
I-30.16-00.....3/22/13	I-30.60-01.....3/7/18	I-60.20-01.....6/10/13
I-30.17-00.....3/22/13	I-40.10-00.....9/20/07	I-80.10-02.....7/15/16

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J-10.....7/18/97	J-28.22-00.....8/07/07	J-50.25-00.....6/3/11
J-10.10-03.....6/3/15	J-28.24-01.....6/3/15	J-50.30-00.....6/3/11
J-10.15-01.....6/11/14	J-28.26-01.....12/02/08	J-60.05-01.....7/21/16
J-10.16-00.....6/3/15	J-28.30-03.....6/11/14	J-60.11-00.....5/20/13
J-10.17-00.....6/3/15	J-28.40-02.....6/11/14	J-60.12-00.....5/20/13
J-10.18-00.....6/3/15	J-28.42-01.....6/11/14	J-60.13-00.....6/16/10
J-10.20-01.....6/1/16	J-28.43-01.....6/28/18	J-60.14-00.....6/16/10
J-10.21-00.....6/3/15	J-28.45-03.....7/21/16	J-75.10-02.....7/10/15
J-10.22-00.....5/29/13	J-28.50-03.....7/21/16	J-75.20-01.....7/10/15
J-10.25-00.....7/11/17	J-28.60-02.....7/21/16	J-75.30-02.....7/10/15
J-12.15-00.....6/28/18	J-28.70-03.....7/21/17	J-75.40-02.....6/1/16
J-12.16-00.....6/28/18	J-29.10-01.....7/21/16	J-75.41-01.....6/29/16
J-15.10-01.....6/11/14	J-29.15-01.....7/21/16	J-75.45-02.....6/1/16
J-15.15-02.....7/10/15	J-29.16-02.....7/21/16	J-80.10-00.....6/28/18
J-20.10-03.....6/30/14	J-30.10-00.....6/18/15	J-80.15-00.....6/28/18
J-20.11-02.....6/30/14	J-40.05-00.....7/21/16	J-81.10-00.....6/28/18
J-20.15-03.....6/30/14	J-40.10-04.....4/28/16	J-86.10-00.....6/28/18
J-20.16-02.....6/30/14	J-40.20-03.....4/28/16	J-90.10-03.....6/28/18
J-20.20-02.....5/20/13	J-40.30-04.....4/28/16	J-90.20-03.....6/28/18
J-20.26-01.....7/12/12	J-40.35-01.....5/29/13	J-90.21-02.....6/28/18
J-21.10-04.....6/30/14	J-40.36-02.....7/21/17	J-90.50-00.....6/28/18
J-21.15-01.....6/10/13	J-40.37-02.....7/21/17	
J-21.16-01.....6/10/13	J-40.38-01.....5/20/13	
J-21.17-01.....6/10/13	J-40.39-00.....5/20/13	

J-21.20-01.....6/10/13	J-40.40-01.....4/28/16
J-22.15-02.....7/10/15	J-45.36-00.....7/21/17
J-22.16-03.....7/10/15	J-50.05-00.....7/21/17
J-26.10-03.....7/21/16	J-50.10-00.....6/3/11
J-26.15-01.....5/17/12	J-50.11-01.....7/21/17
J-26.20-01.....6/28/18	J-50.12-01.....7/21/17
J-27.10-01.....7/21/16	J-50.15-01.....7/21/17
J-27.15-00.....3/15/12	J-50.16-01.....3/22/13
J-28.10-01.....5/11/11	J-50.20-00.....6/3/11

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K-70.20-01.....6/1/16
 K-80.10-01.....6/1/16
 K-80.20-00.....12/20/06
 K-80.30-00.....2/21/07
 K-80.35-00.....2/21/07
 K-80.37-00.....2/21/07

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L-10.10-02.....6/21/12	L-40.10-02.....6/21/12	L-70.10-01.....5/21/08
L-20.10-03.....7/14/15	L-40.15-01.....6/16/11	L-70.20-01.....5/21/08
L-30.10-02.....6/11/14	L-40.20-02.....6/21/12	

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M-1.20-03.....6/24/14	M-12.10-01.....6/28/18	M-40.10-03.....6/24/14
M-1.40-02.....6/3/11	M-15.10-01.....2/6/07	M-40.20-00...10/12/07
M-1.60-02.....6/3/11	M-17.10-02.....7/3/08	M-40.30-01.....7/11/17
M-1.80-03.....6/3/11	M-20.10-02.....6/3/11	M-40.40-00.....9/20/07
M-2.20-03.....7/10/15	M-20.20-02.....4/20/15	M-40.50-00.....9/20/07
M-2.21-00.....7/10/15	M-20.30-04.....2/29/16	M-40.60-00.....9/20/07
M-3.10-03.....6/3/11	M-20.40-03.....6/24/14	M-60.10-01.....6/3/11
M-3.20-02.....6/3/11	M-20.50-02.....6/3/11	M-60.20-02.....6/27/11
M-3.30-03.....6/3/11	M-24.20-02.....4/20/15	M-65.10-02.....5/11/11
M-3.40-03.....6/3/11	M-24.40-02.....4/20/15	M-80.10-01.....6/3/11
M-3.50-02.....6/3/11	M-24.50-00.....6/16/11	M-80.20-00.....6/10/08
M-5.10-02.....6/3/11	M-24.60-04.....6/24/14	M-80.30-00.....6/10/08
M-7.50-01.....1/30/07	M-24.65-00.....7/11/17	
M-9.50-02.....6/24/14	M-24.66-00.....7/11/17	
M-9.60-00.....2/10/09		
M-11.10-02.....7/11/17		

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EXHIBIT 1

ENVIRONMENTAL AND NATURAL RESOURCES LAWS; REMEDIES

1. Clark County, City of Washougal, U.S. Forest Service, National Marine Fisheries Service, Washington Department of Natural Resources, Washington Department of Archaeological and Historic Preservation, U.S. Army Corps of Engineers, Washington Department of Ecology, Federal Emergency Management Agency, etc., have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the contract.

If the Successful Bidder awarded the project is delayed or must undertake additional work by reason of existing ordinances, rules or regulations of agencies not cited in the public improvement contract or due to the enactment of new or the amendment of existing statutes, ordinances, rules 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:
 - A. Terminate the contract;
 - B. Complete the work itself;
 - C. Use nonagency forces already under contract with the Owner;
 - D. Require that the underlying property owner be responsible for cleanup;
 - E. Solicit bids for a new contractor to provide the necessary services under the competitive bid requirements of ORS Chapter 279C; or
 - F. Issue Successful Bidder a change order setting forth the additional work that must be undertaken.
2. In addition to the obligation imposed under subsection (1) of this section to refer to federal, state and local agencies with ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources, a solicitation document must also make specific reference to known conditions at the construction Site that may require the Successful Bidder to comply with the ordinances, rules or regulations identified under subsection (1) of this section.
3. If the Successful Bidder encounters a condition not referred to in the Bidding Documents and not caused by the Successful Bidder and not discoverable by a reasonable pre-bid visual Site inspection and the condition requires compliance with the ordinances, rules or regulations referred to under subsection (1) of this section, the Successful Bidder shall immediately give notice of the condition to the Owner.
4. Except in the case of an emergency and except as may otherwise be required by any environmental or natural resource ordinance, rule or regulation, the Successful Bidder may not commence work nor incur any additional job site costs in regard to the condition encountered and described in subsection (3) of this section without written direction from the Owner.
5. Upon request by the Owner, the Successful Bidder 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.
6. Within a reasonable period of time following delivery of an estimate under subsection (5) of this section, the Owner may:
 - A. Terminate the contract;
 - B. Complete the work itself;
 - C. Use nonagency forces already under contract with the Owner;
 - D. Require that the underlying property owner be responsible for cleanup;
 - E. Solicit competitive bids for a new contractor to provide the necessary services; or

F. Issue the Successful Bidder a change order setting forth the additional work that must be undertaken.

7. If the Owner chooses to terminate the contract under subsection (1)(a) or (6)(a) of this section, the Successful Bidder 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 Successful Bidder's bid documents when making the Owner's determination of the compensation due to Successful Bidder.
8. If the Owner causes work to be done by another contractor under subsection (1)(c) or (e) of this section or under subsection (6)(c) or (e) of this section, Successful Bidder shall not be held liable for actions or omissions of the other contractor.
9. The change order under subsection (1)(f) of this section or under subsection (6)(f) of this section shall include the appropriate extension of contract time and compensate Successful Bidder for all additional costs, including overhead and profit, reasonably incurred as a result of complying with the applicable statutes, ordinances, rules, or regulations. The Owner shall have access to Successful Bidder's bid documents when making the Owner's determination of the additional compensation due to Successful Bidder.
10. Notwithstanding subsections (1) to (9) of this section, the Owner may allocate all or a portion of the known environmental and natural resource risks to a Successful Bidder by listing such environmental and natural resource risks with specificity in the solicitation documents.

EXHIBIT 2 REGULATORY PERMITS

Several regulatory agencies require permit approvals prior to initiating the project. The Contractor agrees to comply fully with all applicable federal, state, and local laws and regulations including, but not limited to, the regulatory permits included or referenced in Exhibit 2.

Exhibit 2 includes regulatory approvals from the following agencies for the following permits:

- BONNEVILLE POWER ADMINISTRATION (National Environmental Policy Act; DOE/EA-2027 dated January 2018)
- CLARK COUNTY (State Environmental Policy Act; Notice of Final Determination dated May 1, 2019)
- CLARK COUNTY (Floodplain Review; Floodplain Review No. FLP2018-00002 dated May 1, 2019)
- NATIONAL MARINE FISHERIES SERVICE (Section 7 of the ESA; Project Notification Form, HIP III No. 2019008 dated November 6, 2018 and associated Programmatic No. 2013-F-0199 dated November 8, 2013)
- U.S. FISH AND WILDLIFE SERVICE (Section 7 of the ESA; Intra-Service Section 7 Biological Evaluation dated May 12, 2016)
- U.S. FISH AND WILDLIFE SERVICE (Steigerwald Lake National Wildlife Refuge General Activities Special Use Permit; Permit No. 19-002 signed February 7, 2019)
- U.S. FOREST SERVICE (Columbia River Gorge National Scenic Area Act; CRGNSA Consistency Determination 18-06-G dated March 1, 2019)
- WASHINGTON DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION (Section 106 of the National Historic Preservation Act; Memorandum of Agreement signed September 24, 2018)
- WASHINGTON DEPARTMENT OF FISH & WILDLIFE (Hydraulic Project Approval – Permit No. 2019-5-8+01 dated January 17, 2019)

The above regulatory approvals are provided as a file titled "Exhibit 2_Regulatory Permits", which is available for download on the Estuary Partnership's website.

The Owner has submitted the following permit applications, which are pending approval. The Owner will provide written approvals to the Contractor as soon as they are received.

- CLARK COUNTY (Shoreline Exemption)
- CLARK COUNTY (Wetland/Habitat Determination)
- U.S. ARMY CORPS OF ENGINEERS (Section 404 of the Clean Water Act)
- WASHINGTON DEPARTMENT OF ECOLOGY (Const. Stormwater General Permit)
- WASHINGTON DEPARTMENT OF ECOLOGY (Section 401 Water Quality Certification)

EXHIBIT 3

U.S. FISH AND WILDLIFE SERVICE (AGENCY) CONDITIONS OF WORK

General:

1. Construction operations shall be allowed Monday through Friday from 6:00 am to 7 pm, unless otherwise approved by Owner and Agency.
2. Contractor is advised that, while the Site will be closed to the public during construction, the Site is still within a public recreation area. Agency will coordinate and be responsible for limiting public access to the Site; however, Contractor will be responsible for assisting with public access restrictions by keeping gates closed to public access, replacing barricades/cones/signs/temporary fencing moved by the Contractor, regulating their designated access points to only project related personnel, and reporting trespassers to Agency. **The Contractor shall notify Agency and Owner at least one month prior to starting Work** so Agency can notify the public and coordinate closures.
3. No habitation or overnight dwelling by employees of Contractor will be permitted on Agency land without advance written approval from the Agency.
4. No pets are allowed on Agency land.
5. Blasting is not allowed.
6. The Contractor shall maintain Work areas free of waste materials, debris, and rubbish and maintain the Site in a clean and orderly condition. The Contractor also shall remove and dispose of upon completion of the construction, all stakes, flagging, and similar debris within the Work area. The Contractor shall dispose of all debris off of Agency land and in accordance with federal, state, and local disposal requirements.
7. The Contractor shall clean all earth moving equipment (loaders, excavators, dump trucks, etc.) moved to the job site of weeds and their seeds prior to each entrance onto and exit from Agency lands. Cleaning shall consist of the removal of all dirt, grease, debris, and materials that may harbor noxious weeds and their seeds. This likely will require the use of a hot water pressure hose/power washer. The Contractor shall make equipment available for visual inspection by Owner and/or Agency prior to entering Agency lands.
8. Contractor shall access project Work areas using access routes specified in the design drawings. If the Contractor desires to access Work areas using other access routes, the Contractor is solely responsible for coordination with the Agency, Owner, WSDOT, the Burlington Northern Santa Fe (BNSF) Railroad, and others to obtain permission. For these alternate routes, the Contractor shall be responsible for meeting all site access conditions required by the Agency, Owner, WSDOT, BNSF, and others each time the Contractor, subcontractors, or employees of either enter the site.
9. Contractor shall maintain and service all equipment at least 100 feet from the wetland boundary. Operators shall have spill kits available and be instructed as to how to use them.

Fire Prevention:

1. Contractor shall adhere to Industrial Fire Precaution Level (IFPL) precautions for all operations. Agency may change the IFPL to other values upon revision of the National Fire Danger Rating System and may change the specific IFPL when such changes are necessary for the protection of Agency lands. When sent to the Contractor, the revised IFPL will supersede previous levels. The Agency also may require emergency measures, including the necessary shutting down of equipment or portions of operations in the Work area, during periods of fire emergency created by hazardous climatic conditions.
2. Before starting any operations on the project, the Contractor shall prepare a fire plan in cooperation with the Owner and Agency providing for the prevention and control of fires in the project area.
3. The Contractor shall, independently and in cooperation with the Agency, take all reasonable actions to prevent and suppress fires in the project area. In the event of a fire, Contractor shall, independently and

in cooperation with USFWS and Fire Fighting officials, take all reasonable action to prevent and suppress fires in the project area. Independent initial action shall be prompt and shall include the use of all personnel and equipment available in the project area.

4. Contractor shall take the specific fire precautionary measures outlined below. Listing of specific fire precautionary measures herein is not intended to relieve the Contractor in any way from compliance with state and local fire laws covering fire prevention and suppression equipment, applicable to operations under this Contract.
 - a. Contractor shall not allow open fires on the project area without advance permission in writing from Agency. Unless restricted by State Law or Federal Regulation, smoking shall be permitted only in such portions of the project area that are free of flammable material.
 - b. All power-driven equipment operated by the Contractor on Agency land shall be equipped with one fire extinguisher having a UL rating of at least 5 BC, and one "D" handled or long handled round point shovel, size "O" or larger. Contractor shall keep equipment readily available and in serviceable condition.
 - c. Each internal combustion engine shall be equipped with a spark arrester meeting either (1) USDA Forest Service Standard 5100-1a, or (2) appropriate Society of Automotive Engineers (SAE) recommended practice J335(b) and J350(a) as now or hereafter amended unless it is: (1) Equipped with a turbine-driven exhaust supercharger such as the turbocharger. There shall be no exhaust bypass. (2) A passenger-carrying vehicle or light truck, or medium truck up to 40,000 GVW, used on roads and equipped with a factory-designed muffler complete with baffles and an exhaust system in good working condition. (3) A heavy duty truck, such as a dump or log truck, or other vehicle used for commercial hauling, used only on roads and equipped with a factory designed muffler and with a vertical stack exhaust system extending above the cab. Exhaust equipment described in this subsection, including spark arresters and mufflers, shall be properly installed and constantly maintained in serviceable condition.
 - d. Contractor shall provide a tank truck or trailer, containing not less than 300 gallons of water. The tank, pump and at least 250 feet of hose and nozzle shall be connected and ready for use at all times. The tank truck shall be maintained in a serviceable condition and located within 10 minutes, round trip, from each project area from the start of Work to the end of the Fire Watch / Fire Security service consistent with IFPL.

EXHIBIT 4
SITE PHOTOGRAPHS



Photo 1: Historic floodplain channel at base of alluvial fan. LWD placement to occur here.



Photo 2: Historic floodplain channel at base of alluvial fan. LWD placement to occur here and to north on alluvial fan surface.



Photo 3: Estimated condition of Site at Start Time. Note this photo was taken of a similar site that received a similar site preparation treatment prior to riparian plantings.



Photo 4: Primary access route.



Photo 5: Approximate location of staging area.



Photo 6: Developed portion of secondary access route.



Photo 7: Undeveloped portion of secondary access route.



Photo 8: Portion of the large woody material provided by Agency and stockpiled at Site.



Photo 9: Portion of the large woody material provided by Agency and stockpiled at Site.

**EXHIBIT 5
TECHNICAL REPORTS**

Gibbons Creek Hydraulic and Sediment Transport Analysis (April 2019)

Geotechnical Analysis: Steigerwald Levee Design – 100% Design Report (Jan. 2019)

Sediment Suitability Determination Memorandum (Dec. 2018)

The above technical reports are provided as a file titled "Exhibit 5_Technical Reports", which is available for download on the Estuary Partnership's website.

EXHIBIT 6
FINAL DESIGN PLAN SET

The final design plan set is provided as a file titled "Exhibit 6_Final Design Plan Set", which is available for download on the Estuary Partnership's website.