

## GENERAL CONDITIONS

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## 1. DEFINITIONS

- 1.1. Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated and shall be applicable to both the singular and plural thereof.
- 1.2. ADDENDA - Written or graphic instruments issued prior to the execution of the AGREEMENT which modify or interpret the CONTRACT DOCUMENTS, Drawings, and Specifications, by additions, deletions, clarifications, or corrections as agreed upon by the parties.
- 1.3. BID or PROPOSAL - The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.
- 1.4. BIDDER - Any person, firm, or corporation submitting a PROPOSAL for WORK.
- 1.5. BONDS - Performance Bonds and other instruments of surety, furnished by the SUPPLIER and the SUPPLIER'S banks in accordance with the CONTRACT DOCUMENTS and approved by DISTRICT.
- 1.6. CHANGE ORDER - A written order to the SUPPLIER authorizing an addition, deletion, or revision in the WORK and/or CONTRACT PRICE within the general scope of the WORK.
- 1.7. CONTRACT DOCUMENTS - The CONTRACT including the SUPPLIER'S Proposal, AGREEMENT, Bank Guarantees and Bonds, Change Orders, General Conditions, Supplemental General Conditions, Drawings, Specifications, and Addenda.
- 1.8. CONTRACT PRICE - The total moneys payable to the SUPPLIER under the terms and conditions of the CONTRACT DOCUMENTS. All prices and monetary amounts in the CONTRACT DOCUMENTS shall be expressed in currency of the United States of America (\$US) unless otherwise noted.
- 1.9. CONTRACT TIME - The period of time for completion of the Work in accordance with the requirements set forth in the Agreement.
- 1.10. SUPPLIER - The person, firm, or corporations with whom the DISTRICT has executed the AGREEMENT
- 1.11. DRAWINGS - the parts of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.
- 1.12. DISTRICT – Three Sisters Irrigation District, Deschutes County, Oregon, a quasi-municipal corporation of the State of Oregon governed under ORS 545, which is the licensee for the McKenzie Reservoir Hydroelectric Project under Federal Energy Regulatory Commission (FERC) Qualified Conduit No. CD17-14-000. The words “DISTRICT” and “OWNER” are used interchangeably throughout this document.
- 1.13. DISTRICT'S REPRESENTATIVE- The authorized representative of the DISTRICT who is assigned to the Project site or any part thereof.
- 1.14. [MISSING TERM]- The persons, firms, or corporations named as such in the CONTRACT DOCUMENTS by the DISTRICT.
- 1.15. EQUIPMENT - The items of equipment required to be furnished under the Contract Documents.

- 1.16. **FIELD ORDER** - A written effecting a change in the **WORK** not involving an adjustment in the **CONTRACT PRICE** or an extension of **CONTRACT TIME**, issued by the **SUPPLIER** during construction.
- 1.17. **FINAL COMPLETION** - That date, as certified by the **DISTRICT'S REPRESENTATIVE** by issuance of a **FINAL ACCEPTANCE CERTIFICATE (FAC)**, when 100% of each and every part of the **WORK** has been completed, tested and accepted by the **DISTRICT** in writing.
- 1.18. **PROJECT** - The undertaking to be performed as provided in the **CONTRACT DOCUMENTS**.
- 1.19. **PROJECT** - The undertaking to be performed as provided in the **CONTRACT DOCUMENTS**.
- 1.20. **SHOP DRAWINGS** - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the **SUPPLIER**, a **SUBSUPPLIER**, manufacturer, supplier or distributor, which illustrate how specific portions of the **WORK** shall be fabricated or installed.
- 1.21. **SPECIFICATIONS** - A part of the **CONTRACT DOCUMENTS** consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- 1.22. **SUBSUPPLIER** - An individual, firm, or corporation having a direct contract with **SUPPLIER** or with any other **NOMINATED SUBSUPPLIER** for the performance of a part of the **WORK** at the site.
- 1.23. **SUBSTANTIAL COMPLETION** or **PROVISIONAL ACCEPTANCE**- That date certified by the **DISTRICT'S REPRESENTATIVE** by issuance of a **PROVISIONAL ACCEPTANCE CERTIFICATE** when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the **CONTRACT DOCUMENTS**, so that the Project or specified part can be utilized for the purposes for which it is intended.
- 1.24. **SUPPLEMENTAL GENERAL CONDITIONS** - Modifications to General Conditions, attached hereto as 09 Supplemental General Conditions.
- 1.25. **SUPPLIER** - Any person or organization who supplies materials or equipment for the **WORK** under this **AGREEMENT**. The words "Supplier" and "SUPPLIER" are used interchangeably herein.
- 1.26. **WORK** - All services and labor necessary to design, fabricate, furnish, deliver, supervise installation, start-up and test the Equipment, including all materials and equipment incorporated or to be incorporated in the Equipment.
- 1.27. **WRITTEN NOTICE** - Any notice to any party of the **AGREEMENT** relative to any part of this **AGREEMENT** in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at their last given address, or delivered in person to said party or their authorized representative at such address.

## **2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS**

- 2.1. The SUPPLIER may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS. Any proposed price modifications that arise as a result of such additional instructions shall be submitted to the DISTRICT for approval in writing within seven (7) days after receipt of such additional instructions and/or detailed drawings.
- 2.2. The additional drawings and instructions thus supplied will become a part of the CONTRACT DOCUMENTS. The SUPPLIER shall carry out the WORK in accordance with the additional detail drawings and specifications.

## **3. SCHEDULES, REPORTS AND RECORDS**

- 3.1. The SUPPLIER shall submit to the DISTRICT such progress schedules, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.
- 3.2. Prior to the first payment invoice, the SUPPLIER shall submit progress schedules showing the order in which the SUPPLIER proposes to carry on the WORK, including dates at which the various parts of the WORK will be started and estimated date of completion of each part, as applicable and as detailed in the Specifications.

## **4. DRAWINGS AND SPECIFICATIONS**

- 4.1. The intent of the Drawings and Specifications is that the SUPPLIER shall furnish all services, labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the Project in an acceptable manner, ready for operation by the DISTRICT.
- 4.2. In case of conflict between the Drawings and Specifications, the Specifications shall govern. Figure dimensions on Drawings shall govern over general Drawings.
- 4.3. Any discrepancies found between the Drawings and Specifications and site conditions or any inconsistencies or ambiguities in the Drawings and Specifications shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the SUPPLIER after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the SUPPLIER'S risk.

## **5. SHOP DRAWINGS**

- 5.1. The SUPPLIER shall provide the number of copies of SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly, but not exceeding two weeks from date of receipt, review all SHOP DRAWINGS. If the SUPPLIER does not receive a response to his submittal of drawings within this time, the submittal shall be considered accepted. The ENGINEER'S review of any SHOP DRAWING shall not release the SUPPLIER from any responsibility for deviations from the CONTRACT DOCUMENTS. The review of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.

- 5.2. When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the SUPPLIER'S certification that he reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.
- 5.3. Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been reviewed by the ENGINEER. A copy of each reviewed SHOP DRAWING and each approved sample shall be kept in good order by the SUPPLIER at the site and shall be available to the DISTRICTS REPRESENTATIVE.
- 5.4. All accepted drawings, blueprints, documentation for assembly and maintenance, tools, printing plates, etc., prepared or constructed by SUPPLIER and paid for by DISTRICT in accordance with the terms of this Agreement shall be the property of DISTRICT immediately upon payment therefor and upon completion of deliveries hereunder, or upon termination of this AGREEMENT, shall be delivered to DISTRICT.

## **6. MATERIALS, SERVICES AND FACILITIES**

- 6.1. It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the SUPPLIER shall provide and pay for all materials, labor, services, tools, equipment, transportation, supervision, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.
- 6.2. Materials and equipment shall be so stored as to insure the preservation of the quality and fitness of the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.
- 6.3. Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- 6.4. Materials, supplies, or equipment to be incorporated into the WORK shall not be purchased by the SUPPLIER or SUBSUPPLIER subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

## **7. INSPECTION AND TESTING**

- 7.1. All materials and equipment used in the construction of the Project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.
- 7.2. The DISTRICT shall provide inspection at the factory if DISTRICT so desires for its purposes. Any such inspection does not relieve SUPPLIER for responsibility for inspection.
- 7.3. The SUPPLIER shall provide at the SUPPLIER'S expense the testing and inspection services required by the CONTRACT DOCUMENTS.

- 7.4. If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the SUPPLIER, the SUPPLIER will give the ENGINEER timely notice of readiness. The SUPPLIER will then furnish the ENGINEER the required certificates of inspection, testing or approval.
- 7.5. Inspections, tests, or reviews by the ENGINEER or others shall not relieve the SUPPLIER from the obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.
- 7.6. The DISTRICTS REPRESENTATIVE and the ENGINEER'S representatives will at all times have access to the WORK.

## **8. SUBSTITUTIONS**

- 8.1. When a material, article, or piece of equipment is identified on the Drawings or Specifications by reference to brand name or catalogue numbers, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The SUPPLIER may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the SUPPLIER. The appropriate CHANGE ORDER will be issued. The SUPPLIER warrants that if substitutes are approved, no changes in the function or general design of the project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the SUPPLIER without change in the CONTRACT PRICE or CONTRACT TIME.

## **9. ROYALTIES AND PATENTS**

- 9.1. The SUPPLIER agrees to pay all required royalties and license fees and shall defend, indemnify and hold the DISTRICT and ENGINEER harmless from and against claims, demands, or suits based on allegations that the equipment manufactured or supplied by the SUPPLIER constitutes an infringement of any patent, trademark, copyright, or other proprietary interest or violation of any noncompetitive or secrecy covenant, if the SUPPLIER is notified promptly of the assertion of any such allegation and if the SUPPLIER is given authority to defend the same and reasonable information and assistance of DISTRICT for the defense of the same. Upon notification of an infringement, or claim, the SUPPLIER agrees to perform the following, at no cost to the DISTRICT:
  - a. Procure for the DISTRICT the right to continue using the equipment; or
  - b. Replace, subject to the approval of the DISTRICT, the same with non-infringing machinery; or and
  - c. Modify it subject to the approval of the DISTRICT so that it becomes non-infringing.

## **10. SURVEYS, PERMITS, REGULATIONS**

- 10.1. In connection with the installation of the Equipment at the Project Site, the DISTRICT shall furnish all boundary surveys (if necessary) and establish all base lines for locating the principal component parts of such Equipment at the site together with a suitable number of bench marks adjacent to the site as shown in the CONTRACT DOCUMENTS.
- 10.2. The SUPPLIER shall carefully preserve bench marks, reference points and stakes if he is at the Project site for any reason and, in case of willful or careless destruction, shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.
- 10.3. Permits and licenses of a temporary nature necessary for transportation of the Equipment to the Project site shall be secured and paid for by the SUPPLIER if needed, unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the DISTRICT, unless otherwise specified. The SUPPLIER shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the SUPPLIER observes that the CONTRACT DOCUMENTS are at variance therewith, the SUPPLIER shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

## **11. PROTECTION OF WORK, PROPERTY, AND PERSONS**

(Only applicable to the transportation of the Equipment to and the Equipment installation supervision work at the Project site)

- 11.1. The SUPPLIER will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK for his personnel. The SUPPLIER will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein.
- 11.2. The SUPPLIER will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. When applicable, the SUPPLIER will implement all necessary safeguards for safety and protection. The SUPPLIER will notify owners of adjacent utilities when prosecution of the WORK may affect them. The SUPPLIER will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or part, by the SUPPLIER, and SUBSUPPLIER or anyone directly or indirectly employed by any of them or anyone directly or indirectly employed by any of them anyone of whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the negligent acts or omission of the DISTRICT, of the ENGINEER, or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the SUPPLIER.

- 11.3. In emergencies affecting the safety of persons at the site or the WORK or property at the site or adjacent thereto, the SUPPLIER, without special instructions or authorization from the ENGINEER or DISTRICT, shall act to prevent threatened damage, injury or loss. The SUPPLIER will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.
- 11.4. SUPPLIER warrants that all materials, equipment, supplies, and facilities, whether temporary or permanent, furnished by SUPPLIER or any of SUPPLIER'S subSUPPLIERS at the site in connection with performance of the Work shall strictly comply with all applicable laws, ordinances, codes, rules, regulations, and orders of any and all governmental authorities, including federal, state, municipality, and local, pertaining to health or safety or environmental protection.

At all times while any of SUPPLIER'S employees, agents, or subSUPPLIERS are on or about DISTRICT'S premises, SUPPLIER shall be solely responsible for providing them with a safe place of employment, and SUPPLIER shall inspect the places where his employees, agents, or subSUPPLIERS are or may be present on or about DISTRICT'S premises and shall promptly take action to correct conditions which are or may become an unsafe place of employment for them. SUPPLIER shall indemnify and save harmless DISTRICT and ENGINEER and their officers, employees, and agents, from and against any and all claims, loss or liability in any manner arising out of SUPPLIER'S failure to comply with the foregoing provisions of this Paragraph.

- 11.5. If a death, serious personal injury, or substantial property damage occurs in connection with the performance of work under the CONTRACT at the site, SUPPLIER shall immediately notify the DISTRICT's representative personally or by telephone. SUPPLIER shall promptly submit to DISTRICT'S representative a written report, in such form as may be required by DISTRICT, of all accidents which occur in connection the Work. Any such report must include the following information: (1) name and address of the injured or decease person(s) and/or person(s) whose property was damaged, (2) name and address of SUPPLIER or subSUPPLIER(s) involved, (3) name and address of SUPPLIER'S liability insurance carrier and/or Workmen's Compensation carrier, as applicable, (4) a detailed description of the accident or event and the injuries and/or property damage involved and whether any of DISTRICT's property, equipment, tools, or material were involved, and (5) a dated copy of SUPPLIER'S report to its insurance carrier concerning such accident or event.

## **12. SUPERVISION BY SUPPLIER**

The SUPPLIER will supervise and/or direct the installation of the Equipment at the Project site. He will be solely responsible for the means, methods, techniques, sequences and procedures of installation work, and must coordinate as necessary with the installation SUPPLIER. The SUPPLIER will employ and maintain at the Project site, a qualified supervisor or superintendent who shall have been designated in writing by the SUPPLIER as the SUPPLIER'S representative at the site. The supervisor shall have full authority to act on behalf of the SUPPLIER and all communications given to the supervisor shall be as binding as if given to the SUPPLIER.



The supervisor shall be present on the site at all times as stipulated in the PROPOSAL and as additionally may be required by the DISTRICT to perform adequate supervision and coordination of the WORK. SUPPLIER agrees that by providing such supervision, all performance guarantees shall remain in full force and effect at all times during performance of the WORK, and that no claims shall be made by SUPPLIER for improper delivery, handling, or installation of equipment.

### **13. CHANGES IN THE WORK**

- 13.1. The DISTRICT may at any time, as the need arises, order changes within the scope of the WORK without invalidating the AGREEMENT. Except to the extent that amounts payable due to such changes do not exceed the amount remaining in the Force Account, if such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER, as more fully set forth in Section 14.0 below.
- 13.2. The DISTRICT'S REPRESENTATIVE, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The SUPPLIER shall proceed with the performance of any changes in the WORK, so ordered by the DISTRICT'S REPRESENTATIVE unless the SUPPLIER believes that such FIELD ORDER entitles the SUPPLIER to a change in CONTRACT PRICE or TIME or both, in which event the SUPPLIER shall give the DISTRICT'S REPRESENTATIVE WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the SUPPLIER shall document the basis for the change in CONTRACT PRICE or TIME within seven (7) days. The SUPPLIER shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the DISTRICT.

If SUPPLIER believes that DISTRICT has given an oral change order, or that work must be performed for any reason that is outside the CONTRACT Scope of Work, SUPPLIER must make written request to DISTRICT for a written change order prior to commencement of performance thereof and in any event within three (3) days of the date that any such oral direction is given or the date of occurrence of the event that caused work to be performed beyond the CONTRACT Scope of Work. Any such written request must identify the person who gave the oral direction and the nature of the direction and its effect or other event and its impact, if any, on CONTRACT price and schedule. Sub-suppliers shall adhere to all applicable provisions of the above paragraph, and their subcontracts shall so provide.

### **14. CHANGES IN CONTRACT PRICE**

The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

- a. Unit prices previously approved.
- b. An agreed lump sum.

## **15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

- 15.1. The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK shall be commenced promptly after the issuance of the Notice to Proceed by the DISTRICT.
- 15.2. The SUPPLIER will proceed with the WORK at such rate of progress as to insure completion of the applicable portions of the WORK within the Guaranteed Delivery Periods. It is expressly understood and agreed, by and between the SUPPLIER and the DISTRICT, that such Guaranteed Delivery Periods represent reasonable deadlines for the performance of such WORK, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK. If the applicable portions of the WORK are not completed within such Guaranteed Delivery Periods, DISTRICT will suffer loss and damages (including but not limited to guaranteed capacity or other penalties from the purchaser(s) of the electricity to be produced by the Project), to which it is difficult to assign an exact value.
- 15.3. If the SUPPLIER shall fail to complete the applicable portions of the WORK within the Guaranteed Delivery Periods (subject to any written extension(s) of time granted by the DISTRICT), then the SUPPLIER will pay to the DISTRICT the amounts set forth below as liquidated damages (and not as a penalty) for such loss, damages and/or penalties suffered by the District:

\$500.00 for each calendar day that the submittals specified in items #1 or #2 are not delivered within the applicable Guaranteed Delivery Period set forth in Paragraph 1.07 of the Proposal Form.

\$1,000.00 for each calendar day, for the first 30 days of delay, that the equipment specified in items 3 or 4 of Paragraph 1.07 of the Proposal Form is not delivered within the applicable Guaranteed Delivery Period set forth in the Proposal Form.

With respect to items 3 or 4 of Paragraph 1.07 of the Proposal Form, after 30 days, if the delay continues, SUPPLIER shall pay \$2,000.00 per day of additional delay.

The maximum amount of liquidated damages payable for the combination of any failure to meet the Guaranteed Delivery Periods set forth herein and/or the guaranteed performance levels more fully described in Paragraph 14.0 of the General Conditions late delivery shall not exceed 20 percent of the total Contract Price; provided that to the extent the total of all liquidated damages for failure to meet such requirements has reached such amount and the delay in delivery is continuing, the DISTRICT may resort to any other remedies provided hereunder (including but not limited to termination for default) or by law. For purposes of this Paragraph 15.3 and Paragraph 14.0 of the Supplemental General Conditions, "Contract Price" shall be defined as the Grand Total shown on the Proposal Form submitted by the SUPPLIER.

- 15.4. The SUPPLIER shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following and the SUPPLIER has given WRITTEN NOTICE of such delay to the DISTRICT or ENGINEER within three (3) days of when SUPPLIER knew or should have known of such delay occurring.
- 15.4.1 To any preference, priority or allocation order duly issued by the DISTRICT.
  - 15.4.2 To causes without any fault or negligence of the SUPPLIER, including acts of God, or of the public enemy, acts of the DISTRICT, acts of another SUPPLIER in the performance of a contract with the DISTRICT, fires, floods, epidemics, quarantine restrictions, strikes; and
  - 15.4.3 To any delays of SUBSUPPLIERS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.
- 15.5. SUPPLIER shall be entitled to an extension of time to complete the Work equal to only the time of any delay, disruption, or interference which is due to fire, flood, other acts of God, war, civil insurrection, strikes except for lock outs, or other force majeure events without any fault or negligence of SUPPLIER. SUPPLIER shall notify DISTRICT in writing of the amount of lost time involved within three (3) days following any such occurrence. SUPPLIER shall not make claims for loss of efficiency or continuity due to such events. Such extension of time shall be the exclusive remedy of SUPPLIER for any such delay and SUPPLIER shall not be entitled to and hereby waives any claim for damages against DISTRICT on account of such delay. If SUPPLIER fails to notify DISTRICT in writing of the amount of lost time involved within three (3) days following any such occurrence, SUPPLIER shall be deemed to have waived any claim for an extension of time.
- 15.6. SUPPLIER shall advise DISTRICT promptly in writing of any labor dispute or anticipated labor dispute, or delay in material delivery or fabrication, which may reasonably be expected to affect the performance of the Work by SUPPLIER or any of its sub-SUPPLIERS in regard to the completion date of the Work.
- 15.7. Liquidated damages for failure to achieve guaranteed performance of the equipment supplied under this AGREEMENT shall also be assessed in accordance with Paragraph 14 of the Supplemental General Conditions.

**16. CORRECTION OF WORK**

- 16.1. The SUPPLIER shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the SUPPLIER shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the DISTRICT and shall bear the expense of making good all WORK of other SUPPLIERS destroyed or damaged by such removal or replacement.
- 16.2. All removal and replacement WORK shall be done at the SUPPLIER'S expense. If the SUPPLIER does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the DISTRICT may remove such WORK and store the materials at the expense and responsibility of the SUPPLIER.

**17. [Intentionally Deleted]**

**18. SUSPENSION OF WORK, DEFAULT, TERMINATION, AND DELAY**

- 18.1. 18.1 The DISTRICT may suspend the WORK or any portion thereof for a period of not more than 180 (one hundred eighty) days or such further time as agreed upon by the SUPPLIER, by WRITTEN NOTICE to the SUPPLIER and the ENGINEER, which shall fix the date on which WORK shall be resumed. The SUPPLIER will resume that WORK on the date so fixed. The SUPPLIER will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any such suspension caused at the request of the DISTRICT by a reasonable amount negotiated between the Parties.
- 18.2. If the SUPPLIER is adjudged as bankrupt or insolvent, or make a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the SUPPLIER or for any of its property, or if SUPPLIER files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or repeatedly fails to make prompt payments to SUBSUPPLIERS or for labor, materials or equipment or disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or disregards the authority of the ENGINEER, or otherwise violates any provision of the CONTRACT DOCUMENTS, then the DISTRICT may, without prejudice to any other right or remedy and after giving the SUPPLIER and its surety a minimum of seven (7) days from receipt of a WRITTEN NOTICE, terminate the services of the SUPPLIER for default and take possession of the Equipment and of all related materials, equipment, owned by the SUPPLIER, and finish the WORK by whatever method the DISTRICT may deem expedient. In such case the SUPPLIER shall not be entitled to receive any further payment. If the direct and indirect costs of completing the SUPPLIER's obligations, including costs for outside professional services, exceed the unpaid balance of the Contract Price, the SUPPLIER will pay the difference to the DISTRICT within thirty (30) days. If delays in achieving final completion result as a consequence of such termination, penalties for late completion shall be assessed and paid by the SUPPLIER in accordance with Paragraph 15 of these terms and conditions. Such costs incurred by the DISTRICT will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

- 18.3. Where the SUPPLIER'S services have been so terminated by the DISTRICT, said termination shall not affect any right of the DISTRICT against the SUPPLIER then existing or which may thereafter accrue. Any retention or payment of moneys by the DISTRICT due the SUPPLIER will not release the SUPPLIER from compliance with the CONTRACT DOCUMENTS.
- 18.4. After ten (10) days from delivery of a WRITTEN NOTICE to the SUPPLIER and the ENGINEER, the DISTRICT may, without cause and without prejudice to another right or remedy, elect to abandon the Project and terminate the Contract. In such case the SUPPLIER shall be paid for all WORK executed and any expense sustained plus a negotiated reasonable profit.
- 18.5. If, through no act or fault of the SUPPLIER, the WORK is suspended for a period of more than three hundred sixty five (365) days by the DISTRICT or under an order of court or other public authority, or the DISTRICTS REPRESENTATIVE fails to act on any request for payment within thirty (30) days after it is submitted, or the DISTRICT fails to pay the SUPPLIER substantially the sum approved by the DISTRICTS REPRESENTATIVE or awarded by arbitrators within thirty (30) days of its approval and presentation, then the SUPPLIER may, after fifteen (15) days from delivery of a WRITTEN NOTICE to the DISTRICT and the ENGINEER, providing an opportunity for the DISTRICT to cure such default within such period, terminate the Contract and recover from the DISTRICT payment for all WORK executed and all expenses sustained prior to the effective date of such termination. In addition and in lieu of terminating the CONTRACT, if the DISTRICTS REPRESENTATIVE has failed to act on a request for payment or if the DISTRICT has failed to make any payment as aforesaid, the SUPPLIER may upon ten (10) days written notice to the DISTRICT and the DISTRICTS REPRESENTATIVE stop the WORK until paid all amounts then due, in which event and upon resumption of the WORK CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.
- 18.6. If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the DISTRICT or DISTRICTS REPRESENTATIVE to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the SUPPLIER for the costs and delays necessarily caused by the failure of the DISTRICT or ENGINEER.

## **19. PAYMENTS TO SUPPLIER**

- 19.1. Payments to the SUPPLIER will include milestone payments and progress payments based on the progress of the WORK, as more fully set forth in Paragraph 16 of the Supplemental Conditions. The payment schedule is presented in Schedule 1 attached hereto and made a part of this Agreement.
- 19.2. Prior to PROVISIONAL ACCEPTANCE, the DISTRICT, with the approval of the ENGINEER and with the concurrence of the SUPPLIER, DISTRICT may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

- 19.3. [Intentionally Deleted]
- 19.4. Upon substantial completion of the Work, the SUPPLIER shall apply to the DISTRICT for a PROVISIONAL ACCEPTANCE certificate. The DISTRICTS REPRESENTATIVE shall inspect the facilities within 15 days of such application, and if the WORK has been completed to the extent allowing the Project to be safely put to its intended purpose, in the DISTRICTS REPRESENTATIVE's opinion, DISTRICTS REPRESENTATIVE shall issue a PROVISIONAL ACCEPTANCE certificate and a complete list of all items necessary for the SUPPLIER to complete for the work to be considered finally complete. Upon final completion and acceptance of the WORK, the DISTRICTS REPRESENTATIVE shall issue a FINAL COMPLETION certificate. After FINAL COMPLETION, any unpaid balance found to be due to the SUPPLIER, but except such sums as may be lawfully retained by the DISTRICT, shall be paid to the SUPPLIER in accordance with the payment provisions. (FINAL COMPLETION certificate is to be understood as equivalent to the FINAL ACCEPTANCE CERTIFICATE used in other parts of the CONTRACT DOCUMENTS).
- 19.5. The SUPPLIER and ENGINEER will indemnify and save the DISTRICT and/or the DISTRICT'S agents harmless from all claims growing out of the lawful demand of any SUBSUPPLIERS, laborers, workmen, mechanics, material men, and furnisher of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The SUPPLIER shall, at the DISTRICT'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the SUPPLIER fails to do so the DISTRICT may, after having notified the SUPPLIER, either pay unpaid bills or withhold from the SUPPLIER'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged where upon payment to the SUPPLIER shall be resumed in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the DISTRICT to either the SUPPLIER, the SUPPLIER'S Surety, or any third party. In paying any unpaid bills of the SUPPLIER, any payment so made by the DISTRICT shall be considered as a payment made under the CONTRACT DOCUMENTS by the DISTRICT to the SUPPLIER and the DISTRICT shall not be liable to the SUPPLIER for any such payments made in good faith.
- 19.6. If the DISTRICT fails to make payment thirty (30) days after approval by the DISTRICTS REPRESENTATIVE, there shall be added to each such payment interest at the rate of 1% per month commencing on the first day after said payment is due and continuing until the payment is received by the SUPPLIER.

## **20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE**

The acceptance by the SUPPLIER of final payment shall be and shall operate as a release to the DISTRICT of all claims and liability to the SUPPLIER other than claims in stated amounts as may be specifically excepted by the SUPPLIER for all things done or furnished in connection with this WORK and for every act and neglect of the DISTRICT and other relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the SUPPLIER or its sureties from any obligations under the CONTRACT DOCUMENTS or the respective Bonds.

## 21. INSURANCE

21.1. Prior to the commencement of any work under this Agreement, and at all times during the term of this Agreement, SUPPLIER shall obtain and maintain continuously, at its own expense, a policy or policies of insurance as enumerated below. All insurance required by this Agreement will be primary insurance with respect to any insurance carried by the DISTRICT. SUPPLIER shall have no right to call upon or seek contribution from any insurance carried by the DISTRICT.

21.1.1 Commercial General Liability insurance, written on an occurrence form (ISO – CG 00 01). The commercial general liability insurance shall include the following:

a. Usual coverages known as:

Premises / Operations Liability  
Products / Completed Operations  
Personal / Advertising Injury  
Contractual Liability  
Fire Damage Legal Liability

b. No General Liability policy shall exclude the following:

Broad Form Contractual Liability  
Broad Form Property Damage including completed operations  
XCU Coverage  
Independent SUPPLIER's Liability

21.1.2. If such policy is written on a Claims Made form (ISO – GC 00 02), the retroactive date shall be prior to or coincident with the Effective Date of this Agreement. The policy shall date that coverage is Claims Made, and state the Retroactive Date. Claims Made form coverage shall be maintained by the SUPPLIER for a minimum of three years following the termination of this Agreement, and the SUPPLIER shall annually provide the DISTRICT with proof of such renewal. If renewal of the Claims Made form of coverage becomes unavailable, or economically prohibitive, the SUPPLIER shall purchase an Extended Reporting Period Tail or execute another form of guarantee acceptable to the DISTRICT to assure financial responsibility for services performed.

a. Primary Insurance

Said policy(s) must provide the following coverage: Bodily Injury and Property Damage –

\$2,000,000 General Aggregate  
\$2,000,000 Complete Operations Aggregate  
\$2,000,000 Personal and Advertising Injury  
\$1,000,000 Per Occurrence  
\$100,000 Fire Damage

21.1.3 Business Automobile Liability Insurance, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (ISO – CA 00 01) or equivalent.

a. Such policy must provide the following coverage:

Bodily Injury and Property Damage with a minimum limit of  
\$1,000,000 per accident.

- 21.2. All insurance as provided for in 21.1.1, 21.1.2 and 21.1.3 above shall include the DISTRICT, its officers, elected officials, employees, and agents as Additional Insureds with respect to DISTRICT's liability arising out of or related to SUPPLIER's negligence in the performance of services under this Agreement, and shall not be reduced or cancelled without forty-five (45) days prior written notice to the DISTRICT.

Such insurance shall indemnify the SUPPLIER against covered loss or damage from liability imposed by law upon, or assumed under Contract by the SUPPLIER or his SUBSUPPLIER's for damages on account of such public liability, property damage, products liability or completed operations liability.

- 21.3. Should SUPPLIER be self-insured, under items 21.1.1, 21.1.2 and 21.1.3 above, a letter from the Corporate Risk Manager, or appropriate Finance Officer, is acceptable – stipulating if actuarially funded and fund limits; plus any excess declaration pages to meet the contract requirements. Further, this letter should advise how SUPPLIER would protect the DISTRICT as an Additional Insured in their Self Insured layer, and include claims handling directions in the event of a claim.

- 21.4. Workers Compensation – Pursuant to ORS 279C.530(2), Contractor attests that it is either a subject employer required to comply with ORS 656.017 (worker's compensation), or an employer that is exempt under ORS 656.126. If Contractor is not exempt from compliance with ORS 656.017 and employs subject workers who provide work forming any part of the Work under this Agreement in the State of Oregon, Contractor shall comply with ORS 656.017 and provide the required Worker's Compensation coverage. Contractor shall maintain Workers' Compensation insurance to cover statutory limits and Employer's Liability (including Occupational Disease) coverage with limits of not less than \$1,000,000 which shall cover all of Contractor's employees engaged in the Work. Contractor shall ensure that each of its Subcontractors complies with these requirements.

- 21.5. The cost of any claim payments falling within the deductible or the self-insured retention shall be the responsibility of the SUPPLIER. Should the SUPPLIER be insured by a captive under this item, a letter from the Corporate Risk Manager, or appropriate Finance Officer, is acceptable, stipulating that it is actuarially funded and the fund limits meet the contract requirements.



- 21.6. Builders Risk Insurance – The CONTRACTOR shall, at its own expense, carry and maintain “All Risks” forms of “Builders Risks” insurance without optional deductibles, unless otherwise specified in this Agreement, against loss of or damage to property (including but not limited to, building materials; tools; equipment; vehicles; watercraft; aircraft; theft; vandalism; malicious mischief; collapse; collapse from defective material or methods; collapse from faulty design, plans, specifications, or workmanship; debris removal; windstorm; falsework; testing and startup; temporary buildings; business interruption; demolition; increased cost of construction; and architects and SUPPLIER’s fees arising from a covered loss) including Earthquake and Flood on a replacement cost basis and with a waiver of the coinsurance provision, insuring the DISTRICT, SUPPLIER, all SUBSUPPLIER’s and all SUB- SUBSUPPLIERS from and against all risks of physical loss or damage to the work, the foundation, (including permanent and temporary building and contents), materials, equipment and supplies for the full insurable value thereof, while in transit to the job site, while there awaiting installation, during installation and all forms of testing, and until completion and acceptance by the DISTRICT of SUPPLIER’s work hereunder. Such insurance shall be written in an amount at least equal to the initial contract sum as well as subsequent modifications of that sum. The DISTRICT shall be named as an Additional Insured on all property and casualty insurance policies.
- 21.7. SUPPLIER shall ensure that all policies of insurance that SUPPLIER carries as insurance shall include a waiver of the insurer’s right of subrogation to the benefit of the DISTRICT.
- 21.8. Any deductible or self-insured retention must be disclosed and is subject to approval by DISTRICT’s Risk Manager. The cost of any claim payments falling within the deductible or self-insured retention shall be the responsibility of the SUPPLIER.
- 21.9. Evidence of Insurance – The following documents must be provided and filed with the DISTRICT’s Contract as evidence of insurance coverage:
- a. A Certificate of insurance (Accord 25-S) showing the Insuring Company, policy numbers, effective dates, limits of liability and deductibles;
  - b. A copy of the Endorsement (CG 2010 (ISO) or equivalent) naming the DISTRICT as an Additional Insured (not applicable to Professional Liability and Worker’s Compensation Insurance), showing the policy number, and signed by an authorized representative of the insurance company.
- 21.10. Failure of the DISTRICT to demand such certificate or other evidence of compliance with these insurance requirements or failure of the DISTRICT to identify a deficiency from the provided evidence shall not be construed as a waiver of the SUPPLIERS obligation to maintain such insurance. Acceptance by the DISTRICT or any certificate or other evidence of compliance does not constitute approval or agreement by the DISTRICT that the insurance requirements have been met or that the policies shown in the certificates or other evidence are in compliance with the requirements.

- 21.11. The DISTRICT shall have the right but not the obligation of prohibiting the SUPPLIER or SUBSUPPLIER from entering the project site until such certificates or other evidence of insurance has been provided in full compliance with these requirements. If SUPPLIER fails to maintain insurance as set forth above, the DISTRICT may purchase such insurance at the SUPPLIER's expense. The SUPPLIER's failure to maintain the required insurance may result in termination of this Agreement at the DISTRICT's option.
- 21.12. SUBSUPPLIERS – SUPPLIER shall insure that each SUBSUPPLIER meets the insurance requirements and specifications of this Agreement. All coverages for SUBSUPPLIER's shall be subject to all requirements stated herein and applicable to their profession. SUPPLIER shall furnish the DISTRICT, upon request, with copies of Certificates of Insurance evidencing coverage for each SUBSUPPLIER.
- 21.13. Duration – All required coverages will be maintained without interruption during the entire term of this Agreement plus an additional 3 years in products and completed operations coverage following final acceptance of the project by the DISTRICT.
- 21.14. Certification and Cancellation of Insurance – The SUPPLIER shall not cause any insurance policy to be canceled or permit any policy to lapse. All insurance policies shall include a provision to the effect that the insurance policy shall not be subject to cancellation, lapse, or to reduction in the required limits of liability or amount of insurance until notice has been mailed to the DISTRICT by the Insuring Company stating the date that such cancellation, lapse or reduction shall be effective which date shall not be less than forty five (45) calendar days after the mailing of such notice.
- 21.15. Prior to performing any services and before any Notice to Proceed from the DISTRICT will be issued, the SUPPLIER shall file with the DISTRICT Certificates of Insurance rated A-VII or better by A.M. Best Company certifying to the coverage of all insurance required herein. All Certificates of Insurance shall be authenticated by the proper Agent of the Insured and shall certify the name of those insured, the type and amount of the insurance, the location and operations to which the insurance applies, the expiration date, and that the Insuring Company will give notice to the DISTRICT at least forty-five (45) calendar days prior to the effective date of any cancellation, lapse or reduction in limits.

## **22. CONTRACT SECURITY**

The SUPPLIER shall furnish the DISTRICT with bonds in penal sums equal to the amounts as agreed upon in the CONTRACT DOCUMENTS. The expense of these Bonds shall be borne by the SUPPLIER. The wording of the Bonds shall be according to the text draft included in the CONTRACT, or as otherwise approved by the DISTRICT.

## **23. ASSIGNMENTS**

Neither the SUPPLIER nor the DISTRICT shall sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of any right, title or interest therein, or any obligations thereunder, without written consent of the other party.

## 24. INDEMNIFICATION

- 24.1. **General Indemnity.** Supplier shall defend, save, hold harmless, and indemnify District, its officers, employees and agents, from and against all third-party claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, for personal injury, including death, damage to real property and damage to tangible personal property resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Supplier or its officers, employees, subcontractors, or agents under this Agreement; provided that Supplier shall have no obligation to indemnify District from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of District, its officers, employees or agents.
- 24.2. **Delays.** Supplier shall indemnify the District for any and all loss and damages resulting from delays in completion of the Work when such delay is caused or attributable to default in the proper performance by Supplier.
- 24.3. **Product Defects.** The Supplier agrees to indemnify and hold harmless the District from liability, including strict liability, for any and all defects appearing or developing in the materials furnished under this Contract for a period of one year after the date of acceptance of the work in the Contract by the District.
- 24.4. **Attorneys' Fees.** In any suit or action instituted to enforce compliance with any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such attorney fees, costs and expenses as the court may adjudge reasonable in such suit or action, or any appeal therefrom.

## 25. SEPARATE CONTRACTS

- 25.1. The DISTRICT reserves the right to perform additional work related to the Project, and/or to enter into other contracts in connection with this Project. If the proper execution or results of any part of the SUPPLIER'S WORK depends upon the WORK of any other SUPPLIER, the SUPPLIER shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results. Such other contracts shall not affect SUPPLIER's guarantees and warranties in any way as long as they are not interfering with the SUPPLIER's scope of work.

## 26. SUBCONTRACTING

- 26.1. The SUPPLIER may utilize the services of specialty SUBSUPPLIERS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBSUPPLIERS.
- 26.2. The SUPPLIER shall not award WORK to SUBSUPPLIER(s), in excess of ten (10%) percent of the CONTRACT PRICE, without prior written approval of the DISTRICT. NOMINATED SUBSUPPLIERS as defined in 1.18 of GENERAL CONDITIONS do not need further approval by the DISTRICT.
- 26.3. The SUPPLIER shall be fully responsible to the DISTRICT for the acts and omissions of its SUBSUPPLIERS, and of persons either directly or indirectly employed by them, as the SUPPLIER is for the acts and omissions of persons directly employed by the SUPPLIER.

- 26.4. The SUPPLIER shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBSUPPLIERS to the SUPPLIER by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBSUPPLIERS and to give the SUPPLIER the same power as regards terminating any subcontract that the DISTRICT may exercise over the SUPPLIER under any provision of the CONTRACT DOCUMENTS.
- 26.5. Nothing contained in this Contract shall create any contractual relationship between any SUBSUPPLIER and the DISTRICT.

**27. ENGINEER'S AUTHORITY**

- 27.1. The ENGINEER may act as the DISTRICT'S representative during the manufacturing, factory testing, delivery, installation and Project site testing and commissioning periods, and shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed, and shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER may make visits to the factory or to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.
- 27.2. The SUPPLIER will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship, and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.
- 27.3. The ENGINEER will not be responsible for the means, controls, techniques, sequences, procedures, or safety of the manufacturing or installation process.
- 27.4. The ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.