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1. GENERAL

These Supplemental Conditions amend or supplement the General Conditions of these CONTRACT DOCUMENTS and specific provisions of the CONTRACT DOCUMENTS as indicated herein and shall supersede any conflicting provisions in this Contract. All provisions which are not so amended or supplemented remain in full force and effect. The terms in these Supplemental Conditions shall be those as defined in the General Conditions.

2. PROJECT DESCRIPTION

2.1. The McKenzie project is sited near Sisters, Oregon on Whychus Creek. It is situated in the lower district on TSID's McKenzie Reservoir.

The McKenzie Reservoir Hydroelectric Project will use irrigation water currently being diverted from Whychus Creek through the penstock. The project will operate as a supplemental use to the existing water right under a FERC qualified conduit.

2.2. The work covered by these CONTRACT DOCUMENTS includes design, fabrication, delivering to jobsite, supervision of installation, start-up and testing of a horizontal shaft, single runner, Francis turbine with the generator directly connected to the turbine, and auxiliary electrical and mechanical equipment, for a complete water-to-wire equipment package for the McKenzie Reservoir Hydroelectric Project.

2.3. The work covered by these CONTRACT DOCUMENTS includes design, fabrication, delivering to jobsite, supervision of installation, start-up and testing of a horizontal shaft, single runner, Turgo or Pelton turbine with the generator directly connected to the turbine, and auxiliary electrical and mechanical equipment, for a complete water-to-wire equipment package for the McKenzie Reservoir Hydroelectric Project.

3. PERMITS

With respect to the installation supervision and other on-site WORK required by the Contract Documents, the SUPPLIER will comply with all required local construction and permits required for this project as obtained by DISTRICT.

4. PUBLIC CONVENIENCE AND SAFETY

The SUPPLIER shall ensure that all on site work required under this CONTRACT complies with all local standards or ordinances, Oregon State regulations and safe working practice. The DISTRICTS REPRESENTATIVE reserves the right to stop work when in his judgment safety conditions are compromised and threaten the public or the DISTRICT'S property workmen or inspection personnel, and no extension of time will be given to SUPPLIER for any delays as a result of such work stoppages.

5. MEASUREMENT, PAYMENT AND WORK QUANTITIES

5.1. Measurements and payment for all elements of the WORK shall be as set forth in paragraph 16 of this section.

5.2. Rights are reserved to increase, decrease or to entirely eliminate certain items from the WORK if found desirable or expedient, and the SUPPLIER is cautioned against unbalancing of his Proposal by prorating his overhead and profit. The overhead,

indirect charges and profit should be equally prorated on all items in the PROPOSAL FORM.

- 5.3. The SUPPLIER will be allowed no claims for anticipated profits, loss of profits or damages because of any difference between the estimated and the actual amounts of work done or materials furnished or used in the completed project.

6. PROTECTION OF WORK AND PROPERTY

The SUPPLIER shall protect the Work described in this contract package and required materials from damage due to the nature of the work, the action of the elements, or any other cause whatever until the completion and acceptance of the Work, including during shipment via ocean or land transportation.

7. CODES, STANDARDS AND LAWS

Where codes or standards are referred to in these CONTRACT DOCUMENTS, plans and specifications, they shall be the current approved editions of said code or standard. It shall be the duty of any supplier of materials on this project to submit evidence as requested that said materials are in compliance with the applicable codes and specifications. The SUPPLIER shall conform to all applicable federal and State laws in carrying out his obligations under this Contract.

8. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the SUPPLIER and the DISTRICT with reference to the Supplemental Conditions described herein. This Agreement shall become effective upon execution by the DISTRICT and SUPPLIER.

9. CONDITIONS AT SITE

- 9.1. With respect to erection and start-up supervision services, the SUPPLIER represents and agrees that it has fully informed itself of the conditions to be encountered at or affecting the site and all other conditions that may affect the progress of the Work and satisfied itself as to those conditions and problems indicated or reasonably inferable therefrom. Without limitation to the generality of the foregoing, SUPPLIER hereby represents and agrees that it shall thoroughly investigate and fully satisfy itself as to the conditions affecting the site, the performance of the Work, and the construction and completion of the Project, including but not restricted to those bearing upon access to the site, accommodations which may be required, risks, contingencies, laws, regulations, codes, licenses and permits; transportation, disposal, handling and storage of materials and supplies; availability of labor, materials, and supplies; availability of water, electric power, and other utilities; roads; and uncertainties of weather, as well as physical conditions at the site, obstructions; and the character and extent of equipment, materials, supplies, facilities, services and labor needed for prosecution and completion of the Work. The SUPPLIER shall at his cost conduct any and all tests which are necessary or advisable in connection with the foregoing investigations. The contract prices include all work that may have to be done by SUPPLIER and its SubSUPPLIERS to overcome all situations, problems, or site conditions actually encountered to the extent they were indicated to be probable or existing or reasonably inferable or foreseeable from proper performance of the aforementioned investigations. SUPPLIER acknowledges responsibility for determining prior to submitting its Proposal the effects of all conditions existing at the site or affecting

performance of the Work on its work, activities, schedule, and cost. SUPPLIER is responsible for having properly estimated the difficulty and cost of successfully performing the Work and SUPPLIER shall have no recourse against DISTRICT if any of the matters referred to above are other than as assumed by SUPPLIER, to the extent indicated or reasonably inferable from information in the CONTRACT DOCUMENTS or otherwise available to the SUPPLIER or from proper performance of the aforementioned investigations.

DISTRICT reserves the right to inspect all crates and containers received at the port of entry of the equipment into the USA for visible signs of shipping damage and to verify that all crates and boxes expected have arrived. SUPPLIER shall retain the risk of hidden damage to the parts and for missing parts until final completion.

- 9.2. DISTRICT shall furnish, as indicated in the CONTRACT DOCUMENTS, the lands upon which the EQUIPMENT is to be installed (including any temporary storage areas to the extent required) and all necessary rights-of-way and easements for access thereto.

10. FORCE MAJEURE

SUPPLIER shall not be responsible for any delays in or inability to perform when such delay or inability is due to events of force majeure such as fire, flood, other acts of God, war, civil insurrection, or strikes except for lockouts, if the SUPPLIER gives written notice to the DISTRICT within three (3) calendar days of when SUPPLIER knew or should have known of such delay occurring. Delay or inability to perform shall be of not greater duration than the event of force majeure. SUPPLIER shall use its best efforts to remedy such event of force majeure and continue its performance. Delays or defaults by SubSUPPLIERS of the SUPPLIER shall not constitute force majeure unless reasons are caused by the force majeure events defined above. The SUPPLIER shall not be entitled to any extension of any Guaranteed Delivery Period unless written notice of such delay has been provided as set forth herein.

11. CANCELLATION

This agreement may be canceled by the DISTRICT if the SUPPLIER is so notified for cause, convenience, or any other reason, in writing, upon at least ten days written notice. In the event of cancellation for DISTRICT convenience, the DISTRICT agrees to pay to the SUPPLIER upon presentation of invoices, reasonable cancellation fees, less any contract payments made as of that date. Such fee shall include allocable overhead and profit for the Work completed up to that point, the cost of any material supplied to the Work, and the cost of purchased materials and components applicable to the Work. In the event of cancellation by DISTRICT for cause or breach by SUPPLIER, SUPPLIER shall not be entitled to any cancellation fee, in addition DISTRICT shall be entitled to set-off any costs and/or expenses incurred by it and resulting from SUPPLIER's breach, including the costs of any delays in achieving FINAL COMPLETION of the Project caused as a result of such cancellation. Upon cancellation for any reason, all drawings, data, material, and components associated with the work shall become the property of the DISTRICT.

12. SAFETY DEVICES

The SUPPLIER shall furnish and install guards and safety devices as required by the latest safety regulations for all equipment supplied. The DISTRICT may inform the SUPPLIER on a timely basis of the need for other or different guards or safety devices, which will be

supplied by the SUPPLIER under the changes provision of this Agreement.

13. EQUIPMENT WARRANTY AND REMEDY

The SUPPLIER warrants the Equipment to be new, free from defects in design, material, and workmanship disclosed or discovered under normal use and operation for a period of thirty (30) months from completion of delivery, or twenty four (24) months after written issuance of the FINAL ACCEPTANCE certificate by the DISTRICT, whichever is shorter. SUPPLIER further warrants and covenants to the DISTRICT that all services performed under this Agreement by SUPPLIER, SUPPLIER SubSUPPLIERS, assignees and agents (including but not limited to installation supervision, start-up and testing services) shall be performed in a skillful and workmanlike manner, and that all stages of Work on the Project will comply with the specifications set forth in the Contract Documents. If the DISTRICT notifies the Supplier in writing of any claimed defect in the Equipment and if, after appropriate tests and inspection by the SUPPLIER, the Equipment is found not to be in conformity with this warranty, the SUPPLIER shall at the DISTRICT's option, either repair the same at his cost including travel expenses, labor charges, shipping and costs to remove the nonconforming equipment from service and to place it back into service after repair, or provide and install a replacement free of charge at the DISTRICT's site. Any part repaired or replaced by the SUPPLIER within the warranty period shall have its own warranty period limited to two (2) years after the date of completion of the repair or replacement of the Equipment. New or replaced parts supplied or installed after the expiration of this warranty shall be covered by the manufacturer's standard new parts warranty. Any services found not in conformity with this warranty shall be promptly re-performed at no cost to the DISTRICT, upon written notice from the DISTRICT of such non-conformity.

The DISTRICT, without waiving any of its rights or remedies against SUPPLIER hereunder, shall have the right to operate any and all equipment as soon as, and as long as, it is in operating condition whether or not such equipment has been accepted as complete and satisfactory, except that this shall not be construed to permit operation of any equipment which may be materially damaged by such operation before any required alterations or repairs have been made. All repairs or alterations required of the SUPPLIER shall be made by the SUPPLIER with due speed and with the understanding that time is of the essence in such repair or alterations. The repairs or alterations shall be made in such a manner and at such time as will cause the minimum interruption in the use of the equipment by the DISTRICT.

The foregoing warranty does not cover and the SUPPLIER makes no warranty with respect to:

- a. Failures not reported to the SUPPLIER within the warranty period above specified; and
- b. Failures or damage to the extent due to negligence of the DISTRICT, including abuse or improper maintenance.

As an accommodation to the DISTRICT, the SUPPLIER will assign any rights beyond the stated warranty it may have under warranties given to it by the manufacturer of standard or accessory equipment (such as controls, motors, electrical equipment, etc.) purchased by the SUPPLIER and sold by it to the DISTRICT.

The warranties of these CONTRACT DOCUMENTS are expressly in lieu of all implied warranties (except title), including but not limited to implied warranties of merchantability

and fitness for a particular purpose.

Except as provided in sections regarding insurance, indemnity, performance guarantees and title to the WORK, the foregoing states DISTRICT's exclusive remedy against the SUPPLIER and his Sub-suppliers for any defect in the goods or failure of the Equipment or services provided hereunder to be as warranted.

14. PERFORMANCE GUARANTEE AND REMEDY

The SUPPLIER guarantees the efficiency and capacity performance of the proposed equipment in accordance with the quoted efficiencies and capacities listed in the PROPOSAL FORM, and as further submitted to DISTRICT by SUPPLIER and approved in writing by DISTRICT.

Equipment units guaranteed shall include the turbine, generator and step-up transformer efficiency. Performance of the turbine may be field-tested by a qualified third party acceptable to SUPPLIER, at the DISTRICT's expense, and in accordance with the performance test procedures described in IEC Code (Code) and the performance test procedures described in the Technical Specifications of the CONTRACT DOCUMENTS. The generator shall be efficiency tested in the factory by SUPPLIER per the specifications, and may be witnessed by a DISTRICT representative. The generator efficiency test shall be in accordance with IEC Code 34. The acceptable error band for the generator and transformer tests shall be + or - 0.1 percent (one tenth of one percent). It is agreed that factory efficiency tests, after acceptance, will be used without correction in determination of overall plant performance and determination of whether or not efficiency guarantees for that equipment have been met. The SUPPLIER agrees that the third party turbine performance test, conducted at the site by the DISTRICT, shall measure overall performance efficiency and capacity to within +/- 1.0 percent (accuracy band) per Code requirements.

If the performance tests performed in accordance with and as described above indicate that the units are performing at the guaranteed efficiencies and within the accuracy band of the test, then the SUPPLIER shall be considered to have met this guarantee. If the units are found to be performing below the guaranteed efficiencies within the accuracy band of the test performed in accordance with the above, then the SUPPLIER shall be considered to not have met this guarantee and the DISTRICT will suffer direct loss and damages due to this failure to meet the performance guarantee.

In the event of noncompliance with the performance guarantees, DISTRICT will allow SUPPLIER a period not to exceed 3 months in which to correct the problem causing the noncompliance, by either repair at his cost, including shipping and costs to remove the non-conforming equipment from service and to place it back into service after repair, or by installing a replacement FOB the DISTRICT's project site at his sole expense. SUPPLIER shall use its best efforts to perform such repair or replacement in the shortest possible time, but in no case shall such repair or replacement take in excess of three (3) months from the date of discovery of the noncompliance.

Any repaired or replaced equipment shall be retested by the same persons (if possible) who performed the initial test, at the SUPPLIER'S cost. In the event of noncompliance with the guarantee, and if SUPPLIER fails to correct such noncompliance within the time period agreed to, the DISTRICT will suffer direct loss and damage due to this failure. The DISTRICT and SUPPLIER agree that it is difficult to assign an exact value to the damages

that will be suffered by the DISTRICT due to the failure to achieve guaranteed performance, and therefore SUPPLIER agrees to pay and shall pay liquidated damages for failure to achieve guaranteed performance. These liquidated damages will be in addition to and separate from any liquidated damages incurred or paid due to late delivery or completion.

The value of liquidated damages for failure to achieve guaranteed performance shall be calculated as follows:

1. The cost of the initial efficiency test of the turbine shall be borne by the DISTRICT. In case of non-compliance within the tolerance band, SUPPLIER will reimburse such costs to DISTRICT and pay for all the subsequent tests.
2. Flows:
 - a. Francis 250 kW: For each of the flows, between 5 and 40 cfs inclusive, associated with the Guaranteed Efficient Chart on page 9 of the Proposal Forms 1 & 2, a performance guaranteed efficiency at the transformer high side terminals will be calculated based upon actual efficiency test results of the guaranteed unit. Upper and lower performance limit points will be calculated for each guaranteed performance value based on the accuracy band of the turbine test ($\pm 1.0\%$), and generator test ($\pm 0.1\%$).

For the turbine and generator, the actual test points that fall below the guaranteed efficiency, including accuracy band limits, will represent negative differential percentages with respect to the limits. Differential percentages will each be equally weighted for simplicity of calculation. The negative weighted differentials at the six operating points will be summed to obtain a total net differential percentage. A negative net differential will incur liquidated damages for failure to achieve guaranteed performance. The net negative differential percentage, expressed in hundredths of a percent, shall be multiplied times a sum of \$400.00 for each one one-hundredth of a percent of net differential percentage. The result will establish the value of the liquidated damages for failure to meet the performance guarantee. The unit performance test and differential calculation shall be calculated by the third party testing company, at DISTRICT's expense. The liquidated damages value will be calculated by the DISTRICT and shall be due within 30 days from the date of the issuance of the performance test report.

- b. Turgo or Pelton 50 kW: For each of the flows, between 1 and 4 cfs inclusive, associated with the Guaranteed Efficient Chart on page 9 of the Proposal Forms 3 & 4, a performance guaranteed efficiency at the transformer high side terminals will be calculated based upon actual efficiency test results of the guaranteed unit. Upper and lower performance limit points will be calculated for each guaranteed performance value based on the accuracy band of the turbine test ($\pm 1.0\%$), and generator test ($\pm 0.1\%$).

For the turbine and generator, the actual test points that fall below the guaranteed efficiency, including accuracy band limits, will represent negative differential percentages with respect to the limits. Differential percentages will each be equally weighted for simplicity of calculation. The negative weighted differentials at the six operating points will be summed to obtain a total net differential percentage. A negative net differential will incur liquidated damages for failure to achieve guaranteed

performance. The net negative differential percentage, expressed in hundredths of a percent, shall be multiplied times a sum of \$400.00 for each one one-hundredth of a percent of net differential percentage. The result will establish the value of the liquidated damages for failure to meet the performance guarantee. The unit performance test and differential calculation shall be calculated by the third party testing company, at DISTRICT's expense. The liquidated damages value will be calculated by the DISTRICT and shall be due within 30 days from the date of the issuance of the performance test report.

For example, if the result is a negative net differential percentage of 1.00 percent for the turbine, generator and main step-up transformer the liquidated damages for failure to achieve guaranteed performance would be calculated as: $(1.00) \times 100 \times 400 = \$40,000.00$ total payment.

The maximum amount of liquidated damages payable for failure the combination of any failure to achieve the guaranteed performance levels set forth herein and the Guaranteed Delivery Periods set forth in Paragraph 15.3 of the General Conditions shall not exceed 20 percent of the total CONTRACT PRICE; provided that in the event any test results are more than 5% below the applicable guaranteed performance level, such results shall constitute a material breach of performance by SUPPLIER and the DISTRICT shall, as an alternative to the collection liquidated damages as provided hereunder, have the right to terminate this Agreement for cause pursuant to Paragraph 18 of the General Conditions, based on said material breach. For purposes of this Paragraph 14.0 and Paragraph 15.3 of the General Conditions, "Contract Price" shall be defined as the Grand Total shown on the Proposal Form submitted by the SUPPLIER.

DISTRICT and SUPPLIER agree that the liquidated damages for failure to achieve guaranteed performance as described above, represent fair and reasonable compensation to the DISTRICT for such failure to achieve guaranteed performance.

15. SHIPMENT

15.1. The purchase price shall be deemed to include, in addition to freight charges, proper packing and tagging, boxing, insurance and special handling charges, all duties required, and all brokerage fees required, however denominated, imposed against or with respect to the goods by any government authority during the term of the Agreement. Details of the points of delivery and delivery times of the various parts of the WORK are given in Contract Documents.

The SUPPLIER shall use the best means of shipment and routing consistent with the nature of the equipment shipped and in accordance with the shipping schedule. The SUPPLIER shall give at least 4 week advance notice to the DISTRICT of the date and time that delivery of the equipment will be made. The DISTRICT or its representative has the right to reject any and all equipment having visual or concealed damages. Off-loading and customs clearance, shall be the responsibility of the SUPPLIER. SUPPLIER shall transport to the site all electrical and mechanical equipment such as the turbine and generator and all accessories. SUPPLIER shall retain the risk of hidden damage to the electro- mechanical equipment parts and for missing parts until final completion. The SUPPLIER shall give the DISTRICT 4 weeks advance notice prior to shipping any item from the factory, with an additional 48 hour confirmation notification just prior to actual shipment.

15.2. Warehouse Clause:

In case the equipment can not arrive, due to force majeure, and a delay in excess of 60 days in the scheduled shipment date is anticipated due to such force majeure event, the goods will be sent to a warehouse at the port of shipment under the SUPPLIER's responsibility and a warehouse certificate will replace the Bill of Lading. The remaining services (ocean freight, supervision of erection and commissioning) to be performed according to the contract will be deducted from the remaining amount of money to be paid. Once the force majeure ends or allows the rest of the services to be provided (i.e. transportation, supervision, and commissioning) the schedule will resume accordingly and the payments on the rest of the services will be adjusted based upon official indices applicable to such services.

16. PAYMENT SCHEDULE

16.1. The DISTRICT shall make payments to the SUPPLIER according to the price breakdown of the various pieces of equipment as proposed by the SUPPLIER and in accordance with Schedule 1 attached. Invoices shall be prepared and submitted in accordance with paragraph 19 of Section 00700, "Payments To SUPPLIER". The SUPPLIER shall prepare and submit invoices for the Work with evidence substantiating completion.

The properly prepared and documented invoices submitted in accordance with the above shall be paid by the DISTRICT within 30 days of receipt. Payments due that are not paid by DISTRICT within 30 days shall bear interest at the rate of 8 percent (8%) per annum.

Payment procedures and documentation as required for payments as stipulated in Schedule 1 shall prevail over any payment conditions, procedures or modalities as may be written in any other part of the CONTRACT DOCUMENTS.

16.2. The DISTRICT may withhold, or, on account of subsequently discovered evidence, refuse payment and offset the whole or part of any invoice to such extent as may be necessary to protect it from loss on account of:

- a. Defective material or equipment;
- b. Failure of the SUPPLIER to make payments due to sub-suppliers;
- c. Unsatisfactory prosecution of the work by the SUPPLIER, according to the agreed upon schedule;
- d. Invoicing which is incorrect;
- e. Overcharges in violation of the terms and conditions of this Agreement;
- or
- f. Assessment of liquidated damages for late delivery or performance.

Any such withholding of payment shall be noticed in writing by the DISTRICT including a statement of reasons for withholding and a copy of such notice shall be sent to SUPPLIER.

17. TITLE TO THE WORK

17.1. Title to all Work completed and in progress, and to all material to be used in the Work wherever stored, shall vest in the DISTRICT immediately, provided the corresponding invoice was duly paid by the DISTRICT. However, SUPPLIER

shall assume and be responsible for all loss and damage to any and all such material and work until final acceptance by DISTRICT of the entire completed project, except for loss and damages caused by DISTRICT's personnel and/or sub-suppliers in the installation of the turbine and electrical equipment by mishandling or failure to comply with SUPPLIER's advice or instructions.

- 17.2. SUPPLIER warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to DISTRICT no later than the time of payment by DISTRICT in respect thereof free and clear of any and all liens or other encumbrances or other charges of any kind and of all claims of third parties related thereto.

18. INTERFERENCE

With respect to the transportation of the Equipment to and installation supervision, start-up and testing services to be performed at the Project site, SUPPLIER shall conduct the Work in a manner which will maintain good public relations by minimizing inconvenience and disturbance to the traveling and resident public affected thereby, and in such manner as to cause the least possible interference with the business operations of DISTRICT or others affected thereby. SUPPLIER shall cooperate with DISTRICT in all ways to prevent and/or minimize any such interference.

19. APPROVALS

As called for in the Contract Documents, the SUPPLIER will provide specific documents in writing for approval by the DISTRICT. The DISTRICT's approval or conditional approval with comment signifies permission to the SUPPLIER to proceed with the WORK and indicates, but does not warrant, that the DISTRICT has seen nothing in the document at variance with the Agreement. The SUPPLIER's proceeding with the WORK prior to the DISTRICT'S approval is at its own risk. Neither approval nor conditional approval with comment shall relieve the SUPPLIER of any of his responsibilities under the Agreement.