

**REQUEST FOR PROPOSAL
FOR
SYSTEM INTEGRATOR OF RECORD (IOR)**

CITY OF DAYTON, OREGON

PROPOSAL SUBMITTAL DEADLINE:
February 19, 2026 2:00 PM

WESTECH ENGINEERING, INC.
3841 Fairview Industrial Drive SE, Suite 100
Salem, Oregon 97302
(503) 585-2474

**REQUEST FOR PROPOSAL
SYSTEM INTEGRATOR OF RECORD
CITY OF DAYTON, OREGON**

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1. PURPOSE OF RFP AND PROJECT BACKGROUND:

The City of Dayton (City) is requesting proposals from consultants to (1) procure and install control & telemetry systems for existing City infrastructure, (2) procure control and telemetry systems in connection with future contemplated City infrastructure projects that involve a separate design and construction scope, and (3) provide ongoing system maintenance and minor repair work (Project), collectively, to serve as the City's System Integrator of Record (Consultant). Control and telemetry system components must be procured from Rockwell Automation, and the selected Consultant must be a Rockwell Certified Systems Integrator. This Request for Proposals (RFP) is intended to provide interested parties with sufficient information to prepare and submit proposals for consideration by the City. The City intends to enter into (the two contracts attached to this RFP as Appendices A.1 and A.2) with the selected Consultant under the terms and conditions outlined in this RFP. The City is seeking a Consultant who will be selected and awarded a contract based upon the criteria listed in Section 13 of this RFP. To clarify, there will be no design scope that would be required to be completed by a licensed engineer for this Project.

The City of Dayton serves a population of approximately 2,665 people and provides drinking water, sanitary sewer, and other public utility services to its user base. The City owns and operates a number of water supply wells and associated booster pumps, municipal springs, a municipal PRV station, a municipal water treatment plant (WTP) and three potable water storage reservoirs, as well as associated ancillary systems and appurtenances. The City also owns and operates four sewer pump stations and a wastewater treatment plant, as well as associated ancillary systems and appurtenances. The City owns and operates supervisory control and data acquisition (SCADA) systems connected to many of these utilities.

Partial upgrades to the City's SCADA system were completed over the past several years in order to replace and upgrade certain obsolete components and expand the SCADA system's capabilities and resiliency, as well as additional upgrades and improvements to various water & sewer system components which are currently under construction or in the planning stages. The selected Consultant will perform services to complete the desired upgrades and improvements to the existing SCADA system, and will also provide electrical and control system installation and integration support for current projects under construction and in the planning stages. Further, the selected consultant will provide similar support for future projects, as described in greater detail in Appendix B. Finally, the consultant will provide ongoing repairs and maintenance services for the City's SCADA system.

2. DEFINITIONS:

Unless otherwise stated or the context otherwise implies, words, terms, and phrases used in this Request for Proposal shall have the meaning ascribed to them in the engineering and environmental services profession.

As used in this RFP:

“Addendum” means any document issued by the City to modify the terms and conditions of this RFP document.

“Consultant” means a respondent selected by the City through this RFP who enters into a Master Services Contract and Master Procurement and Installation Contract with the City to provide services included under this RFP.

“City” means City of Dayton, Oregon

“EOR” means the Engineer of Record (i.e. contract City Engineer), Westech Engineering Inc, of the City of Dayton.

“Master Procurement and Installation Contract” means the written contract between the City and a Consultant that will establish the general requirements for Work Assignments (see Appendix A.1).

“Master Services Contract” means the written professional services contract between the City and a Consultant that will establish the general requirements for maintenance work (see Appendix A.2).

“Proposal” means a written proposal and statement of qualifications submitted by a respondent in response to this RFP.

“Proposer” or “Respondent” means any person or entity that submits a written proposal and statement of qualifications in response to this RFP.

“Proposer’s Response Form” means the form attached to this RFP as Appendix C.

“RFP” or “Request for Proposals” means this document, all attached appendices, other documents incorporated by reference in this document, and addenda to this RFP.

“Services” means all labor, equipment, materials, opinions, reports, and other planning, consulting, construction, installation or other services which are authorized by the City.

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

“Work Assignment” means a discrete written agreement or task order between the City and the Consultant pursuant to which the Consultant agrees to perform specific defined Services.

When not inconsistent with the context, words in the plural number include the singular and words in the singular include the plural. However, references to “the Consultant” do imply that there is only one Consultant providing the same or similar services provided for under this RFP. It is the City’s intent to award a Master Services Contract to one Consultant under this RFP.

3. SCOPE OF SERVICES:

- 3.1 The Consultant will be expected to provide services similar to those described in Appendix B. The City intends to enter into a Master Services Contract and Master Procurement and Installation Contract in substantially the same forms as the sample contracts in Appendix A. As specific work tasks are defined, the City will solicit a scope of work and cost proposal from the Consultant and issue a task order for the work under the terms of the Master Procurement and Installation Contract. Maintenance and minor repair work will be provided without task order, on an as-needed basis.
- 3.2 The Consultant shall perform the Services to the City as an independent contractor in accordance with the highest professional standards prevalent in Consultant's industry. Consultant shall be responsible for the professional quality, technical accuracy and coordination of all Services that it performs.
- 3.3 The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in the Services that are caused by Consultant's acts or omissions.

4. INFORMATION CONCERNING RFP:

- 4.1 The EOR is the sole point of contact in the City for this selection action. All correspondence pertaining to this RFP shall be directed to the EOR at:

Westech Engineering, Inc.
Attention: Denny Muchmore, P.E.
3841 Fairview Industrial Dr. SE, Suite 100
Salem, OR 97302

Telephone: (503) 585-2474
Email: dmuchmore@westech-eng.com

- 4.2 Respondents are cautioned not to make any assumptions as to the implied meaning or intent of any part of this RFP. Respondents shall request clarification if needed. Every request for information on, or clarification of, this RFP must be submitted to the EOR in writing by February 13, 2026 at 10:00am.
- 4.3 Respondents submit proposals solely at their own expense and the City is not responsible for any of Respondents' expenses associated with responses to this RFP.
- 4.4 Any prospective respondent may protest the provisions of this RFP or any aspect of the procurement process by filing a written protest to the RFP by February 10, 2026 at 5:00pm, or may protest a notice of intent to award by filing a written protest to the notice of intent to award (NITA) within 7 days of the City's issuance of the NITA . Failure to file a protest will be deemed a waiver of any claim by a respondent that the RFP or procurement procedure violates any provision of ORS Chapter 279A, 279B, 279C, or the City's Public Contracting Rules.

5. SCHEDULE OF EVENTS:

5.1 The following schedule of events shall be followed for this RFP:

REQUEST FOR PROPOSAL ADVERTISED..... January 9, 2026
LAST DATE FOR SOLICITATION PROTESTFebruary 10, 2026
LAST DATE FOR SOLICITATION QUESTIONSFebruary 13, 2026
PROPOSAL SUBMITTAL DEADLINEFebruary 19, 2026 at 2:00 pm.
NOTIFICATION OF INTENT TO INTERVIEW PROPOSERS March 5, 2026
INTERVIEWS OF PROPOSERS (IF REQUESTED) March 19, 2026
EXPECTED DATE FOR NOTICE OF INTENT TO AWARD March 30, 2026
END OF CONTRACT AWARD PROTEST PERIOD.....April 6, 2026
EXPECTED DATE FOR CITY COUNCIL AWARDApril 20, 2026

5.2 The schedule of events in Subsection 5.1 is intended to allow prospective respondents sufficient time to submit requests for information and for the preparation of Proposals.

MANDATORY PRE-SUBMISSION MEETING: All prospective proposers are required to attend a mandatory pre-submission meeting and site visit prior to submission of proposals in order to become acquainted with the City facilities and project specifics.

The mandatory pre-submission site visit will be held beginning at the Water Treatment Plant located at 1209 Ferry St., Dayton Oregon 97114 on January 22, 2026 at 2:00 pm local time. Submissions will not be accepted without proof of attendance at this pre-submittal meeting and sit visit. For questions regarding the pre-submission meeting, please contact the City EOR.

6. ADDENDA TO THE REQUEST FOR PROPOSALS

The provisions of this RFP cannot be modified by oral interpretations or statements. If inquiries or comments by respondents raise issues that require clarification by the City or the City decides to revise any part of this RFP, addenda will be provided to all persons who receive the RFP from the EOR. Receipt of all Addenda must be acknowledged by completing the addenda acknowledgment paragraph of the Proposer's Response Form and submitting the completed and signed form with the Proposal.

7. FORMAT OF PROPOSALS:

7.1 Proposals shall be submitted in the format described in this section and include the content specified in Section 8.

- 7.2 In order to be considered for selection, a respondent must submit a complete, succinct response to this RFP. The proposal shall be prepared simply and economically, providing a concise description of the respondent's capabilities to provide services. The City will not reimburse respondents for any costs incurred in the preparation and presentation of their proposals.
- 7.3 The proposal shall be typed. The proposal shall be organized in accordance with the list of contents specified in Section 8. The proposal shall not exceed the page limits listed in Section 8, *excluding* both the Cover Sheet and the Proposer's Response Form. If a respondent submits a proposal exceeding this limit, the City will consider the pages up to that allowable number and discard all subsequent pages. One (1) page is defined as: one (1) side of a single 8-1/2" x 11" page, with 12-point minimum font size for the substantive text. Any page over this size will be counted as two (2) pages. Any page or partial page with substantive text, tables, graphics, charts, resumes, etc., will be counted as one (1) page. Respondents may use their discretion for the font size of the other materials (e.g. graphics, charts).
- 7.4 The proposal shall be signed in ink by a person who is authorized to represent the respondent.
- 7.5 A proposal from a partnership shall be signed by at least one partner authorized to sign on behalf of the partnership.
- 7.6 A proposal from a corporation shall be signed by the President, the Chief Executive Officer, or other person authorized to act on behalf of the corporation, and shall include evidence of the corporate officer's authority to sign. The State of Incorporation shall also be identified.
- 7.7 By submitting a proposal, a respondent acknowledges that:
- 7.7.1 The respondent has read and understands this RFP; and
 - 7.7.2 The respondent is familiar with the conditions that will affect the respondent's performance, if the respondent is selected by the City.

8. CONTENT OF PROPOSALS:

- 8.1 Content of proposals shall include information and be organized as described below. Respondents shall respond to each category.
- 8.2 Proposals shall include a cover sheet with the following items. 1 page limit.
- 8.2.1 Respondent's name, address, email address, and telephone number;
 - 8.2.2 Name and contact information of primary contact person;
 - 8.2.3 Signature, printed name, and title of respondent's authorized representative;
 - 8.2.4 A statement indicating acceptance of the City's proposed Master Services Contract provisions or suggestions of reasonable alternatives that do not

substantially impair the City's rights under the contract in accordance with Section 9 of the RFP;

8.2.5 Date of signature.

- 8.3 Minimum Requirements of Proposers: It is a requirement that Proposers possess the following minimum certifications, licensing and facilities. Proposers shall furnish documentation to validate that the following minimum qualifications are met. Such documentation demonstrating compliance with these requirements is not included in the page number limit, but shall be provided in a separate section, appropriately labeled, at the end of the proposal.
- 8.3.1 Proposers shall be officially recognized as a Rockwell Certified System Integrator. Proposers shall furnish documentation from Rockwell to validate this status;
 - 8.3.2 Proposers shall own and operate a UL508A Listed Panel Shop. Proposers shall furnish documentation to validate this status;
 - 8.3.3 Proposers shall be licensed by the Oregon Construction Contractors Board (CCB) as a licensed Contractor in good standing;
 - 8.3.4 Proposers shall have licensed electricians on staff, including both low voltage and high voltage (up to 480v 3 phase power) electricians.
- 8.4 Firm Description: 5 page limit. A description of the Proposer's company, documentation of insurance, and a description of the proposer's resources, including a summary of staff, equipment, and facilities.
- 8.5 Qualifications, Resources, and Experience. 10 page limit. This section shall describe the Proposer's specific qualifications and experience with control system and integration work similar to the work anticipated by the City.
- 8.6 Project Team. 10 page limit. This section shall describe the experience of key personnel on the proposed project team. Certifications of key staff shall be listed. This section shall include complete contact information for the project manager that will be assigned to this project, including a resume of his or her experience. The individual's education, training, certifications, and experience shall be identified. Indicate whether experience is with the Proposer or with a former employer.
- 8.7 References: 1 page limit. Contact information for a minimum of three municipal references for which the proposer has provided services similar to those anticipated by the City. These references listed must be familiar with the proposed project team members.
- 8.8 Hourly Rates: 2 page limit. Provide hourly rates billing rates for all staff and crew time, as well as reimbursables.
- 8.9 Additional Information. 5 page limit. Any additional information respondents feel is relevant to assess the capabilities and qualifications of their company to successfully complete the Scope of Work.

- 8.10 Proposers must submit the Proposer's Response Form attached to this RFP as Appendix C.

9. CONTRACT:

- 9.1 The Consultant selected by the City will be requested to enter into two contracts in the forms attached to this RFP as Appendix A. The contract provisions proposed by the City are intended to assign the relative rights and responsibilities of the parties in a manner that will promote quality in the Services.
- 9.2 The selected Consultant shall provide Certificates of Insurance in an amount not less than those listed in the contracts.
- 9.3 The proposal shall either indicate acceptance of the City's proposed contracts provisions or suggest reasonable alternatives that do not substantially impair the City's rights under the contracts. Unconditional refusal to accept the contracts provisions proposed by the City without offering acceptable alternatives may result in the disqualification of the respondent or result in a less favorable evaluation of its proposal.
- 9.4 Following the selection of the successful Consultant, the City may agree to negotiate limited changes to the provisions of the sample contracts. However, the City is not required to make any changes. Prospective Consultants are cautioned that the City believes modifications to the standard provisions constitute increased risk and increased cost to the City. The City reserves the right to negotiate final contracts that are in the best interest of the City.

If inclusion of any of the City's proposed contracts provisions will result in higher cost for the Services, such contracts provisions and associated costs shall be specifically identified in the proposal.

- 9.5 The anticipated initial term of the contracts will be five (5) years with the City's option to extend the term for two additional 5-year periods.
- 9.6 The awarded contracts are for public works projects subject to state prevailing rates of wage under ORS 279C.800 to 279C.870 and, dependent on federal funding, the federal prevailing rates of wage under the Davis-Bacon Act (40 U.S.C. 3141 et seq.), or both. The City will not receive or consider a proposal unless the proposal contains a statement by the proposer that the proposer will comply with ORS 279C.838 or 279C.840 or 40 U.S.C. 3141 et seq.

10. WORK ASSIGNMENTS:

- 10.1 Before performing any work for which the Consultant will seek compensation under the System Integrator Master Services Contract, the selected Consultant shall prepare a detailed scope of work, budget of costs, and project schedule for a specific work task solicited by the City. The scope of work shall include all tasks and deliverables

necessary to complete the work scope requested by the City. The budget of costs shall assign task numbers to each task outlined in the scope of work and show the budgeted number of hours, team member assignments, and hourly rate for each task. The City will then issue a work assignment or task order under the provisions of the System Integrator Master Services Contract.

- 10.2 The selected Consultant shall not begin work on any work assignment or task until the City has issued a Notice to Proceed or Task Order for that work assignment or task.

11. SUBMISSION OF PROPOSALS:

- 11.1 Proposals shall be delivered to office of the EOR before **2:00 PM on February 19, 2026**. Proposals received after the specified time and date will not be considered. Proposers must also submit a subcontractor disclosure form for the installation scope no later than two hours after the RFP closes.

All proposals shall be signed and dated in ink and submitted in a sealed envelope labeled with the name of the proposal (City of Dayton, System Integrator of Record) and the name of the proposer. The color scanned copy of the proposal shall also be submitted digitally on a USB flash drive included in the envelope (ie. as a single PDF file containing all pages in the proposal and all attachments). Emailed or faxed submittals will not be accepted or considered.

The City is not responsible for mail delivery delays. Respondents are encouraged to submit mailed proposals well prior to the deadline and to confirm receipt of the proposal by telephone.

- 11.2 Respondents shall submit their proposal to the EOR at the address shown below.

Denny Muchmore, P.E.
Westech Engineering, Inc.
3841 Fairview Industrial Drive SE
Salem, OR 97302

- 11.3 Each respondent's proposal shall be irrevocable for one hundred and twenty (120) days from the submission deadline or until the City specifically rejects the proposal or executes a contract with another respondent, whichever occurs first.
- 11.4 The City reserves the right to hold the proposals (rather than opening them immediately after the submittal deadline) so that the proposals can be opened and evaluated by City staff, at a time determined by the City.
- 11.5 There will be no public opening of proposals. Proposals received will not be available for inspection after the evaluation process has been completed and the notice of intent to award has been issued. However, the City will record and make available the identity of all proposers after opening of proposals.

12. WITHDRAWAL OF PROPOSALS:

Any proposal may be withdrawn by delivering a written request to the EOR at any time prior to the date of closing. The request shall be executed by a duly authorized representative of the respondent. Proposals withdrawn early may be resubmitted prior to the deadline.

13. EVALUATION OF PROPOSALS:

- 13.1 Proposals will be scored and evaluated by City staff. Scoring and evaluation will focus on the qualifications and response provided in the proposal.
- 13.2 The City may interview one or more ranked respondent(s), but the City is not required to interview any or all respondents.
- 13.3 Proposals that do not contain all information required by this RFP or are otherwise non-responsive, may be rejected, or given a lower rating in the evaluation process. The City may waive minor informalities in a proposal.
- 13.4 The City may request supplemental information from a respondent concerning the respondent's ability to perform services. If a respondent fails to provide supplemental information promptly after receiving a written request from the City, the City may refuse to consider the Respondent's proposal.
- 13.5 In cases of doubt or differences of opinion concerning the interpretation of this RFP, the City shall have exclusive discretion to determine the intent, purpose, and meaning of any provision in this RFP.
- 13.6 City staff will apply the following criteria in making a recommendation to the City Manager for the award of the contracts. The criteria are listed with the range of points that respondents can score in each category.
 - A. Favorable references and proven track record for control system, integration & programming services. (0-10 pts)
 - B. Product & service quality and expected performance (0-30 pts)
 - C. Quality and completeness of proposal (0-10 pts)
 - D. Service capabilities and support after facility commissioning, considering location of service representatives, track record for other municipalities in western Oregon. (0-20 pts)
 - E. Cost (Hourly Rates) (0-20 pts)
 - F. Interviews (if held) (0-10 pts)

14. SELECTION:

- 14.1 The City reserves the right to modify or incorporate additional steps in the evaluation process in the best interest of having a thorough and comprehensive body of

information in order to make a recommendation on final approval to the City Council.

- 14.2 The City may award the contracts to and negotiate the contracts with the most qualified, responsive, responsible respondent, as determined in the sole discretion of the City. The highest ranked proposal based upon the evaluation criteria described in Section 13 may be identified as the finalist.
- 14.3 The City will determine if the apparent successful respondent is responsible prior to award and execution of the contract. All respondents must sign and submit the Responsibility Determination Form set forth in Appendix C-1.
- 14.4 If the City and the selected respondent are unable for any reason to negotiate a contract, the City will, either orally or in writing, formally terminate negotiations with the selected respondent. The City may then negotiate with the next most qualified respondent. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the City terminates this RFP.
- 14.5 All respondents not selected will be notified of the City's decision by issuance of a Notice of Intent to Award, which will be sent to all respondents who submitted a timely and responsive proposal. After the City selects a Consultant to perform the services and issues a Notice of Intent to Award, any proposer may review the evaluation documentation at the office of the EOR. If there are disagreements with the outcome of the selection process, the proposer must submit any protest in writing to the EOR within seven (7) days after the issuance of the Notice of Intent to Award. A written response will be issued by the City for any protest from a proposer, prior to execution of the contract with the selected proposer.
- 14.6 The Services and responsibilities set forth in this RFP, together with any other documents required herein, shall be included in the contracts executed by the successful Proposer, as indicated in the Contract forms attached as Appendix A. Any open terms in the attached contracts will be completed based on City negotiation and the Respondent's proposal. Subject to Section 9.3 of this RFP, submittal of a proposal indicates a Proposer's intent to execute the attached contracts and to be bound thereby.
- 14.7 Rights Reserved – The City reserves the right to:
 - 14.7.1 Reject any proposal not in compliance with all provisions of the RFP, all prescribed public contracting procedures and requirements and other applicable laws.
 - 14.7.2 Reject for good cause any or all proposals upon the City finding that it is in the public interest to do so.
 - 14.7.3 Reject any proposal or proposals not meeting or differing from the requirements set forth herein.
 - 14.7.4 Waive any and all minor irregularities or informality in the proposal submitted when, in the opinion of the City, it is in its best interest to do so.
 - 14.7.5 Consider the competency and responsibility of proposers in making any decisions to select a proposer and/or execute a contract.

- 14.7.6 Reject a selected proposer if within a reasonable time, determined solely at the discretion of the City, the proposer has not executed a contract with the City.
 - 14.7.7 Hold the three proposals determined best by the City under consideration until the final award is made, provided that the City shall award the contract within 120 days after the proposal opening date.
 - 14.7.8 Extend the deadline for submitting proposals.
 - 14.7.9 Seek other proposals, if deemed in the public interest.
 - 14.7.10 Cancel the RFP when the cancellation is in the best interest of the City as determined by the City, or to reject any proposal not in compliance with all prescribed public procurement procedures and requirements, or, for good cause, reject all proposals upon a finding of the City that it is in the public interest to do so. If the City cancels this procurement after proposals have been submitted, the proposals will be returned, but the City will keep a list of the proposals received.
- 14.8 All information submitted by a proposer shall become and remain the property of the City and is considered public information and subject to disclosure pursuant to the Oregon Public Records Law, except such portions of the proposal, as identified by the proposer, which are exempt from disclosure consistent with Oregon law. If a proposal contains any information that the proposer believes is exempt from disclosure under the various grounds specified in the Oregon Public Records Law, the proposer must clearly designate each such portion of its proposal as exempt at the time of proposal submission, along with a justification and citation to the legal authority relied upon. Identifying the proposal, in whole, as exempt from disclosure is not acceptable. Failure to identify specific portions of the proposal as exempt shall be deemed a waiver of any future claim of that information as exempt.

The City will make available to any person requesting information, through the City processes for disclosure of public records, any and all information submitted as a result of this RFP not exempted from disclosure without obtaining permission from any proposer to do so. City may also, in its sole discretion, elect to publish all such information at any time, regardless of whether or not a public records request has been received. However, if a public records request is made for material marked by the proposer as exempt, the City will attempt to notify the impacted proposer prior to any release of the material. Application of the Oregon Public Records Law by the City will determine whether any information is actually exempt from disclosure. The City accepts no liability for the release of any information submitted

- 14.9 Selection of a successful proposer under this RFP is not a guarantee of a contract award, nor is the award of a contract for any portion of the work a guarantee of award of a contract for any subsequent work. All work is subject to budgetary and funding constraints of the City of Dayton. All legal rights and obligations between the successful proposer, if any, and the City will come into existence only when a contract is fully executed by the parties, and the legal rights and obligations of each party shall at that time

be only those rights and obligations which are set forth in the contract and any other documents specifically referred to in that contract and executed by the parties.

15. MISCELLANEOUS:

- 15.1 RFP documents may be examined at Dayton City Hall, 416 Ferry Street, Dayton, Oregon 97114 during normal business hours, Monday through Thursday, 8:00 am to 5:30 pm. City offices are closed 12:00 pm to 12:30 pm for lunch.
- 15.2 Each proposer to this RFP must identify in their proposal whether they are a "resident Bidder," as defined in ORS 279A.120.
- 15.3 Each proposer to this RFP must identify in their proposal whether they are certified as a disadvantaged business enterprise (DBE), minority-owned, woman-owned, veteran-owned, or emerging small business under ORS 200.055, and must maintain such certification for the term of any contract awarded based on that status.
- 15.4 This is a public works contract subject to ORS 279C.800 to 279C.870.

APPENDIX A.1

**SYSTEM INTEGRATOR MASTER PROCUREMENT
AND INSTALLATION CONTRACT**

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.

MASTER AGREEMENT BETWEEN OWNER AND PROVIDER FOR PROCUREMENT AND INSTALLATION



MASTER AGREEMENT BETWEEN OWNER AND PROVIDER FOR PROCUREMENT AND INSTALLATION

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SAMPLE

MASTER AGREEMENT BETWEEN OWNER AND PROVIDER FOR PROCUREMENT AND INSTALLATION

This Master Agreement is by and between the City of Dayton, an Oregon municipal corporation ("Owner") and [formal name of entity] ("Provider").

Terms used in this Agreement have the meanings stated in the General Conditions.

Owner and Provider hereby agree as follows:

ARTICLE 1—MASTER AGREEMENT

1.01 Task Orders

- A. Upon Owner's identification of a need for a procurement project, or procurement and installation project, each pursuant to this Master Agreement, Owner shall notify Provider in writing of the same. The parties shall then work together in good faith to negotiate and execute a mutually acceptable Task Order containing all material terms and conditions of the particular Work (including, at minimum, the sections set forth in paragraph C). A sample Procurement Task Order is attached hereto as Exhibit A.1 and a sample Procurement and Installation Task Order is attached hereto as Exhibit A.2. The parties shall negotiate and execute a Procurement Task Order for the procurement of Goods and Special Services. The parties shall negotiate and execute a Procurement and Installation Task Order for the procurement and installation of Goods and related services.
- B. Owner reserves the right to negotiate the terms of a Task Order, including the project cost estimate, if doing so is in the best interest of the Owner, or to cancel a Task Order request altogether.
- C. Work authorized under this Master Agreement shall only be initiated by a fully executed Task Order signed by both the Owner and the Provider. Task Orders shall include a description of the Work to be performed, to include, but not be limited to, the following:
 1. A description of the Goods, quantity of Goods, and other identifying characteristics;
 2. Scope of Special Services, if any;
 3. Items to be furnished by Owner, if applicable;
 4. Contract Price;
 5. Contract Times;
 6. Point of Destination, if applicable;
 7. Warranty terms; and
 8. Reasonable evidence of required bonds, insurance, and consent to assignment, if applicable.
- D. Provider shall perform the Work using commercially reasonable efforts. Provider shall be responsible for securing all permits, licenses, approvals, and other authorizations necessary to perform the Work. Provider shall bear full responsibility for all subcontractors and employees performing Work on its behalf, and for prompt payments to the same.

- E. If there are conflicts between the terms of the Master Agreement and any individual Task Order, the terms of the Master Agreement shall take precedence.

1.02 *Work*

- A. Provider shall, as applicable, furnish the Goods and Special Services, install the Goods, and perform and provide all other related services, materials, and equipment, as specified or indicated in each fully executed Task Order.
- B. The Goods are generally described within each applicable fully executed Task Order.
- C. The Special Services are generally described within each applicable fully executed Task Order.
- D. Any installation, commissioning, or other related work is generally described within each applicable fully executed Task Order.
- E. All Goods, Special Services, and other installation, commissioning, and other related work provided pursuant to a particular Task Order is collectively referred to herein as the "Work."

1.03 *The Project*

- A. The Project, of which the Work is a part, is generally described as follows: **[brief description of Project]**.

1.04 *Engineer*

- A. Owner has retained **[formal name of entity or individual]** ("Engineer"), to act as Owner's representative. Engineer assumes all duties and responsibilities and has the rights and authority assigned to Engineer in the Contract Documents in connection with Provider's provision of the Work.

ARTICLE 2—CONTRACT TIMES

2.01 *Time of the Essence*

- A. All time limits for Milestones, including but not limited to the submittal of Shop Drawings and Samples, the delivery of Goods, the furnishing of all Work as stated in the Contract Documents, and Substantial Completion and Final Completion, as applicable, are of the essence of the Master Agreement.

2.02 *Schedule of Contract Times*

- A. The Contract Times are set forth in each fully executed Task Order.

2.03 *Shop Drawings and Samples*

- A. *Submittal of Shop Drawings and Samples:* Provider shall submit all Shop Drawings and Samples required by each fully executed Task Order to Engineer for its review and approval.
- B. *Engineer's Review:* It is the intent of the parties that Engineer will conduct its review of Shop Drawings and Samples and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within **[insert number]** days after Provider's submittal of such Shop Drawings and Samples, or within such longer period that is needed because of the quantity and quality of such submittals. Resubmittals will be limited whenever possible.

2.04 *Liquidated Damages*

- A. Owner and Provider recognize that time is of the essence as stated in Paragraph 2.01, and that Owner will suffer financial and other losses if (1) with respect to Procurement Task Orders, the Goods are not delivered to the Point of Destination and ready for receipt of delivery by Owner within the time specified in the applicable Task Order, plus any extensions thereof allowed in accordance with this Master Agreement or (2) with respect to Procurement and Installation Task Orders, Provider fails to achieve Substantial Completion or Final Completion within the times specified in the applicable Task Order, plus any extensions thereof allowed in accordance with this Master Agreement. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Provider's specific compliance with the Milestone requirements set forth in this paragraph and each fully executed Task Order. Further, the parties recognize the time, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the loss (whether direct, consequential, or otherwise) suffered by Owner if complete, acceptable Goods are not delivered on time, or otherwise if the Work is not completed within the times set forth in the applicable Task Order. Accordingly, instead of requiring any such proof, Owner and Provider agree that as liquidated damages for delay (but not as a penalty) Provider shall pay Owner (I) \$[insert dollar amount] for each day that expires after the time specified in the applicable Task Order for delivery of acceptable Goods, (II) \$[insert dollar amount] for each day that expires after the Substantial Completion Date identified in the applicable Task Order, and (III) \$[insert dollar amount] for each day that expires after the Final Completion Date identified in the applicable Task Order.

2.05 *Term*

- A. The Master Agreement term shall commence on the Master Agreement Effective Date and shall continue for five (5) years thereafter, unless sooner terminated in accordance with the terms of this Master Agreement. The Owner may choose, in its discretion, to extend the initial five (5) year term for up to two (2) additional five (5) year terms, for a total of no more than fifteen (15) years total.
- B. Upon termination or expiration of this Master Agreement, all Task Orders shall also expire or terminate.

ARTICLE 3—CONTRACT PRICE

3.01 *Contract Price and Total Price*

- A. The Contract Price is comprised of the amounts set forth in each fully executed Task Order.

ARTICLE 4—PAYMENT PROCEDURES

4.01 *Submittal and Processing of Applications for Payment*

- A. Provider shall submit Applications for Payment in accordance with Article 16 of the General Conditions and each applicable, fully executed Task Order. Engineer and Owner will process such Applications for Payment in accordance with said Article 16.

4.02 *Progress Payments; Final Payment*

- A. Provider may submit an Application for Payment requesting Contract Price payment as stated in each applicable fully executed Task Order.
- B. Owner shall pay Provider the amount owed under an Application for Payment within 30 days after Engineer's presentation to Owner of the Application for Payment and Engineer's recommendation.

4.03 *Interest*

- A. All amounts not paid when due will bear interest as the rate of the maximum percent permitted by law per annum.

ARTICLE 5—REPRESENTATIVES

5.01 *Owner Authorized Representative*

- A. The Owner Authorized Representative is _____.

5.02 *Provider Authorized Representative*

- A. The Owner Authorized Representative is _____.

ARTICLE 6—ASSIGNMENT OF MASTER AGREEMENT

6.01 *Assignment of Master Agreement*

- A. This Master Agreement shall only be assigned upon express written consent of both parties. Task Orders may be assigned in accordance with the terms set forth therein.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *List of Contract Documents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement.
 - 2. Supplementary Conditions.
 - 3. General Conditions.
 - 4. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibits A.1, Procurement Task Order Form;
 - b. Exhibit A.2, Procurement and Installation Task Order Form;
 - c. Exhibit B, Notice of Receipt and Conformity;
 - d. Exhibit C, Application for Payment;
 - e. Exhibit D, Public Contracting Requirements;
 - f. Documentation submitted by Provider **[identify]**.
 - g. Procurement Materials: **[identify]**.

5. The following which may be delivered or issued on or after the Effective Date of the Master Agreement and are not attached hereto:
 - a. All fully executed Task Orders, with corresponding incorporated and attached documentation (including, but not limited to, performance and payment bonds, Specifications, Drawings, and consent to assignment documentation);
 - b. Change Orders;
 - c. Change Directives;
 - d. Field Orders; and
 - e. Amendments.
- B. The documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above.
- D. If there is a conflict between the Contract Documents, the Contract Documents shall take precedence in the following order: (1) Exhibit D, (2) Amendments and Change Orders, (3) Task Orders, (4) Procurement Materials, (5) this Agreement, (6) Supplementary Conditions, (7) General Conditions, and (8) documentation provided by the Provider.
- E. The Contract Documents may only be amended or supplemented as provided in Paragraph 12.01 of the General Conditions.

ARTICLE 8—PROVIDER’S REPRESENTATIONS AND CERTIFICATIONS

8.01 *Provider’s Representations*

- A. In order to induce Owner to enter into this Master Agreement, Provider makes the following representations:
 1. Provider has examined and carefully studied the Contract Documents.
 2. If required by the applicable Task Order to visit the Point of Destination or the Site, or if, in Provider’s judgment, any observable local or Site conditions may affect the delivery, cost, progress, or furnishing of the Work, then Provider has visited the Point of Destination and Site (as applicable) and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, progress, and furnishing of the Work.
 3. Provider is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Provider's obligations under the Master Agreement.
 4. Provider has carefully studied, considered, and correlated the information known to Provider with respect to the effect of such information on the cost, progress, and performance of Provider's obligations under the Master Agreement.
 5. Provider has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Provider has discovered in the Master Agreement Documents, and the written resolution (if any) thereof by Engineer is acceptable to Provider.

6. The Master Agreement Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Provider's obligations under the Master Agreement.
7. Provider's entry into this Master Agreement constitutes an incontrovertible representation by Provider that without exception all prices in the Master Agreement are premised upon provision of the Work as required by the Contract Documents.

8.02 *Provider's Certifications*

- A. Provider certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Master Agreement. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the procurement process, in the Master Agreement execution, or in the execution of any Task Order;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the procurement process or the execution of the Master Agreement to the detriment of Owner, (b) to establish procurement or contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish procurement prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of the Master Agreement.

ARTICLE 9—CONFIDENTIALITY

9.01 *Confidential Information*

- A. Provider's Confidential Information. During the term of this Master Agreement, Provider may disclose to the Owner certain Provider confidential information pertaining to Provider's business ("Provider Confidential Information"). Provider shall be required to mark Provider Confidential Information CONFIDENTIAL with a restrictive legend or similar marking, together with a written statement describing the material which is requested to remain protected from disclosure and the justification for such request under Oregon public records laws. If Provider Confidential Information is not clearly marked, or the Provider Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Provider shall identify the Provider Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Master Agreement itself shall not be considered Provider Confidential Information. Provider Confidential Information does not include information that (1) is or becomes (other than by disclosure by the Owner) publicly known; (2) is furnished by Provider to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in the Owner possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Provider without the obligation of confidentiality, (5) is disclosed with the written consent of Provider, or; (6) is independently developed by

employees or agents of the Owner who can be shown to have had no access to the Provider Confidential Information. Subject to subsection (i) and (ii), the Owner shall: (1) limit disclosure of Provider Confidential Information to those directors, elected and appointed officials, employees, contractors and agents of the Owner who need to know the Provider Confidential Information in connection with the Work and who have been informed of confidentiality obligations at least as strict as those contained in this Master Agreement, and (2) exercise reasonable care to protect the confidentiality of the Provider Confidential Information, at least to the same degree of care as the Owner employs with respect to protecting its own proprietary and confidential information.

- B. Owner's Confidential Information. Any and all information that the Owner provides to Provider or its employees or agents in the performance of this Master Agreement that the Owner designates as confidential (either on the document itself or through related correspondence), as well as all reports and other documents and materials that result from Provider's use of such information and any other work product that the Owner designates as confidential, is deemed to be confidential information of the Owner ("Owner Confidential Information"). Owner Confidential Information does not include information that (1) is or becomes (other than by disclosure by Provider) publicly known; (2) is furnished by the Owner to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Provider's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than the Owner without the obligation of confidentiality, (5) is disclosed with the written consent of Owner, or; (6) is independently developed by employees or agents of Provider who can be shown to have had no access to the Confidential Information.
- C. Provider shall treat as confidential any Owner Confidential Information that has been made known or available to Provider or that Provider has received, learned, heard or observed; or to which Provider has had access. Provider shall use Owner Confidential Information exclusively for the Owner benefit in the performance of this Master Agreement. Except as may be expressly authorized in writing by the Owner, in no event shall Provider publish, use, discuss or cause or permit to be disclosed to any other person such Owner Confidential Information. Provider shall (1) limit disclosure of the Owner Confidential Information to those directors, officers, employees, subcontractors, and agents of Provider who need to know the Owner Confidential Information in connection with the Work and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Master Agreement, (2) exercise reasonable care to protect the confidentiality of the Owner Confidential Information, at least to the same degree of care as Provider employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the Owner, upon its request, all materials containing Owner Confidential Information, in whatever form, that are in Provider's possession or custody or under its control. Provider is expressly restricted from and shall not use the intellectual property rights of the Owner's without the Owner's prior written consent.
- D. Retroactivity. This Section shall apply to all Owner Confidential Information previously received, learned, observed, known by or made available to Provider and related to this Master Agreement.
- E. Survival. Provider's confidentiality obligations under this Master Agreement shall survive termination or expiration of this Master Agreement.

- F. Equitable Relief. Provider acknowledges that unauthorized disclosure of Owner Confidential Information will result in irreparable harm to the Owner. The Parties agree that, notwithstanding any other section of this Master Agreement, in the event of a breach or a threatened breach of the Master Agreement's terms related to Confidential Information or intellectual property rights, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.
- G. Discovery of Documents. In the event a court of competent jurisdiction orders the release of Confidential Information submitted by one Party, the other Party will notify the Party whose Confidential Information is being requested to be disclosed of the request. The Party receiving the request shall allow the other Party to participate in the response at its own expense. Each Party will comply with any effective court order.

9.02 *Public Records*

- A. Public Records Request. Provider acknowledges that the Owner is subject to the Oregon Public Records Act and federal law. Third persons may claim that the Provider Confidential Information (as defined above) that Provider submitted to the Owner hereunder may be, by virtue of its possession by the Owner, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The Owner's commitments to maintain certain information confidentially under this Master Agreement are all subject to the constraints of Oregon and federal laws. All information submitted by Provider to the Owner is a public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which Provider requests and meets an exemption from disclosure consistent with federal or Oregon law. Within the limits and discretion allowed by those laws, the Owner will make a good faith effort to maintain the confidentiality of information.
- B. The Owner will retain one (1) copy of any public records for the express purposes of complying with State of Oregon public records and archiving laws.

9.03 *Waiver of Immunity*

- A. Notwithstanding any other provision of the Master Agreement, it is stipulated and agreed that by accepting Confidential Information, Owner has not and does not waive its legal immunity (if any) from suit or liability.

[Remainder of this page is intentionally left blank, signatures are on the following page.]

IN WITNESS WHEREOF, Owner and Provider have signed this Master Agreement. Counterparts have been delivered to Owner and Provider.

The Effective Date of the Master Agreement is **[date to be inserted at the time of execution]**.

Owner

(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

Designated Representative:

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address: _____

Phone: _____

Email: _____

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Provider

(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

(If Provider is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

Designated Representative:

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address: _____

Phone: _____

Email: _____

General Conditions

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. *Application for Payment*—The document prepared by Provider, in a form acceptable to Engineer, to request payments pursuant to an applicable Task Order, and which is to be accompanied by such supporting documentation as is required by the Contract Documents. A form Application for Payment is attached to the Master Agreement as Exhibit C.
 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 Directive* – A written directive from Owner to Provider issued on or after the Effective Date of a Task Order, ordering an addition, deletion or revision to the applicable Work.
 9. *Change Order*—A document which is signed by Provider 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 a Task Order, issued on or after the Effective Date of an applicable Task Order.
 10. *Change Proposal*—A written request by Provider, 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 Master Agreement or an applicable Task Order, or both.

11. *Claim*

- a. A demand or assertion by Owner or Provider seeking an adjustment of applicable Contract Price or Contract Times, or both, or other relief with respect to the terms of the Master Agreement or a particular Task Order.
 - b. A demand or assertion by Owner or Provider made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of a final payment.
 - c. A demand for money or services by a third party is not a Claim.
12. *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.
13. *Contract Documents*— As defined pursuant to the Master Agreement.
14. *Contract Price*—The money that Owner has agreed to pay Provider for completion of the Work under each applicable Task Order.
15. *Contract Times*—The number of days or the dates by which Provider shall complete the Work under each applicable Task Order.
16. *Contractor/Assignee*— A construction contractor with which Project Owner enters into a construction contract, and to which Project Owner, as initial Owner, assigns the applicable Task Order and, as it pertains to such Task Order, this Master Agreement.
17. *Cost of the Work*—See Paragraph 14.01 for definition.
18. *Days* - Calendar days, including weekdays, weekends and holidays, unless otherwise specified.
19. *Drawings*—The part of each applicable Task Order that graphically shows the scope, extent, and character of the Work to be performed by Provider.
20. *Effective Date of the Master Agreement*—The date, indicated in the Master Agreement, on which the Master Agreement becomes effective.
21. *Effective Date of a Task Order* – The date, indicated in each fully executed Task Order, on which the Task Order becomes effective.
22. *Electronic Document*—Any Work-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.
23. *Electronic Means*—Electronic mail (email), upload/download from a secure Work 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 Master Agreement. 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.

24. *Engineer*—The individual or entity named as such in the executed Master Agreement.
25. *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.
26. *Final Completion* - The final completion of all requirements under an applicable Task Order, including Correction Period as described in 16.08 but excluding Warranty Work as described in Articles 7 and 16, and the final payment and release of all retainage, if any, released.
27. *Force Majeure* - An act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to this Master Agreement or an applicable Task Order who is asserting Force Majeure
28. *Goods* – As defined pursuant to the Master Agreement and each fully executed Task Order.
29. *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 Master Agreement and applicable Task Order, 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.
30. *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, including but not limited to those rules, regulations, and requirements set forth in Exhibit D.
31. *Liens*—Charges, security interests, or encumbrances upon Master Agreement-related or specific Task Order-related funds, real property, or personal property.
32. *Master Agreement*—The written instrument, executed by Owner and Provider, that sets forth terms by which the parties may enter Task Orders, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
33. *Milestone*—A principal event in the performance of the Work that the Provider must attain by the date or within the number of days indicated, including but not limited to the delivery of the Goods, the furnishing of Work, Substantial Completion of Work, and Final Completion of Work, as applicable.
34. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.

35. *Owner*—The individual or entity with which Provider has contracted regarding the Work, and which has agreed to pay Provider for the performance of the Work, pursuant to the terms of the Master Agreement.
36. *Owner Authorized Representative* -- As defined pursuant to the Master Agreement.
37. *Point of Destination* -- The specific address of the location where delivery of Goods will be made, as stated in the applicable Task Order.
38. *Progress Schedule*—A schedule, prepared and maintained by Provider, describing the sequence and duration of the activities comprising Provider's plan to accomplish the Work within the Contract Times of an applicable Task Order.
39. *Project* -- As defined pursuant to the Master Agreement.
40. *Project Owner* — The Owner.
41. *Punchlist* - The list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of a Task Order.
42. *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.
43. *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.
44. *Schedule of Submittals*—A schedule, prepared and maintained by Provider, of required submittals and the time requirements for Engineer's review of the submittals.
45. *Schedule of Values*—A schedule, prepared and maintained by Provider, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Provider's Applications for Payment.
46. *Provider* -- The individual or entity with which Owner has contracted for performance of the Work.
47. *Provider Authorized Representative* - As defined pursuant to the Master Agreement.
48. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Provider and submitted by Provider to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
49. *Site*—Lands or areas indicated in each fully executed Task Order 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 Provider.
50. *Special Services* -- As defined pursuant to the Master Agreement and each fully executed Task Order.
51. *Specifications*—The part of a fully executed Task Order 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.

52. *Subcontractor*—An individual or entity having a direct contract with Provider or with any other Subcontractor for the performance of a part of the Work.
53. *Submittal*—A written or graphic document, prepared by or for Provider, which the Contract Documents require Provider 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; Work photographic documentation; record documents; and other such documents required by the Contract Documents or a fully executed Task Order. 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.
54. *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 and applicable Task Order, 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.
55. *Successful Bidder*—The Bidder to which the Owner makes an award of the Master Agreement.
56. *Supplementary Conditions*—The part of the Master Agreement that amends or supplements these General Conditions.
57. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Provider or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Provider or a Subcontractor.
58. *Technical Data*
- a. Those items expressly identified as Technical Data, 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 5.04, 5.05, and 5.07, 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 Work and made available to Provider.

- 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.

59. *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.

60. *Unit Price Work*—Work to be paid for on the basis of unit prices (if any).

61. *Work*—As defined pursuant to the Master Agreement.

62. *Work Change Directive*—A written directive to Provider issued on or after the Effective Date of an applicable Task Order, 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 Work 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 11 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. *Non-conforming*: The word “non-conforming,” when modifying the word “Work” or words “Goods and Special Services” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - 1. does not conform to or otherwise comply with 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 or final delivery, as applicable, 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, Goods, Special Services, or equipment, means to supply and deliver said services, materials, Goods, Special Services, 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, Goods, Special Services, 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, Goods, Special Services or equipment, means to furnish and install said services, materials, Goods, Special Services, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Provider with respect to specific services, materials, Goods, Special Services, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Provider shall furnish and install said services, materials, Goods, Special Services, 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 Provider delivers the signed counterparts of a Task Order to Owner, Provider shall also deliver to Owner the performance bond and payment bond (if the Task Order requires Provider to furnish such bonds).
- B. *Evidence of Provider's Insurance*: When Provider delivers the signed counterparts of a Task Order to Owner, Provider shall also deliver to Owner, with copies to each additional insured (as identified in the Master Agreement), the certificates, endorsements, and other evidence of insurance required to be provided by Provider in accordance with the Contract Documents and the applicable Task Order.
- C. *Evidence of Owner's Insurance*: After receipt of the signed counterparts of the Task Order, and all required bonds and insurance documentation, as applicable, Owner shall promptly deliver to Provider, with copies to each additional insured (as identified in the Master Agreement), the certificates and other evidence of insurance required to be provided by Owner under the terms of the applicable Task Order.

- D. The Provider hereby certifies that the Provider is licensed with the Construction Providers Board in accordance with ORS 701.035 to 701.055 and, further, that all Subcontractors performing work as described in ORS 701.025(2) (i.e., construction work) will be licensed with the Construction Providers Board in accordance with ORS 701.035 to 701.055 before the Subcontractors commence Work that constitutes construction work under each applicable Task Order.

2.02 *Copies of Documents*

- A. Owner shall furnish to Provider one (1) copy in electronic portable document format (PDF) of the Contract Documents including one fully signed counterpart of the Master Agreement and each Task Order. Provider may request up to three (3) printed copies of the Contract Documents (including one fully signed counterpart of the Master Agreement and each Task Order). 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 Master Agreement and each Task Order, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Master Agreement and each Task Order available to Provider 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 a Task Order (or as otherwise required by the Task Order), Provider 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 applicable Work, including any Milestones specified in the Task Order;
 - a. The Progress Schedule will be acceptable to Owner and Engineer if it provides an orderly progression of the Submittals, tests, and deliveries to completion within the specified Milestones of the Contract Times.
 - b. Such acceptance will not impose on Owner or Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of Provider's performance of its obligations under the Task Order, nor interfere with or relieve Provider from Provider's full responsibility therefor.
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work to be performed pursuant to the Task Order, 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, if applicable. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

- B. No progress payment will be made to Provider until an acceptable Progress Schedule and acceptable schedule of Submittals are submitted to Owner and Engineer (and other conditions applicable to progress payments are met).

2.04 *Preliminary Conference*

- A. Within 20 days after a Task Order's Contract Times start to run, a conference attended by Owner, Provider, 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.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment, a conference, attended by Provider, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No payment will be made to Provider 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 Provider from Contractor's full responsibility therefore.
 - 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, Provider 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 Documents, the Owner, Engineer, and Provider may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. *Electronic Documents Protocol:* The parties shall conform to the following provisions in Paragraphs 2.06.B and 2.06.C, together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals.
 - 1. *Basic Requirements*
 - a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents in an electronic or digital format using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Contract Documents.
 - b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.

- c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Contract Documents.
- d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between a party and any third party for any portion of the Work on the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with a party or with Engineer. Nothing herein will modify the requirements of the Contract Documents regarding communications between and among the parties and their subcontractors and consultants.
- e. Electronic files shall be transmitted in electronic portable file (.PDF) format unless noted otherwise in the Contract Documents.
- f. Nothing herein negates any obligation 1) in the Contract Documents to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; 2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or 3) to comply with the notice requirements of Paragraph 19.01 of the General Conditions.

2. *System Infrastructure for Electronic Document Exchange*

- a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP, and any explicit system requirements specified by attachment to this EDP, it is the obligation of each party to determine, for itself, its own System Infrastructure.
 - 1) The maximum size of an email attachment for exchange of Electronic Documents under this EDP is 15 MB. Attachments larger than that may be exchanged using large file transfer functions or physical media.
 - 2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.
- d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties shall cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Provider, not reasonably anticipated under the original EDP, Provider may seek an adjustment in price or time under the appropriate process in the Contract Documents.
- e. Each party is responsible for its own back-up and archive of documents sent and received during the term of the contract under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other

communications protocol, upon which the parties may rely for document archiving during the specified term of operation of such Project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of Project documents after the term of the Contract Documents, or after termination of the Project document archive, if one is established, for as long as required by the Contract Documents and as each party deems necessary for its own purposes.

C. Software Requirements for Electronic Document Exchange; Limitations

1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.
 - a. Prior to using any updated version of the software required in this paragraph for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.
2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.

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. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce, furnish, or provide the indicated Work will be provided, whether or not specifically called for, at no additional cost to Owner. It is the intent of the Contract Documents to describe a functionally complete Work (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 Master Agreement and all Contract Documents supersede 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 Provider, 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 *Standards Specifications, Codes, Laws and Regulations*

- A. 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 on the Effective Date of the applicable Task Order, except as may be otherwise specifically stated in the Contract Documents.
- B. 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, Provider, 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.
- C. The provisions of the Contract Documents shall be construed in accordance with the laws of the State of Oregon and ordinances of the City of Dayton, Oregon. Any action or suits involving any question arising under this Master Agreement must be brought in the appropriate court in Yamhill County, Oregon. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon. Provider, by the signature herein of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts. In no event shall this paragraph be construed as a waiver of the Owner of any form of defense or immunity.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Provider's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Provider shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Provider shall promptly report in writing to Engineer (or if the applicable Task Order is assigned, then directly to Contractor/Assignee) 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 to Provider, that Provider discovers, or has actual knowledge of. Provider shall

not proceed with any Work affected thereby (except in an emergency as required by Paragraph 7.07) until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer (or if the applicable Task Order is assigned, then directly to Contractor/Assignee), or by an amendment or supplement to the Task Order issued pursuant to Article 12.

2. Provider shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Provider 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 (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the furnishing and 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 each final payment, Provider and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents and/or an applicable Task Order (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents and applicable Task Order, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents and applicable Task Order, and judge of the acceptability of the Work.
 1. After assignment (if any) Provider shall submit such matters directly to Contractor/Assignee for response or administration.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, and if necessary, initiate an amendment or supplement to the Contract Documents or applicable Task Order. Engineer's written clarification, interpretation, or decision will be final and binding on Provider, 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 Provider in writing that Engineer is unable to provide a decision or interpretation. If Owner and Provider are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 13.

3.05 *Reuse of Documents*

- A. Provider 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 Work 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 Master Agreement and each applicable Task Order. Nothing herein precludes Provider 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 applicable Contract Times will commence to run on the Effective Date of each Task Order.

4.02 *Starting the Work and Continuing Performance*

- A. Provider shall start to perform the Work as identified in each Task Order. No Work may be done at the Site prior to such date.
- B. Provider shall adhere to the Progress Schedule established in accordance with Paragraph 2.05, as duly adjusted, and the Work will be provided within the Contract Times.

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 Provider to proceed with the Work. Provider 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. Provider 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. Provider 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. Provider 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. Such adjustments will comply with any applicable provisions of the Specifications.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.
- B. Provider shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner, unless otherwise expressly provided or directed by 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 17.04, or as Owner and Provider may otherwise agree in writing.

4.05 *Delays*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Provider shall be entitled to an equitable adjustment in applicable Contract Price or Contract Times.
- B. Provider 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 Provider. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier, or any other person or entity for whom Provider is responsible, shall be deemed to be within the control of Provider.
- C. If Provider's performance or progress is delayed, disrupted, or interfered with by Force Majeure events, or events for which Owner is solely responsible, then Provider shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Provider'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 or Contract Price 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);
 4. Inspection delays by governmental authorities and custom delays (but in no event tariff related delays or costs);
 5. International shipping delays;
 6. Pandemics and epidemics; and
 7. Acts of war or terrorism.
- D. Provider's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Provider'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. Provider 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 Provider. Such a concurrent delay by Provider shall not preclude an adjustment of Contract Times to which Provider is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 12.
- E. Each request or Change Proposal seeking an adjustment to 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 12.08.

Provider 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 an applicable Task Order, 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 8.02 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 *Applicability*

- A. This Article 5 applies to Work completed pursuant to a Procurement and Installation Task Order.

5.02 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Provider in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Provider must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Provider 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. Provider shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.03 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Provider shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Provider 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. Provider shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Provider'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 Provider or those for which Provider 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 Provider or those for which Provider is responsible, Provider shall (a) take immediate corrective or remedial action as required by Paragraph 7.14, 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, defend, and hold harmless Owner and Engineer, and the partners, employees, agents, consultants, elected and appointed officials, 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, Provider's performance of the Work, or because of other actions or conduct of the Provider or those for which Provider is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Provider 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, Provider shall clean the Site and the Work and make it ready for utilization by Owner. At the final completion of the Work, Provider 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 and applicable Task Order.

- D. *Loading of Structures*: Provider shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Provider subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.04 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: Provider shall 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 5.06, and not in the drawings referred to in Paragraph 5.04.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 Provider on Technical Data*: Provider may rely upon the accuracy of the Technical Data expressly identified in the Contract Documents and an applicable Task Order 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 Provider may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.58.b.

D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Provider 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 Provider's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Provider, 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 Provider, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Provider interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.05 *Differing Subsurface or Physical Conditions*

A. *Notice by Provider*: If Provider 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 Provider is entitled to rely as provided in Paragraph 5.04 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 and applicable Task Order; 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 and applicable Task Order;

then Provider 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 7.07), notify Owner and Engineer in writing about such condition. Provider 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 Provider 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 5.05.A; obtain any pertinent cost or schedule information from Provider; prepare recommendations to Owner regarding the Provider'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 Provider Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Provider (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 Provider, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Provider to resume such Work.
- E. *Possible Price and Times Adjustments*
 1. Provider 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 Provider'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 5.05.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 14.03; and,
 - c. Provider's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Provider shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Provider knew of the existence of such condition at the time Provider made a commitment to Owner with respect to Contract Price and Contract Times by the execution of the applicable Task Order, 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, Contract Documents, and/or applicable Task Order to be conducted by or for Provider prior to Provider's making such commitment; or
 - c. Provider failed to pause the Work or give the written notice required by Paragraph 5.05.A.
 3. If Owner and Provider agree regarding Provider'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. Provider 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 Provider regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.06 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.07 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.04 and 5.05 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.06 *Underground Facilities*

- A. *Provider's Responsibilities:* Unless it is otherwise expressly provided in the Contract Documents or applicable Task Order, the cost of all of the following shall be included in the Contract Price, and Provider 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 or applicable Task Order as being within the area affected by the Work, by exposing such Underground Facilities during the performance of the Work;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during the performance of the Work; 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 Provider:* If Provider 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 Provider 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 7.07), 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 Provider) regarding the Provider's resumption of Work in connection with the Underground Facility in question;
3. obtain any pertinent cost or schedule information from Provider; 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, Provider shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Provider Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Provider (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 Provider, 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 Provider to resume such Work.

F. *Possible Price and Times Adjustments*

1. Provider 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 Provider'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 14.03;
 - b. Provider'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. Provider gave the notice required in Paragraph 5.06.B.

2. If Owner and Provider agree regarding Provider'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. Provider 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 Provider regarding the Underground Facility in question.
4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at each 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, Provider's remedies are limited to those set forth in this Paragraph 5.06.F.

5.07 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Owner shall 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 Provider on Technical Data Authorized:* Provider may rely upon the accuracy of the Technical Data expressly identified by Owner 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 Provider may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.58.b. Except for such reliance on Technical Data, Provider 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 Provider's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Provider, 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 Provider interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Provider 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 or applicable Task Order to be within the scope of the Work.

D. Provider shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Provider, Subcontractors, Suppliers, or anyone else for

whom Provider 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 Provider encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents or applicable Task Order as being within the scope of the Work, or if Provider or anyone for whom Provider is responsible creates a Hazardous Environmental Condition, then Provider 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 7.07); 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 Provider the written notice required by Paragraph 5.07.F. If Provider or anyone for whom Provider 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. Provider 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 Provider 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 Provider 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 Provider, 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, Provider 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, 12.07, and 12.08.
- H. If, after receipt of such written notice, Provider 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 12. 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, Provider shall indemnify, defend, and hold harmless Owner and Engineer, and the employees, agents, consultants, elected and appointed officials, 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 Provider or by anyone for whom Provider is responsible, or to a Hazardous Environmental Condition created by Provider or by anyone for whom Provider is responsible. Nothing in this Paragraph 5.07.I obligates Provider to

indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- J. The provisions of Paragraphs 5.04, 5.05, and 5.06 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. Provider shall furnish a performance bond and a payment bond, in accordance with the terms of the each fully executed Task Order, as security for the faithful performance and payment of Provider's obligations under the Contract Documents. 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 16.08, 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 Master Agreement. Each required bond shall be for the full value of the applicable Task Order's Contract Price.
- B. Provider shall also furnish such other bonds (if any) as are required by the Supplementary Conditions, or other provisions of the Master Agreement.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of a Task Order, if any, 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. Provider 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 Provider is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Provider 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 Provider has failed to obtain a required bond, Owner may exclude the Provider from the Site and exercise Owner's termination rights under Article 17.
- 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.

6.02 *Insurance—General Provisions*

- A. Owner and Provider shall obtain and maintain insurance as required in the Contract Documents and each fully executed Task Order.

- B. All insurance required by the Contract Documents to be purchased and maintained by Owner or Provider 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 or a Task Order, all companies that provide insurance policies required under this Master Agreement 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 Master Agreement, unless expressly allowed in the Supplementary Conditions or a Task Order.
- D. Provider shall deliver to Owner, with copies to each additional insured identified in the applicable Task Order, certificates of insurance and endorsements establishing that Provider has obtained and is maintaining the policies and coverages required by the Master Agreement and applicable Task Order. Upon request by Owner or any other insured, Provider 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, Provider, 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 Master Agreement and applicable Task Order.
- E. Owner shall deliver to Provider, with copies to each additional insured identified in the applicable Task Order, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract Documents and applicable Task Order. Upon request by Provider 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 Master Agreement and applicable Task Order.
- F. Failure of Owner or Provider to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Provider 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 Provider, 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 Provider, and Provider cannot rely upon Owner's liability policies for any of Provider's obligations to the Owner, Engineer, or third parties.
- H. Provider 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 Work, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions or applicable Task Order as additional

insureds on Provider'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 Work.
 - I. If either party does not purchase or maintain the insurance required of such party by the Master Agreement or applicable Task Order, 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 Provider has failed to obtain and maintain required insurance, Provider's entitlement to enter or remain at the Site or Point of Destination, as applicable, 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 17.
 - 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 Master Agreement and applicable Task Order necessarily will be adequate to protect Provider or Provider's interests. Provider is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Provider 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 Master Agreement, applicable Task Order, or otherwise.
 - N. All the policies of insurance required to be purchased and maintained under this Master Agreement and applicable Task Order 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.
 - O. Failure of Owner to demand certificates of insurance or other evidence of Provider's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided will not be construed as a waiver of Provider's obligation to maintain such insurance.
 - P. Upon assignment of a Task Order and the applicable terms of the Contract Documents, if any, Provider shall name the Contractor/Assignee as an additional insured and comply with the written request of Contractor/Assignee to provide evidence of insurance.

6.03 *Provider's Insurance*

- A. *Required Insurance:* Provider shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements identified herein:

1. Workers Compensation at statutory limits.
2. Commercial general liability as follows:

Commercial General Liability	Policy limits of not less than
General aggregate	\$2,000,000
Products – completed operations aggregate	\$2,000,000
Personal and Advertising Injury	\$2,000,000
Each occurrence	\$2,000,000

3. Automobile liability as follows:

Automobile Liability	Policy limits of not less than
Combined single limit (bodily injury and property damage)	\$2,000,000

4. Professional Liability as follows:

Contractor's professional liability	Policy limit of not less than
Each claim	\$3,000,000
Annual aggregate	\$3,000,000

5. Excess Umbrella Liability Coverage: Provider shall provide excess umbrella liability coverage, on an occurrence basis, issued as broad form excess to all other professional liability, errors and omissions, commercial general liability, and commercial auto liability coverage's not less than \$5,000,000.

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 each applicable scope of Work is complete (as set forth in Paragraph 16.06.D), and longer if expressly required elsewhere in this Master Agreement or an applicable Task Order, and at all times thereafter when Provider may be correcting, removing, or replacing non-conforming or defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the applicable Task Order;
4. apply with respect to the performance of the Work, whether such performance is by Provider, 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 Provider's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Master Agreement or applicable Task Order, must:

1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions or applicable Task Order;
2. include coverage for the respective officers, elected and appointed officials, directors, members, partners, employees, agents, 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 Provider's acts or omissions, or the acts and omissions of those working on Provider's behalf, in the performance of Provider's operations.

6.04 *Builder's Risk and Other Property Insurance (For Work completed under a Procurement and Installation Task Order only)*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions or a Task Order, Provider is not required to purchase and/or maintain builder's risk insurance in connection with the Work.
- 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 16.06.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 16.06.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 16.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Provider) 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 Master Agreement and applicable Task Order 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 Provider 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 Provider's expense.

6.05 *Property Losses; Subrogation (for Work completed under a Procurement and Installation Task Order only)*

- 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 or a Task Order), 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.
 - 1. Owner and Provider waive all rights against each other and the respective officers, directors, elected and appointed officials, 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.
 - 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 Provider 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 16.04, after Substantial Completion pursuant to Paragraph 16.03, or after final payment pursuant to Paragraph 16.06, 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 Provider, 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.
- 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. Provider shall be responsible for assuring that each subcontract contains provisions whereby the Subcontractor waives all rights against Owner, all individuals or entities identified in the Supplementary Conditions or applicable Task Order as insureds, and the officers, directors, members, elected and appointed officials, 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 (For Work completed under a Procurement and Installation Task Order only)*

- 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 Master Agreement or applicable Laws and Regulations.
- C. If no other special agreement is reached, Provider shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—PROVIDER'S RESPONSIBILITIES

7.01 *Performance of Obligations*

- A. Provider shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction necessary to perform its obligations in accordance with the Contract Documents and each fully executed Task Order.
- B. If the Contract Documents or a Task Order note, or Provider determines, that professional engineering or other design services are needed to carry out Provider's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Provider shall cause such services to be provided by a properly licensed design professional, at Provider's expense. Such services are not Owner-delegated professional design services under this Master Agreement, and neither Owner nor Engineer has any responsibility with respect to (1) Provider's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Provider, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.
- C. Provider shall coordinate the provision of any Special Services to avoid or limit interference or disruption of other activities at the location where the Special Services are to occur, including but not limited to ongoing facility operations and construction activities.

7.02 *Supervision and Superintendence*

- A. Provider 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 and Task Order(s).

- B. At all times during the progress of the Work, Provider shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.
- C. Any person employed on the Project, by the Provider or a Subcontractor, who, in the opinion of the Engineer, does not act in a courteous and professional manner towards the adjacent property owners, the traveling public, or Owner shall, at the written request of the Engineer, be removed from the Project. That employee shall not return to work on the Project without the approval of the Engineer.

7.03 *Labor; Working Hours*

- A. Provider shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents and Task Order(s). Provider shall maintain good discipline and order at the Site.
- B. Provider shall be fully responsible to Owner and Engineer for all acts and omissions of Provider'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 Provider is responsible for Provider's own acts and omissions.

7.04 *Goods, Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents or Task Order(s), Provider 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 or a Task Order.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents or a Task Order. All special warranties and guarantees required by the Specifications or otherwise provided will expressly run to the benefit of Owner. If required by Engineer, Provider 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 or a Task Order.
- D. All Goods, and all equipment and material incorporated into the Goods, must be as specified, and unless specified otherwise in the Contract Documents or a Task Order, must be:
 - 1. new, and of good quality;
 - 2. protected, assembled, connected, cleaned, and conditioned in accordance with the original manufacturer's instructions; and
 - 3. shop-assembled to the greatest extent practicable.

7.05 *Concerning Subcontractors and Suppliers*

- A. Provider may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Provider's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve

Provider's obligation to Owner to perform and complete the Work in accordance with the Contract Documents and applicable Task Order.

- B. Provider shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract Documents or applicable Task Order to do so.
- C. Subsequent to the submittal of Provider's Bid or final negotiation of the terms of a Task Order, Owner may not require Provider to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Provider has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Provider 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. Provider shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Master Agreement or a Task Order, either in whole or in part, without the Owner's prior written consent. Unless otherwise agreed by the Owner in writing, such consent shall not relieve the Provider of any obligations under the Master Agreement or applicable Task Order. Any assignee or transferee shall be considered the agent of the Provider and be bound to abide by all provisions of the Master Agreement and/or applicable Task Order. If the Owner consents in writing to an assignment, sale, disposal or transfer of the Provider's rights or delegation of Provider's duties, the Provider and its surety, if any, shall remain liable to the Owner for complete performance of the Master Agreement as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Owner otherwise agrees in writing.
- F. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Provider to retain specific replacements; provided, however, that Owner may not require a replacement to which Provider has a reasonable objection. If Provider 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. Provider shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- G. If Owner requires the replacement of any Subcontractor or Supplier retained by Provider to perform any part of the Work, then Provider shall be entitled to an adjustment in Contract Price or Contract Times with respect to the replacement, and Provider shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- H. 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 and applicable Task Order.
- I. On a monthly basis, Provider shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Provider, and of all other Subcontractors and Suppliers known to Provider at the time of submittal.
- J. Provider shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

- K. The divisions and sections of the Specifications and the identifications of any Drawings do not control Provider in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- L. *Subcontractor and Supplier Contracting Requirements*
 - 1. Provider further agrees that if Subcontractors are employed in the performance of this Master Agreement or applicable Task Order, the Provider and its Subcontractors are subject to the requirements and sanction of ORS Chapter 656, Workers' Compensation.
 - 2. All Work performed for Provider 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 Master Agreement and applicable Task Order for the benefit of Owner and Engineer.
- M. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Provider for Work performed for Provider by the Subcontractor or Supplier.
- N. Provider shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Provider or in case of an emergency, or as otherwise expressly allowed in these Contract Documents or a Task Order.

7.06 *Hazard Communication Programs*

- A. Provider 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 or Point of Destination in accordance with Laws or Regulations.

7.07 *Emergencies*

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

7.08 *"Or Equals"*

- A. *Provider's Request; Governing Criteria:* Whenever an item of equipment or material to be incorporated into the Work is specified or described in the Contract Documents or a Task Order by using the names of one or more proprietary items or specific Suppliers or manufacturers, the Contract Price has been based upon Provider 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, Provider 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 Provider 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.
2. 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 Work as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
 - b. Provider certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in the Contract Price or Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Provider’s Expense*: Provider shall provide all data in support of any proposed “or equal” item at Provider’s expense.
- C. *Engineer’s Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each “or-equal” request. Engineer may require Provider 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 Provider in writing of any negative determination. Notwithstanding Engineer’s approval of an “or-equal” item, Provider shall remain obligated to comply with the requirements of the Contract Documents and applicable Task Order.
- 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 Documents.
- E. *Special Guarantee*: Owner may require Provider to furnish at Provider’s expense a special performance guarantee or other surety with respect to any such proposed “or-equal.”

7.09 *Intellectual Property and License Fees*

- A. Provider 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 or applicable Task Order 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 applicable Task Order. Except to the extent stated elsewhere in the Contract Documents or a Task Order, Provider is not transferring any patent rights, copyrights, or other intellectual property rights for any Goods delivered.

- B. All work products of the Provider that result from this Master Agreement or applicable Task Order, including but not limited to background data, documentation and staff work that is preliminary to final reports, are the property of Owner. Draft documents and preliminary work submitted to the Owner for review and comment shall not be considered as owned, used or retained by the Owner until the final document is submitted. The Owner shall own all proprietary rights, including but not limited to copyrights, trade secrets, patents and all other intellectual or other property rights in and to such work products. Preexisting trade secrets of the Provider shall be noted as such and shall not be considered as a work product of this Master Agreement or applicable Task Order. All such work products shall be considered "works made for hire" under the provisions of the United States Copyright Act and all other equivalent laws.
- C. Use of any work product of the Provider by the Owner for any purpose other than the use intended by this Master Agreement and applicable Task Order(s) is at the risk of the Owner. Use of any work product by Provider is prohibited without the written consent of the Owner. All documents or other materials submitted to Owner by Provider shall become the sole and exclusive property of Owner. Such materials are subject to Oregon Public Records Laws.
- D. To the fullest extent permitted by Laws and Regulations, Provider shall indemnify, defend, and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, elected and appointed officials, 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 or applicable Task Order.

7.10 *Permits*

- A. Unless otherwise provided in the Contract Documents or a Task Order, Provider shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Provider, when necessary, in obtaining such permits and licenses. Provider shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the full execution of the applicable Task Order). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.11 *Taxes*

- A. Provider shall pay all sales, consumer, use, and other similar taxes required to be paid by Provider in accordance with the Laws and Regulations of the place of the Work which are applicable during the performance of the Work. All taxes and duties are included in the Contract Price, except as noted in the Supplementary Conditions or applicable Task Order.

7.12 *Laws and Regulations*

- A. Provider 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 Provider's compliance with any Laws or Regulations.
- B. If Provider performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Provider shall bear all resulting costs and losses, and shall indemnify, defend, and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, elected and appointed officials, 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 Provider's responsibility to make certain that the Work described in the Contract Documents and applicable Task Order(s) is in accordance with Laws and Regulations, but this does not relieve Provider of its obligations under Paragraph 3.03.
- C. Owner or Provider may give written notice to the other party of any changes after the date when Provider became bound under each fully executed Task Order in Laws or Regulations having an effect on the cost or time of performance of the particular Work covered by such Task Order, 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 Provider 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 Provider may submit a Change Proposal, or Owner may initiate a Claim.

7.13 *Record Documents*

- A. Provider shall maintain in a safe place one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, Task Orders, written interpretations and clarifications, and approved Shop Drawings. Provider 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, Provider shall deliver these record documents to Engineer.
- B. Provider agrees to maintain and retain and retain all financial records, supporting documents, statistical records and all other records pertinent to this Master Agreement and each applicable Task Order during the term of this Master Agreement and for a minimum of six (6) years after the expiration or termination date of this Master Agreement, or for a minimum of six (6) years after all other pending matters in connection with this Master Agreement are closed, whichever is longer. The Owner and its duly authorized representatives shall have access, for a period not less than six (6) years to books, documents, papers and records of Provider which are pertinent to the Contract Documents and each Task Order including records pertaining to overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Master Agreement is involved in litigation, Provider shall retain all pertinent records until all litigation is resolved. The Owner and/or its agents will continue to be provided full access to the records during litigation.

7.14 *Safety and Protection*

- A. Provider 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. If Owner or its representatives visit the Provider's manufacturing or storage facilities, for testing, inspection, or other purposes, Provider shall inform Owner in advance of any safety preparations, standards, or programs with which Owner and its representatives must comply.
- C. Provider 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.
- D. Provider 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, at the Point of Destination, 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 or on or off the Point of Destination; and
 - 3. other property at the Site, the Point of Destination, 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 Task Order performance.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.14.D.2 or 7.14.D.3 caused, directly or indirectly, in whole or in part, by Provider, 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 Provider at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the negligent 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).
- F. Provider 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.
- G. Provider 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 Provider); and other contractors and utility owners performing work at or adjacent to the Site or Point of Destination, in writing, when Provider 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.
- H. Provider 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, Specifications, or applicable Task Order. When Provider's personnel, or the personnel of any Subcontractor to Provider, are present at the Point of Destination, the Site, or any work area controlled by Owner, the Provider shall be responsible for the compliance by such personnel with any applicable requirements of Owner's safety programs that are made known to Provider.

- I. Provider shall inform Owner and Engineer of the specific requirements of Provider's safety program with which Owner's and Engineer's Subcontractors, employees and representatives must comply while at the Site or the Point of Destination.
- J. Provider'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 Provider in accordance with Paragraph 16.06.C that the Work is acceptable, and, Provider has left the Site or Point of Destination (except as otherwise expressly provided in connection with Substantial Completion).
- K. Provider's duties and responsibilities for safety and protection will resume whenever Provider or any Subcontractor or Supplier returns to the Site or other location of the Goods to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents or applicable Task Order.

7.15 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Provider shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work, the Contract Documents, and the applicable Task Order;
 - 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) if applicable to the particular Task Order, all information relative to Provider'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 Provider has satisfied Provider's obligations under the Contract Documents and applicable Task Order with respect to Provider's review of that Submittal, and that Provider approves the Submittal.
3. With each Shop Drawing or Sample, Provider shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents and applicable Task Order. 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:* Provider 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. Provider 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 Provider proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.15.C.
 2. *Samples*
 - a. Provider shall submit the number of Samples required in the Specifications.
 - b. Provider 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 7.15.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents, a particular Task Order, 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 Provider.
- 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 particular Task Order, and be compatible with the design concept of the completed Work as a functioning whole as indicated by the Contract Documents and particular Task Order.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, 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 Provider from responsibility for any variation from the requirements of the Contract Documents and applicable Task Order unless Provider has complied with the requirements of Paragraph 7.15.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 and/or applicable Task Order in a Field Order or other appropriate Master Agreement modification.
 5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Provider from responsibility for complying with the requirements of Paragraphs 7.15.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 or an applicable Task Order, 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. Provider 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 7.15.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

1. Provider 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. Provider shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Provider 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 Provider shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Provider to secure reimbursement for such charges.
3. If Provider requests a change of a previously approved Shop Drawing or Sample, Provider shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Provider to secure reimbursement for such charges, unless the need for such change was unforeseeable and is beyond the control of Provider.

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. Provider 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 and applicable Task Order.
 - 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 and applicable Task Order as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, Provider 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.

7.16 *Provider's General Warranty and Guarantee*

- A. Provider warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and applicable Task Order and will not be non-conforming or defective in materials and workmanship and shall in all material respects comply with the terms of the Contract Documents and each applicable Task Order. Further, Provider warrants and guarantees to Owner that the title to the Goods conveyed will be proper, its transfer rightful, and free from any security interest, lien, or other encumbrance. Provider shall defend, indemnify, and hold Buyer harmless against any liens, claims, or demands contesting or affecting title of the Goods conveyed.
- 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 16.08 and any other manufacturers warranties or other warranties that Provider passes on to Owner. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.16 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 16.08:
 - 1. Owner shall give Provider written notice of any non-conforming or defective Work within 60 days of the discovery that such Work is non-conforming or defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 13.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Provider's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Provider, Subcontractors, Suppliers, or any other individual or entity for whom Provider is responsible;
 - 2. excessive corrosion or chemical attack, unless corrosive or chemically-damaging conditions were disclosed by Owner in the Contract Documents or applicable Task Order and the Contract Documents or applicable Task Order required the Goods to withstand such conditions;
 - 3. use of Goods in a manner contrary to Provider's written instructions for installation, operation, and maintenance; or
 - 2. normal wear and tear under normal usage.
- D. Provider's obligation to perform and complete the Work in accordance with the Contract Documents and applicable Task Order is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents and applicable Task Order, a release of Provider's obligation to perform the Work in accordance with the Contract Documents and applicable Task Order, or a release of Owner's warranty and guarantee rights under this Paragraph 7.16:
 - 1. Observations by Owner or Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any payment;
 - 3. Delivery acceptance or other general acceptance of any Goods by Owner or Engineer, or any failure to do so;
 - 4. Use of the Goods by Owner;

5. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 6. Use or occupancy of the Work or any part thereof by Owner;
 7. Any review and approval of a Shop Drawing or Sample submittal;
 8. The issuance of a notice of acceptability by Engineer;
 9. The end of the correction period established in Paragraph 16.08;
 10. Any inspection, test, or approval by others; or
 11. Any correction of defective or non-conforming Work by Owner.
- E. Owner shall promptly notify Provider of any breach of Provider's warranties and guarantees.
- F. If the Master Agreement or an applicable Task Order requires the Provider 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 Provider's performance obligations to Owner for the Work described in the assigned contract.

7.17 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Provider under the Master Agreement or otherwise, Provider shall indemnify, defend, and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, elected and appointed officials, 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 claims or actions relating to or resulting from the acts or omissions of Provider, or Provider's Subcontractors or Suppliers, or any individual or entity directly or indirectly employed by any of them to perform any of the Work pursuant to this Master Agreement and each fully executed Task Order.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, elected or appointed officials, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Provider, 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 7.17.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 Provider or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The terms of this Paragraph 7.17 shall survive termination or expiration of these Contract Documents and all Task Orders.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 Applicability

- A. This Article 8 applies to Work completed pursuant to a Procurement and Installation Task Order.

8.02 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents and executed Task Orders, 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 Provider 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 Provider.
- C. Provider 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. Provider 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. Provider shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Provider 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 Provider's Work depends upon work performed by others, Provider 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 Provider's Work. Provider's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Provider'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 Provider is governed by the provisions of Paragraph 4.05.C.3.

8.03 *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, the applicable Task Order, or provided to Provider 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 or applicable Task Order, Owner shall have sole authority and responsibility for such coordination.

8.04 *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 Provider 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 Provider shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Provider 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 Provider in the Contract Documents or applicable Task Order prior to the final negotiation of the terms of the applicable Task Order, and any remedies available to Provider under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Provider assigning to Owner all Provider'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. Provider'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. Provider 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 Provider 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 Provider, and assign to such other contractor or utility owner the Owner's contractual rights against Provider with respect to the breach of the obligations set forth in this Paragraph 8.04.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Provider 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 Provider'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 Provider.
- C. If Provider 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 Provider's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Provider'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 Provider, Owner, or Engineer, then Provider 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, defend, and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, elected and appointed officials, 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 Provider*

- A. Except as otherwise provided in these General Conditions or a Task Order, Owner shall issue all communications to Provider through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Provider 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 Provider when they are due as provided in the Contract Documents.

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 5.02.
- 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 Provider 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 21.

9.08 *Inspections, Tests, and Approvals*

- A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 15.02.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, Provider’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Provider to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be

responsible for Provider's failure to perform the Work in accordance with the Contract Documents and applicable Task Order(s).

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.07.

9.11 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Provider's safety programs of which Owner has been informed and which do not contradict the Laws and Regulations or any Owner safety program.
- B. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Owner's own safety programs.
- C. Owner shall furnish copies of any applicable Owner safety programs to Provider.

ARTICLE 10 -- SHIPPING AND DELIVERY

10.01 *Applicability*

- A. This Article 10 applies to Work completed pursuant to a Procurement Task Order.

10.02 *Shipping*

- A. Provider shall select the carrier and bear all costs of packaging, transportation, insurance, special handling, and all other costs associated with shipment and delivery of the Goods.

10.03 *Delivery*

- A. Provider shall deliver the Goods free on board (FOB) to the Point of Destination, freight prepaid, in accordance with the Contract Times set forth in the applicable Task Order, or other date agreed to by Owner and Provider.
- B. At least 10 days before shipment, Provider shall provide written notice to Owner of the manner of shipment and the anticipated delivery date. The notice must also include any instructions concerning special equipment or services required at the Point of Destination to unload, store, maintain and care for the Goods. Provider shall also require the carrier to give Owner at least 24 hours' notice by telephone prior to the anticipated time of delivery.
- C. Unless otherwise stated in a particular Task Order, Owner will be responsible and bear all costs for unloading the Goods from carrier.
- D. Owner will assure that adequate facilities are available to receive delivery of the Goods at the time established for delivery, or on another date agreed to by Owner and Provider.
- E. No partial deliveries will be allowed, unless permitted or required by the applicable Task Order or agreed to in writing by Owner.
- F. Provisions governing inspection on delivery are set forth in Paragraph 15.02.

10.04 *Risk of Loss*

- A. Risk of loss and insurable interests transfer from Provider to Owner upon Owner's receipt of the Goods.

- B. Notwithstanding the provisions of Paragraph 10.03.A, if Owner rejects the Goods as nonconforming or defective, the risk of loss on such Goods will remain with Provider until Provider corrects the non-conformity or defect or Owner accepts the Goods. If rejected Goods remain at the Point of Destination pending modification and acceptance, then Provider shall be responsible for arranging adequate protection and maintenance of the Goods at Provider's expense.

ARTICLE 11 —ENGINEER'S STATUS DURING WORK

11.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the term of each Task Order until assignment (if any). The duties and responsibilities and the limitations of authority of Engineer as Owner's representative are set forth in the Contract Documents.

11.02 *Visits to Site*

- A. With respect to Work completed under Procurement and Installation Task Orders, Engineer will make visits to the Site at intervals appropriate to the various stages of the Work 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 Provider'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 and applicable Task Order. 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 or non-conforming Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 11.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Provider's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Provider's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Provider to comply with Laws and Regulations applicable to the performance of the Work.

11.03 *Resident Project Representative*

- A. This paragraph 11.03 applies to Work completed under Procurement and Installation Task Orders.
- B. The Resident Project Representative (RPR) will be Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
 - 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Provider. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Provider. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

2. *Schedules*: Review the Progress Schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Provider and consult with Engineer concerning acceptability.
3. *Conferences and Meetings*: As invited, attend meetings with Provider, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison*:
 - a. Serve as Engineer's liaison with Provider. Working principally through Provider's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents and fully executed Task Orders.
 - b. Assist Engineer in serving as Owner's liaison with Provider when Provider's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents*: Report to Engineer when clarifications and interpretations of the Contract Documents are needed, and transmit to Provider clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples*:
 - a. Record date of receipt of Samples and Provider -approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Provider, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Provider of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications*: Consider and evaluate Provider's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit to Provider in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective or Non-Conforming Work*:
 - a. Conduct on-Site observations of Provider's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents and applicable Task Order.
 - b. Report to Engineer whenever RPR believes that any part of Provider's Work in progress is defective or non-conforming, will not produce a completed Project that conforms generally to the Contract Documents and applicable Task Order, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents and applicable Task Order, 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 RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. *Inspections, Tests, and System Start-ups:*

- a. Observe that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Provider maintains adequate records thereof.
- b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

10. *Records:*

- a. Prepare a daily report or keep a diary or log book, recording Provider's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- b. Record names, addresses, e-mail addresses, web site locations, and telephone numbers of Provider s, Subcontractors, and major Suppliers of materials and equipment.
- c. Maintain records for use in preparing Project documentation.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Provider's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
- b. Recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Provider.
- c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, Force Majeure events endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.

12. *Payment Requests:* Review applications for payment with Provider for compliance with the established procedure for their submission and forward with recommendations to Engineer, 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.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, observe if materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents and applicable Task Order to be assembled and furnished by Provider are applicable to the items actually installed and in accordance with the Contract Documents and applicable Task Order, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

- a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion, and the preparation of a punch list of items to be completed or corrected prior to completion of the Work.
 - b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Provider, and prepare a final punch 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 RPR shall not:
 - 1. Authorize any deviation from the Contract Documents or Task Order or substitution of materials or equipment (including "or-equal" items).
 - 2. Exceed limitations of Engineer's authority as set forth in the Contract Documents or Task Order.
 - 3. Undertake any of the responsibilities of Provider, Subcontractors, or Suppliers.
 - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Provider's Work.
 - 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Provider.
 - 6. Participate in specialized field or laboratory tests or inspections conducted off-Site or outside the Point of Destination by others except as specifically authorized by Engineer.
 - 7. Accept Shop Drawing or Sample submittals from anyone other than Provider.
 - 8. Authorize Owner to occupy the Project in whole or in part.

11.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 15.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.15.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Provider in response to Owner's delegation (if any) to Provider of professional design services, is set forth in Paragraph 7.15.
- D. Engineer's authority as to changes in the Work is set forth in Article 12.
- E. Engineer's authority as to Applications for Payment is set forth in Article 16.
- F. As set forth in Article 3, Engineer will be the initial interpreter of the Contract Documents and each Task Order and judge of the acceptability of the Work, and will issue clarifications, interpretations, and decisions regarding such issues.

11.05 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Provider as set forth in Paragraph 14.03.

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

- A. Engineer will render decisions regarding the requirements of the Contract Documents and applicable Task Orders, 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 Provider, and will not be liable to Owner, Provider, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

11.07 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 11 or under any other provision of the Master Agreement or Task Order, 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 Provider, 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 Provider's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Provider to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Provider's failure to perform the Work in accordance with the Contract Documents or applicable Task Order.
- C. Engineer will not be responsible for the acts or omissions of Provider 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 Provider under Paragraph 16.06.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 and applicable Task Order.
- E. The limitations upon authority and responsibility set forth in this Paragraph 11.07 also apply to the Resident Project Representative, if any.

11.08 *Compliance with Safety Program*

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

ARTICLE 12—CHANGES TO THE MASTER AGREEMENT OR TASK ORDER

12.01 *Amending and Supplementing the Master Agreement or a Task Order*

- A. The Contract Documents or a fully executed Task Order 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 fully executed Task Order 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 Documents and Task Orders that involve (1) the performance, conformance, 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 Provider may amend other terms and conditions of the Master Agreement or a Task Order without the recommendation of the Engineer.

12.02 *Change Orders*

- A. Owner and Provider 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 Provider has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 12.05, (b) required because of Owner's acceptance of defective or non-conforming Work under Paragraph 15.04 or Owner's correction of defective or non-conforming Work under Paragraph 15.07, 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 12.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 13, Claims; Paragraph 14.02.D, final adjustments resulting from allowances; Paragraph 14.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Provider refuses to execute a Change Order that is required to be executed under the terms of Paragraph 12.02.A, it will be deemed to be of full force and effect, as if fully executed.

12.03 *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 12.08 regarding change of Contract Price.
- B. If Owner has issued a Work Change Directive and:
 - 1. Provider believes that an adjustment in Contract Times or Contract Price is necessary, then Provider 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.

12.04 *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 Work as a functioning whole as indicated by the Contract Documents and applicable Task Order. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Provider, which shall perform the Work involved promptly.
- B. If Provider believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Provider shall submit a Change Proposal as provided herein.

12.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Master Agreement or any Task Order, 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 Provider 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, Provider 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 and applicable Task Order.
- C. Nothing in this Paragraph 11.05 obligates Provider to undertake work that Provider reasonably concludes cannot be performed in a manner consistent with Provider's safety obligations under the Contract Documents, applicable Task Order, or Laws and Regulations.

12.06 *Owner's Contingency Allowance*

- A. The Owner's Contingency Allowance, if any such is set forth in the applicable Task Order, is for the sole use of Owner to cover unanticipated costs.
- B. If Owner exercises its unilateral right to use all or a portion of the Owner's Contingency Allowance, Owner will issue a written directive that documents the costs to which the allowance is applied, Provider's entitlement to compensation, and the consequent reduction in such allowance.
- C. Prior to final payment, the Contract Price, as set forth in the applicable Task Order, will be duly adjusted to account for any unused portion of the Owner's Contingency Allowance.
- D. Each Task Order addresses the impact on Owner's Contingency Allowance of an assignment of the Task Order.

12.07 *Unauthorized Changes in the Work*

- A. Provider 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 or fully executed Task Orders, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.07 or in the case of uncovering Work as provided in Paragraph 15.05.C.2.

12.08 *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 12.10. 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 or applicable Task Order, then by application of such unit prices to the quantities of the items involved (subject to the provisions of the applicable Task Order);
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents or applicable Task Order, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.08.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 14.01) plus a Provider's fee for overhead and profit (determined as provided in Paragraph 12.08.C).
- C. *Provider's Fee:* When applicable, the Provider'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 14.01.B.1 and 14.01.B.2, the Provider's fee will be 15 percent;
 - b. For costs incurred under Paragraph 14.01.B.3, the Provider'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 12.08.C.2.a and 12.08.C.2.b is that the Provider's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 14.01.B.1 and 14.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Provider 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 14.01.B.4, 14.01.B.5, and 14.01.C;
- e. The amount of credit to be allowed by Provider 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 Provider's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 14.01.B (specifically, payroll costs, Paragraph 14.01.B.1; incorporated materials and equipment costs, Paragraph 14.01.B.2; Subcontract costs, Paragraph 14.01.B.3; special consultants costs, Paragraph 14.01.B.4; and other costs, Paragraph 14.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 12.07.C.2.a through 12.07.C.2.e, inclusive.

12.09 *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 12.09. 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.

12.10 *Change Proposals*

- A. *Purpose and Content:* Provider 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 a Task Order or relating to the acceptability of the Work under the Contract Documents or a Task Order; challenge a set-off against payment due; or seek other relief under the Master Agreement or applicable Change Order. 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 or applicable Task Order. Each Change Proposal will address only one issue, or a set of closely related issues.
- B. *Change Proposal Procedures*
 - 1. *Submittal:* Provider 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 Provider 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.

- c. 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 Provider 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 Provider 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 Provider'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 Provider'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 Provider. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Provider 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 13.
 - 5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Provider, unless Owner or Provider appeals the decision by filing a Claim under Article 13.
 - 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 Provider may choose to seek resolution under the terms of Article 13.
 - D. *Post-Completion*: Provider shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 16.06.
- 12.11 *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 or a Task Order (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Provider's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 13—CLAIMS

- 13.01 *Claims Process*: The following disputes between Owner and Provider are subject to the Claims process set forth in this Article:
- A. Appeals by Owner or Provider of Engineer's decisions regarding Change Proposals;
 - B. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents or a particular Task Order;

- C. 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
 - D. Subject to the waiver provisions of Paragraph 16.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 16.06.B.
- 13.02 *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Master Agreement 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 Provider seeking an increase in the Contract Times or Contract Price, Provider shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Provider's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Provider is entitled.
- 13.03 *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.
- 13.04 *Mediation*
- A. At any time after initiation of a Claim, Owner and Provider may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - B. If Owner and Provider agree to mediation, then after 60 days from such agreement, either Owner or Provider 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.
 - C. Owner and Provider shall each pay one-half of the mediator's fees and costs.
- 13.05. *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 18 for final resolution of disputes.
- 13.06 *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 Provider 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 18 for the final resolution of disputes.
- 13.07 *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 Master Agreement and the applicable Task Order(s), including the Work, the Contract Times, or the Contract Price.

ARTICLE 14—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

14.01 *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 14.01 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, Provider 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 Work, will not include any of the costs itemized in Paragraph 14.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Provider in the performance of the Work under schedules of job classifications agreed upon by Owner and Provider 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 Provider unless Owner deposits funds with Provider 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 Provider shall make provisions so that they may be obtained.
 3. Payments made by Provider to Subcontractors for Work performed by Subcontractors. If required by Owner, Provider shall obtain competitive bids from subcontractors acceptable to Owner and Provider 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 Provider's Cost of the Work and fee as provided in this Paragraph 14.01.

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 Provider'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 or Point of Destination, 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 Provider.
 - 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. Provider 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) For Provider owned equipment, or for equipment rented or leased from lessor firms associated with or owned by the Provider, equipment use approved by the Engineer will be paid at the rental rates given in the most current edition of the EquipmentWatch Cost Recovery (Blue Book) published by EquipmentWatch, a division of Penton Business Media, Inc., and available from EquipmentWatch (phone 1-800-669-3282) at <https://equipmentwatch.com/blue-book-cost-recovery/>.
 - a.) The hourly rates shall be developed by dividing the monthly Blue Book rates by 176 hours a month (the weekly, hourly and daily rates listed in the Blue Book shall not be used). For equipment rented or leased from lessor firms not owned by, or associated with, the Provider, the hourly rates shall be based on the Blue Book rates for the actual period of rental or lease. Rates in all cases shall be adjusted by application of the Rate Adjustment Tables, reductions for the machine age and equipment overhead, and regional adjustments.

- b.) The allowable equipment rates for the first operating shift necessitated by the Change Order work shall not exceed 100% of the Blue Book rate, as adjusted, plus operating costs. The allowable equipment rates for the second operating shift and third operating shift necessitated by the Change Order work shall not exceed 50% of the Blue Book rate, as adjusted, plus operating costs.
 - c.) The allowable equipment rates for equipment at the site, and not in actual use, as a direct result of the changed work (standby equipment) shall be paid at 50% of the Blue Book rate after application of the rate adjustment tables with no operating costs applied. Payments for standby equipment shall come due only as long as the equipment was idled solely by the actions of the Owner, and that the idle period exceeds that normally experienced for such equipment. Reimbursement for standby equipment shall not exceed eight hours per day, and 40 hours per week. There will be no reimbursement for equipment idled at the discretion of the Provider, or by actions not under the control of the Owner, such as, but not limited to, acts of God, strikes or adverse weather conditions.
- 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. Deposits lost for causes other than negligence of Provider, 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.
 - e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Provider 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 Provider, 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 Provider's fee.
 - f. The cost of utilities, fuel, and sanitary facilities at the Site.
 - g. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - h. The costs of premiums for all bonds and insurance that Provider is required by the Contract Documents and applicable Task Order 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 Provider's officers, executives, principals, general managers, construction managers, site superintendents (above the level of foreman) engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Provider, whether at the Site, the Point of Destination or in Provider'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 14.01.B.1 or specifically covered by Paragraph 14.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Provider's fee.
2. The cost of purchasing, renting, or furnishing small tools and hand tools.
3. Expenses of Provider's principal and branch offices other than Provider's office at the Site or Point of Destination.
4. Any part of Provider's capital expenses, including interest on Provider's capital employed for the Work and charges against Provider for delinquent payments.
5. Costs due to the negligence of Provider, 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 14.01.B.
8. Sales, consumer, use, and other similar taxes including Oregon Corporate Activity Tax (CAT) related to the Work, and for which Provider is liable, as imposed by laws and regulations except as otherwise identified in Paragraph 14.01.B.5.

D. *Provider's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Provider's fee for the Work set forth in the applicable Task Order will be determined as set forth in the applicable Task Order.
 - 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, Provider'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 12.08.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 Provider'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 12.08.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 14, Provider 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 Provider's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Provider's fee. Provider shall preserve all such documents for a period of six 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 Provider.

14.02 Allowances

- A. It is understood that Provider has included in the Contract Price all allowances so named in the Contract Documents and fully executed Task Orders 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*: Provider agrees that:
1. the cash allowances include the cost to Provider (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site or to the Point of Destination, and all applicable taxes; and
 2. Provider's costs for unloading and handling on the Site or at the Point of Destination, 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*: Provider 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 Provider for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

14.03 Unit Price Work

- A. Where the Contract Documents or applicable Task Order 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 Contract Documents or applicable Task Order.
- 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 Provider for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Provider to be adequate to cover Provider's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Provider. Engineer will review with Provider 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 Provider, 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. Provider or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the extended price of a particular item of Unit Price Work amounts to 25 percent or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Provider differs by more than 25 percent from the estimated quantity of such item indicated; and
 - b. Provider'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 Provider's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Provider.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 15—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

15.01 *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, as applicable, at reasonable times for their observation, inspection, and testing. Provider shall provide them proper and safe conditions for such access and advise them of Provider's safety procedures and programs so that they may comply with such procedures and programs as applicable.

15.02 *Tests, Inspections, and Approvals*

- A. The Contract Documents and executed Task Order(s) specify required inspections and tests. Owner shall have the right to perform, or cause to be performed, reasonable inspections and require reasonable tests of the Goods at Provider's facility, at the Point of Destination, and at the Site. Provider shall allow Owner a reasonable time to perform such inspections or tests. Further, Provider 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. Provider shall reimburse Owner for all expenses, except for travel, lodging, and subsistence expenses of Owner's and Engineer's representatives, for inspections and tests specified in the Contract Documents and applicable Task Order. If as the result of any such specified testing the Work is determined to be non-conforming or defective, then Provider shall also bear the travel, lodging, and subsistence expenses of Owner's and Engineer's representatives, and all expenses of re-inspection or retesting.
- C. Provider shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspection and tests expressly required

by the Contract Documents as identified in Paragraph 15.02.D. Owner shall bear all expenses of inspections and tests that are not specified in the Contract Documents (other than any re-inspection or retesting resulting from a determination of defect or non-conformity); provided, however, that if as the result of any such non-specified inspections or testing the Work is determined to be non-conforming or defective, then Provider shall bear all expenses of such inspections and testing, and of any necessary re-inspection and retesting.

- D. 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, Provider 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.
- E. Provider shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents or an applicable Task Order, unless the Contract Documents or applicable Task Order 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 and any applicable Task Order;
 - 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 Provider'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.

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

1. Provider shall provide Owner timely written notice of the readiness of the Goods for all inspections, tests, or approvals which the Contract Documents and applicable Task Order specify are to be observed by Owner prior to shipment.
 2. Owner will give Provider timely notice of all specified tests, inspections, and approvals of the Goods which are to be conducted at the Point of Destination, and a representative of Provider will attend such tests, inspections, and approvals.
 3. If, on the basis of inspections or testing, the Goods appear to be conforming and not defective, Owner will give Provider prompt notice thereof. If on the basis of inspections or testing, the Goods appear to be non-conforming or defective, Owner will give Provider prompt notice thereof and will advise Provider of the remedy Owner elects under the provisions of Paragraph 15.04.
 4. Neither payments made by Owner to Provider prior to any tests or inspections, nor any tests or inspections, will constitute acceptance of non-conforming or defective Goods, or prejudice Owner's rights under the Master Agreement.
- I. *Visual Inspection on Delivery.* With respect to Work issued pursuant to a Procurement Task Order:
1. Owner will visually inspect the Goods upon delivery solely for purposes of identifying the Goods, general verification of quantities, and observation of apparent condition. Such visual inspection will not be construed as final or as receipt of any Goods and Special Services that, as a result of subsequent inspections and tests, are determined to be nonconforming or defective.
 2. If, on the basis of the visual inspection specified in Paragraph 15.02.I.1, the Goods appear to comply with the requirements of the Contract Documents and applicable Task Order as to quantities and condition and do not contain any apparent defects or non-conformities, then within 10 days of delivery Owner shall issue to Provider Owner's acknowledgment of the receipt of Goods.
- J. *Final Inspection.* With respect to Work issued pursuant to a Procurement Task Order:
1. After all of the Goods have been incorporated into the Project, tested in accordance with such testing requirements as are specified, and are functioning as required, and Provider has performed and completed all Special Services, Owner will make a final inspection.
 2. If, on the basis of the final inspection, Owner determines that the Goods and Special Services are conforming, Owner's notice thereof will constitute Owner's acceptance of the Goods and Special Services, subject to any limitations stated in the notice.
 3. If, on the basis of the final inspection, the Goods and Special Services are nonconforming, Owner will identify the non-conformity in writing.

15.03 *Non-Conforming or Defective Work*

- A. *Provider's Obligation:* It is Provider's obligation to assure that the Work is not defective in materials or workmanship, and otherwise is not non-conforming.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective or non-conforming, and to reject defective or non-conforming Work.
- C. *Notice of Defects:* Prompt written notice of all defective or non-conforming Work of which Owner or Engineer has actual knowledge will be given to Provider.

- D. *Rejection of Work*: If Owner elects to reject the Work in whole or in part, Owner's notice to Provider will describe in sufficient detail the non-conforming or defective aspect of the Work. If Goods have been delivered to Owner, Provider shall promptly, and within the Contract Times, remove and replace the rejected Goods. Provider shall bear all costs, losses and damages attributable to the removal, replacement, reinspection, and retesting of the non-conforming or defective Work. Upon rejection of Goods, Owner retains a security interest in the Goods to the extent of any payments made and expenses incurred in their testing and inspection.
- E. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective or non-conforming Work, Provider shall, at no cost to Owner and in response to written instructions from Owner, either correct all such defective or non-conforming Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective or non-conforming Work, remove it from the Project and replace it with Work that is not defective or non-conforming, including all work required for reinstallation.
- F. *Remedying Non-Conforming or Defective Work*: If Owner elects to permit the Provider to modify the Work to correct the non-conformance or defect, then Provider shall promptly provide a schedule for such modifications and shall make the Work conforming and not defective within a reasonable time.
- G. *Preservation of Warranties*: When correcting defective or non-conforming Work, Provider shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- H. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective or non-conforming Work, Provider shall pay all claims, costs, losses, and damages arising out of or relating to defective or non-conforming Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective or non-conforming Work, fines levied against Owner by governmental authorities because the Work is defective or non-conforming, and the costs of repair or replacement of work of others resulting from defective or non-conforming Work. Provider's obligations will include the costs of the correction or removal and replacement of the nonconforming or defective Work and the replacement of property of Owner and others destroyed by the correction or removal and replacement of the non-conforming or defective Work, and obtaining conforming and non-defective Work from others. Prior to final payment, if Owner and Provider are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective or non-conforming Work, then Owner may impose a reasonable set-off against payments due under Article 16.

15.04 *Acceptance of Defective or Non-Conforming Work*

- A. If, instead of requiring correction or removal and replacement of defective or non-conforming 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). Provider shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Provider. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents and applicable Task Order 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 16. If the acceptance of non-conforming or defective Work occurs after final payment, Provider shall pay an appropriate amount to Owner.

15.05 *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 Provider shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Provider's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Provider, 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 or non-conforming, Provider 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 Provider's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 16.
 - 2. If the uncovered Work is not found to be defective or non-conforming, Provider 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 Provider may submit a Change Proposal within 30 days of the determination that the Work is not defective or non-conforming.

15.06 *Owner May Stop the Work*

- A. If the Work is defective or non-conforming, or Provider 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 and applicable Task Order, then Owner may order Provider 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 Provider, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

15.07 *Owner May Correct Defective or Non-Conforming Work*

- A. If Provider fails within a reasonable time after written notice from Engineer to correct defective or non-conforming Work, or to remove and replace defective or non-conforming Work as required by Engineer, then Owner may, after 7 days' written notice to Provider, correct or remedy any such deficiency or non-conformity.
- B. In exercising the rights and remedies under this Paragraph 15.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may, as

applicable to the executed Task Order in question, exclude Provider from all or part of the Site, take possession of all or part of the Work, and suspend Provider's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or Point of Destination, or for which Owner has paid Provider but which are stored elsewhere. Provider shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site or Point of Destination 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 15.07 will be charged against Provider as set-offs against payments due under Article 16. 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 Provider's defective or non-conforming Work.
- D. Provider shall not be allowed an extension of the Contract Times or Contract Price increase 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 15.07.

ARTICLE 16—PAYMENTS TO PROVIDER; SET-OFFS; COMPLETION; CORRECTION PERIOD

16.01 *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 14.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Provider during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established for each progress payment (but not more often than once a month), Provider shall submit to Engineer for review an Application for Payment filled out and signed by Provider covering the Work completed as of the date of the application and accompanied by such supporting documentation as is required by the Contract Documents and applicable Task Order.
 - 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, Point of Delivery, 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 Provider 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. Any Application for Payment that is based in whole or in part on the delivery of Goods must be accompanied by a bill of sale, invoice, or other documentation reasonably satisfactory to Owner warranting that Owner has rightfully received good title to the Goods from Provider and that, upon payment, the Goods will be free and clear of all liens.

Such documentation will include releases and waivers from all parties with viable lien rights.

4. Beginning with the second Application for Payment, each Application must include an affidavit of Provider stating that all previous progress payments received by Provider have been applied to discharge Provider's legitimate obligations associated with prior Applications for Payment.
5. The amount of retainage, if any with respect to progress payments will be as stipulated in the applicable Task Order.
6. Owner shall notify Provider promptly of any deficiency in the required documentation.

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 Provider indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Provider 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 and applicable Task Order (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, if applicable, the results of any subsequent tests called for in the Contract Documents or applicable Task Order, a final determination of quantities and classifications for Unit Price Work under Paragraph 14.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Provider'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 Master Agreement or applicable Task Order; or
 - b. there may not be other matters or issues between the parties that might entitle Provider to be paid additionally by Owner or entitle Owner to withhold payment to Provider.
4. Neither Engineer's review of Provider'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 Provider's failure to comply with Laws and Regulations applicable to Provider's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Provider 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 16.01.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 or non-conforming, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective or non-conforming Work in accordance with Paragraph 15.07, or has accepted defective or non-conforming Work pursuant to Paragraph 15.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Provider is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Provider and therefore justify termination for cause under the Contract Documents.

D. Payment Becomes Due

1. Thirty 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 Provider.

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 Provider's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Provider'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. Provider has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site or Point of Destination;
 - c. Provider 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 Provider 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 non-conforming or defective, requiring correction or replacement;
 - g. Owner has been required to correct non-conforming or defective Work in accordance with Paragraph 15.07, or has accepted non-conforming or defective Work pursuant to Paragraph 15.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Provider and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Provider's failure to achieve milestones, Substantial Completion, delivery, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Provider 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 Provider immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Provider any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Provider the amount so withheld, or any adjustment thereto agreed to by Owner and Provider, if Provider remedies the reasons for such action. The reduction imposed will be binding on Provider 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 16.01.D.1 and subject to interest as provided in the Master Agreement.

F. Retainage

- 1. Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.570, each applicable Task Order, and Exhibit D.

16.02 Provider's Warranty of Title

- A. Provider warrants and guarantees that title to all Work, materials, and equipment furnished under the Master Agreement and each applicable Task Order 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.

16.03 Substantial Completion

- A. This Paragraph 16.03 applies to Work conducted pursuant to a Procurement and Installation Task Order.

- B. When Provider considers the entire Work is ready for its intended use, Provider shall notify Owner and Engineer in writing that such entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Provider 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.
- C. Promptly after Provider's notification, Owner, Provider, 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 Provider in writing giving the reasons therefor.
- D. 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 Provider 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 Provider 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.
- E. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Provider 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 Provider 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.
- F. After Substantial Completion the Provider shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Provider may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- G. Owner shall have the right to exclude Provider from the Site after the date of Substantial Completion subject to allowing Provider reasonable access to remove its property and complete or correct items on the punch list.

16.04 *Partial Use or Occupancy*

- A. This Paragraph 16.04 applies to Work conducted pursuant to a Procurement and Installation Task Order.
- B. Prior to Substantial Completion of the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents

or applicable Task Order, or which Owner, Engineer, and Provider 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 Provider's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Provider permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Provider agrees that such part of the Work is substantially complete, Provider, Owner, and Engineer will follow the procedures of Paragraph 16.03.A through 16.03.E for that part of the Work.
2. At any time, Provider may notify Owner and Engineer in writing that Provider 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, Provider, 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 Provider in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 16.03 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.

16.05 *Final Inspection*

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

16.06 *Final Payment*

A. *Application for Payment*

1. After Provider has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents and applicable Task Order, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.13), and other documents, Provider 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 and applicable Task Order (including but not limited to all final operations and maintenance manuals, and any special warranties);

- 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 16.01.C.4.e and as approved by Owner, Provider may furnish receipts or releases in full and an affidavit of Provider 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, Provider 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 Provider 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 its completion 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 Provider's other obligations under the Master Agreement and applicable Task Order 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 Provider, indicating in writing the reasons for refusing to recommend final payment, in which case Provider 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 Provider that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 16.07.
- D. *Completion of Work:* The Work, or applicable portion thereof, 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 Master Agreement and applicable Task Order with respect to progress payments. Owner shall pay the resulting balance due to Provider within 30 days of Owner's receipt of the final Application for Payment from Engineer.

- F. Owner will not make final payment, or return or release included retainage (if any) at any time, unless Provider submits written consent of the surety to such payment, return, or release.

16.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Provider of such Work, except as set forth in an outstanding Claim, appeal under the provisions of Article 16, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment and all rights and remedies available to it with respect to all other ongoing Work.
- B. The acceptance of final payment by Provider will constitute a waiver by Provider of all claims and rights against Owner with respect to that applicable Work other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 16, and that Work that is ongoing under the terms of the Contract Documents and each applicable Task Order.

16.08 *Correction Period*

- A. If within one year after the date of final Acceptance of Work, as applicable, (or such longer period of time as may be prescribed by the Supplementary Conditions or applicable Task Order, or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Provider written notice that any Work has been found to be defective or non-conforming, or that Provider's repair of any damages to the Site or adjacent areas has been found to be defective or non-conforming, then after receipt of such notice of defect or non-conformity Provider shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective or non-conforming repairs to the Site or such adjacent areas;
 - 2. correct such defective or non-conforming Work;
 - 3. remove the defective or non-conforming Work from the Project and replace it with Work that is not defective or non-conforming, if the defective or non-conforming 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 or non-conformity within 60 days of the discovery that such Work or repairs is defective or non-conforming. 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 or non-conforming Work under Paragraph 15.03.C
- C. If, after receipt of a notice of defect or non-conformity within 60 days and within the correction period, Provider 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 or non-conforming Work corrected or repaired or may have the rejected Work removed and replaced. Provider 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). Provider'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 13.01.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 final completion of all the related Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective or non-conforming 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. Provider'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 17—SUSPENSION OF WORK AND TERMINATION

17.01 *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 Provider and Engineer. Such notice will fix the date on which Work will be resumed. Provider shall resume the Work on the date so fixed. Provider shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension, provided that performance was or would not have been suspended or delayed for causes attributable to Provider. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

17.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Provider and justify termination for cause:
 - 1. Provider's persistent failure to perform the Work in accordance with the Contract Documents or an applicable Task Order (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 Provider to perform or otherwise to comply with a material term of the Contract Documents or an applicable Task Order;
 - 3. Provider's disregard of Laws or Regulations of any public body having jurisdiction;
 - 4. Provider's failure to pay any Provider employee or Subcontractor for Work performed; or
 - 5. Provider's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 17.02.A occurs, then after giving Provider (and any surety) 10 days' written notice that Owner is considering a declaration that Provider

is in default and termination of the Master Agreement and/or an applicable Task Order, Owner may proceed to:

1. declare Provider to be in default, and give Provider (and any surety) written notice that the Master Agreement and/or applicable Task Order is terminated;
 2. enforce the rights available to Owner under any applicable performance bond; and
 3. pursue any other rights and remedies available to Owner at law or in equity.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Master Agreement and/or applicable Task Order for cause, Owner may exclude Provider from the Site or Point of Destination, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site, at the Point of Destination, or for which Owner has paid Provider but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Master Agreement and/or applicable Task Order under Paragraph 17.02.B if Provider 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 17.02.B, Provider shall not be entitled to receive any further payment until the Work is completed. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance of the Contract Price, Provider 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 Provider's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Provider then existing or which may thereafter accrue, or any rights or remedies of Owner against Provider or any surety under any payment bond or performance bond. Any retention or payment of money due Provider by Owner will not release Provider from liability.
- G. If and to the extent that Provider 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.

17.03 Owner May Terminate for Convenience

- A. Upon 7 days' written notice to Provider and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate a Procurement and Installation Task Order. Termination pursuant to the terms of this paragraph will not constitute a breach of contract by Owner. In such case, Provider 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. Owner has the right to terminate a Procurement Task Order, without cause, at any time prior to delivery of the Goods, by written notice. Termination pursuant to the terms of this paragraph will not constitute a breach of contract by Owner. Upon termination, Owner shall pay Provider for the direct costs incurred in producing any Goods that Provider has specially manufactured for the Project.
- C. Provider 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.

ARTICLE 18—FINAL RESOLUTION OF DISPUTES

18.01 *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 13; and
 2. Disputes between Owner and Provider concerning the Work, or obligations under the Contract Documents or applicable Task Order, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Provider may:
1. elect in writing to invoke the dispute resolution process provided for in Paragraph 18.02; or
 2. agree with the other party to submit the dispute to another dispute resolution process.

18.02 *Claims Review Process and Dispute Resolution*

- A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph). Any controversy or claim in the amount of \$100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Master Agreement and applicable Task Order and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 18, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.

- C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute, the Master Agreement, or the applicable Task Order. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
- D. The Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation, this Master Agreement, or an applicable Task Order permits them to do so.
- E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Master Agreement or Task Order provisions deemed applicable and relied on in making the award.
- F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- G. No arbitration arising out of or relating to the Master Agreement or an applicable Task Order will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Master Agreement or applicable Task Order unless:
 - 1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;
 - 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;
 - 3. such other individual or entity is subject to arbitration under a contract with either Owner or Provider, or consents to being joined in the arbitration; and
 - 4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.
- H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations, the Master Agreement or applicable Task Order. To the extent any disclosure is

allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

J. Proceedings shall take place in Yamhill County, Oregon.

18.03 Attorneys' Fees

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

ARTICLE 19—MISCELLANEOUS

19.01 Giving Notice

- A. Whenever any provision of the Contract Documents or Task Order requires the giving of written notice to Owner, Engineer, or Provider, 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.

19.02 Computation of Times

- A. When any period of time is referred to in the Contract Documents or Task Order 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.

19.03 Cumulative Remedies

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

19.04 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 Provider for any claims, costs, losses, or damages sustained by Provider on or in connection with any other project or anticipated project.

19.05 *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 Master Agreement or a Task Order.

19.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Master Agreement and each Task Order, as well as all continuing obligations indicated in the Master Agreement and each Task Order, will survive final payment, completion, and acceptance of the Work or termination of the Master Agreement, a Task Order, or of the services of Provider.

19.07 *Controlling Law*

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

19.08 *Assignment of Master Agreement and Task Orders*

- A. Unless expressly agreed to elsewhere in the Master Agreement or a Task Order, no assignment by a party to this Master Agreement of any rights under or interests in the Master Agreement or a Task Order 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 Master Agreement or Task Order.

19.09 *Successors and Assigns*

- A. Owner and Provider 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 and each Task Order.

19.10 *Headings*

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

19.11 *Entire Agreement*

- A. Owner and Provider agree that this Master Agreement and each Task Order is the complete and final agreement between them, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Master Agreement and each Task Order may not be altered, modified, or amended except in writing signed by an authorized representative of both parties.

19.12 *Successors and Assigns*

- A. Owner and Provider each binds itself, its partners, successors, permitted assigns, and legal representatives to the other party hereto, its partners, successors, permitted assigns, and

legal representatives in respect to all covenants, agreements, and obligations contained in the Master Agreement and each Task Order.

SAMPLE

Exhibit A.1

Procurement Task Order Form

This Task Order Number [redacted] ("Task Order") is entered between **the City of Dayton** ("Owner") and [redacted] ("Provider"). This Task Order is issued under the authority of the Master Agreement Between Owner and Provider for Procurement and Installation dated [redacted] between the Owner and Provider (the "Master Agreement") and is subject to all provisions of the Master Agreement, which is incorporated by reference.

1. **Project Background.**
2. **Contract Times Commencement.** The Contract Times will commence to run on the day that this Task Order is fully executed.
3. **Scope of Special Services.** Provider shall perform the following Work: [if applicable, describe planning work here.]
4. **Goods.** Provider shall deliver the following goods to the Point of Destination.

Good Type	Quantity	Identifier

5. **Items to be furnished by the Owner, if applicable:**
6. **Required Shop Drawings and Samples:**
7. **Site description (if applicable):**
8. **Contract Price.**
 - a. Owner shall pay Provider a Lump Sum of \$[redacted] for furnishing the Goods and Special Services (other than any Unit Price Goods and Special Services) in accordance with the Contract Documents. Such Lump Sum amount accounts for the following Owner-accepted alternates: [identify accepted alternates, if any].
 - b. For all Unit Price Goods and Special Services furnished by Provider in accordance with the Contract Documents, Owner shall pay Provider an amount equal to the sum of the extended prices (established for each separately identified unit price item by multiplying the unit price by the actual quantity of that item).

Unit Price Goods and Special Services					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
Total of all Extended Prices for Unit Price items (subject to final adjustment based on actual quantities)					\$

- 4.b.1 The extended prices set forth as of the Effective Date of this Task Order for unit price items are based on estimated quantities.
- 4.b.2 The estimated quantities of items of Unit Price Goods and Special Services are not guaranteed and are solely for the purpose of determining an initial Contract Price. Payments to Provider for Unit Price Goods and Special Services will be based on actual quantities.
- 4.b.3 Each unit price will be deemed to include an amount considered by Provider to be adequate to cover Provider's overhead and profit for each separately identified unit price item.
- 4.b.4 Engineer will determine the actual quantities and classifications of unit price items furnished by Provider. Engineer will review with Provider the Engineer's preliminary determinations on such matters before rendering a written decision (by recommendation of an Application for Payment or otherwise). Engineer's written decision will be final and binding upon Owner and Provider (except as modified by Engineer to reflect changed factual conditions or more accurate data), subject to the provisions of Article 11 of the General Conditions.
- 4.b.5 The final adjustment of Contract Price with respect to Unit Price Goods and Special Services will be set forth in a Change Order.
- c. Owner's Contingency Allowance is stipulated as \$[amount]. If no amount is stated, the Owner's Contingency Allowance is zero. Owner's use of such allowance, including resulting compensation of Owner, is governed by Paragraph 12.06 of the General Conditions.
- d. The Contract Price is \$[amount]. Such Contract Price is comprised of the Lump Sum amount (taking into account any accepted alternates), Unit Price Goods and Special Services amount (if any) (subject to final adjustment), and Owner's Contingency Allowance (if any) (subject to final adjustment).
- e. If Provider bases price on Bid: For furnishing the Goods and Special Services in accordance with the Contract Documents, Owner shall pay Provider the prices stated in Provider's Bid, attached hereto as an exhibit, subject to final adjustments for Unit Price Goods and Special Services and Owner's Contingency Allowance, if any, and subject to

the following Owner-accepted alternates: **[identify accepted alternates, if any]**.

9. Payment Terms.

- a. Provider may submit an Application for Payment requesting the stated percentages of Contract Price upon attainment of each of the following payment line items:

Payment Line Item (Lump Sum)	Percentage of Lump Sum
1. [Completion of Special Services in accordance with Contract Documents]	[10]
2. [Receipt of Approval of Shop Drawings and Samples]	[10]
3. [Completion of acceptable factory testing (if any)]	[5]
4. [Delivery of Goods to Point of Destination in accordance with the [Contract Documents]	[70]
5. Final Payment: [Correction of non-conformities, provision of final Operations and Maintenance manuals, submittal of warranties and other final documentation required by the Contract Documents]	[5]
Contract Price (Lump Sum)	100

- b. For Unit Price Goods and Special Services, if any, or for payments owed to Provider as a result of authorizations by Owner under the Owner's Contingency Allowance (if any), Provider shall submit a separate Application for Payment, no more frequently than monthly, that states (1) the actual quantities of such Unit Price Goods and Special Services that have been furnished, and the applicable unit prices; and (2) the services or items performed or furnished under the Owner's Contingency Allowance, and the amounts owed. If practical, and at Provider's option, Provider may apply for such unit price and Owner's Contingency Allowance payments in a separate section of an Application for Payment submitted under Paragraph 16.01.B. for lump-sum items.

10. Shipping or Delivery Method:

11. Point of Destination: **[address]**

12. Offloading: **[Y/N]**

13. Contract Times. This Task Order is effective and, unless otherwise expressly stated herein, Work shall commence on the date it is signed by the Owner and Provider. The Contract Times for the Work are as follows:

Milestone	Date or Days	Notes
Commencement Date		

Commence Special Services for Goods		
Submit Shop Drawings		
Deliver acceptable Goods to Point of Destination		Delivery may be made in the 15-day period before delivery date
Complete Special Services for Goods		
Readiness for Final Inspection and Acceptance of Goods and Special Services		

14. Key Personnel for this Task Order. The Owner is engaging the expertise, experience, judgment and personal attention of the Provider's Key Personnel identified below.

Key Personnel	Position/Title	Role on Project

15. Applicable Specifications: [copy of list attached].

16. Drawings: (incorporated by reference):

- a. consisting of a cover sheet and sheets numbered [number] through [number], inclusive, with each sheet bearing the following general title: [Title].
- b. [listed on the attached sheet index.]

17. Storage Requirements and Responsibilities: [attach any requirements]

18. Evidence of performance and payment bonds: (attach). [require if TO is over \$100k]

19. Evidence of executed Exhibit B: (attach).

20. Evidence of insurance: (attach), including any additional insurance limits or types beyond the minimum required by the General Conditions.

Additional Insureds:

21. Warranty terms: To be provided at [time].

22. Task Order Assignment.

- a. Owner has the right to assign this Task Order, but only to a person or entity with sufficient apparent ability to satisfy all of Owner's obligations under this Task Order, and Provider hereby consents to such assignment. Forms documenting the assignment of the Task Order,

and consent of Provider's surety to the assignment, have been executed by Owner, Provider, and Provider's surety, and are attached as exhibits to this Task Order. If assigned, the following provisions apply:

1. The Task Order is initially executed in the name of the entity identified herein as Owner, and will be assigned by such Owner (as assignor) to a construction contractor (Contractor/Assignee) designated by such Owner. The assignment will occur on the effective date of the construction contract between such Owner (Project Owner) and the Contractor/Assignee, which is expected to occur on or about **[insert date, or number of days from Task Order's Effective Date]**. Commencing on the date of acceptance of assignment by the Contractor/Assignee, all references in the Task Order and, as applicable to this Task Order, in the Master Agreement, to "Owner" shall mean the designated Contractor/Assignee.
2. The assignment of this Task Order and applicable Master Agreement provisions relieves the assignor from all further obligations and liabilities under this Task Order. After assignment, Provider shall become a subcontractor or supplier to the Contractor/Assignee and, except as noted herein, all rights, duties, and obligations of Owner under the Task Order become the rights, duties, and obligations of the Contractor/Assignee.
3. After assignment:
 - a. The Drawings and Specifications, and any modifying Addenda provided pursuant to this Task Order will become "Contract Documents" under the construction contract.
 - b. If the Drawings or Specifications, as "Contract Documents" under the construction contract, are duly modified under such construction contract, then Provider and Contractor/Assignee shall enter into a corresponding Change Order under the applicable provisions of the Master Agreement.
 - c. The Drawings and Specifications may not be modified by Provider or Contractor/Assignee, singly or in tandem, except as such Drawings or Specifications, as "Contract Documents" under the construction contract, have been duly modified under such construction contract.
 - d. All performance warranties, guarantees, and indemnifications required by the Task Order and, as applied to this Task Order, the Master Agreement, will continue to run for the benefit of assignor (Project Owner) and, in addition, for the benefit of the Contractor/Assignee. However, if assignor (Project Owner) and Contractor/Assignee make the same warranty or guarantee claim, then Provider shall only be liable once for such claim. Other than its remedies under such warranties, guarantees, and indemnifications, assignor will not retain direct rights under this Task Order, but will have rights and remedies as a party to the construction contract, whose scope of work will encompass the Drawings, Specifications, and modifying Addenda; provided, however, that any limitations on Provider's liability in this Task Order and, as applied to this Task Order, the Master Agreement, will continue to bind the original Owner (assignor) after assignment.
 - e. The Contractor/Assignee shall have all the rights of the Owner under the Performance Bond and Payment Bond provided pursuant to this Task Order, if any.

- f. Provider shall submit all Applications for Payment submitted pursuant to this Task Order directly to Contractor/Assignee.
 - 1) Contractor/Assignee shall review each Application for Payment submitted pursuant to this Task Order promptly, determine the amount that Contractor/Assignee approves for payment, and then include the amount approved in the next application for payment submitted to Project Owner (or Engineer) under the construction contract.
 - 2) Contractor/Assignee shall pay Provider within **[number]** days of receipt of payment from the Project Owner under the construction contract.
 - 3) After assignment, Engineer will review, approve, or deny the content of Applications for Payment under this Task Order only to the extent that Contractor/Assignee, as construction contractor, has incorporated such content into payment applications that Engineer reviews under the construction contract.
- g. The Contractor/Assignee shall have all the rights of the Owner under any pending Claim filed in connection with this Task Order by Owner.
- h. All Claims filed in connection with this Task Order and supporting documentation will be submitted directly by the claimant party (either Owner **[Contractor/Assignee]** or Provider) to the other party, without submittal to Engineer.
 - 1) The other party will render a response in writing within 30 days of receipt of the last submittal from claimant.
 - 2) If the other party does not render a written response to a Claim within 30 days after receipt of the last submittal of the claimant, the other party shall be deemed to have approved the Claim in its entirety.
 - 3) The other party's written response to a Claim, or the approval of the Claim in its entirety as a function of failure to respond within 30 days, will be final and binding upon Owner and Provider 30 days after it is issued, unless within such 30 days of issuance either Owner or Provider appeals the result by initiating the mediation of the Claim in accordance with the dispute resolution procedures set forth in Paragraph 13.02 of the General Conditions.
 - 4) Any Claim by Provider that Contractor/Assignee may choose to submit, present, or forward to Project Owner must be submitted to Owner within sufficient time for Contractor/Assignee to preserve its rights under the construction contract, notwithstanding any procedures or time limits in this Task Order or the Master Agreement.
- i. Provider's recovery of additional cost, time, or both cost and time for any Claim filed in connection with this Task Order attributable to the Project Owner will be limited to the proportionate recovery by Contractor/Assignee against Project Owner for such Claim. Provider will cooperate and assist Contractor/Assignee in pursuing any Claim filed in connection with this Task Order by Contractor/Assignee against Project Owner on behalf of Provider, including the timely preparation and delivery of supporting documentation.

- j. If the pursuit of any claim by Contractor/Assignee against Project Owner on Provider's behalf requires the expenditure by Contractor/Assignee of legal or consulting fees, or results in litigation, arbitration, or any dispute resolution procedures, Provider agrees to pay for a proportionate share of attorneys' fees, consultant fees, and litigation, arbitration, and other resolution costs incurred by Contractor/Assignee in pursuing the claim on behalf of Provider, based upon the amount claimed by Provider as compared to the total value of the claim pursued by the Contractor/Assignee.
 - k. All rights, duties, and obligations of Engineer to Contractor/Assignee and Provider under this Task Order and, as applicable to this Task Order, the Master Agreement, will cease.
 - l. Subject to the foregoing provisions, all references in this Task Order to submitting items to Engineer, or to Engineer having tasks or obligations, will be read after such an assignment as requiring submittal to Contractor/Assignee, or as Contractor/Assignee having such tasks or obligations (which Contractor/Assignee may delegate when appropriate).
 - m. If the Task Order includes an Owner's Contingency Allowance, upon assignment, such allowance will be automatically reduced to the amount previously authorized by Owner (Project Owner), and cease to be operational.
- b. No other assignment by a party hereto of any rights under or interests in this Task Order and, as applicable to this Task Order, the Master Agreement, will be binding on another party hereto without the written consent of the party sought to be bound. Specifically, but without limitation, Task Order payments or other money that may become due, and Task Order payments or other money that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Laws and Regulations). Unless specifically stated to the contrary in any written consent to such an assignment, such an assignment will not release or discharge the assignor from any duty or responsibility under the Contract Documents.

23. General Conditions. The parties acknowledge and agree that this Task Order is subject to, and each party is bound by, the General Conditions.

24. Order of Precedence. If a conflict, inconsistency or ambiguity arises in the Task Order interpretation, this Task Order shall be interpreted in the following order of precedence: (a) the Master Agreement; (b) this Task Order.

25. Expiration. Expiration or termination of this Task Order does not extinguish or prejudice the Owner's right to enforce this Task Order with respect to any breach of a Provider warranty or any default or defect in Consultant performance that has not been cured.

26. Modification. No provision of this Task Order may be modified except in writing, signed by the Owner and Provider.

IN WITNESS WHEREOF, the parties hereto have executed this Task Order as of the date last set forth below.

Provider:

Owner:

Signed:

Signed:

Name:

Name:

Title:

Title:

Date:

Date:

Address:

Address:

Phone/Email:

Phone/Email:

ATTACHMENT A -- ASSIGNMENT OF MASTER AGREEMENT, CONSENT TO ASSIGNMENT, AND ACCEPTANCE OF ASSIGNMENT

This assignment will be effective on the effective date of the construction contract between Owner (as "Owner") and Contractor/Assignee (as "Provider").

Task Order Number ____ and, to the extent directly applicable to Task Order Number _____, the Master Agreement between **[insert name of original Owner]** ("Owner") and **[insert name of Provider]** ("Provider") for Procurement and Installation (Master Agreement) are hereby assigned, transferred, and set over to Contractor/Assignee, as assignee, by Owner, as assignor. Upon assignment the Contractor/Assignee shall have the duties, rights, and obligations of Owner under the terms of Task Order Number _____ and the Master Agreement, and will be responsible to Owner under the construction contract for the performance of obligations by Provider, which will become a Subcontractor or Supplier to Contractor/Assignee. Owner, Provider, and Contractor/Assignee hereby acknowledge and agree to be bound by the terms and conditions of assignment set forth in **Article 4** of the Master Agreement.

Assignment Made by Owner

(typed or printed name of organization)

By: _____ Date: _____

(individual's signature) *(date signed)*

Name: _____ Title: _____

(typed or printed) *(typed or printed)*

If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Provider Agreement.

Assignment Acknowledged and Accepted by Provider

(typed or printed name of organization)

By: _____ Date: _____

(individual's signature) *(date signed)*

Name: _____ Title: _____

(typed or printed) *(typed or printed)*

If Provider is a corporation, attach evidence of authority to sign.

Assignment Accepted by Contractor/Assignee

(typed or printed name of organization)

By: _____ Date: _____

(individual's signature) *(date signed)*

Name: _____ Title: _____

(typed or printed) *(typed or printed)*

If Contractor/Assignee is a corporation, attach evidence of authority to sign.

ATTACHMENT B - SURETY'S CONSENT TO ASSIGNMENT

Task Order Number ____ and, to the extent directly applicable to Task Order Number _____, the Master Agreement between **[insert name of original Owner]** ("Owner") and **[insert name of Provider]** ("Provider") for Procurement and Installation (Master Agreement) may be assigned, transferred, and set over to **[Name of Contractor/Assignee]** ("Contractor/Assignee"), in accordance with **Article 4** and Attachment A of Task Order Number _____.

Surety further agrees that, upon assignment of the Master Agreement, the Contractor/Assignee shall have all the rights of the Owner under the Performance Bond and the Payment Bond, if any.

Agreement to Assignment Acknowledged and Accepted by Surety

(typed or printed name of organization)

By: _____ <div style="text-align: center;"><i>(individual's signature)</i></div>	Date: _____ <div style="text-align: center;"><i>(date signed)</i></div>
Name: _____ <div style="text-align: center;"><i>(typed or printed)</i></div>	Title: _____ <div style="text-align: center;"><i>(typed or printed)</i></div>

Attach Power of Attorney.

Exhibit A.2

Procurement and Installation Task Order Form

This Task Order Number [redacted] ("Task Order") is entered between **the City of Dayton** ("Owner") and [name] ("Provider"). This Task Order is issued under the authority of the Master Agreement Between Owner and Provider For Procurement and Installation dated [date] between the Owner and Provider (the "Master Agreement") and is subject to all provisions of the Master Agreement, which is incorporated by reference. Capitalized terms used but not defined herein have the meanings set forth in the Master Agreement.

1. **Project Background:**
2. **Contract Times Commencement.** The Contract Times will commence to run on the day that this Task Order is fully executed.
3. **Scope of Special Services.** Provider shall perform the following Work: [if applicable, describe planning work here.]
4. **Goods.** Provider shall deliver and install the following goods at the Site.

Good Type	Quantity	Identifier

5. **Items to be furnished by Owner, if applicable:**
6. **Required Shop Drawings and Samples:**
7. **Site Description:**
8. **Contract Price.**
 - a. **Guaranteed Maximum Price.** The guaranteed maximum price payable to the Provider under this Task Order is \$[amount] ("Contract Price"). If the maximum compensation is increased by amendment of this Task Order, the amendment must be fully effective before Provider performs the work subject to the amendment.
 - b. **Fees.** The Owner shall compensate Provider for the performance of Work on the basis of the following hourly rates:
 - c. **Unit prices.**
 - d. **Reimbursable Expenses.**

1		
2		
		Total

9. Retainage Percentage: [no more than 5%]

10. Payment Terms: Payments shall be requested and provided in accordance with the General Conditions. [add any other particular payment related terms here. Special instructions regarding payment? Payment method? Etc.]

11. Shipping or Delivery Method:

12. Installation Scope:

13. Commissioning Scope:

14. Contract Times. This Task Order is effective and, unless otherwise expressly stated herein, Work shall commence on the date it has been signed by the Owner and Provider. The Contract Times for the Work are as follows:

Milestone	Date or Days	Notes
Commencement Date		
Commence Special Services for Goods		
Submit Shop Drawings		
Complete Special Services for Goods		
Readiness for Final Inspection and Acceptance of Goods and Special Services		
Substantial Completion		
Final Completion		

15. Key Personnel for this Task Order. The Owner is engaging the expertise, experience, judgment and personal attention of the Provider's Key Personnel identified below.

Key Personnel	Position/Title	Role on Project

16. Evidence of performance and payment bonds: (attach). [require if TO is over \$100k]

17. Evidence of insurance: (attach), including any additional insurance limits or types beyond the minimum required by the General Conditions.

Additional Insureds:

18. Applicable Specifications: [copy of list attached].

19. Drawings: (incorporated by reference):

- a. consisting of a cover sheet and sheets numbered [number] through [number], inclusive, with each sheet bearing the following general title: [Title].
- b. [listed on the attached sheet index.]

20. Warranty terms: To be provided at [time].

21. The parties understand and agree that this Task Order is subject to prevailing wage laws. The Provider shall comply fully with the provisions of ORS 279C.800 through 279C.870. The current prevailing wage rates may be found here: <https://www.oregon.gov/boli/WHD/PWR/Pages/PWR-Rate-Publications---2019.aspx>. The rates are those in effect as of the effective date of the Task Order. If both state and federal prevailing wage rates apply to the Work, Provider must pay all laborers, including those working on behalf of subcontractors, the higher of the applicable state or federal wage rate. If Provider is required to pay prevailing wages, Provider will ensure that its subcontractors also agree to do so in writing. If both state and federal wages apply to the Work, Provider will ensure that its subcontractors agree in writing to pay the higher of the applicable state or federal wage rate.

22. General Conditions. The parties acknowledge and agree that this Task Order is subject to, and each party is bound by, the Procurement General Conditions and the Installation General Conditions.

23. Order of Precedence. If a conflict, inconsistency or ambiguity arises in the Task Order interpretation, this Task Order shall be interpreted in the following order of precedence: (a) the Master Agreement; (b) this Task Order.

24. Expiration. Expiration or termination of this Task Order does not extinguish or prejudice the Owner's right to enforce this Task Order with respect to any breach of a Contractor's warranty or any default or defect in Consultant's performance that has not been cured.

25. Modification. No provision of this Task Order may be modified except in a writing signed by the Owner and Provider.

IN WITNESS WHEREOF, the parties hereto have executed this Task Order as of the dates set forth below.

Provider:

Owner

Signed:

Signed:

Name:

Name:

Title:

Title:

Date:

Date:

Address:

Address:

Phone/Email:

Phone/Email:

Exhibit C

Application for Payment

Owner:

Application No:

Provider:

Application Date:

Engineer:

Application Period: From _____ to _____.

Master Agreement and Effective Date:

Task Order and Effective Date:

1. **Original Contract Price:** \$ _____.
2. **Net Change by Change Orders and Amendments to date:** \$ _____.
3. **Current Contract Price (and lines 1 and 2):** \$ _____.
4. **Retainage (if applicable):** \$ _____.
5. **Amount due this Application:** \$ _____.
6. **Payment Milestone (if applicable):** _____.
7. **Amount to finish Task Order, including retainage: (subtract line 3 and 5):** \$ _____.

Seller Certification: Provider certifies, to the best of its knowledge after due inquiry, that:

1. All previous payments received from Buyer on account of Work done under the Master Agreement and the applicable Task Order have been applied on account to discharge Provider's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment.
2. Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner in accordance with the terms of the Contract Documents free and clear of all liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interest, or encumbrances).
3. All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Progress estimate attached: []

Supporting Documentation: []

Provider:

City of Dayton

Signed:

Signed:

Name:

Name:

Title:

Title:

Date:

Date:

Address:

Address:

Phone/Email:

Phone/Email:

Exhibit D

Statutorily Required Public Contracting Provisions

Provider shall observe all applicable state and local laws pertaining to public contracts. Pursuant to ORS Chapters 279A, 279B and 279C, which require every public contract to contain certain provisions, and other state law, the following provisions shall be a part of this Master Agreement, as applicable. All defined terms in this Exhibit shall be interpreted in accordance with the Solicitation, Contract Documents, and the relevant statutory provisions.

1. ORS 279A.110 (Non-discrimination Certification): Provider shall certify that Provider has not discriminated and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged, minority owned, woman owned, veteran owned, or emerging small business enterprise (certified under ORS 200.055.), or a business that is owned or controlled by, or employs a disabled veteran (as defined in ORS 408.225).
2. No person shall be subject to discrimination in the receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, sexual orientation or national origin. Provider shall comply with provisions of Owner's Equal Opportunity Policy and comply with ORS Chapter 659 and ORS Chapter 659A relating to unlawful employment practices and discrimination by employers against any employee or applicant for employment because of race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older. Particular reference is made to ORS 659A.030, which states that it is unlawful employment practice for any employer, because of the race, religion, color, sex, national origin, marital status or age if the individual is 18 years or older or because of the race, religion, color, sex, national origin or age of any other person with whom the individual associates, or because of a juvenile record that has been expunged pursuant to ORS 419A.260 and ORS 419A.262 of any individual, or to refuse to hire or employ or to bar or discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment. Any violation of this provision shall be considered a material violation of the Agreement and shall be grounds for cancellation, termination, or suspension in whole or in part.
3. Pursuant to ORS 279B.220 or 279C.505, as applicable, Provider shall make payment promptly, as due, to all persons supplying to the Provider labor or material for the performance of the work provided for in the Master Agreement or a particular Task Order; shall pay all contributions or amounts due the Industrial Accident Fund from the Provider or subcontractor incurred in the performance of the Master Agreement or a particular Task Order; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished, and; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
4. Pursuant to ORS 279B.225, If a Task Order requires the performance of lawn and landscape maintenance, Provider shall salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.
5. Pursuant to ORS 279B.230(1) or 279C.530(1), as applicable, Provider shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of

such Provider, of all sums which the Provider agrees to pay for such services and all monies and sums which the Provider collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

6. Pursuant to ORS 279B.230(2) or 279C.530.(2), as applicable, all subject employers working under the Master Agreement or an applicable Task Order are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
7. Pursuant to ORS 279B.235(1) and 279B.020 and ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime): Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, Provider shall not employ and shall require that its subcontractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:
 - i. For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
 - ii. For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
 - iii. For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).
 - iv. The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.
 - v. Provider shall and shall require its subcontractors to give notice in writing to their employees who work under this Master Agreement or a Task Order, either at the time of hire or before commencement of Work on a particular Task Order, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
8. Environmental Laws. Provider shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
9. Oregon Tax Law Compliance: Provider must, throughout the duration of this Master Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Provider (to the best of Provider's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the date of this Master Agreement, represents and warrants that it has faithfully has complied with, and will continue to comply with during the term of this Master Agreement: (A) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) any tax provisions imposed by a political subdivision of this state that applied to Provider, to Provider's property, operations, receipts, or income, or to Provider's performance of or compensation for any work performed by Provider; (C) any tax provisions imposed by a political subdivision of this state that applied to Provider, or to goods, services, or property, whether tangible or intangible, provided by Provider; and (D) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Failure to comply with this section is a default for which the Owner may terminate the Master Agreement and seek damages and other relief available under the terms of the Master Agreement or under applicable law.

10. Foreign Contractor. If Provider is not domiciled in or registered to do business in the state of Oregon, Provider shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Master Agreement. Provider shall demonstrate its legal capacity to perform these services in the state of Oregon prior to entering into this Master Agreement.
11. Assignment or Transfer Restricted. Unless otherwise provided in the Master Agreement, the Provider shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Master Agreement or a particular Task Order, either in whole or in part, without the Owner's prior written consent. Unless otherwise agreed by the Owner in writing, such consent shall not relieve the Provider of any obligations under the Master Agreement or a particular Task Order. Any assignee or transferee shall be considered the agent of the Provider and be bound to abide by all provisions of the Master Agreement or a particular Task Order. If the Owner consents in writing to an assignment, sale, disposal or transfer of the Provider's rights or delegation of Provider's duties, the Provider and its surety, if any, shall remain liable to the Owner for complete performance of the Master Agreement and all fully executed Task Orders as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Owner otherwise agrees in writing.

For all fully executed Procurement and Installation Task Orders:

1. Pursuant to ORS 279C.505(2), Provider shall demonstrate that an employee drug-testing program is in place. Provider will require each subcontractor providing labor for the Project to:
 - i. Demonstrate to the Provider that it has a qualifying employee drug-testing program for the subcontractor's subject employees, and represent and warrant to the Provider that the qualifying employee drug-testing program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract; or
 - ii. Require that the subcontractor's subject employees participate in the Provider's qualifying employee drug-testing program for the duration of the subcontract.
2. Pursuant to ORS 279C.510, if a Task Order includes demolition work, Provider shall salvage or recycle construction and demolition debris, if feasible and cost-effective. All excavated PCC and AC debris from this Project shall be sorted, separated, and taken to a facility or site so that the material may be recycled or re-used in the future as appropriate. All costs associated with Project material recycling shall be incidental to the Project, and no additional payment will be made. If a Task Order includes lawn or landscape maintenance, the Provider shall compost or mulch yard waste material at an approved site, if feasible and cost-effective
3. Pursuant to ORS 279C.515(1), if Provider fails, neglects, or refuses to make prompt payment of any Claim for labor or services furnished to the Provider or a subcontractor by any person in connection with this Master Agreement or a particular Task Order as such Claim becomes due, the Owner may pay such Claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Provider by reason of this Master Agreement or a particular Task Order. The payment of a Claim in the manner authorized in this Section shall not relieve the Provider or the Provider's surety from any obligation with respect to any unpaid Claims.

4. Pursuant to ORS 279C.515(2), if Provider or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Master Agreement or a particular Task Order within 30 days after receipt of payment from the Owner or a contractor, the Provider or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Provider or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the Owner or from the Provider, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.
5. Pursuant to ORS 279C.515(3), if Provider or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Master Agreement or a particular Task Order, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
6. Pursuant to ORS 279C.525 (Notice of Environmental Regulations): State law requires that solicitation documents for the Master Agreement make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Master Agreement. These agencies include, but are not limited to:
 - i. Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupational Safety and Health Administration, Department of Transportation, Federal Highway Administration, and Water Resources Council.
 - ii. State Agencies: Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, and Department of Water Resources.
 - iii. Local Agencies: City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other and special governmental agencies such as Tri-Met, urban renewal agencies, and Port districts.
 - iv. Tribal Governments.
7. Pursuant to ORS 279C.545 (Time Limitations on Claims for Overtime): Construction workers employed by the Provider or its subcontractor shall be foreclosed from the right to collect for any overtime under this Master Agreement or a particular Task Order unless a claim for payment is filed with the

Provider or subcontractor within 90 days from the completion of the particular Task Order, providing the Provider or subcontractor has:

- i. Caused a circular clearly printed in blackface pica type and containing a copy of this Section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work; and
 - ii. Maintained such circular continuously posted from the inception to the completion of the Task Order on which workers are or have been employed.
8. Provider is advised of the statutory Retainage requirements in ORS 279C.550 to 570.
- i. Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Task Order payments after 50 percent of the Work under the Task Order is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Provider, which application shall include written approval of Provider's surety; except that when the Work is 97-1/2 percent completed the Owner may, at its discretion and without application by the Provider, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the Provider, Owner shall respond in writing within a reasonable time.
 - ii. In accordance with the provisions of ORS 279C.560 and related Oregon administrative rules, Provider may request in writing:
 1. to be paid amounts which would otherwise have been retained from progress payments where Provider has deposited acceptable bonds and securities of equal value with Owner or in an escrow account, satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner;
 2. that retainage be deposited in an interest-bearing account, in a bank, savings bank, trust company or savings association for the benefit of Owner, with earnings from such account accruing to the Provider; or
 3. that the Owner allow Provider to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.570
 - iii. Where the Owner has agreed to the Provider's election of option (1) or (2), Owner may recover from Provider any additional costs incurred through such election by reducing Provider's final payment. Where the Owner has agreed to Provider's election of option (3), Provider shall accept like bonds from subcontractors and suppliers on the Project.
 - iv. The retainage held by Owner shall be included in and paid to the Provider as part of the final payment of each Contract Price. The Owner shall pay to Provider interest at the rate of one and one-half percent per month on the final payment due Provider, interest to commence 30 days after the Work under the applicable Task Order has been completed and accepted and to run until the date when final payment is tendered to Provider. The Provider shall notify Owner in writing when the Provider considers the Work complete and Owner shall, within 15 days after receiving the written notice, either accept the Work or notify the Provider of Work yet to be performed on the applicable Task Order. If Owner does not within the time allowed notify the Provider of Work

yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

- v. In accordance with the provisions of ORS 279C.560, Owner shall reduce the amount of the retainage if the Provider notifies the controller of the Owner that the Provider has deposited in a bank or trust company, in a manner authorized by the Owner's Authorized Representative, bonds and securities of equal value of a kind approved by the Owner's Authorized Representative.
9. Provider is advised of the prompt-payment requirements in ORS 279C. 570.
10. Pursuant to ORS 279C.580(3) (Prompt Payment of First-Tier Subcontractors): Provider shall include in each subcontract for property or services with a first-tier subcontractor a clause that obligates the Provider to pay the first-tier subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Provider by the Owner. Provider shall also include in each subcontract a clause that states that if the Provider fails to pay any claim for materials or labor furnished under a particular Task Order within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the ten-day period that payment is due under ORS 279C.580(3). Provider shall require each first-tier subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its subcontractors to include a similar clause in each contract with a lower-tiered subcontractor or supplier.
11. Pursuant to ORS 279C.580(4), Provider shall include in each of its subcontracts for a public improvement, for the purpose of performance of such contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580 (B) (4) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
12. Provider is advised of the rights of action and procedures on payment bonds and public works bonds under ORS 279C.600-.625.
13. Pursuant to ORS 279C.800 to 279C.870 (Payment of Prevailing Wage Required):
- i. The hourly rate of wage to be paid by Provider or any subcontractor to workers in each trade or occupation required for the public works employed in the performance of this Master Agreement and each fully executed Procurement and Installation Task Order shall not be less than the specified minimum rate of wage in accordance with ORS 279C.838 and ORS 279C.840 for each trade or occupation as defined by the Commissioner of the Oregon Bureau of Labor and Industries in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon available at <https://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>.
 - ii. Each Procurement and Installation Task Order is subject to the prevailing wage rates published as specified in the BOLI publication titled "Prevailing Wage Rates for Public Works Contracts in Oregon," including any applicable amendments in effect at the time this Master Agreement is first advertised for bid, which are hereby incorporated into this Master Agreement by this reference. The applicable rates for this Project are those published [January 1, 2025].
 - iii. Provider and all subcontractors shall keep the prevailing wage rates for the Project posted in a conspicuous and accessible place in or about the Project.

- iv. The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.
 - v. If Provider or any subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.
 - vi. If the Master Agreement utilizes federal funds, the higher of Oregon or federal prevailing wage shall apply, and it shall be the Provider's responsibility to make that determination.
14. Pursuant to ORS 279C.830(2), on public works contracts, Provider shall have, and ensure that its subcontractors have, a public works bond filed with the Construction Contractors Board before starting work on an applicable Task Order, unless the Provider or subcontractor are exempt under ORS 279C.836.
15. ORS 279C.845 (Prevailing Wage Certification; Additional Retainage):
- i. Provider and every subcontractor shall file certified statements with Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Provider or subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract Documents, which certificate and statement shall be verified by the oath of Provider or Provider's surety or subcontractor or subcontractor's surety that Provider and any subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to Provider or subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.
 - ii. The certified statement shall be delivered or mailed by Provider or subcontractor to Owner. Certified statements for each week during which the Provider or subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. Notwithstanding any other provision of the Contract Documents and in addition to any other retainage required under this Contract Documents, the Owner shall retain 25% of any amount earned by the Provider until the Provider has filed the certified statements with the Owner as required by this Section. The Owner will pay the retainage required under this Section within 14 days after Provider files the certified statements required by this Section.
 - iii. Provider and each subcontractor shall preserve the certified statements for a period of three years from the date of completion of the applicable Task Order.
16. ORS 671.560, 701.026 (Landscape/Construction Contractors License Required): If Provider is performing work as a landscape contractor as defined in ORS 671.520(2), Provider must have a current, valid landscape contractor's license issued under ORS 671.560. If Provider is performing work as a contractor as defined in ORS 701.005(2), Provider must have a current, valid construction contractor's license issued under ORS 701.026. Provider shall further certify that all subcontractors performing Work described in ORS 701.005(2) are registered with the Construction Contractors

Board or licensed by the State Landscaping Contractor's Board as required by the above-noted statutes before they commence Work under an applicable Task Order. Provider shall maintain in effect all licenses, permits, and certifications required for the performance of the Work. Provider shall notify Owner immediately if any license, permit, or certification required for performance of an applicable Task Order shall cease to be in effect for any reason.

SAMPLE

APPENDIX A.2

SYSTEM INTEGRATOR MASTER SERVICES CONTRACT

CITY OF DAYTON

SYSTEM INTEGRATOR OF RECORD, MASTER SERVICES CONTRACT

This Master Services Contract (this “Contract”) is by and between City of Dayton (“City”) and _____ (“System Integrator of Record”) for the installation and upgrade of control and telemetry systems, performance of system integration and programming services as required to meet the City’s public utility needs, as defined in Exhibit A – Scope of Work, including but not limited to systems and facilities described in Appendix B of the RFP.

A. RECITALS

City solicited proposals for a System Integrator of Record (hereafter also referenced as “IOR”) from qualified firms, to provide control and telemetry system installation and upgrades, system integration and programming services through a formal competitive proposal process.

Whereas, _____ submitted its proposal, having examined the Request for Proposals, and was chosen as the most highly qualified proposer, best suited to meet the City’s needs pursuant to the RFP criteria.

B. CONTRACT EXHIBITS

The following exhibits are hereby incorporated by reference into this Contract:

Exhibit A – Scope of Work
Exhibit A-1 – Service Level Agreement
Exhibit B – Oregon Public Contracting Code Requirements
Exhibit C – Request for Proposal for System Integrator of Record
Exhibit D – Selected System Integrator of Record’s Proposal
Exhibit E – Selected System Integrator of Record’s Fee Schedule

In the event of a conflict between this Contract and its exhibits, the terms of this Contract shall prevail, followed by Exhibit B, then Exhibits A, C, D, and E in that order.

C. AGREEMENT

1. Term

The initial term of this Contract shall be for a five (5) year term from the date of its execution (“Effective Date”), unless amended or sooner terminated under the provisions of this Contract. The date of execution shall be the date on which the City signs this Contract as noted on the signature page herein. At the City’s sole discretion, the Contract term may be extended for up to two (2) additional 5-year periods of time upon execution of an amendment to this Contract entered into by the parties. The City may elect in its sole discretion to extend the Contract terms for shorter periods, provided the total term of this Contract shall not exceed fifteen (15) years. Such extension(s) will consider whether updates are required to IOR’s fee schedule attached as Exhibit E to this Contract.

2. Scope of Work

IOR shall provide all services and deliver all materials, products, deliverables and equipment (the “Services”) as specified in the attached Exhibits, which are hereby incorporated into this Contract by this reference, and as may be described in Task Orders issued under this Contract.

2.1 Key Positions and Personnel. For the period of performance under this Contract, the parties have identified Key Positions and Key Personnel as set forth in the table below, along with the percentage of their time to be allocated to the City’s Project:

Name	Title/Role	% of Time	Company

- 2.2 Substitution of Key Personnel. IOR shall make no substitutions of Key Personnel unless the substitution is necessitated by law, illness, death, resignation, or termination of employment. IOR shall notify the City within ten (10) calendar days after the occurrence of any of these events.

Any substitutions or replacements of Key Personnel require the written approval of the City. IOR shall provide the City with the maximum possible period of notice of substitution or replacement of Key Personnel in order to allow for background screening, fingerprint checks, and other investigation as may be required in Section 2.2 below.

For any proposed substitute or replacement Key Personnel, IOR shall provide the following information to the City: a detailed explanation of the circumstances necessitating the proposed substitution or replacement, a complete resume for the proposed substitute(s), and any additional information requested by the City. Proposed substitutes or replacements should have qualifications comparable to or better than those of the persons being replaced. No change in Contract prices may occur as a result of substitution or replacement of Key Personnel.

- 2.3 Security Requirements for Personnel. If required by the City, IOR shall conduct a criminal history/records check of all personnel that will have access to City information, systems, or payments and ensure ongoing security requirements for personnel are maintained.

3. **Compensation**

- 3.1 Compensation. IOR will be paid by City on a time and materials basis, for approved Services actually completed by IOR, accepted by the City and invoiced as described in this section.

3.1.1 Payments shall be made to the IOR based on the fee schedule provided by the IOR defined in Exhibit E.

3.1.2 IOR shall complete its scope of work Services as defined in Exhibit A and in Task Orders to be issued by the City.

- 3.2 Invoices. Payments shall be based upon monthly invoices which IOR shall submit to the City, detailing the previous months' fees, costs and percentage of the Services completed at that time. Upon request, IOR will provide the City representative with documents and records evidencing the progress made on the project to date. IOR shall send invoices to City's representative at City's address set forth in Section 7. In the event of non-payment due to a fee dispute between the parties, IOR shall continue to provide Services to City.

- 3.3 Reimbursable Expenses. Reimbursable expenses must be preapproved in writing by the City and shall be itemized and include expenses reasonably incurred in the interest of the project for: 1) Reproductions, presentations and work session handouts or other materials; 2) Postage and handling of documents; 3) Authorized travel expenses; and 4) Expense of overtime work requiring higher than regular rates, if authorized by City.

- 3.4 The City shall not pay compensation for any portion of the Services not performed. Payment shall not be considered acceptance or approval of any Services or waiver of any defects therein. The compensation contemplated in this section shall constitute full and complete payment for said Services.
- 3.5 IOR must promptly pay all sums due to subcontractors for services and reimbursable expenses after receiving payment for those services from City.

4. Firm Offer Established; Nonexclusive Contract.

- 4.1 This Contract constitutes a firm offer by IOR regardless of whether any Task Order for Services is executed. This Contract is enforceable as a firm offer pursuant to ORS 279B.140 for the Contract term specified in Section 1, and all pricing in Exhibit E is valid until the Contract expires or is terminated, unless the pricing is changed according to Section 1.
- 4.2 This Contract is not exclusive. The City retains the right to contract for Services through any selection process authorized by law, or to perform the Services itself. The City does guarantee that any specific number of Task Orders will be entered into or that any specific amount of Services will be required.

5. Inspection and Acceptance of Deliverables.

Any deliverables, hardware, products, equipment or Services (collectively "Deliverables") to be provided by IOR under this Contract shall be subject to inspection and test by the City at times and place determined by the City. If the City finds any Deliverable to be incomplete or not in compliance with the applicable specifications or requirements, the City may reject the Deliverable and require IOR to either correct the Deliverable without charge or deliver the Deliverable at a reduced price, whichever is equitable under the circumstances. If IOR is unable or refuses to cure any defects in the Deliverable within a time deemed reasonable by the City, the City may reject the Deliverable and terminate this Contract in whole or in part.

6. Contractor Is an Independent Contractor

IOR is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation for Services provided for under this Contract. While City reserves the right to set the schedule and evaluate the quality of IOR's completed work, City cannot and will not control the means, methods and manner of IOR's performance. IOR is responsible for determining the appropriate means, methods and manner of performing Services. IOR is responsible for all federal and state taxes applicable to compensation and payment paid to IOR under the Contract and will not have any amounts withheld by City to cover IOR's tax obligations. IOR is not eligible for any City fringe benefit plans.

7. Notices

All notices provided for hereunder shall be in writing and shall be deemed to be duly served on the date of delivery if delivered in person, when receipt of transmission is generated by the transmitting facsimile machine if delivered by facsimile transmission, on the day after deposit if delivered by overnight courier, or three days after deposit if delivered by placing in the U.S. mail, first-class, postage prepaid. Any notice delivered by facsimile transmission shall be followed by a hard copy. All notices shall be addressed as follows:

City:

Don Cutler, Public Works Supervisor
City of Dayton
PO Box 339
416 Ferry Street
Dayton, OR 97114-0339

System Integrator of Record (IOR):

(name & title)
(company)
(address)

8. Indemnification

- 8.1 IOR shall indemnify, defend and hold harmless the City, its directors, officers, elected and appointed officials, agents, and employees, from all claims, demands, suits, and actions for all losses, damages, liabilities, costs and expenses (including all attorneys' fees and costs), resulting from or arising out of the actions, errors, or omissions of IOR or its officers, employees, subcontractors, or agents under this Contract.
- 8.2 Infringement Liability. IOR shall indemnify, defend, and hold harmless the City, its directors, officers, elected and appointed officials, employees, and agents from and against any and all claims, demands, suits, and actions for any damages, liabilities, losses, costs, and expenses (including reasonable attorneys' fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged misappropriation, violation, or infringement of any proprietary right, whether arising from copyright, patent, trademark, trade secret or any other intellectual property right of any person whosoever. The City agrees to notify IOR of the claim and gives IOR sole control of the defense of the claim and negotiations for its settlement or compromise.
- 8.3 The obligations of the indemnifications extended by IOR to the City shall survive the termination or expiration of this Agreement.

9. Insurance Requirements

- 9.1 During the term of this Contract, IOR shall maintain, at its own expense, the following types of insurance in the following amounts:
- a. Comprehensive general liability insurance on Insurance Services Office (ISO) occurrence form CG 00 01, including coverage for premises operations, independent contractors, protected products, completed operations, contractual liability, personal injury, and broad form for property damage (including coverage for explosion, collapse, and underground hazards):
- \$2,000,000 – each occurrence (bodily injury)
\$4,000,000 – general aggregate
\$1,000,000 – property damage, contractual, etc.
\$2,000,000 – umbrella liability coverage
- Coverage shall also include contractual liability coverage for the indemnity provided under this Contract. (Proof of coverage will be attached to this Contract).
- b. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence. (Proof of coverage will be attached to this Contract).
- c. Professional Liability (Errors and Omissions) insurance covering IOR's liability arising out of negligent acts, errors or omissions in its performance of work or Services under this Contract. Such policy will have a combined single limit of not less than \$2,000,000 per each claim, incident or occurrence. Such policy will be on a claims made basis and will have an extended claims reporting period of six (6) years after final completion of Services. (Proof of coverage will be attached

to this Contract).

- d. Technology Errors and Omissions, including Cyber Liability Insurance Coverage. IOR shall maintain coverage that shall be sufficiently broad to respond to the duties and obligations as is undertaken by IOR in this Contract and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, as well as credit monitoring expenses with limits sufficient to respond to these obligations. Limits shall not be less than specified below:

Five million dollars (\$5,000,000) Per Occurrence/five million dollars (\$5,000,000) General Aggregate

- e. Automobile Liability insurance. The policy shall cover bodily injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract. Automobile Liability coverage shall be written in an amount not less than \$2,000,000 combined single limit.
- e. The limits required in this Section 9.1 may be met with a combination of underlying and umbrella coverage.

9.2 If any of the above required insurance is arranged on a "claims made" basis, "tail" coverage will be required at final completion or termination of this Contract for a duration of two (2) years.

9.3 Policies shall provide that City, its officers, representatives, employees, and agents (including the City's engineer of record or contract City engineer) will be included as an additional insured with respect to the coverages required in Section 9.1(a) and a waiver of subrogation against them shall be obtained for all coverages.

9.4 All coverages under Section 9.1 shall be primary over any insurance City may carry on its own.

9.5 All policies of insurance shall be issued by duly licensed insurers with a rating of not less than A-VI and that are qualified to do business in the State of Oregon.

9.6 IOR shall furnish City with certificates of insurance evidencing all required coverages prior to commencing any work or Services under this Contract. If requested by City, IOR shall furnish City with executed copies of such policies of insurance. IOR shall furnish City with at least 30 days' written notice of cancellation of, or any modification to, the required insurance coverages. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract.

10. Workers' Compensation

10.1 IOR, its subcontractors, if any, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all subject workers.

10.2 IOR warrants that all persons engaged in Contract work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. IOR shall indemnify City for any liability

incurred by City as a result of IOR's breach of the warranty under this section.

11. Hours of Employment; Prevailing Wage

IOR shall comply with all applicable state and federal laws regarding employment.

The parties understand and agree that this Contract is subject to prevailing wage laws. The IOR shall comply fully with the provisions of ORS 279C.800 through 279C.870. The current prevailing wage rates may be found here: <https://www.oregon.gov/boli/WHD/PWR/Pages/PWR-Rate-Publications---2019.aspx>. If both state and federal prevailing wage rates apply to the Services, IOR must pay all laborers, including those working on behalf of subcontractors, the higher of the applicable state or federal wage rate. If IOR is required to pay prevailing wages, IOR will ensure that its subcontractors also agree to do so in writing. If both state and federal wages apply to the Services, IOR will ensure that its subcontractors agree in writing to pay the higher of the applicable state or federal wage rate.

12. Assignment

Before performing any Services for which the IOR will seek compensation under this Contract, the IOR shall prepare a detailed scope of work, budget of costs, and project schedule for a specific work task solicited by the City. The scope of work shall include all tasks and deliverables necessary to complete the Services requested by the City. The budget of costs shall assign task numbers to each task outlined in the scope of work and show the budgeted number of hours, team member assignments, and hourly rate for each task. The City will then issue a Task Order or assignment under the provisions of this Contract.

The IOR shall not begin work on any task or assignment until the City has issued a Notice to Proceed (NTP) for that task or assignment (either hard copy or email NTP) and a Task Order.

IOR may not assign any of its responsibilities under this Contract without City's prior written consent, which consent may be withheld in City's sole discretion. IOR may not subcontract for performance of any of its responsibilities under this Contract without City's prior written consent, which consent shall not be unreasonably withheld. IOR's assigning or subcontracting of any of its responsibilities under the Contract without City's consent shall constitute a material breach of this Contract. Regardless of any assignment or subcontract, IOR shall remain liable for all of its obligations under this Contract.

13. Labor and Material

IOR shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of all Contract work, all at no cost to City other than the compensation provided in this Contract.

14. Ownership of Work and Documents

All work produced by IOR is the exclusive property of the City. "Work Product" includes but is not limited to, technical drawings, prints, blueprints, schematics, research, reports, computer programs, manuals, drawings, plans, recordings, photographs, artwork and any data or information in any form. IOR and the City intend that such Work Product shall be deemed "work made for hire" of which the City shall be deemed the author. If for any reason, a Work Product is deemed not to be a "work made for hire," upon payment for the Services, IOR irrevocably assigns and transfers to the City all right, title and interest in such Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. IOR shall obtain such interests and execute all documents necessary to fully vest such rights in the City. IOR waives all rights relating to Work Product, including any rights arising under 17 USC § 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications.

Notwithstanding the above, all pre-existing trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights of IOR are and will remain the exclusive property of IOR. IOR hereby grants to the City a non-exclusive, perpetual, irrevocable license, with the right to sublicense, to disclose, copy, distribute, display, perform, prepare derivative works of and otherwise exploit any pre-existing intellectual property rights incorporated into the Work Product(s).

15. Termination for Convenience

This Contract may be terminated by mutual consent of the parties. In addition, City may terminate all or part of this Contract upon determining that termination is in the best interest of City by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against IOR. Upon termination under this section, IOR shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) City has against IOR. Pursuant to this section, IOR shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by IOR. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless IOR can show good cause beyond its control for the delay.

16. Termination for Cause

City may terminate this Contract effective upon delivery of written notice to IOR, or at such later date as may be established by City, under any of the following conditions:

- 16.1 If City funding is not obtained and continued at levels sufficient to allow for the indicated quantity of services. In addition, this Contract may be modified at the City's option to accommodate a reduction in funds.
- 16.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the Services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 16.3 If any license or certificate required by law or regulation to be held by IOR to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

17. Termination for Default

Either party may terminate this Contract in the event of a material breach by the other party that is not cured. Unless otherwise set forth in this Contract, before termination is permitted, the party seeking termination shall give the other party written notice via certified mail of the breach, its intent to terminate, and thirty (30) calendar days to cure the breach. If the breach is not cured within thirty 30 days, the party seeking termination may terminate immediately by giving written notice by certified mail that this Contract is terminated. If there is an immediate risk of harm to life or property, the City may terminate this Contract immediately and without regard to the 30-day notice provision. Upon a termination of this Contract by the City for material breach by IOR, IOR shall be paid the Contract price only for Services performed in accordance with the manner of performance as set forth in this Contract.

18. Remedies

In the event of termination of this Contract, the parties shall have the following remedies:

- 18.1 If terminated under Section 17 by City due to a material breach by IOR, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid

balance of the total compensation provided under this Contract, then IOR shall pay to City the amount of the reasonable excess.

- 18.2 In addition to the above remedies for a material breach by IOR, City also shall be entitled to any other equitable and legal remedies that are available.
- 18.3 If City breaches this Contract, IOR's remedy shall be limited to termination of this Contract and receipt of Contract payments to which IOR is entitled.
- 18.4 City shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from termination of this Contract in accordance with its terms.
- 18.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, IOR shall immediately cease all activities related to the services and work under this Contract. As directed by City, IOR shall, upon termination, deliver to City all then existing Work Product that, if the Contract had been completed, would be required to be delivered to City. Any termination of this Contract will result in termination of any issued Task Orders unless the City provides otherwise to IOR.

19. Nondiscrimination

During the term of this Contract, IOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin, or other legally protected status under state or federal law.

20. Governing Law; Jurisdiction; Venue

This Contract shall be governed by and construed in accordance with the laws of the state of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between City and IOR that arises from or relates to this Contract which results in litigation shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the state of Oregon; 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 Oregon. System Integrator of Record, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

21. Compliance with Laws and Regulations

IOR shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Contract. Without limiting the generality of the foregoing, IOR expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the IOR: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal, state and municipal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated.

City's performance under this Contract is conditioned upon IOR's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit B and incorporated herein by this reference. IOR, its subconsultants and all employers providing work,

labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. IOR shall adhere to all safety standards and regulations established OSHA or by City for work performed on its premises or under its auspices.

22. Experience, Capabilities and Resources

By execution of this Contract, IOR agrees that:

- 22.1 IOR is an experienced firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Contract and to administer any work within the scope and complexity contemplated by this Contract.
- 22.2 IOR has the capabilities and resources necessary to perform the obligations of this Contract.
- 22.3 IOR is familiar with all current laws, rules, and regulations which are applicable to the completion of work which may fall within the scope of this Contract.

23. Drawings, Specifications and Other Documents

IOR hereby agrees that it will, in a manner consistent with its standard of care defined in this Agreement, including above in Section 22, complete all work, prepare any drawings, specifications, and other documents pursuant to this Contract so that they are complete and that the project, when completed, shall be a complete and properly functioning facility.

24. Errors and Omissions

IOR shall be responsible for correcting any errors in Services provided. IOR shall correct at no additional cost to City any and all such errors in the work provided by IOR or its subconsultants.

25. Contract Performance

IOR shall at all times carry on the Services diligently, without delay and punctually fulfill all requirements herein. IOR shall not be liable for delays that are beyond IOR's reasonable control. Contract expiration shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any breach of IOR's warranties or a default or defect in performance by IOR that has not been cured. IOR agrees that time is of the essence under this Contract.

26. Access to Records

IOR shall maintain current financial records in accordance with Generally Accepted Accounting Principles (GAAP). IOR agrees to maintain and retain and retain all financial records, supporting documents, statistical records and all other records pertinent to this Contract during the term of this Contract and for a minimum of six (6) years after the expiration or termination date of this Contract, or for a minimum of six (6) years after all other pending matters in connection with this Contract are closed, whichever is longer. During the term of this Contract and for not less than six (6) years after the Contract expiration and for the purpose of making audit, examination, excerpts, and transcripts, City, and its duly authorized representatives shall have access to IOR's books, documents, papers, and records that are pertinent to this Contract. If, for any reason, any part of this Contract, or any resulting consulting contract(s) is involved in litigation, IOR shall retain all pertinent records for not less than six (6) years or until all litigation is resolved, whichever is longer. IOR shall provide full access to these records to City, and its duly authorized representatives in preparation for and during litigation.

27. General Representations and Warranties

- 27.1 IOR represents and warrants to City that:
- 27.1.1 IOR has the power and authority to enter into and perform this Contract;
 - 27.1.2 When executed and delivered, this Contract shall be a valid and binding obligation of IOR enforceable in accordance with its terms;
 - 27.1.3 IOR shall, at all times during the term of this Contract, be duly licensed to perform the Services, and if there is no licensing requirement for the profession or services, be duly qualified and competent; and
 - 27.1.4 The Services under this Contract shall be performed in accordance with the professional skill, care and highest standards of other professionals performing similar services under similar conditions.
- 27.2 Products and Services Warranties. IOR represents and warranty to City that:
- 27.2.1 All deliverables, products, hardware and equipment (collectively "Products") provided by IOR hereunder will materially conform to the acceptance criteria set forth in this Contract, including the Statement of Work and the applicable documentation and specifications;
 - 27.2.2 The Products shall be free and clear of any liens or encumbrances and shall be new and unused (and, if applicable, the current model) and shall carry full manufacturer warranties, and shall be delivered with complete documentation. IOR warrants that all Products delivered to City shall be free from defects in labor, material, manufacture and design, shall be in compliance with the specifications set out in this Contract, and shall be suitable for the operating environment in which they are installed. IOR shall furnish the details of both IOR's and manufacturer's warranties on materials and workmanship.
 - 27.2.3 The Products and Services are free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of software, collect unlawful personally identifiable information on users, or prevent the software from performing as required under the terms and conditions of this Contract. Notwithstanding the foregoing, this representation and warranty does not include a disabling device that limits, suspends or ends use of the Products or Services expressly permitted by the terms and conditions of the license under which it was provided:
 - 27.2.4 When used as authorized by this Contract, no Work Product infringes nor will City's use, duplication or transfer of the Work Product infringe any copyright, patent, trade secret or other proprietary right of any third party; and
 - 27.2.5 The Products will function together as an integrated system in accordance with the Statement of Work, applicable documentation or Task Order.
- 27.3 The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

28. Performance Metrics and Service Level Guarantees.

- 28.1 In its provision of the Products and Services, IOR shall meet the performance metrics and service level guarantees set forth in this Contract. IOR's Service Level Agreement is included as Exhibit A-1 to this Contract.. IOR shall provide, maintain, and upgrade any hardware and related equipment, and software provided by IOR and required for delivery and operation of the Products and Services.

- 28.2 If IOR fails to meet a performance standard, IOR shall (i) investigate, assemble and preserve pertinent information with respect to, and report on the causes of, the failure, including performing a root cause analysis of the failure; (ii) advise the City, as and to the extent requested by City, of the status of remedial efforts being undertaken with respect to such failure; (iii) minimize the impact of and correct the problem and begin meeting the performance standard; and (iv) take appropriate preventive measures so that the failure does not recur.
- 28.3 IOR shall pay the damages or issue service credits as agreed to in this Contract if IOR fails to provide the Products or Services as and when required by this Contract or fails to meet the performance metrics and service level guarantees specified in this Contract. This section does not limit the City's rights with respect to the events upon which the City may rely as a basis for termination of this Contract for cause.

29. Third Party Intellectual Property.

In the event the Products include third party intellectual property, and unless otherwise agreed, IOR shall ensure that City receives a license to use the Products sufficient to fulfill the business objectives, requirements, and specifications identified in this Contract. City shall have the right to review the proposed license agreement and negotiate terms with the licensor; upon agreement to the terms, City shall be bound by such license agreement. If City and licensor cannot reasonably agree to terms, City, in its sole discretion, may return the Products to IOR (without incurring any termination liability), and IOR shall provide a full refund including any shipping and handling charges.

30. Delivery Terms; Risk of Loss.

- 30.1 IOR shall ship Products freight and insurance prepaid. IOR shall ship the Products no later than the date set forth in the applicable Task Order, or as otherwise agreed by IOR and City.
- 30.2 IOR shall deliver the Products F.O.B. to the City's designated location.
- 30.3 IOR accepts the risk, responsibility, and liability for loss or damage to the Products. This risk shall remain with IOR until acceptance of the Products by City in accordance with the acceptance procedures described in Section 5. However, during the period between delivery of the Products to City, and prior to City's acceptance, IOR shall not be responsible for loss or damage that results from City's use of the Products with a product that is not authorized by IOR, City's misuse or unauthorized modification of the Products, improper maintenance of the Products by City, or City's storage or operation of the Products in a physical or operating environment that IOR has advised City is unsuitable for the Products.
- 30.4 Unless otherwise agreed, all equipment and hardware delivered to the City by IOR will be owned exclusively by the City. Title to the equipment and hardware will pass to the City on the date of City's final acceptance, unless otherwise agreed to by the parties.

31. City Obligations

- 31.1 City shall provide full information in a timely manner regarding requirements for and limitations on the project.
- 31.2 City shall establish and update, if necessary, overall project budgets.
- 31.3 City shall furnish the services of consultants when such services are requested by IOR, reasonably required by the scope of a project, and agreed to by City.
- 31.4 City shall furnish all testing as required by law or the contract documents for the project

associated with the assignment or work task, for other than control system, telemetry system or SCADA system testing which is part of the work performed by the IOR.

- 31.5 City shall furnish all legal accounting, auditing and insurance services as necessary for projects to meet the City's needs and interests, after IOR has performed requisite project management and oversight duties.
- 31.6 City shall provide prompt written notice to IOR if City becomes aware of any fault or defect in a project, including any errors, omissions or inconsistencies in IOR's design or performance under this Contract.
- 31.7 City shall pay IOR in accordance with Section 3 and Exhibit A of this Contract, upon receipt of IOR's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect work completed and progress made upon the project to date, on a pro rata basis.
- 31.8 City shall report the total amount of all payments to IOR, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.
- 31.9 City shall guarantee access to, and make all provisions for IOR to enter upon public and private property necessary for performance of the Scope of Work over which City exercises control.
- 31.10 Extra work or work on contingency tasks is not permitted unless authorized by the City in writing. Failure of IOR to secure written authorization for extra work shall constitute a waiver of all rights to an adjustment in the Contract price or Contract time.

32. Arbitration

- 32.1 All claims, disputes, and other matters in question between the City and IOR arising out of, or relating to this Contract, including rescission, reformation, enforcement, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in City's sole discretion, in accordance with Uniform Oregon Arbitration Act ORS 36.600 et seq. and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after the notice of demand, the presiding judge of the Yamhill County Circuit Court will establish rules to govern the arbitration. The City shall have the sole discretion as to whether or not dispute will be decided by arbitration rather than through the court process.
- 32.2 A claim by IOR arising out of, or relating to this Contract must be made in writing and delivered to the Public Works Superintendent not less than 30 days after the date of the occurrence giving rise to the claim. Failure to file a claim with the Public Works Superintendent within 30 days of the date of the occurrence that gave rise to the claim shall constitute a waiver of the claim. A claim filed with the Public Works Superintendent will be considered by the City Council at its next regularly scheduled meeting. At that meeting, the City Council will render a written decision approving or denying the claim. If the claim is denied by the City Council, the IOR may file a written request for arbitration with the Public Works Superintendent. No demand for arbitration shall be effective until the City Council has rendered a written decision denying the underlying claim. No demand for arbitration shall be made later than thirty (30) days after the date on which the City Council has rendered a written decision on the underlying claim. The failure to demand arbitration within said 30 days shall result in the City Council's decision being binding upon the City and IOR.
- 32.3 Notice of demand for arbitration shall be filed in writing with the other party to the Contract. The demand for arbitration shall be made within the 30-day period specified

above. The City, if not the party demanding arbitration, has the option of allowing the matter to proceed with binding arbitration or by written notice within five (5) days after receipt of a demand for arbitration, to reject arbitration and require the IOR to proceed through the courts for relief. If arbitration is allowed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and the award will not be subject to modifications or appeal except to the extent permitted by Oregon law.

33. Joinder

Notwithstanding any contrary language in other documents or agreements related to services provided by IOR pursuant to this Contract, including contracts for construction services, either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact arising out of or related to this Contract and whose presence is required if complete relief is to be accorded. This section applies to any and all claims, disputes, and other matters arising out of, or relating to this Contract, including but not limited to those claims, disputes, and other matters subject to litigation or arbitration.

34. Attorney Fees

If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this Contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for City to incur the services of an attorney to enforce any provision of this Contract without initiating litigation, IOR agrees to pay City's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.

35. Successors and Assigns; Subcontractors and Assignments

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

36. Limitation of Liabilities

City shall not be liable for (i) any indirect, incidental, consequential, or special damages this the Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

37. Foreign Contractor

If IOR is not domiciled in or registered to do business in the state of Oregon, IOR shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. IOR shall demonstrate its legal capacity to perform the work under this Contract in the state of Oregon prior to entering into this Contract.

38. Confidentiality

38.1 City's Confidential Information. Any and all information that the City provides to IOR or its employees or agents in the performance of this Contract that the City designates as confidential (either on the document itself or through related correspondence), as well as all reports and other documents and materials that result from IOR's use of such information and any other Work Product that the City designates as confidential, is deemed to be confidential information of the City ("City Confidential Information"). City Confidential Information does not include information that (1) is or becomes (other than by disclosure by IOR) publicly known; (2) is furnished by the City to others without restrictions similar to those imposed by this Contract; (3) is rightfully in IOR's possession without the obligation of

nondisclosure prior to the time of its disclosure under this Contract; (4) is obtained from a source other than the City without the obligation of confidentiality, (5) is disclosed with the written consent of City, or; (6) is independently developed by employees or agents of IOR who can be shown to have had no access to the Confidential Information.

- 38.2 IOR shall treat as confidential any City Confidential Information that has been made known or available to IOR or that IOR has received, learned, heard or observed; or to which IOR has had access. IOR shall use City Confidential Information exclusively for the City's benefit in the performance of this Contract. Except as may be expressly authorized in writing by the City, in no event shall IOR publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. IOR shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees, subcontractors, and agents of IOR who need to know the City Confidential Information in connection with the Services and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Agreement, (2) exercise reasonable care to protect the confidentiality of the City Confidential Information, at least to the same degree of care as IOR employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. IOR is expressly restricted from and shall not use the intellectual property rights of the City without the City's prior written consent.
- 38.3 IOR's confidentiality obligations under this Agreement shall survive termination or expiration of this Contract.
- 38.4 Public Records Requests. IOR acknowledges that the City is subject to the Oregon Public Records Act and federal law. Third persons may claim that IOR Confidential Information (as defined below) that IOR submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The City's commitments to maintain certain information confidentially under this Contract are all subject to the constraints of Oregon and federal laws. All information submitted by IOR to the City is a public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which IOR requests and meets an exemption from disclosure consistent with federal or Oregon law, in accordance with the process set forth in Section 38.5 Within the limits and discretion allowed by those laws, the City will make a good faith effort to maintain the confidentiality of information.
- 38.5 IOR's Confidential Information. During the term of this Contract, IOR may disclose to the City certain IOR confidential information pertaining to IOR's business ("Contractor Confidential Information"). IOR shall be required to mark Contractor Confidential Information CONFIDENTIAL with a restrictive legend or similar marking, together with a written statement describing the material which is requested to remain protected from disclosure and the justification for such request under Oregon public records laws. If Contractor Confidential Information is not clearly marked, or the Contractor Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, IOR shall identify the Contractor Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Contract itself shall not be considered Contractor Confidential Information. Contractor Confidential Information does not include information that (1) is or becomes (other than by disclosure by the City) publicly known; (2) is furnished by IOR to others without restrictions similar to those imposed by this Contract; (3) is rightfully in the City's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (4) is obtained from a source other than IOR without the obligation of confidentiality, (5) is disclosed with the written consent of IOR, or; (6) is independently developed by employees or agents of the City who can be shown to have had no access to the Contractor Confidential Information. Subject to Section 38.4 the City shall: (1) limit disclosure of Contractor Confidential Information to those directors, elected and appointed officials, employees, contractors and agents of the City who need to know the Contractor Confidential Information in connection

with the Services and who have been informed of confidentiality obligations at least as strict as those contained in this Contract, and (2) exercise reasonable care to protect the confidentiality of the Contractor Confidential Information, at least to the same degree of care as the City employs with respect to protecting its own proprietary and confidential information.

39. Force Majeure

IOR shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war.

40. Waivers

No waiver by City of any provision of this Contract shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by IOR of the same or any other provision. City's consent to or approval of any act by IOR requiring City's consent or approval shall not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by IOR, whether or not similar to the act so consented to or approved.

41. Severability

Any provisions of this Contract which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

42. Headings

The captions contained in this Contract are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

43. Integration and Modification

This Contract, including the attached exhibits referenced above, contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters addressed by this Contract. Any modifications or amendments to this Contract will only be effective when made in writing and signed by authorized parties for each party to this Contract.

44. Certificate of Compliance with Oregon Tax Laws

By executing this Contract, System Integrator (IOR) certifies under penalty of perjury that IOR is, to the best of IOR's knowledge, not in violation of any tax laws of this state or any applicable tax laws of any political subdivision of this state..

45. Authority

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to make this Contract.

CITY:

CITY OF DAYTON

SYSTEM INTEGRATOR OF RECORD (IOR):

_____ (company name)

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A SCOPE OF WORK

SERVICES AND RESPONSIBILITY OF SYSTEM INTEGRATOR OF RECORD (IOR)

Services shall be provided by IOR pursuant to City work task requests or as otherwise requested by City in writing. When authorized by City, the specific services which the IOR shall furnish will generally consist of, but not be limited to, the following itemized services:

Services shall generally consist of, but not be limited to, fabrication & installation of control system, telemetry system or SCADA system components, including installation, replacement and/or upgrades, system integration and programming services related to City's public utilities, including but not limited to the water and wastewater facilities and other facilities owned or overseen by the City. Such "of record" IOR services may be requested of IOR by City, pursuant to this Contract's terms and conditions for Work, which will govern work authorized by separate Assignments or Task Orders that may include special terms and conditions.

Assignments or Task Orders shall be used to authorize work described above. Said Assignments or Task Orders and amendments thereto shall be agreed to by both parties, with scope of work, delivery schedule, and total compensation to be negotiated at the time the Assignment or Task Order is proposed by either party. Assignments or Task Orders that do not meet these requirements shall not be binding and no further compensation will be allowed for any Assignment or Task Order work performed.

Subject to the requirements of this section, City shall have the right to amend the scope of any Assignment or Task Order to this Contract and to cancel a portion of the work pursuant to an Assignment or Task Order at any time. City shall pay IOR an amount to be agreed upon by the parties for all additional work. City shall pay IOR a reduced amount to be agreed upon by the parties in the event City cancels such work. City shall not be liable for profits lost due to cancelled work.

The selected IOR shall perform the following services as approved by and directed by the City:

- Serve as the City's Integrator of Record.
- Design and integrate updates to the City's existing control, telemetry & SCADA systems.
- Provide technical and/or equipment recommendations or design information, along with associated preliminary cost estimates in order to support the development of City project budgets.
- Troubleshoot issues with City facilities and make recommendations for improvements.
- Provide equipment & installation service for upgrade or replacement of existing control & telemetry systems as directed by the City.
- Perform ongoing routine maintenance and repairs on the control system and instrumentation and affected components.
- Perform radio propagation studies.
- Provide emergency support services.
- In addition to the general and recurring activities listed above, there may be ad hoc duties including verbal communications with the City staff or elected officials as part of prudent administration of the City's infrastructure systems.
- Subconsultants may be used, subject to written approval by the City on design of projects where supplemental expertise is desired.

**EXHIBIT A-1
SERVICE LEVEL AGREEMENT**

[TO BE PROVIDED]

SAMPLE

Exhibit B

PUBLIC CONTRACTING CODE REQUIREMENTS

System Integrator of Record ("Contractor") shall observe all applicable state and local laws pertaining to public contracts. Pursuant to ORS Chapters 279A, 279B and 279C, which require every public contract to contain certain provisions, and other state law, the following provisions shall be a part of this contract, as applicable. All defined terms in this Exhibit shall be interpreted in accordance with the solicitation or contract document and the relevant statutory provision. Subcontractor shall be read to mean subcontractor or subconsultant.

1. ORS 279A.110 (Non-discrimination Certification): Contractor shall certify that Contractor has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a disadvantaged, minority owned, woman owned, veteran owned, or emerging small business enterprise (certified under ORS 200.055.), or a business that is owned or controlled by, or employs a disabled veteran (as defined in ORS 408.225).
2. Pursuant to ORS 279B.220 or 279C.505, as applicable, Contractor shall make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract; shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished, and; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
3. Pursuant to ORS 279B.225, every public contract for lawn and landscape maintenance shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.
4. Pursuant to ORS 279B.230(1) or 279C.530(1), as applicable, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
5. Pursuant to ORS 279B.230(2) or 279C.530.(2), as applicable, in every public contract, all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
6. Pursuant to ORS 279B.235(1) and 279B.020 and ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime): Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, Contractor shall not employ and shall require that its Subcontractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:
 - i. For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and

- ii. For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
 - iii. For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).
 - iv. The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.
 - v. Contractor shall and shall require its Subcontractors to give notice in writing to their employees who work under this contract, either at the time of hire or before commencement of Work or Services under the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
7. Environmental Laws. Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
8. Oregon Tax Law Compliance: Contractor must, throughout the duration of this contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the date of this contract, represents and warrants that it has faithfully complied with, and will continue to comply with during the term of this contract: (A) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Failure to comply with this section is a default for which the City may terminate the contract and seek damages and other relief available under the terms of the contract or under applicable law.
9. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the state of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this contract. Contractor shall demonstrate its legal capacity to perform these services in the state of Oregon prior to entering into this contract.

Exhibit C

Exhibit C – Request for Proposal

SAMPLE

Exhibit D

Exhibit D – System Integrator of Record's Proposal

SAMPLE

Exhibit E

SYSTEM INTEGRATOR OF RECORD'S FEE SCHEDULE

The Scope of Services defined in Exhibit A shall be provided to the City on a time and materials basis as defined by the following fee schedule provided by the System Integrator of Record.

SAMPLE

APPENDIX B

SYSTEM OVERVIEW FOR SYSTEM INTEGRATOR OF RECORD RFP

Background Information

The City of Dayton intends to upgrade and expand the existing City facilities, including but not limited to the Supervisory Control and Data Acquisition (SCADA) System, as well as the local control systems & telemetry systems at existing & future water and wastewater facilities, the existing & future City Hall/Library/Community Center campus facilities, etc. The City of Dayton intends to select an experienced and qualified System Integrator of Record (IOR) to provide such services. The IOR will collaborate with both the City and the City's various consultant(s) to develop the best solutions for the control system and SCADA system improvements and expansion.

The City's control, telemetry & SCADA system consists of a main SCADA system at the Water Treatment Plant (Main site) and various remote sites (water & sewer pump stations, reservoirs/tanks, wells & associated improvements, municipal springs and associated improvements, pressure reducing valve, City buildings, etc.). The Water Treatment Plant has the Main PLC, SCADA server and HMI. Remote sites which are telemetry enabled typically contain a PLC, telemetry system, radio or cellular modem and antenna, etc. The primary SCADA software is Rockwell Automation FactoryTalk version 14 and was installed approximately 2 years ago. Allen Bradley Control Logix Programmable Logic Controllers (PLCs) are the standard PLC currently utilized by the Water Treatment Plant Main SCADA. There also is an Allen Bradley MicroLogix 1400 which handles the radio polling on both the serial side (Modbus RTU) and ethernet side. There is again another Allen Bradley MicroLogix 1400 that controls the chlorine generation unit. Also, the remote sites which have been upgraded use Allen Bradley MicroLogix 1400s (TP1 and Breyman), although there are some older legacy control systems which have not yet been upgraded use Schneider Modicon PLCs (this is Well1, 2, 3, 4, 5, Springs Reservoir, McDougal Wells, and the PRV site. Well 2 and Well 5 use a different flavor of PLC but it is still the same programming software.). Serial MDS 4710 radio modems and Yagi antennas with an OMNI Antenna at the WTP are utilized as the current telemetry standard. For the upgraded sites Sierra Wireless Cellular modems are used for communication back to the WTP. A landline auto dialer is communicating to the Main SCADA Server for Alarms & Events and utilized for alarm notification to the City's operators via voice message.

The following table is a general summary existing sites only, but may not be entirely complete and is not intended to reflect all existing conditions or all existing equipment which is controlled/monitored at each site, and does not include all future anticipated sites, systems or equipment.

Site	Equipment/Systems Directly Controlled/Monitored by Local Control System at the Site	Control, Telemetry & SCADA Equipment
Water Treatment Plant (WTP)	<ol style="list-style-type: none"> 1. WTP Pressure Filters & ancillary systems. 2. Chlorination system & chlorine level monitoring. 3. Reservoir water level monitoring 4. Emergency Power Generator. 5. Water storage reservoir at WTP site. 6. Dayton Service Pumps, VFD speed control. 7. Dayton Fire Pump. 8. Dayton Discharge flow meter. 9. Call for water from various wells. 10. Lafayette Transfer Pumps, VFD speed control. 11. Lafayette Discharge flow meter. 	<ol style="list-style-type: none"> A. WTP System PLC B. SCADA Server (monitors all local and remote systems with telemetry capabilities) C. Primary SCADA HMI (Human Machine Interface) D. Various antennae & various modems (telemetry system communications)
Water, Wellfield Wells 1-5	<ol style="list-style-type: none"> 1. Well Pump controls (VFD speed control) & associated downhole level transducer 2. Well discharge flow meter 3. Methane Stripper 4. Booster Pump after methane stripper 	<ol style="list-style-type: none"> A. Local Control Panel B. Telemetry/SCADA system PLC. C. Antennae & radio modems
Water, Watershed Reservoirs	<ol style="list-style-type: none"> 1. Reservoir water level monitoring 	<ol style="list-style-type: none"> A. Local Control Panel B. Telemetry/SCADA system PLC. C. Antennae & cellular modem
Water, Watershed Springs Chlorination Building	<ol style="list-style-type: none"> 1. Chlorination system & chlorine level monitoring. 2. Flow meter. 3. Turbidimeter. 	<ol style="list-style-type: none"> A. Local Control Panel B. Telemetry/SCADA system PLC. C. Antennae & cellular modem
Water, Watershed McDougall Well 1 & Well 2	<ol style="list-style-type: none"> 1. Well Pump controls 2. Manual Well discharge flow meter 	<ol style="list-style-type: none"> A. Local Control Panel B. No current telemetry link or SCADA connection.

Site	Equipment/Systems Directly Controlled/Monitored by Local Control System at the Site	Control, Telemetry & SCADA Equipment
Water, PRV Watershed Station	<ol style="list-style-type: none"> 1. PRV operational position & status. 2. Flow meter. 3. Pressure relief valve. 	<ol style="list-style-type: none"> A. Local Control Panel B. Telemetry/SCADA system PLC. C. Antennae & radio modem
Water, Fisher Farms Wells 1-4 <i>(future, planning stage)</i>	<ol style="list-style-type: none"> 1. Well Pump controls (VFD speed control) & associated downhole level transducer 2. Well discharge flow meter 3. Methane Stripper 4. Booster Pump after methane stripper 	<ol style="list-style-type: none"> A. Local Control Panel(s) B. Telemetry/SCADA system PLC. D. Antennae & radio modem(s)
Sewer, WWTP	<ol style="list-style-type: none"> 1. Chlorination system. 2. Dechlorination system & chlorine level monitoring. 3. Discharge flow meter. 4. Lagoon 2 aerators. 	<ol style="list-style-type: none"> A. Local Control Panel. B. No current telemetry link or SCADA connection.
Sewer, Main Pump Station (MPS)	<ol style="list-style-type: none"> 1. Sewage pumps (duplex low flow pumps, duplex high flow pumps), VFD speed control 2. Wetwell water level monitoring 3. Emergency Power Generator. 4. High level alarm system. 5. MPS discharge flow meter. 	<ol style="list-style-type: none"> A. Local Control Panel. B. Telemetry/SCADA system PLC. C. Antennae & cellular modem.
Sewer, Remote Overflow, Main Pump Station	<ol style="list-style-type: none"> 1. Wireless level measurement (ultrasonic & transducer), overflow alarm system 	<ol style="list-style-type: none"> A. Antennae & cellular modem.
Sewer, 9th Street Pump Station	<ol style="list-style-type: none"> 1. Sewage pumps (duplex pumps) 2. Wetwell water level monitoring 3. Emergency Power Generator. 4. High level alarm system. 5. Overflow alarm system. 	<ol style="list-style-type: none"> A. Local Control Panel. B. Telemetry/SCADA system PLC. C. Antennae & cellular modem.

Site	Equipment/Systems Directly Controlled/Monitored by Local Control System at the Site	Control, Telemetry & SCADA Equipment
Sewer, Palmer Creek Pump Station	<ol style="list-style-type: none"> 1. Sewage pumps (duplex pumps) 2. Wetwell water level monitoring 3. Emergency Power Generator. 4. High level alarm system. 5. Overflow alarm system. 	<ol style="list-style-type: none"> A. Local Control Panel. B. Telemetry/SCADA system PLC. C. Antennae & cellular modem.
Sewer, Hwy 221 Pump Station	<ol style="list-style-type: none"> 1. Sewage pumps (duplex pumps), VFD speed control 2. Wetwell water level monitoring 3. Emergency Power Generator. 4. High level alarm system. 5. Overflow alarm system. 	<ol style="list-style-type: none"> A. Local Control Panel. B. Telemetry/SCADA system PLC. C. Antennae & cellular modem.
Sewer, Ash Road Pump Station <i>(future, planning stage)</i>	<ol style="list-style-type: none"> 1. Sewage pumps (triplex pumps anticipated), VFD speed control 2. Wetwell water level monitoring 3. Emergency Power Generator. 4. High level alarm system. 5. Overflow alarm system. 	<ol style="list-style-type: none"> A. Local Control Panel. B. Telemetry/SCADA system PLC. C. Antennae & cellular modem.
City Hall, Public Works Office & Community Center Campus	<ol style="list-style-type: none"> 1. Alarms, etc. 	<ol style="list-style-type: none"> A. To be determined.

APPENDIX C
PROPOSER'S RESPONSE FORM

PROPOSER'S RESPONSE FORM

Name of Entity Submitting Proposal: _____

Address: _____

Date: _____

Communications concerning this Proposal shall be addressed to:

Contact Person: _____

Telephone Number: _____ Fax Number: _____

Email: _____

The undersigned, through the formal submittal of this proposal response, declares that he/she has examined all related proposal documents and read the instruction and conditions, and hereby proposes to furnish materials and services, in accordance with the proposal documents herein.

The Proposer, by his signature below, hereby represents as follows:

- (a) That no Councilor, officer, agent or employee of City is personally interested directly or indirectly in this Proposal or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the City, its Councilors, officers, agents, or employees has induced Proposer to enter into this proposal and the papers made a part hereof by its terms;
1. The Proposer represents that Proposer is properly licensed and adequately experienced, equipped, organized and financed to furnish and deliver the equipment specified and perform the services required
 2. The Proposer has carefully reviewed for accuracy all statements in this Proposal and attachments, and agrees that the City will not be responsible for any errors or omissions of the Proposer in preparing this Proposal. The Proposer agrees that this Proposal may not be revoked or withdrawn for one hundred twenty (120) calendars days after the date on which Proposals are received.
 3. The Proposer has examined and understands the Request for Proposal (RFP) Documents and the Proposal is made in accordance therewith.
 4. Addenda. The Proposer acknowledges that it has received the following Addenda Number(s): _____ and agrees that all addenda issued are a part of the Proposal and have been considered in preparing this Proposal. (Proposer: insert the total number of addenda received; if no addenda were received, write "NONE" in the space.)

- (b) The Proposer and each person signing on behalf of any proposer certifies, in the case of a joint proposal, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
1. The prices in this proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other proposer or with any competitor;
 2. Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the proposer prior to the proposal deadline, either directly or indirectly, to any other proposer or competitor;
 3. No attempt has been made nor will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restraining trade;
- (c) Proposer has not and will not discriminate against a subcontractor in the awarding of a subcontract because a subcontractor is a minority, woman, or emerging small business enterprise certified under ORS 200.055, or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.

The names of the principal officers of the corporation submitting this proposal, or of the partnership, or of all persons interested in this proposal as principals are as follows:

Name (type or print): _____

Title: _____

Name (type or print): _____

Title: _____

Name (type or print): _____

Title: _____

Proposer is a resident proposer, as defined in ORS 279A.120. If not a resident, proposer, proposer's resident state is _____.

Did the Proposer attend the mandatory pre-submission meeting? (Check one)

_____ YES _____ NO

If Proposer is an Individual:

By: _____
(Individual's Signature)

Name (type or print): _____

Doing business as: _____

Contractor Registration #: _____ Federal Tax ID #: _____

If Proposer is a Partnership:

Partnership Name (type or print): _____

By: _____
(Signature of General Partner – attach evidence of authority to sign)

Name (type or print): _____

Title: _____

Contractor Registration #: _____ Federal Tax ID #: _____

If Proposer is a Corporation:

Corporation Name (type or print): _____

State of Incorporation (type or print): _____

Type of Corporation (General Business, Profession, Service, LLC, etc): _____

By: _____
(Signature– attach evidence of authority to sign if other than president or vice-president)

Name (type or print): _____

Title: _____

Attest: _____
(Signature of Corporate Secretary)

Contractor Registration #: _____ Federal Tax ID #: _____

If Proposer is a Joint Venture:

Name of Joint Venture (type or print): _____
.....

First Joint Venture Name (type or print): _____

By: _____
(Signature of joint venture partner– attach evidence of authority to sign)

Title: _____

Contractor Registration #: _____ Federal Tax ID #: _____
.....

Second Joint Venture Name (type or print): _____

By: _____
(Signature of joint venture partner– attach evidence of authority to sign)

Title: _____

Contractor Registration #: _____ Federal Tax ID #: _____

.....

Third Joint Venture Name (type or print): _____

By: _____
(Signature of joint venture partner– attach evidence of authority to sign)

Title: _____

Contractor Registration #: _____ Federal Tax ID #: _____

.....

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated under the applicable category above, attach additional pages if necessary.)

APPENDIX D

INVITATION TO PROPOSE

The City of Dayton, Oregon (“City”) requests proposals from qualified consultants to serve as the City’s System Integrator of Record for its control and telemetry (SCADA) systems. The selected consultant will (1) procure and install control and telemetry systems for existing City infrastructure, (2) procure such systems in connection with future City infrastructure projects, and (3) provide ongoing system maintenance and minor repair services.

Control and telemetry components must be procured from Rockwell Automation, and the selected consultant must be a Rockwell Certified Systems Integrator. The City intends to enter into a Master Services Contract and a Master Procurement and Installation Contract with the selected consultant. The anticipated initial term of the contracts will be five years with the option to extend for two additional 5-year periods.

A mandatory pre-submission meeting and site visit will be held at 2:00 p.m. on January 22, 2026, beginning at the Dayton Water Treatment Plant, 1209 Ferry Street, Dayton, OR 97114. Attendance is required to submit a proposal.

Proposals must be received by 2:00 pm on February 19, 2026 addressed to Westech Engineering, Inc., Attention: Denny Muchmore, P.E., 3841 Fairview Industrial Drive, SE, Salem, OR 97302, in a sealed envelope clearly marked “City of Dayton, System Integrator of Record,” along with the name of the proposer.

Copies of the full RFP, including appendices with the sample contracts and proposer’s response form, may be obtained from Westech Engineering, Inc., Attention: Denny Muchmore, P.E., 3841 Fairview Industrial Dr. SE, Suite 100, Salem, OR 97302, (503) 585-2474, dmuchmore@westech-eng.com.

Requests for clarification must be submitted in writing no later than February 13, 2026, at 10:00 a.m. Protests to the solicitation must be filed no later than February 10, 2026, at 5:00 p.m.

The City reserves the right to reject any or all proposals or to waive irregularities.

APPENDIX E

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

Project Name: _____

Proposal Closing: _____

This form must be submitted at the location specified in the Request for Proposals on the advertised proposal closing date and within two (2) working hours after the advertised proposal closing time.

List below the name of each Subcontractor that will be furnishing labor or labor and materials and that is required to be disclosed, the category of work that the Subcontractor will be performing and the dollar value of the subcontract. You must disclose subcontractors whose contract value is equal to or greater than: a) 5% of the total project bid or \$15,000 whichever is greater; or b) \$350,000 regardless of the percentage of the total project bid.

Enter "NONE" if there are no Subcontractors that need to be disclosed (ATTACH ADDITIONAL SHEETS IF NEEDED). Disclosure requirements do not apply to Subcontractors who only provide materials.

	<u>NAME</u>	<u>DOLLAR VALUE</u>	<u>CATEGORY OF WORK</u>
<u>1.</u>			
<u>2.</u>			
<u>3.</u>			

THE CITY MUST REJECT A PROPOSAL IF THE PROPOSER FAILS TO SUBMIT THIS DISCLOSURE FORM BY THE STATED DEADLINE. Subcontractor lists will be made available to the public for inspection immediately after opening.

Form submitted by (proposer company name):

Contact Name: _____

Phone Number: _____