



# Clean Water Services

## FOURTH ADDENDUM TO INVITATION TO BID

### FOR FOREST GROVE WRRF SECONDARY CLARIFIER NO. 3 AND FLAGPOLE LANDSCAPE PROJECT NO. 7036.6925

#### CLEAN WATER SERVICES

**ISSUED: MARCH 24, 2023**

Clean Water Services' Invitation to Bid for ITB - Forest Grove WRRF Secondary Clarifier No. 3 and Flagpole Landscape Project No. 7036.6925 dated February 27, 2023 (ITB) is hereby amended as follows:

1. SUPPLEMENTARY CONDITIONS: Article 6.0 – Bonds and Insurance:
  - Replace SC 6.03.A.5.A.1 with “Workers’ Compensation and other related coverages: State minimum limit: Statutory”
  - Replace SC-6.03.F.1 with “Pollution Liability: None.”
2. ADVERTISEMENT FOR BIDS - Bid Due Date Revised:

Sealed Bids for construction of the Forest Grove Water Resource Recovery Facility (WRRF) Secondary Clarifier No. 3 and Flagpole Landscape Project No. 7036.6925 (Project) will be accepted by Michelle Mann, Program Support Specialist, electronically via Bid Locker at [https://bidlocker.us/details/3318\\_Forest\\_Grove\\_Wrrf\\_Secondary\\_Clarifier\\_No\\_3\\_And\\_Flagpole\\_Landscape\\_Project](https://bidlocker.us/details/3318_Forest_Grove_Wrrf_Secondary_Clarifier_No_3_And_Flagpole_Landscape_Project) until 2:00 p.m., local time, on **April 4, 2023**. Any Bids received after the specified time will not be considered. First-Tier Subcontractor Disclosure Forms must be electronically submitted to Bid Locker at or before 4:00 p.m. local time on the same day (Deadline).

Bids will be publicly opened and read aloud by telephone conference at **2:00 p.m. local time on April 4, 2023**.

Only the date has been revised. All other details of the bid submission and receipt remain the same.

**NOTE:** If you have already uploaded your bid to Bid Locker, please revise the bid document to confirm that you have received all addenda issued for this Invitation to Bid. You may resubmit your bid to Bid Locker until 2:00 p.m on the bid due date.

Except as modified in this Addendum, the ITB will remain in effect as originally written.

## SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof. The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix “SC” added thereto.

SC-1.01.A – Add the following paragraphs after Paragraph 1.01.A.48:

49. Construction Manager: Person or entity designated by the Owner to provide construction management services for the Project with duties, responsibilities, and limitations of the Engineer, unless stipulated otherwise.
50. Equipment (Construction): All machinery and equipment, together with the necessary supplies for upkeep and maintenance, including tools and apparatus necessary for the proper construction and acceptable completion of the Work contemplated. (Installation) All material or articles used in equipping a facility or apparatus required to fulfill a functional design.
51. Latent Defect: A defect in the Work of which the Owner has no actual knowledge.
52. Specialist— The term Specialist refers to a person, partnership, firm, or corporation of established reputation (or if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workers skilled in either (as applicable) manufacturing or fabricating items required by the Contract Documents, or otherwise performing Work required by the Contract Documents. Where the Specifications require the installation by a Specialist, that term shall also be deemed to mean either the manufacturer of the item, a person, partnership, firm, or corporation licensed by the manufacturer, or a person, partnership, firm, or corporation who will perform the Work under the manufacturer’s direct supervision.
53. Utility: Any public or private fixed works for transporting fluids, gases, electricity, signals, or communications.
54. Engineer: references to Engineer in any portion of the Contract Documents shall mean Architect, which is the individual or entity named as such in the Agreement.

### SC-2.01.A - *Delivery of Bonds*

Delete 2.01.A in its entirety and replace it with the following:

- A. Bonds:
1. If Contractor chooses not to sign the Contract electronically, Contractor will deliver the bonds Contractor is required to furnish with the executed counterparts of the Contract to Owner.
  2. If the Contract will be signed electronically, Contractor will deliver the bonds Contractor is required to furnish within 5 days of Owner's Notice of Award the Contract to Contractor.

### SC-2.01.B - *Evidence of Insurance*

Delete 2.01.B in its entirety and replace it with the following:

- B. Evidence of Contractor's Insurance:
1. If the Contract is not being signed electronically, when Contractor delivers the executed counterparts of the Contract to Owner, Contractor will also deliver to Owner, with copies to each additional insured identified by name in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) for the insurance coverages that Contractor is required to purchase and maintain in accordance with Article 6.
  2. If the Contract is being signed electronically, when Contractor delivers the bonds to Owner, Contractor will deliver to Owner, with copies to each additional insured identified by name in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) for the insurance coverages that Contractor is required to purchase and maintain in accordance with Article 6.

### SC-2.02.A - *Copies of Documents*

Delete Paragraph 2.02.A in its entirety and replace it with the following:

If the Contract is not being signed electronically, Owner will furnish Contractor up to three copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

If the Contract is being signed electronically, Owner will provide Contractor with an electronic copy of the complete Contract Document or access to a complete copy, and Contractor will be responsible for making its own copies.

SC-3.03.B.1 – Add the following paragraph after Paragraph 3.03.B.1.b:

c. In resolving inconsistencies among two or more components of the Contract Documents, precedence shall be given in the following order:

1. Permits
2. Agreement
3. Addenda
4. Contractor's Bid (Bid Form)
5. Supplementary Conditions
6. General Conditions
7. Specifications – Division 01
8. Specifications – All remaining Divisions
9. Drawings
10. Bonds

Change Orders, Work Change Directives, Field Orders, Engineer's written interpretation and clarifications and Notice to Proceed, in precedence listed, will take precedence over all other Contract Document components referenced herein. Figure dimensions on Drawings take precedence over scaled dimensions. The Drawings with the higher level of detail take precedence over less detailed Drawings.

SC-4.04.A – Add the following after subparagraph 4.04.A.2:

3. If Contractor falls behind the accepted Progress Schedule, Contractor shall submit for review no later than the time of submittal of the next request for partial payment, such supplementary schedule or schedules as may be necessary to demonstrate the manner in which the acceptable rate of progress will be regained, all without additional cost to Owner. Owner may set-off payment in accordance with Article 15 until updated progress schedule is submitted and approved.

SC-4.05.C.2 – Add the following at the end of Paragraph 4.05.C.2:

Such requests shall be accompanied with supporting documentation referenced to the NOAA INDEX weather in the Project vicinity.

SC- 4.05.G – Change “within 30 days” to “within 10 days”

SC-4.05 – Add the following paragraph after Paragraph 4.05.G:

H. Contractor shall proceed expeditiously with adequate forces and shall achieve the Contract Times. Contractor shall accelerate the Work as required to achieve Contract Times at no additional cost to the Owner. Accelerated Work shall include, but not be limited to, expedited delivery of materials and equipment, increasing the number of workers, working overtime, and working additional shifts.

SC-5.01.B – Delete Paragraph 5.01.B in its entirety.

SC-5.03.A.1 – Add the following language after Paragraph 5.03.A.1:

a. None.

SC-5.03.A.2 – Add the following language after Paragraph 5.03.A.2:

a. None.

C. Contractor may examine copies of reports and drawings identified in SC-5.03.A.1. and SC-5.03.A.2. that were not included with the Bidding Documents at Rock Creek Water Resource Recovery Facility, 3235 SE River Road, Hillsboro, Oregon 97123, during regular business hours by appointment, or may request copies from Engineer.

SC-5.03.B – In the first sentence of 5.03.B, insert the word “reasonably” between the words “may” and “rely” and delete the second sentence (beginning with “Such” and ending with “Conditions”) of Paragraph 5.03.B.

SC-5.06 - Delete Paragraph 5.06.A and Paragraph 5.06.B in their entirety and replace them with the following:

A. No reports or drawings related to Hazardous Environmental Conditions are known to Owner.

SC-6.01.A - Add the following language after Paragraph 6.01.A:

Provide the following additional bond(s):

1. Contractor’s Public Works Bond:

a. Public works bond in the amount of \$30,000 in accordance with the requirements of ORS 279C.836.

SC-6.03.A - Add the following paragraph after Paragraph 6.03.A.4:

5. The limits of liability for the insurance required by Paragraph 6.03.A shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

A. Workers’ Compensation and related coverages under Paragraph 6.03.A:

1. State: Minimum limit \$1,000,000 **Statutory**

2. United States Longshoreman and Harbor Workers’ Compensation Act and Jones Act Coverage: if applicable.

3. Employer’s Liability:

Bodily Injury, Each Accident: \$ 1,000,000

Bodily Injury by Disease, Each Employee: \$ 1,000,000

Bodily Injury/Disease Aggregate: \$ 1,000,000

For work performed in monopolistic states, stop-gap liability coverage shall be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of: \$ 1,000,000

4. Foreign Voluntary Worker Compensation: if applicable

SC-6.03.B - Add the following paragraph after Paragraph 6.03.B:

Contractor's Commercial General Liability under Paragraph 6.03.B, as either primary coverage or through combination of primary and excess / umbrella liability:

a. Policy Limits including Products – Completed Operations

Contract Bid	Per Occurrence Limit	Aggregate Limit
< \$100,000	\$ 1,000,000	\$2,000,000
\$100,000 to \$1,000,000	\$ 1,000,000	\$2,000,000

b. Products - Completed Operations

Contract Bid	Per Occurrence Limit
< \$100,000	\$ 1,000,000
\$100,000 to \$1,000,000	\$ 1,000,000

c.

SC-6.03.D - Add the following paragraph after Paragraph 6.03.D:

1. Contractor's Automobile Liability

a. Bodily Injury:

Each Accident **\$ 1,000,000**

b. Property Damage:

Each Accident \$ 1,000,000

c. Combined Single Limit of \$ 1,000,000

SC-6.03.F - Add the following paragraph after Paragraph 6.03.F:

1. Pollution Liability: **None**

a) ~~Each Occurrence~~ \_\_\_\_\_ \$ 1,000,000

b) ~~General Aggregate~~ \_\_\_\_\_ \$ 1,000,000

SC-6.03.G - Add the following paragraph after Paragraph 6.03.G:

1. Include the following parties or entities as additional insured:

a. **Clean Water Services**, 2550 S.W. Hillsboro Highway, Hillsboro,  
Oregon 97123.

SC-6.03.H - Add the following paragraph after Paragraph 6.03.H:

1. None

SC-6.05.A - Add the following paragraph(s) after Paragraph 6.05.A.13:

14. Property insurance furnished under this Contract shall have deductibles no greater than \$50,000 for direct physical loss in any one occurrence.

SC-7.01.B – Add the following language after the first sentence of Paragraph 7.01.B:

If a replacement is necessary, the replacement shall also be a competent resident superintendent and shall be subject to approval by Owner. The Contractor's superintendent shall be present at the Site at all times while Work is in progress and shall be available by phone for emergencies 24 hours per day, 7 days per week. If at anytime the superintendent leaves the Project Site while Work is in progress, Engineer shall be notified and provided with the name of the Contractor's representative having responsible charge.

SC-7.02.B - Add the following language at the end of Paragraph 7.02.B:

Contractor shall comply with ORS 279C.520.

1. Contractor and Subcontractor regular working hours consist of 7:00 a.m. and 5:00 p.m., Monday through Friday excluding holidays. If a change to these



standard hours is desired, a request must be placed with and approved by Owner and Engineer a minimum of five work days prior to the first day of altered hours.  
2. Owner's legal holidays are **New Year's Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day**

SC-7.08 – Add the following paragraph after Paragraph 7.08.A:

B. Owner will pay the cost of all construction permits.

SC-7.08 - Add the following paragraphs after Paragraph 7.08.A:

B. Owner will pay for the following construction permits and licenses:

1. Forest Grove Plumbing Permit (back flow device) .

SC-7.10 - Add the following paragraph after Paragraph 7.10.C:

D. Those Laws and Regulations for which Contractor may be responsible are included as required by law or for the convenience of the Contractor in the Appendix attached as Exhibit B to the Supplementary Conditions.

SC-7.12.C – Add the following language immediately after Paragraph 7.12.C

Contractors and Owners Safety Plan requirements are in section 01329

SC-7.19.B – Add the following sentence to the end of Paragraph 7.19.B:

The design professional shall be registered in the State of Oregon.

SC-9.02.A – In Paragraph 9.02.A, delete the words “provided Contractor makes no reasonable objection to the replacement engineer”

SC-10.03 - Add the following paragraphs after Paragraph 10.03.A:

B. Resident Project Representative (RPR) will be furnished by Owner. The responsibilities, authority, and limitations of the RPR are limited to those of Engineer in accordance with Paragraph 10.08 and as set forth elsewhere in the Contract Documents and are further limited and described below.

C. Responsibilities and Authority:

1. Schedules: Review and monitor Progress Schedule, Schedule of Submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.

2. Conferences and Meetings: Conduct or attend meetings with Contractor, such as preconstruction conferences, progress meetings, Work conferences and other Project related meetings.

3. Liaison: (i) Serve as Engineer's liaison with Contractor, working principally through Contractor's authorized representative, and assist in understanding the intent of the Contract Documents; (ii) assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's onsite operations; (iii) assist in obtaining from Owner additional details or information when required for proper execution of the Work.

4. Interpretation of Contract Documents: Inform Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

5. Submittals: Receive submittals that are furnished at the Site by Contractor, and notify Engineer of availability for examination. Advise Engineer and Contractor of the commencement of any Work or arrival of materials and equipment at Site, when recognized, requiring a Shop Drawing or Sample if the submittal has not been approved by Engineer.

6. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and provide recommendations to Engineer; transmit to Contractor, in writing decisions as issued by Engineer.

7. Review of Work and Rejection of Defective Work: (i) Conduct onsite observations of the Work in progress to assist Engineer in determining if the Work is, in general, proceeding in accordance with the Contract Documents; (ii) inform Engineer and Contractor whenever RPR believes that any Work is defective; (iii) advise Engineer whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged or does not meet the requirements of any inspection test, or approval required to be made; and advise Engineer of that part of the Work in progress that RPR believes should be corrected or rejected or uncovered for observation, or requires special testing, inspection, or approval.

8. Inspections, Tests, and System Startups: (i) Verify tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; (ii) observe, record, and report to Engineer appropriate details relative to the test procedures and system startups; and (iii) accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

9. Records: (i) Maintain records for use in preparing Project documentation; (ii) keep a diary or log book recording pertinent Site conditions, activities, decisions and events; (iii) record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of Contractors, Subcontractors, and major Suppliers of materials and equipment.

10. Reports: (i) Furnish Engineer periodic reports of progress of the Work and of Contractor's compliance with the Progress Schedule and Schedule of Submittals; (ii) immediately notify Engineer of the occurrence of Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Hazardous Environmental Condition; and (iii) assist Engineer in drafting proposed Change Orders, Work Change Directives, and Field Orders; obtain backup material from Contractor as appropriate.

11. Payment Requests: Review Applications for Payment with Contractor 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.

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

13. Completion: (i) Participate in a Substantial Completion inspection; assist in determination of Substantial Completion and the preparation of lists of items to be completed or corrected; (ii) Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied; and (iii) observe whether items on final list have been completed or corrected, and make recommendations to Engineer concerning acceptance.

D. Limitations of Authority: Resident Project Representative will not:

1. have authority to authorize a deviation from Contract Documents or substitution of materials or equipment, unless authorized by Engineer; or

2. undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's authorized representative; or

3. advise on, issue directions relative to, or assume control over an aspect of the means, methods, techniques, sequences, or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents; or

4. advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor; or

5. participate in specialized field or laboratory tests or inspections conducted offsite by others, except as specifically authorized by Engineer; or

6. accept Shop Drawings or Samples from anyone other than Contractor; or
7. authorize Owner to occupy the Project in whole or in part.

SC-11.05.B - Add the following to the end of Paragraph 11.05.B:

All requests for time extensions shall be supported by Schedule analysis showing the effect on the entire Project taking into account concurrent Work and the critical path, including float. Partial demonstration of impact on particular operations only will not be acceptable to show the criticality of any event on the Project Schedule as a whole.

SC-11.05 - Add the following paragraph after Paragraph 11.05.B:

C. Use of Float:

1. A claim for an adjustment of Contract Times (or Milestones), otherwise allowable under the Contract Documents, shall be granted only when the time lost or gained exceeds the float for the activity at the time of the event giving rise to the claim. Float, the amount of time between the early start date and the late start date, or the early finish date and the late finish date, is jointly owned by both Owner and Contractor whether expressly disclosed or implied in any manner.
2. Contractor shall not use float suppression techniques (including, but not limited to, preferential sequencing caused by late starts of follow-up trades, unreasonably small crews, extended durations, or imposed dates) in information provided to Engineer.

SC-11.07 - Add the following paragraphs after Paragraph 11.07.B:

C. In signing a Change Order, the Owner and Contractor acknowledge and agree that:

1. the stipulated compensation (Contract Price or Contract Times, or both) set forth in the Change Order includes payment for (i) the Cost of the Work covered by the Change Order, (ii) Contractor's fee for overhead and profit, (iii) interruption of progress schedules, (iv) delay and impact, including cumulative impact, on Work under the Contract Documents, and (v) extended overhead;
2. the Change Order constitutes full mutual accord and satisfaction for the change to the Work;
3. no reservation of rights to pursue subsequent claims on the Change Order will be made by either party;
4. no subsequent claim or amendment of the Contract Documents will arise out of or as a result of the Change Order;
5. in executing the Change Order, Contractor shall defend and indemnify Owner and Engineer and their officers, agents and employees from any and all claims of any kind by any Subcontractor or Supplier of any tier based upon the subject matter of any claim released hereunder by Contractor in the Change Order;

6. the individual signing the Change Order for Contractor represents by signing that he or she is fully authorized to bind Contractor; and

7. except as otherwise provided in the Change Order, the Contract, as amended, between Owner and Contractor remains in full force and effect.

D. A copy of the Change Order form that will be used on the Project is attached as Exhibit A to the Supplementary Conditions. Requests for Information (RFIs) of the Contractor and Engineer's responses to RFIs that result in the development and execution of a Change Order shall be attached to and referenced in the Change Order.

SC-11.09 – Add the following paragraphs to ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK:

#### 11.09 Cost Reduction Incentive

A. Contractor may submit cost reduction proposals to the Engineer for modifying the plans, Specifications, or other requirements of this Contract for the sole purpose of reducing the total cost of construction. The cost reduction proposal shall not impair the essential functions or characteristics of the Project, including, but not limited to, service life, economy of operation, ease of maintenance, desired appearance, or safety standards.

B. Cost reduction proposals shall contain the following information:

1. A description of both the existing Contract requirements and the proposed changes.
2. An itemization of the change in Contract requirements if the cost reduction proposal is adopted.
3. A detailed estimate of the cost of performing the Work under the existing Contract and under the proposed change. The detailed estimates shall include all labor, material, equipment, Subcontractor, supervision, overhead and fee costs in sufficient detail as Owner deems appropriate and in accordance with Article 11. The detailed estimates shall also include adequate substantiation for such costs in the form of quantity surveys and Supplier and Subcontractor quotations. If requested by Owner, Contractor shall require any Subcontractors to provide detailed estimates in accordance with this Paragraph.
4. A CPM schedule analysis of the time associated with performing the Work under the existing Contract and under the proposed change.
5. A statement of the time within which the Engineer must make a decision on the cost reduction proposal.

C. Engineer will not be liable to the Contractor for any failure to accept or act upon any cost reduction proposal submitted, nor for any delays to the Work attributable to any such cost reduction proposal.

D. Contractor shall continue to perform the Work in accordance with the requirements of the Contract until an executed Change Order, incorporating the cost reduction proposal has been issued. If an executed Change Order has not been issued by the date indicated in the Contractor's cost reduction proposal, or such other date as the Contractor may

subsequently have specified in writing, such cost reduction proposal shall be deemed rejected.

E. Engineer shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the Engineer reserves the right to disregard Contract bid prices if, in the judgment of the Engineer, such prices do not represent a fair measure of the value of the Work to be performed or deleted.

F. Engineer reserves the right to require the Contractor to share in the Owner's costs of investigating a cost reduction proposal submitted by the Contractor. Where such condition is imposed, the Contractor shall indicate acceptance in writing, and such acceptance shall constitute full authority for the Engineer to deduct amounts payable to the Contractor from any monies due the Contractor under the Contract.

G. If Contractor's cost reduction proposal is accepted in whole or in part, such acceptance will be by a Contract Change Order. The Change Order shall specifically state that it is executed pursuant to this Section. Such change order will incorporate the changes in the Contract Documents which are necessary to implement the cost reduction proposal, and shall include any conditions upon which the Engineer's approval is based. The Change Order shall set forth the estimated net savings in the cost of performing the Work attributable to the cost reduction proposal, and shall further provide that the Contract cost be adjusted by crediting the Owner with 50 percent of the net cost savings. The amount specified to accrue to the Contractor in the Change Order for a cost reduction proposal shall constitute full compensation to the Contractor for all Work associated with the cost reduction proposal.

H. Acceptance of the cost reduction proposal and performance of the Work thereunder shall not extend the time of the Contract unless specifically provided for in the Contract Change Order incorporating the cost reduction proposal.

I. Owner expressly reserves the right to adopt a cost reduction proposal for general use on contracts administered by the Owner when it determines that the cost reduction proposal is suitable for application to other contracts. When an accepted cost reduction proposal is adopted for general use, only the Contractor who first submitted such proposal will be eligible for compensation, and only to those contracts awarded to the Contractor prior to submission of the accepted cost reduction proposal. Cost reduction proposals similar or identical to previously submitted proposals will be eligible for consideration and compensation if the previously submitted cost proposal was not adopted for general application. The Owner or any other public agency shall have the right to use all or any part of a cost reduction proposal without obligation or compensation of any kind to the Contractor.

J. Contractor shall bear all costs to revise all bonds for the Project to include the cost reduction incentive proposal work.

SC-12.01 Delete Paragraph 12.01.D in its entirety and replace with the following:

#### D. Executive Negotiation

1. Within 10 days of the delivery of notice of appeal to Engineer's written decision regarding a Claim, dispute or other matter, senior representatives of at least Owner and Contractor, having authority to settle the dispute, and Engineer shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

2. In the event a mutually acceptable decision cannot be reached through executive negotiation within 20 days of the appealing party's notice, or mutually agreeable longer period, or if the party receiving such notice will not meet within 10 days, Owner or Contractor may make a written declaration, delivered to the other party and Engineer, that the executive negotiation is deemed unsuccessful and may initiate further dispute resolution measures in accordance with Article 17.

SC-12.01.G - Delete the words "direct" and "mediation," in the first sentence.

SC-12.02 – Add the following paragraph to ARTICLE 12 –CLAIMS:

#### 12.02 Right to Audit

A. If the Contractor submits a Claim to the Owner for additional compensation, the Owner shall have the right, as a condition to considering the Claim, and as a basis for evaluation of the Claim, and until the Claim has been settled, to audit the Contractor's books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the Claim has been submitted. The right to audit shall include the right to inspect the Contractor's plant, or such parts thereof, as may be or have been engaged in the performance of the Work. The Contractor further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives, as the Owner deems desirable during the Contractor's normal business hours at the office of the Contractor. The Contractor shall make available to the Owner for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the Owner.

SC-13.01.A.1 – Delete Paragraph 13.01.A.1 in its entirety and replace it with the following:

1. Labor costs for employees in the direct employ of Contractor in the performance of the Work will be the actual cost for wages in accordance with the Oregon Bureau of Labor and Industries (BOLI) Prevailing Wage Rates for Public Works Contracts in Oregon for each craft or type of workers performing the Work at the time the Work is done, plus BOLI's established Fringe Rate for employer payments of payroll taxes, worker compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs

resulting from Federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. Labor costs for equipment operators and helpers will be paid only when such costs are not included in the invoice for equipment rental. The labor costs for foremen and superintendents shall be proportioned to all of their assigned Work and only that applicable to extra Work shall be paid.

SC-13.01.B.4 – In Paragraph 13.01.B.4, delete the word “special” and replace with the word “technical”.

SC-13.01.B.5.c - Delete Paragraph 13.01.B.5.c in its entirety and replace it with the following:

c. Rentals of construction equipment at the rental rate listed for such equipment or from rate sheets from local rental companies. Such rental rate will be used to compute payments for equipment whether the equipment is under the Contractor’s control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment will be the rate resulting in the least total cost to the Owner for the total period of use. If it is deemed necessary by the Contractor to use the equipment not listed by the references specified herein, an equitable rental rate for the equipment will be established by the Engineer. The Contractor may furnish cost data which might assist the Engineer in the establishment of the rental rate. Payment shall be subject to the following:

- 1) Payment for equipment which is already on the Project Site and which is used in the completion of extra Work will not be allowed;
- 2) All equipment shall, in the opinion of the Engineer, be in good working condition and suitable for the purpose for which the equipment is to be used;
- 3) Before construction equipment is used on the extra Work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Engineer, in duplicate, a description of the equipment and its identifying number;
- 4) Unless otherwise specified, manufacturer’s ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least minimum rating recommended by the manufacturer;
- 5) Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, will be considered to be small tools and no payment will be made therefore; and



6) Rental time will not be allowed while equipment is inoperative due to breakdowns. The rental time to be paid for equipment at the Site will be the time the equipment is in productive operation on the extra Work being performed and, in addition, will include the time required to move the equipment to the location of the extra Work and return it to the original location or to another location; except, that moving time will not be paid if the equipment is used on other than the extra Work, even though located at the Site of the extra Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made for loading and transporting costs when the equipment is used at the Site of the extra Work on other than the extra Work.

SC-13.01.C.5 – Insert the words “, including lost opportunity costs” between the words “kind” and “and” in the second line. Delete the “s” on Paragraphs in this same paragraph.

SC-14.02.B - Replace “Owner shall” with “Owner shall perform testing and inspections itself or shall” at the beginning of this paragraph.

SC-14.02.D - Add the following after Paragraph 14.02.D.5:

6. retesting required because of nonconformance to the requirements of the Contract Documents

SC-14.02 - Add the following paragraph at the end of Paragraph 14.02.F:

G. Tests required by Contract Documents to be performed by Contractor that require test certificates be submitted to Owner or Engineer for acceptance shall be made by an independent testing laboratory or agency licensed or certified in accordance with Laws and Regulations and applicable state and local statutes. In the event state license or certification is not required, testing laboratories or agencies shall meet the following applicable requirements:

1. Basic requirements of ASTM E329, “Standard Specification for Agencies Engaged in Construction Inspection, Testing, or Special Inspection” as applicable.
2. Calibrate testing equipment at reasonable intervals by devices of accuracy, traceable to the National Institute of Standards and Technology or accepted values of natural physical constants.

SC-15.01.B - Add the following subparagraph after Paragraph 15.01.B.3:

4. Schedules and Data: During the progress of the Work, each Application for Payment shall be accompanied by Contractor’s updated schedule of operations, or progress report, with Shop Drawings schedules, procurement schedules, value of material on hand included in the application, and other data specified in Section 01330, Submittal Procedures, or reasonably required by Engineer.

SC-15.01.C - Replace “10” with “15” at the beginning of this paragraph.

SC-15.01.D - Delete Paragraph 15.01.D in its entirety and replace it with the following:

D. Payment Becomes Due:

Thirty days after presentation of the Application for Payment to Engineer or 15 days after approval of Application for Payment by Owner, whichever comes first, the amount recommended will (subject to the provisions of Paragraph 15.01.E) become due and when due will be paid by Owner to Contractor. The Engineer shall have 15 days from receipt of Application for Payment to notify Contractor if all or part of the Application for Payment is in dispute. The Application for Payment is deemed approved by Owner when Owner makes payment.

SC-15.01.E.1.e - Add the following immediately after Paragraph 15.01.E.1.e:

, including extra cost of inspection made necessary by delayed Work by Contractor under Article 4.05

SC 15.03.A Add the following to the end of Paragraph 15.03.A:

Substantial Completion is further defined as (i) that degree of completion of the Project’s operating facilities or systems sufficient to provide Owner the full time, uninterrupted, and continuous beneficial operation of the Work; (ii) all required functional, performance and acceptance or startup testing has been successfully demonstrated for all components, devices, equipment, and instrumentation and control to the satisfaction of Engineer in accordance with the requirements of the Specifications; (iii) all inspections required have been completed and identified critical defective Work has been replaced or corrected; and (iv) all appurtenant operations and maintenance features (e.g., hose bibs, drainage systems, etc.) and safety features (e.g., handrails, motor guards, etc.) have been installed and are functional. Project phases are defined in Section 01140, Work Restrictions.

1. Conditions precedent to Substantial Completion of the Work and Engineer’s issuance of a Certificate of Substantial Completion shall include:

- a. Conformance with all training services requirements and deliverables.
- b. Acceptance of all preliminary operation and maintenance manuals by Owner and Engineer.
- c. Submittal of current record documents to Owner and Engineer.
- d. Correction of all state, local, and other regulatory agencies defective Work lists.
- e. Submittals have been received and approved by Engineer including, but not limited to, the following:
  - 1). Approved Shop Drawings.
  - 2). Record Drawings and Specifications.

- 3). Electrical testing and wiring diagram.
- 4). Equipment data forms.
- 5). Manufacturer's certificates of proper installation.
- 6). Factory test reports.
- 7). Commissioning, testing and startup reports.

SC 15.03.B - Add the following subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, shall be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off due under Article 15.01.E Reductions in payment by Owner

SC-15.06.C – The term “Final Completion” in the Agreement means the same as “Completion of the Work.”

SC-16.04 –Delete Paragraph 16.04 in its entirety.

SC-17.01. Delete Paragraph 17.01 in its entirety and replace it with the following:

*17.01 Mediation, Followed by Binding Arbitration:*

A. All appealed or unsettled Claims, disputes or other matters between Owner and Contractor arising out of or relating to the Contract Documents or the breach thereof, (except for Claims which have been waived by the making or acceptance of final payment as provided by Paragraph 15.06) shall first be submitted to mediation under the Construction Industry Mediation Rules of the American Arbitration Association then obtaining subject to the limitations of this Article 17. The mediator of any claim, dispute or other matter submitted to mediation under this Agreement shall not serve as arbitrator of such Claim, dispute, or other matter unless otherwise agreed.

B. Should the mediation be unsuccessful, such Claim, dispute or other matter (except for Claims which have been waived by the making or acceptance of final payment as provided by Paragraph 15.06) shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association subject to the limitations of this Article 17.

C. This Agreement so to mediate or to arbitrate and any other agreement or consent to mediate or to arbitrate entered into in accordance with these Contract Documents will be specifically enforceable under the prevailing law of any court having jurisdiction.

D. No demand for mediation or arbitration of any appealed or unsettled Claim, dispute or other matter that is required to be referred to Engineer initially for decision in accordance with Article 11 and 12 will be made later than 10 days after the date the executive negotiation has been declared unsuccessful by Owner or Contractor; and the failure to

demand mediation or arbitration within said 10 days' period will result in Engineer's decision being final and binding upon Owner and Contractor. If Engineer renders a further decision after mediation or arbitration proceedings have been initiated, the decision may be entered as evidence but will not supersede the proceedings, except where the decision is acceptable to the parties concerned. Time deadlines specified above apply to mediation (after the executive negotiation has been declared unsuccessful by Owner or Contractor) and arbitration (after the mediation process has been declared unsuccessful by Owner or Contractor.)

E. Notice of the demand for mediation or arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration Association, and a copy will be sent to Engineer for information. The demand for mediation will be made within the ten day periods specified in Paragraph 17.01.D as applicable, and in all other cases within a reasonable time after the unsettled Claim, dispute or other matter has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such unsettled Claim, dispute or other matter would be barred by the applicable statute of limitations.

F. Except as provided in Paragraphs 17.01.G and H below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity who is not a party to the Contract unless:

1. the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitrations, and
2. such other person 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, and
3. the written consent of the other person or entity sought to be included and the Owner and Contractor has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any appealed or unsettled Claim, dispute or other matter not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

G. Notwithstanding Paragraph 17.01.F, if an appealed or unsettled Claim, dispute or other matter between Owner and Contractor involves any allegations relating to the design, Owner may join Engineer as a party to the mediation or arbitration between Owner and Contractor hereunder.

H. Notwithstanding Paragraph 17.01.F, if an appealed or unsettled Claim, dispute or other matter between Owner and Contractor involves the Work of a Subcontractor, either Owner or Contractor may join such Subcontractor as a party to the mediation or arbitration between Owner and Contractor hereunder. Contractor shall include in all subcontracts required by Paragraph 7.06.G of the General Conditions a specific provision whereby the Subcontractor consents to being joined in mediation or arbitration between Owner and Contractor involving the Work of such Subcontractor. Nothing in this Paragraph 17.01.H nor in the provision of such subcontract consenting to joinder shall

create any Claim, right or cause of action in favor of Subcontractor and against Owner, Engineer or Engineer's Consultants that does not otherwise exist.

I. At the conclusion of the mediation process specified herein, the Contractor will, as a condition of taking any further action with respect to any Claim, be required to certify that the amount of the Claim is its best good faith estimate of the amount due ("Certified Claim"). Owner will certify its final offer of settlement ("Final Offer").

J. The results of successful mediation will be implemented by a Change Order. The award rendered by the arbitrators will be final, judgement may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal.

SC-17.03. Add the following new paragraph immediately after Paragraph 17.02:

*17.03 Attorney Fees*

The costs of any binding dispute resolution procedure shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

In the event Contractor pursues the Claim, Contractor will be entitled, in addition to whatever recovery it has on the Claim, to be reimbursed its reasonable attorney's fees incurred in the same proportion it was successful based on the difference between its Certified Claim compared to the Owner's Final Offer. Conversely, Owner will be entitled to be reimbursed its reasonable attorney's fees incurred in proportion to the amount that Contractor was unsuccessful based on the difference between its Certified Claim compared to the Owner's Final Offer. For example, if Contractor recovers 40 percent of the difference between its Certified Claim and the amount of the Owner's Final Offer, Contractor would be entitled to recover 40 percent of its reasonable attorney's fees incurred in the prosecuting the Claim and the Owner would be entitled to recover 60 percent of its reasonable attorney's fees incurred in defending the Claim. On the other hand, if the Contractor recovers 60 percent of the difference between its Certified Claim and the amount of the Owner's Final Offer, Contractor would be entitled to recover 60 percent of its reasonable attorney's fees in prosecuting the Claim and the Owner would be entitled to recover 40 percent of its reasonable attorney's fees incurred in defending the Claim. The Certified Claim and the Final Offer will be admissible in any dispute resolution proceeding.

The supplements listed below and attached after the "End of Section", are a part of this Section:

1. Exhibit A, Contract Change Order
2. Exhibit B, Appendix

**END OF SECTION**