

ORDINANCE NO. 1178

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH PACIFIC ROCK PRODUCTS, LLC dba RINKER MATERIALS FOR SUPPLYING READY-MIXED CONCRETE MATERIALS; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby has heretofore solicited bids for an annual material supply contract for ready-mixed concrete; and

WHEREAS, the solicitation documents were sent to at least three local ready-mixed concrete suppliers on April 27, 2005; and

WHEREAS, one bid was received and opened on May 5th, 2005 at 2:00 PM by the City of Canby in the Canby City Hall from Pacific Rock Products, dba Rinker Materials; and

WHEREAS, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, May 18th, 2005, and considered the bid and reports and recommendations of the City staff, including the staff recommendation that the low responsive bid be selected; and

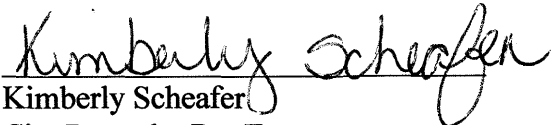
WHEREAS, the Canby City Council determined that the low responsive bid was that of Pacific Rock Products, dba Rinker Materials; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City Administrator is hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, an appropriate contract with Pacific Rock Products, dba Rinker Materials, to supply ready-mixed concrete as specified, for the bid amount of \$76.30 per cubic yard. A copy of the contract with Pacific Rock Products, dba Rinker Materials is attached hereto and marked as Exhibit "A" and by this reference incorporated herein.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, May 18th, 2005; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, June 1st, 2005, after the hour of 7:30 pm at the Council Chambers at the Canby City Hall, 182 N. Holly, Canby, Oregon.

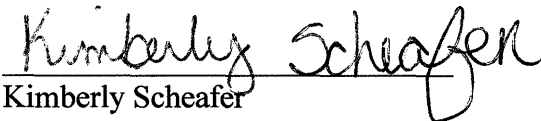

Kimberly Scheafer
City Recorder Pro Tem

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 1st day of June, 2005, by the following vote:

YEAS 5 NAYS 0


Melody Thompson
Mayor

ATTEST:


Kimberly Scheafer
City Recorder Pro Tem

BIDDER'S PACKET and
CONTRACT DOCUMENTS

CITY OF CANBY

Roadway Construction Annual Material Purchase

CLACKAMAS COUNTY, OREGON

1. Hot Mix Asphaltic Concrete
2. Ready Mix Concrete Products
3. 1" - 0" Crushed Base Rock

April 2005

CURRAN-McLEOD, INC. CONSULTING ENGINEERS
6655 S.W. Hampton Street, Suite 210
Portland, Oregon 97223

NOTICE TO CONTRACTORS

Sealed bids for purchase of roadway construction materials will be received by the City of Canby until 2:00 P.M., Thursday, May 5, 2005 at which time bidding will be closed.

Bids forms shall be addressed to Mr. Roy Hester, Public Works Supervisor, 182 North Holly Street, Canby, Oregon 97013. At 2:00 P.M., bids will be opened and read aloud in the Council Chamber of the City Hall, Canby, Oregon.

The project consists of three material purchases: 1. Hot Mix AC which will be priced FOB at the source for transport by the Owner. The Owner anticipates purchasing the following: (1) 0 to 500 tons of Modified ½" Dense AC Mix; (2) 0 to 1,000 tons of ½" Dense AC Mix; (3) 0 to 500 tons of 3/8" Dense AC Mix; (4) Commercial Grade Concrete, to be delivered by the supplier to the City. The Owner anticipates purchasing from 100 to 300 yards; and (5) Crushed Rock Base material to be priced FOB the source for transport by the Owner. The Owner anticipates purchasing from 500 to 1,500 tons. A contract for each product will be awarded separately to the lowest responsive bidder. The supply contract shall be in effect through December 31, 2005 and may be extended by mutual agreement, with an escalation factor based on the ENR Construction Cost Index.

To be considered, bids must be completed on the bidding forms provided, in the manner prescribed in the bidding documents, submitted intact by the date and time specified for the opening of bids.

The City of Canby reserves the right to cancel the procurement or reject any or all bids in accordance with ORS 279B.100.

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BID PROPOSAL

May _____, 2005

Proposal from _____
(hereinafter called "BIDDER"),

organized and existing under the laws of the State of _____, propose to provide the specified materials to the City of Canby, (hereinafter called "OWNER") in compliance with the attached solicitation for Bids.

By submission of this BID, each BIDDER certifies, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to provide materials when requested by the Owner, under this contract after the date to be specified in the NOTICE TO PROCEED, for a contract performance period ending December 31, 2005. Materials included in this bid are ½" dense mix AC, commercial grade concrete and 1" minus crushed rock. Bid prices shall be FOB at the source of materials for the AC and crushed rock. The commercial concrete shall be delivered by the supplier to the project site.

BID SCHEDULE

To determine the most cost effective bid for the Owner, the unit prices for hot mix AC and crushed rock will be evaluated with a location factor added to account for the length of haul for the City staff. (Concrete has no handicap because it is priced per yard delivered) Location factor shall be according to the following table:

LOCATION FACTOR HANDICAP

DISTANCE FROM CITY HALL (ONE WAY)	ADDED COST PER TON
0-5 Miles	\$0
distance over 5 miles	\$0.20 / mile

Bidders may bid on one or more of the items, however, award will be made independently for each material, to the lowest responsive bidder based on the lowest unit price with consideration of the location factor for the hot mix AC and base rock as listed.

No.	AC BID ITEM	UNIT PRICE
1a	Modified ½" Dense Mix AC (Tight "C"), Level 2, Performance Grade (PG) 64-22, bid cost per ton (Bid Price)	\$
1b	Location Factor - (_____ miles)	
1c	Effective cost per ton (1a plus 1b)	\$ _____

No.	AC BID ITEM	UNIT PRICE
2a	½" Dense Mix AC (Class "C"), Level 2, Performance Grade (PG) 64-22, bid cost per ton (Bid Price)	\$
2b	Location Factor - (_____ miles)	
2c	Effective cost per ton (1a plus 1b)	\$ _____

No.	AC BID ITEM	UNIT PRICE
3a	3/8" Dense Mix AC (Class "D"), Level 2, Performance Grade (PG) 64-22, bid cost per ton (Bid Price)	\$
3b	Location Factor - (_____ miles)	
3c	Effective cost per ton (1a plus 1b)	\$ _____

No.	CONCRETE BID ITEM	UNIT PRICE
4	Commercial Grade Concrete, min 3,300 psi 28 day compressive strength per ODOT/ APWA 2002 Specifications, Section 00440, per cubic yard, (bid price)	\$ 76.30/cy

No.	CRUSHED ROCK BID ITEM	UNIT PRICE
5a	1" Minus Crushed Rock, per ODOT/APWA 2002 Standard Specifications, Section 02630, per ton (bid price)	\$ 10.50/ton
5b	Location Factor - (_____ miles)	
5c	Effective cost per ton (3a plus 3b)	\$ _____

The undersigned certifies that (1) this Bid has been arrived at independently and is being submitted without collusion with, and without any agreement, understanding, or planned common course of action with, any other vendor of materials, supplies, equipment, or services described in the Advertisement for Bids designed to limit independent bidding or competition, (2) the contents of this Bid have not been communicated by the undersigned or its employees or agents to any person not an employee or agent of the undersigned or its surety on any bond furnished with the Bid and will not be communicated to such person prior to the official opening of the bids, and (3) if awarded the Contract, will commence work when requested following issuance of Notice to Proceed for the duration of the performance period.

The undersigned certifies that he has received and duly considered the following Addenda to the specifications.

Addenda: No. _____ to No. _____ inclusive.

The undersigned agrees if awarded the Contract, that he will comply with the provisions of the Contract Documents:

Name of Firm Pacific Rock Products, LLC dba Rinker Materials

Signature * 

Name Jeffrey P. Wriston

Address 8705 N.E. 117th Ave. Vancouver, WA 98662

Telephone No. 360-254-7770

If Corporation,
Attest: _____

Secretary of Corporation

*If bid is by a partnership, then one of the partners must sign the bid.

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Sent By: Rinker Materials;

360 882 9821;

May-4-11:06;

Page 2/3

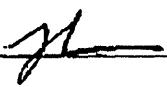
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Signature * 

Name Jeffrey P. Wriston

Address 8705 N.E. 117th Ave. Vancouver, WA 98662

Telephone No. 360-254-7770

If Corporation,
Attest: 
Secretary of Corporation

*If bid is by a partnership, then one of the partners must sign the bid.

CONTRACT FOR CONSTRUCTION

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2005 by and between the

CITY OF CANBY

(hereinafter called OWNER) and

PACIFIC ROCK PRODUCTS, dba RINKER MATERIALS

(hereinafter called CONTRACTOR)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONTRACTOR shall supply materials as required for the duration of the contract as specified in the Contract Documents. The Work is generally described as providing ready mixed concrete.

ARTICLE 2 - ENGINEER

The Project has been designed by CURRAN-McLEOD, INC., Consulting Engineers, who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIME

- 3.1 The performance period is to begin upon issuance of Notice to Proceed and continue through December 31, 2005.
- 3.2 The performance period may be extended by mutual agreement not to exceed a period of five years, with an escalation factor based on the ENR Construction Cost Index.

ARTICLE 4 - CONTRACT PRICE

- 4.1 OWNER shall pay CONTRACTOR for providing concrete material in accordance with the bid schedules in current funds by check in the amount of \$76.30 per cubic yard.

ARTICLE 5 - PAYMENT PROCEDURES

Upon delivery of any material the CONTRACTOR may submit Applications for Payment in accordance with the bid price. Applications for Payment will be processed by the Owner and paid within 30 days of presentation.

ARTICLE 6 - INTEREST

All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project, when requested in accordance with ORS 279.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR certifies that he has familiarized himself with the nature and extent of the Contract Documents, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

- 8.1 Contractor's Bid
- 8.2 This Agreement (pages 7 to 9 inclusive).
- 8.3 Exhibits to this Agreement.
- 8.4 Standard General Conditions for Procurement Contracts (pages 11 to 30 inclusive).
- 8.5 Technical Specifications
- 8.6 Addenda numbers NA Through NA.
- 8.7 Any Modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this ARTICLE 8. The Contract Documents may only be altered, amended or repealed by a written modification.

ARTICLE 9 - MISCELLANEOUS

- 9.1 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically by without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.2 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.3 In the event a suit, arbitration or other legal action is required by either the OWNER or the CONTRACTOR to enforce any provisions of this Agreement, the prevailing parties shall be entitled to all reasonable costs and reasonable attorney's fees upon trial or subsequent appeal.

IN WITNESS WHEREOF, the parties hereto have signed four counterparts of this Agreement.

This Agreement will be effective on June 1, 2005.

OWNER:

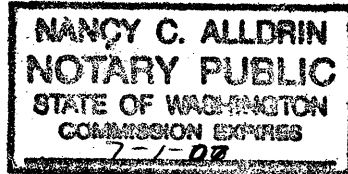
CITY OF CANBY
182 North Holly Street.
Canby, OR 97013

By *Mark Casper*
Name/Title *CITY ADMIN*

CONTRACTOR

Pacific Rock Products, dba
Rinker Materials.
8705 NE 117 Ave
Vancouver, WA 98662

By *Erik Miller*
Name/Title *Erik Miller Concrete Mgr*



Attest *Nancy C Alldrin*
Address for giving notices
Same as above

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 Law.

STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES



**National Society of
Professional Engineers**
Professional Engineers in Private Practice

ASCE American Society
of Civil Engineers

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
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AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General Contractors of America



and the

Construction Specification Institute



Knowledge for Creating
and Sustaining
the Built Environment

These Standard General Conditions For Procurement Contracts have been prepared for use with the Suggested Instructions to Bidders For Procurement Contracts (No. P-200, 2000 Edition), the Suggested Form of Agreement Between Buyer and Seller For Procurement Contracts (No. P-520, 2000 Edition), and the Guide to Preparation of Supplementary Conditions For Procurement Contracts (No. P-800, 2000 Edition). Their provisions are interrelated and a change in one may necessitate a change in the others. Additional information concerning the use of the EJCDC Procurement Documents may be found in the Commentary on Procurement Documents (No. P-001).

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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882

American Consulting Engineers Council
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723

NOTE:

EJCDC publications may be ordered from any of the three sponsoring organizations above and from CSI headquarters at 99 Canal Center Plaza, Suite 300, Alexandria, VA 22314.

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STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Whenever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to the singular or plural thereof. 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* – Those written or graphic instruments issued prior to the opening of Bids in accordance with the Bidding Requirements which clarify or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement* – The written instrument signed by both Buyer and Seller covering the Goods and Special Services and which lists the Contract Documents in existence on the Effective Date of the Agreement.
 3. *Application for Payment* – The form acceptable to Buyer which is used by Seller in requesting progress and final payments and which is accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid* – An offer or proposal submitted on the prescribed form setting forth the prices for the Goods and Special Services to be provided.
 5. *Bidder* – A person who submits a Bid directly to Buyer.
 6. *Bidding Documents* – The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 7. *Bidding Requirements* – The Advertisement or Invitation to Bid, Instructions to Bidders, Form of Bid security, if any, and Bid Form with any supplements.
 8. *Buyer* – The person or public entity purchasing the Goods and Special Services.
 9. *Change Order* – A document recommended by Engineer which is signed by Seller and Buyer and authorizes an addition, deletion, or revision to the Contract Documents or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim* – A written demand or assertion by Buyer or Seller seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract.
 11. *Contract* – The entire and integrated written agreement between Buyer and Seller concerning the Goods and Special Services. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 12. *Contract Documents* – Those items listed in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Files in electronic media format of text, data, graphics, and the like are not Contract Documents, and may not be relied on by Seller. Approved Shop Drawings and other Seller's submittals are not Contract Documents.

13. *Contract Price* – The moneys payable by Buyer to Seller for furnishing the Goods and Special Services in accordance with the Contract Documents as stated in the Agreement.
14. *Contract Times* – The times stated in the Agreement by which the Goods must be delivered and Special Services must be furnished.
15. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, intent, and character of the Goods and Special Services to be furnished by Seller.
16. *Effective Date of the Agreement* – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
17. *Engineer* – The person designated as such in the Agreement.
18. *Field Order* – A written order issued by Engineer which requires minor changes in the Goods or Special Services but which does not involve a change in the Contract Price or Contract Times.
19. *General Requirements* – Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
20. *Goods* – The tangible and movable personal property that is described in the Contract Documents, regardless of whether the property is to be later attached to realty.
21. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
22. *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to the Contract Times.
23. *Notice of Award* – The written notice by Buyer to the apparent Successful Bidder stating that upon timely compliance by the apparent Successful Bidder with the conditions precedent listed therein, Buyer will sign and deliver the Agreement.
24. *Notice to Proceed* – A written notice given by Buyer to Seller fixing the date on which the Contract Times commence to run and on which Seller shall start to perform under the Contract.
25. *Point of Destination* – The specific address of the location where delivery of the Goods shall be made as stated in the Agreement.
26. *Project* – The total undertaking of which the Goods and Special Services to be provided under the Contract are a part.
27. *Project Manual* – The bound documentary information prepared for bidding and furnishing the Goods and Special Services. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
28. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Goods and which establish the standards by which such portion of the Goods or Special Services will be judged.
29. *Seller* – The person furnishing the Goods and Special Services.

30. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Seller and submitted by Seller to illustrate some portion of the Goods or Special Services.
31. *Special Services* – Services associated with the Goods to be furnished by Seller as required by the Contract Documents.
32. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards and workmanship as applied to the furnishing of the Goods and Special Services, and certain administrative details applicable thereto.
33. *Successful Bidder* – The lowest responsible Bidder submitting a responsive Bid, to whom Buyer makes an award.
34. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements these General Conditions.
35. *Written Amendment* – A written statement modifying the Contract Documents, signed by Buyer and Seller on or after the Effective Date of the Agreement and normally dealing with the administrative aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. 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 Goods or Special Services. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Goods or Special Services for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Contract Documents.
2. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.
3. The word “non-conforming” when modifying the words “Goods” or “Special Services”, refers to Goods or Special Services that fail to conform to the Contract Documents.
4. The word “receipt” when referring to the Goods, shall mean the physical taking and possession by the Buyer under the conditions specified in Paragraph 8.01.B.3.

B. Day

1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

- A. When Seller delivers the executed Agreements to Buyer, Seller also shall deliver such bonds as Seller may be required to furnish.

2.02 *Copies of Documents*

- A. Buyer shall furnish Seller up to five copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

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

2.04 *Designated Representatives*

- A. Buyer and Seller shall each designate its representative at the time the Agreement is signed. Each representative shall have full authority to act on behalf of and make binding decisions in any matter arising out of or relating to the Contract.

2.05 *Before Starting Fabrication/Assembly of Goods*

- A. *Seller's Review of Contract Documents:* Before commencing performance of the Contract, Seller shall carefully study and compare the Contract Documents and check and verify pertinent requirements therein and, if specified, all applicable field measurements. Seller shall promptly report in writing to Buyer and Engineer any conflict, error, ambiguity or discrepancy which Seller may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any work affected thereby.

2.06 *Progress Schedule*

- A. Within 15 days after the Contract Times start to run, Seller shall submit to Buyer and Engineer an acceptable progress schedule of activities, including at a minimum, Shop Drawing and Sample submittals, tests, and deliveries as required by the Contract Documents. No progress payment will be made to Seller until an acceptable schedule is submitted to Buyer and Engineer.
- B. The progress schedule will be acceptable to Buyer and Engineer if it provides an orderly progression of the submittals, tests, and deliveries to completion within the specified Milestones and the Contract Times. Such acceptance will not impose on Buyer or Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of the work nor interfere with or relieve Seller from Seller's full responsibility therefor. Such acceptance shall not be deemed to acknowledge the reasonableness and attainability of the schedule.

2.07 *Preliminary Conference*

- A. Within 20 days after the Contract Times start to run, a conference attended by Seller, Buyer, Engineer and others as appropriate will be held to establish a working understanding among the parties as to the Goods and Special Services and to discuss the schedule referred to in Paragraph 2.06.A., procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT AND AMENDING

3.01 *Intent*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for 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 the intended result will be provided, whether or not specifically called for, at no additional cost to Buyer.
- C. Clarifications and interpretations of, or notifications of minor variations and deviations in, the Contract Documents, will be issued by Engineer as provided in Article 9.

3.02 *Laws and Regulations, Standards, Specifications and Codes*

- A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws and Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws and Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- B. No provision of any such standard, specification, manual or code, or any instruction of a supplier shall be effective to change the duties or responsibilities of Buyer or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to Buyer or Engineer, or any of their consultants, agents, or employees any duty or authority to supervise or direct the performance of Seller's obligations or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

- A. *Reporting Discrepancies:* If, during the performance of the Contract, Seller discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Contract or of any standard, specification, manual or code, or of any instruction of any supplier, Seller shall promptly report it to Buyer in writing for Engineer's review. Seller shall not proceed with the furnishing of the Goods or Special Services affected thereby until an amendment to or clarification of the Contract Documents has been issued. Seller shall not be liable to Buyer or Engineer for failure to report any such conflict, error, ambiguity, or discrepancy unless Seller knew or reasonably should have known thereof.
- B. *Resolving Discrepancies:* Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - 1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 - 2. the provisions of any Laws or Regulations applicable to the furnishing of the Goods and Special Services (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Clarifying Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions to the Goods or Special Services or to modify the terms and conditions thereof by a Written Amendment or a Change Order.

- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Goods or Special Services not affecting Contract Price or Contract Times may be authorized, by one or more of the following ways: 1) a Field Order; 2) Engineer's approval of a Shop Drawing pursuant to Paragraph 5.06.D.2; or 3) Engineer's written interpretation or clarification.

ARTICLE 4 – BONDS AND INSURANCE

4.01 *Bonds*

- A. Seller shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price, to Buyer. The bonds shall be delivered in accordance with Paragraph 2.01 and shall remain in effect at least one year after the date final payment is due, except as provided otherwise by Laws or Regulations.
- B. The bonds shall be issued in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations and shall be executed by a surety named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- C. If the surety on a bond is declared bankrupt or becomes insolvent or its right to do business is terminated in the state where the Project is located or it ceases to meet the requirements of Paragraph 4.01.B, Seller shall provide another bond and surety which comply with those requirements within 20 days, at Seller's expense.

4.02 *Insurance*

- A. Seller shall provide insurance of the types and coverages and in the amounts stipulated in the Supplementary Conditions.

ARTICLE 5 – SELLER'S RESPONSIBILITIES

5.01 *Supervision and Superintendence*

- A. Seller shall be solely responsible for the means, methods, techniques, sequences, and procedures used in performing its obligations. Seller shall be responsible to see that the completed Goods and Special Services conform to the Contract Documents.

5.02 *Labor, Materials and Equipment*

- A. Seller shall provide competent, qualified and trained personnel in all aspects of its performance of the Contract.
- B. All equipment, products and material incorporated into the Goods shall be as specified, or if not specified, shall be new, of good quality and protected, assembled, used, connected, applied, cleaned and conditioned in accordance with the original manufacturer's instructions, except as otherwise may be provided in the Contract Documents.

5.03 *Compliance with Laws and Regulations, Standards, Specifications and Codes*

- A. Seller shall comply with all Laws and Regulations applicable to the furnishing of the Goods and Special Services.

5.04 *Or-Equals*

- A. Whenever an item of material or equipment to be incorporated into the Goods is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier or manufacturer, the specification or description 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, other items of material or equipment or material or equipment of other suppliers or manufacturers may be submitted to Buyer for Engineer's review.

1. If in Engineer's sole discretion, such an item of material or equipment proposed by Seller is functionally equal to that named and sufficiently similar so that no change in related work will be required, it may be considered by Engineer as an "or-equal" item.
2. For the purposes of this paragraph, a proposed item of material or equipment may be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment, Engineer determines that: 1) it is at least equal in quality, durability, appearance, strength, and design characteristics; and 2) it will reliably perform at least equally well, the function imposed by the design concept of the completed Project as a functioning whole; and
 - b. Seller certifies that: 1) there is no increase in any cost including capital, installation or operating to Buyer; and 2) the proposed item will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

B. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraph 5.04.A. Engineer will be the sole judge of acceptability. No "or-equal" will be ordered, manufactured or utilized until Engineer's review is complete, which will be evidenced by an approved Shop Drawing. Engineer will advise Buyer and Seller in writing of any negative determination. Notwithstanding Engineer's approval of an "or-equal" item, Seller shall remain obligated to comply with the requirements of the Contract Documents.

C. *Special Guarantee:* Buyer may require Seller to furnish at Seller's expense a special performance guarantee or other surety with respect to any such proposed "or-equal."

D. *Data:* Seller shall provide all data in support of any such proposed "or-equal" at Seller's expense.

5.05 Taxes

A. Seller shall be responsible for all taxes and duties arising out of the sale of the Goods and the furnishing of Special Services. All taxes are included in the Contract Price.

5.06 Shop Drawings and Samples

A. Seller shall submit Shop Drawings and Samples to Buyer for Engineer's review and approval in accordance with the schedule required in Paragraph 2.06.A. All submittals will be identified as required and furnished in the number of copies specified in the Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Seller proposes to provide.

B. Where a Shop Drawing or Sample is required by the Contract Documents, any related work performed prior to Engineer's approval of the pertinent submittal will be at the sole expense and responsibility of Seller.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Seller shall have determined and verified:

- a. all field measurements (if required), quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto; and
- b. that all materials are suitable with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the furnishing of Goods and Special Services.

2. Seller shall also have reviewed and coordinated each Shop Drawing or Sample with the Contract Documents.
3. Each submittal shall include a written certification from Seller that Seller has reviewed the subject submittal and confirmed that it is in compliance with the requirements of the Contract Documents. Both Buyer and Engineer shall be entitled to rely on such certification from Seller.
4. With each submittal, Seller shall give Buyer and Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both in a written communication separate from the submittal and by specific notation on each Shop Drawing or Sample.

D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples.
2. Engineer's approval of Shop Drawings or Samples will be subject to the standard of Paragraph 1.02.A.1. Engineer's approval will not relieve Seller from responsibility for any variation from the requirements of the Contract Documents unless Seller has in writing called Engineer's attention to each such variation at the time of each submittal as required by Paragraph 5.06.C.1. and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval.

E. Resubmittal Procedures

1. Seller 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. Seller shall direct specific attention in writing to any revisions other than the corrections called for by Engineer on previous submittals.

5.07 *Continuing Performance*

- A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.06.A., and the Goods shall be delivered and the Special Services furnished within the Contract Times specified in the Agreement.
- B. Seller shall carry on the work and adhere to the progress schedule during all disputes or disagreements with Buyer. No work shall be delayed or postponed pending resolution of any disputes or disagreements.

5.08 *Seller's Warranties and Guarantees*

- A. Seller warrants and guarantees to Buyer that the title to the Goods conveyed shall be proper, its transfer rightful, and free from any security interest, lien, or other encumbrance.
- B. Seller warrants and guarantees to Buyer that all Goods and Special Services will conform with the Contract Documents, including any Samples approved by Engineer, and the Goods will be of merchantable quality. Engineer shall be entitled to rely on representation of Seller's warranty and guarantee.
- C. Seller's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, improper modification or improper maintenance or operation by persons other than Seller, or
 2. normal wear and tear under normal usage.

- D. Seller's obligation to furnish the Goods and Special Services in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Goods or Special Services that are non-conforming, or a release of Seller's obligation to furnish the Goods and Special Services in accordance with the Contract Documents:
1. observations by Buyer or Engineer;
 2. recommendation by Engineer or payment by Buyer of any progress or final payment;
 3. use of the Goods by Buyer;
 4. any acceptance by Buyer (subject to the provisions of Paragraph 8.02.D.1) or any failure to do so;
 5. the issuance of a notice of acceptance by Buyer pursuant to the provisions of Article 8;
 6. any inspection, test or approval by others; or
 7. any correction of non-conforming Goods or Special Services by Buyer.
- E. Buyer shall within a reasonable time notify Seller of any breach of Seller's warranties or guarantees. If Buyer receives notice of a suit or claim as a result of such breach, Buyer also may give Seller notice in writing to defend such suit or claim. If Seller fails to defend such suit or claim, Seller will be bound in any subsequent suit or claim against Seller by Buyer by any factual determination in the prior suit.

5.09 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, and their officers, directors, shareholders, partners, employees, agents, consultants, contractors and subcontractors from any and all claims, costs, losses, and demands or judgments for damages for claims (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or relating to a negligent act or omission or the breach of any obligation under this Contract by Seller, or its officers, directors, shareholders, partners, employees, agents, consultants, contractors or subcontractors, or anyone for whom Seller is responsible, provided that any such claim, cost, loss, or damage;
1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Goods or Special Services themselves), including the loss of use resulting therefrom; and
 2. is caused in whole or in part by any negligent act or omission of Seller or any individual or entity directly or indirectly employed to furnish any of the Goods or Special Services or anyone for whose acts Seller may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.
- B. The indemnification obligations of Seller under paragraph 5.09.A shall not extend to the liability of Engineer and Engineer's consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:
1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 6 – SHIPPING AND DELIVERY

6.01 *Shipping*

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

6.02 *Delivery*

- A. Seller shall deliver the Goods F.O.B. the Point of Destination in accordance with the Contract Times set forth in the Agreement, or other date agreed to by Buyer and Seller.
- B. Seller shall provide written notice to Buyer at least 15 days before shipment of the manner of shipment and the anticipated delivery date. The notice shall also include any instructions concerning special equipment or services required at the Point of Destination to unload and care for the Goods. Seller shall also require the carrier to give Buyer at least 24 hours notice by telephone prior to the anticipated hour of delivery.
- C. Buyer will be responsible and bear all costs for unloading the Goods from carrier.
- D. Buyer will assure that adequate facilities are available to receive delivery of the Goods during the Contract Times set forth in the Agreement, or another date agreed by Buyer and Seller.
- E. No partial deliveries shall be allowed, unless permitted or required by the Contract Documents or agreed to in writing by Buyer.

6.03 *Risk of Loss*

- A. Risk of loss and insurable interests transfer from Seller to Buyer upon Buyer's receipt of the Goods.
- B. Notwithstanding the provisions of Paragraph 6.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods shall remain with Seller until Seller corrects the non-conformity or Buyer accepts the Goods.

ARTICLE 7 – CHANGES: SCHEDULE AND DELAY

7.01 *Changes in the Goods and Special Services*

- A. Buyer may at any time, without notice to any surety, make changes in the Contract Documents within the general scope of the Contract.
- B. If any such change or action by Buyer affects the Contract Price or Contract Times, Seller shall notify Buyer within 15 days after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Buyer within 45 days after such occurrence. If Seller fails to do so, Seller waives any Claim for such adjustment.
- C. Seller shall not suspend performance while Buyer and Seller are in the process of making such changes and any related adjustments.

7.02 *Changes in Laws and Regulations*

- A. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of furnishing the Goods and Special Services shall be the subject of an adjustment in Contract Price or Contract Times. If Buyer and Seller are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 9.06.A.

7.03 *Changing Contract Price or Contract Times*

- A. The Contract Price or Contract Times may only be changed by:
 - 1. a Change Order;
 - 2. a Written Amendment; or
 - 3. a written unilateral order of Buyer, in which case Seller shall be entitled to an equitable adjustment in Contract Price or Contract Times for any reasonable and necessary costs or delays incurred by Seller to accommodate such a change.
- B. If Seller is prevented from delivering the Goods or performing the Special Services within the Contract Times for any unforeseen reason beyond its control and not attributable to its actions or inactions, then Seller shall be entitled to an adjustment of the Contract Times to the extent attributable to such reason. Such reasons include fire, floods, epidemics, abnormal weather conditions, acts of God, acts of war, directions by government authority, and other like matters. If such an event occurs and delays Seller's performance, Seller shall notify Buyer in writing within 15 days of the beginning of the event causing the delay, stating the reason therefor.
- C. Contract Times will not be modified for delays within the control of Seller, including labor strife, transportation shortages or delays at Seller's facilities. Delays attributable to and within the control of Seller's subcontractors or suppliers shall be deemed to be delays within the control of Seller.
- D. If Seller is prevented from delivering the Goods or furnishing the Special Services within the Contract Times due to the actions or inactions of Buyer, Seller shall be entitled to any reasonable and necessary additional costs arising out of such delay to the extent directly attributable to Buyer.
- E. Neither Buyer nor Seller shall be entitled to any damages arising from delays which are beyond the control of both Buyer and Seller, including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, acts of war, direction by government authority, and other like matters.

ARTICLE 8 – BUYER'S RIGHTS

8.01 *Inspections and Testing*

A. General

- 1. Buyer shall have the right to perform, or cause to be performed, reasonable inspections and require reasonable tests of the Goods at Seller's facility, and at the Point of Destination. Seller shall allow Buyer a reasonable time to perform such inspections or tests.
- 2. Seller shall bear all expenses, except for travel, lodging and subsistence expenses of Buyer's representatives, for inspections and tests at Seller's facility, but Buyer shall be entitled to reimbursement from Seller of travel, lodging and subsistence expenses of Buyer's representatives if the Goods are non-conforming.
- 3. Buyer shall bear all expenses, except for travel, lodging and subsistence expenses of Seller's representatives, for inspections and tests at the Point of Destination, but Buyer shall be entitled to reimbursement from Seller for Buyer's expenses for reinspection or retesting if, on the basis of an initial inspection or testing, the Goods are determined to be non-conforming.
- 4. Seller shall provide Buyer 30 days written notice of the readiness of the Goods for all inspections, tests, or approvals which the Contract Documents specify are to be observed by Buyer prior to shipment.
- 5. Buyer will give Seller timely notice of all specified tests, inspections and approvals of the Goods which are to be conducted at the Point of Destination.

6. If, on the basis of any inspections or testing, the Goods appear to be conforming, Buyer will give Seller prompt notice thereof. If on the basis of said inspections or testing, the Goods appear to be non-conforming, Buyer will give Seller prompt notice thereof and will advise Seller of the remedy Buyer elects under the provisions of Paragraph 8.02.
7. Neither payments made by Buyer to Seller prior to any tests or inspections, nor any tests or inspections shall constitute acceptance of non-conforming Goods, or prejudice Buyer's rights under the Contract.

B. Inspection on Delivery

1. Buyer or Engineer will inspect the Goods upon delivery solely for purposes of identifying the Goods and general verification of quantities and observation of apparent condition in order to provide a basis for a progress payment. Such 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 non-conforming.
2. Within ten days of such inspection, Buyer shall provide Seller with written notice of Buyer's determination regarding conformity of the Goods. In the event Buyer does not provide such notice, it will be presumed that the Goods appear to be conforming.
3. If, on the basis of the inspection specified in Paragraph 8.01.B.1, the Goods appear to be conforming, Buyer's notice thereof to Seller will acknowledge receipt of the Goods.

C. Final Inspection

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 intended, Buyer or Engineer will make a final inspection.
2. If, on the basis of the final inspection, the Goods are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods.
3. If, on the basis of the final inspection, the Goods are non-conforming, Buyer will identify the non-conformity in writing.

8.02 *Non-Conforming Goods or Special Services*

- A. If, on the basis of inspections and testing prior to delivery, the Goods appear to be non-conforming, or if at any time after Buyer has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 8.03, Buyer determines that the Goods are non-conforming, Seller shall promptly, without cost to Buyer and in response to written instructions from Buyer, either correct such non-conforming Goods, or, if rejected by Buyer, remove and replace the non-conforming Goods with conforming Goods, including all work required for reinstallation.

B. Buyer's Rejection of Non-Conforming Goods

1. If Buyer elects to reject the Goods in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Goods. If Goods have been delivered to Buyer, Seller shall promptly, and within the Contract Times, remove and replace the rejected Goods.
2. Seller shall bear all costs, losses and damages attributable to the removal and replacement of the non-conforming Goods as provided in Paragraph 8.02.E.
3. Upon rejection of the Goods, Buyer retains a security interest in the Goods or to the extent of any payments made and expenses incurred in their testing and inspection.

C. *Remedying Non-Conforming Goods or Special Services*

1. If Buyer elects to permit the Seller to modify the Goods to remove the non-conformance, Seller shall promptly provide a schedule for such modifications and shall make the Goods conforming within a reasonable time.
2. If Buyer notifies Seller in writing that any of the Special Services are non-conforming, Seller shall promptly provide conforming services acceptable to Buyer. If Seller fails to do so, Buyer may delete the Special Services and reduce the Contract Price a commensurate amount.

D. *Buyer's Acceptance of Non-Conforming Goods*

1. Instead of requiring correction or removal and replacement of non-conforming Goods discovered either before or after final payment, Buyer may accept the non-conforming Goods. Seller shall bear all costs, losses, and damages attributable to Buyer's evaluation of and determination to accept such non-conforming Goods as provided in Paragraph 8.02.E.

- E. Seller shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for re-inspection, retesting and for any engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the non-conforming Goods or Special Services, including the correction or removal and replacement of the non-conforming Goods and the replacement of property of Buyer and others destroyed by the correction or removal and replacement of the non-conforming Goods, or the obtaining of conforming Special Services from others.

8.03 *Correction Period*

- A. Seller's responsibility for correcting all non-conformities in the Goods will extend for a period of one year after the earlier of the date on which Buyer has placed the Goods in continuous service or the date of final payment, or for such longer period of time as may be prescribed by Laws or Regulations or by the terms of any specific provisions of the Contract Documents.

ARTICLE 9 – ROLE OF ENGINEER

9.01 *Duties and Responsibilities*

- A. The duties and responsibilities and the limitations of authority of Engineer are set forth in the Contract Documents.

9.02 *Clarifications and Interpretations*

- A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Such written clarifications and interpretations will be binding on Buyer and Seller. If either Buyer or Seller believes that a written clarification or interpretation justifies an adjustment in the Contract Price or Contract Times, either may make a Claim therefor.

9.03 *Authorized Variations*

- A. Engineer may authorize minor deviations or variations in the Contract Documents by: 1) issuance of approved Shop Drawings when such change or deviation was duly noted by Seller as required in Paragraph 5.06.C.4, or 2) a Field Order.

9.04 *Rejecting Non-Conforming Goods and Special Services*

- A. Engineer will have the authority to disapprove or reject Goods or Special Services which Engineer believes to be non-conforming.

9.05 *Decisions on Requirements of Contract Documents*

- A. Engineer will be the initial interpreter of the Contract Documents and judge of the acceptability of the Goods and Special Services. Claims, disputes and other matters relating to the acceptability of the Goods and Special Services or the interpretation of the requirements of the Contract Documents pertaining to Seller's performance will be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph.
- B. When functioning as interpreter and judge under this Paragraph 9.05, Engineer will not show partiality to Buyer or Seller and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer pursuant to this Paragraph 9.05 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 10.07) will be a condition precedent to any exercise by Buyer or Seller of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.06 *Claims and Disputes*

- A. *Notice:* Written notice of each Claim, dispute or other matter relating to the acceptability of the Goods and Special Services or the interpretation of the requirements of the Contract Documents pertaining to Seller's performance shall be delivered by the claimant to Engineer and the other party to the Agreement within 15 days after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within 45 days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data.
- B. *Engineer's Decision:* Engineer will render a decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. Engineer's written decision on such Claim, or dispute, or other matter will be final and binding upon Buyer and Seller unless:
 - 1. an appeal from Engineer's decision is made within the time limits and in accordance with the dispute resolution procedures set forth in Article 13; or
 - 2. if no such dispute resolution procedures have been set forth, a written notice of intention to appeal is delivered by Buyer or Seller to the other and to Engineer within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision (unless otherwise agreed to in writing by Buyer and Seller), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.
- C. If Engineer does not render a formal decision in writing within the time stated in Paragraph 9.06.B., a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

ARTICLE 10 – PAYMENT

10.01 *Applications for Progress Payments*

- A. Seller shall submit to Buyer for Engineer's review Applications for Payment filled out and signed by Seller and accompanied by such supporting documentation as is required by the Contract Documents and also as Buyer or Engineer may reasonably require. The timing and amounts of progress payments shall be as stipulated in the Agreement.
 - 1. The first application for Payment will be submitted after review and approval by Engineer of all Shop Drawings and of all Samples required by the Contract Documents.

2. The second Application for Payment will be submitted after receipt of the Goods has been acknowledged in accordance with Paragraph 8.01.B and will be accompanied by a bill of sale, invoice or other documentation satisfactory to Buyer warranting that Buyer has rightfully received good title to the Goods from Seller and that the Goods are free and clear of all liens. Such documentation will include releases and waivers from all parties with viable lien rights. In the case of multiple deliveries of Goods, additional Applications for Payment accompanied by the required documentation will be submitted as Buyer acknowledges receipt of additional items of the Goods.

10.02 *Review of Applications for Progress Payments*

- A. Engineer will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Buyer, or return the Application to Seller indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Seller may make the necessary corrections and resubmit the Application.
 1. Engineer's recommendation of payment requested in the first Application for Payment will constitute a representation by Engineer, based on Engineer's review of the Application for Payment and the accompanying data, that the Shop Drawings and Samples have been reviewed and approved as required by the Contract Documents and Seller is entitled to payment of the amount recommended.
 2. Engineer's recommendation of payment requested in the Application for Payment submitted upon Buyer's acknowledgment of receipt of the Goods will constitute a representation by Engineer, based on Engineer's review of the Application for Payment and the accompanying data Seller is entitled to payment of the amount recommended. Such recommendation will not constitute a representation that Engineer has made a final inspection of the Goods, that the Goods are free from non-conformities, acceptable or in conformance with the Contract Documents, that Engineer has made any investigation as to Buyer's title to the Goods, that exhaustive or continuous inspections have been made to check the quality or the quantity of the Goods beyond the responsibilities specifically assigned to Engineer in the Contract Documents or that there may not be other matters or issues between the parties that might entitle Seller to additional payments by Buyer or Buyer to withhold payment to Seller.
 3. Engineer may refuse to recommend that all or any part of a progress payment be made, or Engineer may nullify all or any part of any payment previously recommended if, in Engineer's opinion, such recommendation would be incorrect or if on the basis of subsequently discovered evidence or subsequent inspections or tests Engineer considers such refusal or nullification necessary to protect Buyer from loss because the Contract Price has been reduced, Goods are found to be non-conforming, or Seller has failed to furnish acceptable Special Services.

10.03 *Amount and Timing of Progress Payments*

- A. Subject to Paragraph 10.02.A., the amounts of the progress payments will be as provided in the Agreement. Buyer shall within 30 days after receipt of each Application for Payment with Engineer's recommendation pay Seller the amount recommended; but, in the case of the Application for Payment upon Buyer's acknowledgment of receipt of the Goods, said 30-day period may be extended for so long as is necessary (but in no event more than 60 days) for Buyer to examine the bill of sale and other documentation submitted therewith. Buyer shall notify Seller promptly of any deficiency in the documentation and shall not unreasonably withhold payment.

10.04 *Suspension of or Reduction in Payment*

- A. Buyer may suspend or reduce the amount of progress payments, even though recommended for payment by Engineer, under the following circumstances:
 1. Buyer has reasonable grounds to conclude that Seller will not furnish the Goods or the Special Services in accordance with the Contract Documents,

2. Buyer has requested in writing assurances from Seller that the Goods or Special Services will be delivered or furnished in accordance with the Contract Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request.
- B. If Buyer refuses to make payment of the full amount recommended by Engineer, Buyer will provide Seller and Engineer immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Buyer shall promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.

10.05 *Final Application for Payment*

- A. After Seller has corrected all non-conformities to the satisfaction of Buyer and Engineer, furnished all Special Services, and delivered all documents required by the Contract Documents, Engineer will issue to Buyer and Seller a notice of acceptability. Seller may then make application for final payment following the procedure for progress payments. The final Application for Payment will be accompanied by all documentation called for in the Contract Documents, a list of all unsettled claims and such other data and information as Buyer or Engineer may reasonably require.

10.06 *Final Payment*

- A. If, on the basis of the review of the final Application for Payment and accompanying documentation, Engineer is satisfied that the Goods and Special Services have been furnished in accordance with the Contract Documents, and that Seller's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, recommend in writing final payment subject to the provisions of Paragraph 10.07 and present the Application to Buyer. Otherwise, Engineer will return the Application to Seller, indicating the reasons for refusing to recommend final payment, in which case Seller shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, Buyer shall, within 30 days after receipt thereof, pay Seller the amount recommended by Engineer.

10.07 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
1. a waiver of all Claims by Buyer against Seller, except Claims arising from unsettled liens and Claims, from non-conformities in the Goods or Special Services appearing after final payment, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Seller's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Seller against Buyer other than those previously made in accordance with the requirements herein and expressly noted in writing by Seller as still unsettled in its final Application for Payment.

ARTICLE 11 – CANCELLATION, SUSPENSION, AND TERMINATION

11.01 *Cancellation*

- A. Buyer has the right to cancel the Contract, without cause, at any time prior to delivery of the Goods by written notice. Cancellation pursuant to the terms of this paragraph shall not constitute a breach of contract by Buyer. Upon cancellation:
1. Buyer shall pay Seller for Goods, specially manufactured for the Project, plus any documented reasonable direct and indirect costs incurred by Seller in producing such Goods not recovered by payment for the reasonable value of the Goods.

2. For Goods which are not specially manufactured for the Project, Seller shall be entitled to a restocking charge of 10 percent of the unpaid Contract Price of such Goods.

11.02 *Suspension of Performance by Buyer*

- A. Buyer has the right to suspend performance of the Contract, without cause, by written notice. Upon suspension under this paragraph, Seller shall be entitled to an increase in the Contract Times and Contract Price caused by the suspension, provided that performance would not have been suspended or delayed for causes attributable to Seller.

11.03 *Suspension of Performance by Seller*

- A. Subject to the provisions of Paragraph 5.07.B, Seller may suspend the furnishing of the Goods and Special Services only under the following circumstance:
 1. Seller has reasonable grounds to conclude that Buyer will not perform its future payment obligations under the Contract. ("Reasonable grounds" shall not include a pending dispute or disagreement with Buyer) and,
 2. Seller has requested in writing assurances from Buyer that future payments will be made in accordance with the Contract, and Buyer has failed to provide such assurances within ten days of Seller's written request.

11.04 *Breach and Termination*

A. Buyer's Breach

1. Buyer shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including but not limited to:
 - a. wrongful rejection or revocation of Buyer's acceptance of the Goods,
 - b. failure to make payments in accordance with the Contract Documents, or
 - c. wrongful repudiation of the Contract.
2. Seller shall have the right to terminate the Contract for cause by declaring a breach should Buyer fail to comply with any material provisions of the Contract. Upon termination, Seller shall be entitled to all remedies provided by Laws and Regulations.
 - a. In the event Seller believes Buyer is in breach of its obligations under the Contract, Seller shall provide Buyer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Buyer shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Seller may grant in writing) within which to cure the alleged breach.

B. Seller's Breach

1. Seller shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including, but not limited to:
 - a. failure to deliver the Goods or perform the Special Services in accordance with the Contract Documents,
 - b. wrongful repudiation of the Contract, or
 - c. delivery or furnishing of non-conforming Goods or Special Services.

2. Buyer may terminate Seller's right to perform the Contract for cause by declaring a breach should Seller fail to comply with any material provision of the Contract Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.
 - a. In the event Buyer believes Seller is in breach of its obligations under the Contract, and except as provided in Paragraph 11.04.B.2.b, Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Buyer may grant in writing) within which to cure the alleged breach.
 - b. If and to the extent that Seller has provided a performance bond under the provisions of Paragraph 4.01, the notice and cure procedures of that bond, if any, shall supersede the notice and cure procedures of Paragraph 11.04.B.2.a.

ARTICLE 12 – LICENSES AND FEES

12.01 *Intellectual Property and License Fees*

- A. Unless specifically stated elsewhere in the Contract Documents, Seller is not transferring any intellectual property rights, patent rights, or licenses for the Goods delivered. However, in the event the Seller is manufacturing to Buyer's design, Buyer retains all intellectual property rights in such design.
- B. Seller shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Goods, unless specified otherwise by the Contract Documents.

12.02 *Seller's Infringement*

- A. Subject to Paragraph 12.01.A, Seller shall indemnify and hold harmless Buyer, Engineer and their officers, directors, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, 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 out of or relating to any infringement or alleged infringement of any United States or foreign patent or copyright by any of the Goods delivered hereunder.
- B. In the event of suit or threat of suit for intellectual property infringement, Buyer will notify Seller within a reasonable time of receiving notice thereof.
- C. Upon written demand from Buyer, Seller shall be given the opportunity to defend the claim or suit, including negotiating a settlement. Seller shall have control over such claim or suit, provided that Seller agrees to bear all expenses and to satisfy any adverse judgment thereof.
 1. If Seller fails to defend such suit or claim after written demand by Buyer, Seller will be bound in any subsequent suit or claim against Seller by Buyer by any factual determination in the prior suit or claim.
 2. If Buyer fails to provide Seller the opportunity to defend such suit or claim after written demand by Seller, Buyer shall be barred from any remedy against Seller for such suit or claim.
- D. If a determination is made that Seller has infringed upon intellectual property rights of another, Seller may obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction as necessary to avoid the infringement at Seller's own expense.

12.03 *Buyer's Infringement*

- A. Buyer shall indemnify and hold harmless Seller, and its officers, directors, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, 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 out of or relating to any infringement or alleged infringement of any United States or foreign patent or copyright caused by Seller's compliance with Buyer's design of the Goods or Buyer's use of the Goods in combination with other materials or equipment in any process (unless intent of such use was known to Seller and Seller had reason to know such infringement would result).
- B. In the event of suit or threat of suit for intellectual property infringement, Seller must within a reasonable time after receiving notice thereof notify Buyer.
- C. Upon written demand from Seller, Buyer shall be given the opportunity to defend the claim or suit, including negotiating a settlement. Buyer shall have control over such claim or suit, provided that Buyer agrees to bear all expenses and to satisfy any adverse judgment thereof.
 - 1. If Buyer fails to defend such suit or claim after written demand by Seller, Buyer will be bound in any subsequent suit or claim against Buyer by Seller by any factual determination in the prior suit or claim.
 - 2. If Seller fails to provide Buyer the opportunity to defend such suit or claim after written demand by Buyer, Seller shall be barred from any remedy against Buyer for such suit or claim.

12.04 *Reuse of Documents*

- A. Neither Seller nor any other person furnishing any of the Goods or Special Services under a direct or indirect contract with Seller shall: (1) 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 (2) reuse any of such Drawings, Specifications, other documents, or copies thereof on any other project without written consent of Buyer and Engineer and specific written verification or adaptation by Engineer. This prohibition will survive termination or completion of the Contract. Nothing herein shall preclude Seller from retaining copies of the Contract Documents for record purposes.

ARTICLE 13 – DISPUTE RESOLUTION

13.01 *Dispute Resolution Method*

- A. Disputes between Buyer and Seller will be resolved as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of Paragraphs 9.05 and 9.06, Buyer and Seller may exercise such rights or remedies as they have under Controlling Law.

ARTICLE 14 – MISCELLANEOUS

14.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

14.02 *Controlling Law*

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

14.03 *Computation of Time*

- A. When any period of time is referred to in the Contract Documents 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 shall be omitted from the computation.

14.04 *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, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

14.05 *Survival of Obligations*

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

**SECTION 01000
GENERAL REQUIREMENTS**

PART 1 - GENERAL

1.01 SUMMARY OF WORK

- A. The CONTRACTOR shall furnish all material and equipment necessary to complete the contract in all respects as specified herein and under the terms of the Contract.
- B. The work in this Contract is as described in the Notice to Contractors, Contract for Construction and the Bid Proposal.

1.02 GENERAL CONSTRUCTION

- A. The intent of the Contract Documents is to ensure the systematic implementation of construction with a minimum of public inconvenience. The CONTRACTOR shall coordinate his work to minimize any inconvenience to either party.

1.03 CONTRACTOR RESPONSIBILITY

- A. The CONTRACTOR shall be fully informed on all Federal and State laws and all local laws, ordinances and regulations of bodies having jurisdiction or authority or which in any way might affect the conduct of the work.
- B. The CONTRACTOR shall indemnify and protect the OWNER and ENGINEER against any claim or liability arising from a violation of any law, ordinance or regulation by himself, any subcontractor or employee of the CONTRACTOR or subcontractor.
- C. The CONTRACTOR shall obtain and pay for all licenses and permits and shall be responsible for all fees, taxes or payments required for the lawful and due performance of the Work.

1.04 SPECIAL REQUIREMENTS

- A. No bonding shall be required for performance of this contract, including bid bonds, performance bonds or payment bonds.
- B. Contractor shall provide hot mix AC FOB at the source of production for the Owner to transport. Commercial Grade Concrete shall be delivered to the job site in the City of Canby. Crushed rock shall be provided FOB at the source of supply for the Owner to transport.

**** END OF SECTION ****

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**SECTION 02500
PAVING AND SURFACING**

PART 1 - GENERAL

1.01 DESCRIPTION

- A. This Section covers the work and materials for furnishing Asphaltic Concrete Hot Mix, Portland Cement Concrete and Crushed Rock Surfacing.

PART 2 - PRODUCTS

2.01 HOT MIX AC

- A. Asphaltic concrete shall comply with the requirements of the ODOT / APWA 2002 Oregon Standard Specifications for Construction Section 00744.
- B. Asphaltic concrete shall be ½" dense mix with a Level 2 design and performance graded 64-22 binder.
- C. The Contractor shall provide a mix design and certification that it complies with the ODOT / APWA requirements.

2.02. COMMERCIAL GRADE CONCRETE

- A. Concrete materials shall conform to the requirements of the ODOT / APWA 2002 Oregon Standard Specification for Construction Section 00440.
- B. Concrete material shall be Commercial Grade Concrete with minimum compressive strength of 3,300 psi.
- C. The Contractor shall provide a mix design and certification it complies with the ODOT / APWA requirements, and break results.

2.03 CRUSHED ROCK BASE

- A. Crushed rock materials shall conform to the requirements of the ODOT / APWA 2002 Oregon Standard Specification for Construction Section 02630.
- B. Crushed rock shall meet the nominal requirements of 1" minus sizing.
- C. Contractor shall provide gradation test results to certify compliance with the ODOT / APWA requirements.

PART 3 - EXECUTION

3.01 HOT MIX AC

- A. The Owner will transport all hot mix AC products from the production plant of the Contractor with the Owners vehicles and staff.
- B. The Contractor shall be required to provide material only during normal production periods and hours, and will keep the Owner informed at least 48 hours prior to any scheduled shut downs excluding weekends and normal holidays.
- C. The Owner will purchase materials in any minimum or maximum quantity desired within the limits of this contract or as mutually agreed.

3.02 COMMERCIAL GRADE CONCRETE

- A. The Contractor shall provide and deliver all concrete materials purchased under this contract.
- B. The Contractor shall be required to provide material only during normal production periods and hours, and will keep the Owner informed at least 48 hours prior to any scheduled shut downs excluding weekends and normal holidays.
- C. Minimum quantities required to be delivered shall be no less than 3 cubic yards on any order.

3.03 CRUSHED ROCK

- A. The Owner will transport all crushed rock products from the production plant of the Contractor with the Owners vehicles and staff.
- B. The Contractor shall be required to provide material only during normal production periods and hours, and will keep the Owner informed at least 48 hours prior to any scheduled shut downs excluding weekends and normal holidays.
- C. The Owner will purchase materials in any minimum or maximum quantity desired within the limits of this contract or as mutually agreed.

****END OF SECTION****