

CONTRACT

THIS AGREEMENT, made on the _____ day of _____, 2021, by and between City of John Day, party of the first part, hereinafter called the Owner, and Tidewater Contractors Inc, party of the second part, hereinafter called the Contractor.

WITNESSETH, that the Contractor and the Owner, for the consideration hereinafter named, agree as follows:

ARTICLE I - Scope of the Work

The Contractor hereby agrees to furnish materials (City of John Day is providing all piping, manholes, and bedding material), equipment and labor as required and to perform all work shown on the drawings and described in the specifications for the project as prepared by Sisul Engineering, hereinafter referred to as Engineer, entitled:

2021 East End Charolais Drive Extension

The work shall include those items named in the Proposal and shall be in accordance with the requirements and provisions of the Contract Documents as defined in the "General Conditions" which Contract Documents are enclosed herewith, and are hereby made a part of the Agreement.

The Contractor also agrees to comply with all applicable state laws, municipal ordinances, and rules and regulations of all authorities having jurisdiction over the construction, and specifically the applicable provisions of Oregon law relating to public contracts (ORS Chapter 279C) which by this reference are incorporated in the contract and made a part hereof.

ARTICLE II - Time of Completion

The work to be performed under this Contract shall be commenced within 10 calendar days after the date of written notice by the Owner to the Contractor to proceed. The work shall be completed and ready for final payment by June 1st, 2022, and a milestone of March 31st, 2022 to have all grading, base rock and utilities installed ready for paving.

ARTICLE III - Payment

The Owner shall pay to the Contractor for the performance of the work the total amounts determined by the total number of each of the units of work actually completed as named in the attached Schedule of Prices and the unit prices stated thereafter. Based upon the estimated quantities and the stated unit prices, the total contract sum is; Two Hundred Fifty Eight Thousand, Four Hundred and Thirty One dollars and no cents (\$258,431.00) .

Progress payments shall be made in accordance with Section 21 of the “General Conditions.”

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first written above.

Contractor: _____

Owner: _____

By _____

By _____

Title _____

Title _____

2021 Charolais Heights EXT.

SCHEDULE A

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT PRICE	TOTAL PRICE
1-210	MOBILIZATION	1	LS	7500 00	\$ 7500 00
2-330	ENBANKMENT - MATERIAL GENERATED ONSITE	4200	CY	20 00	\$ 84,000 00
3-641	3/4"-0" BASE ROCK PROVIDED AND PLACED	300	CY	39 00	\$ 11,700 00
4-641	1.5"-0" BASE ROCK PROVIDED AND PLACED PHASE 1	583	CY	37 00	\$ 21,571 00
5-641	1.5"-0" BASE ROCK PROVIDED AND PLACED PHASE 2	798	CY	37 00	\$ 29,526 00
6-405	TRENCHING (SEWER PIPING)	737	LF	15 00	\$ 11,055 00
7-446	INSTALL 8" 3034 PVC SEWER MAIN LINE	275	LF	22 00	\$ 6,050 00
8-446	INSTALL 6" 3034 PVC SEWER SERVICE	232	LF	20 00	\$ 4,640 00
9-446	INSTALL 4" 3034 PVC SEWER SERVICE	230	LF	20 00	\$ 4,600 00
10-446	INSTALL 8" SEWER CLEANOUT	1	EA	450 00	\$ 450 00
12-446	INSTALL 6" SEWER CLEANOUT	1	EA	450 00	\$ 450 00
13-446	INSTALL 4" SEWER CLEANOUT	2	EA	425 00	\$ 850 00
14-471	INSTALL 48" MANHOLE	2	EA	2950 00	\$ 5,900 00
15-405	STORM TRENCH	225	LF	13 00	\$ 2,925 00
16-405	TRENCHING (WATER SERVICE)	100	LF	12 00	\$ 1,200 00
17-444	INSTALL 2" CONDUIT FIBER	440	LF	2 50	\$ 1,100 00
18-444	STORM DRAINAGE DITCH	232	LF	27 00	\$ 6,264 00
19-000	EX DITCH CLEANING	1600	LF	5 00	\$ 8,000 00
20-000	12" CULVERT	151	LF	45 00	\$ 6,795 00
21-000	30" CULVERT EXTENSION	25	LF	39 00	\$ 975 00
22-744	Hot Mix Asphalt	362	TON	115 00	\$ 41,630 00
23-744	Asphalt Grind	1250	SF	1 00	\$ 1,250 00
				Total Schedule	\$258,431 00

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. DEFINITIONS

Wherever used in these General Conditions or in the other contract documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Addenda - Written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents are attached to the agreement and made a part thereof as provided therein.

Application For Payment - The form accepted by the engineer which is to be used by the contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the contract documents.

Bid - The offer or proposal of the bidder, submitted on the prescribed form, setting forth the prices for the work to be performed.

Bonds - Bid, Performance and Payment bonds and other instruments of security.

Change Order - A written order to the contractor signed by the owner authorizing an addition, deletion or revision in the work, or an adjustment in the contract price of the contract time issued after the effective date of the agreement.

Contract Documents - The agreement, addenda (which pertain to the contract documents), contractor's bid (including documentation accompanying the bid and any post bid documentation submitted prior to the notice of award) when attached as an exhibit to the agreement, the bonds, these general conditions, the supplementary conditions, the specifications, the drawings, together with all modifications issued after the execution of the agreement.

Contract Price - The moneys payable by the owner to the contractor under the contract documents as stated in the agreement.

Contract Time - The number of days or the date stated in the agreement for the completion of the work.

Contractor - The person, firm or corporation with whom the owner has entered in to the agreement.

Day - A calendar day of twenty-four hours measured from midnight to the next midnight.

Defective - An adjective which when modifying the work, refers to work that is unsatisfactory, faulty or deficient, or does not conform to the contract documents or does not meet the requirements of an inspection, test or approval referred to in the contract documents, or has been damaged prior to the engineer's recommendation of final payment.

Drawings - The drawings which show the character and scope of the work to be performed and which have been prepared or approved by the engineer and are referred to in the contract documents.

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.

Engineer - The person, firm, or corporation named as such in the agreement.

Field Order - A written order issued by the engineer which orders minor changes in the work, but which does not involve a change in the contract price or the contract time.

Modification - A written amendment of the contract documents signed by both parties, a change order, or a field order. A modification may only be issued after the effective date of the agreement.

Notice of Award - The written notice by the owner to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, with the time specified, the owner will sign and deliver the agreement.

Notice to Proceed - A written notice given by the owner to the contractor fixing the date on which the contract time will commence to run and on which the contractor will start to perform his obligation under the contract documents.

Owner - The public body or authority, corporation, association, partnership, or individual with whom the contractor has entered into the agreement and for whom the work is to be provided.

Project - The total construction of which the work to be provided under the contract documents may be the whole, or a part as indicated elsewhere in the contract documents.

Resident Project Representative - The authorized representative of engineer who is assigned to the site of any part thereof.

Shop Drawings - All drawings, diagrams illustrations, schedules and other data which are specifically prepared by the contractor, a subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by contractor to illustrate material or equipment for some portion of the work.

Specifications - Those portions of the contract documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the work and certain administrative details applicable thereto.

Subcontractor - An individual, firm or corporation having a direct contract with the contractor or with any other subcontractor for the performance of a part of the work at the site.

Substantial Completion - The work (or a specified part thereof) has progressed to the point where, in the opinion of the engineer as evidenced by his definitive certificate of substantial completion, it is sufficiently complete, in accordance with the contract documents, so that the work (or specific part) can be utilized for the purposes for which it was intended; or if there be no such certificate issued, when final payment is due. The terms "substantially complete" and "substantially completed" as applied to any work refer to substantial completion thereof.

Work - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the contract documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the contract documents.

2. **ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS**

- 2.1 The Contractor may be furnished additional instructions and detail drawings by the Engineer, as necessary to carry out the work required by the contract documents.
- 2.2 The additional drawings and instructions thus supplied will become a part of the contract documents. The Contractor shall carry out the work in accordance with the additional details drawings and instructions.

3. **SCHEDULES, REPORTS AND RECORDS**

- 3.1 The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates records and other data where applicable as are required by the contract documents for the work to be performed.
- 3.2 Prior to the first partial payment estimate, the Contractor shall submit construction progress schedules showing the order in which the Contractor proposes to carry on the work, including dates at which the various parts of the work will be started estimated date of completion of each part and, as applicable:
 - 3.2.1 The dates at which special detail drawings will be required; and
 - 3.2.2 Respective dates for submission of shop drawings, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.
- 3.3 The Contractor shall also submit a schedule of payments that the Contractor anticipates will be earned during the course of the work.

4. **DRAWINGS AND SPECIFICATIONS**

- 4.1 The intent of the drawings and specifications is that the Contractor shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the work in accordance with the contract documents and all incidental work necessary to complete the project in an acceptable manner, ready for use, occupancy or operation by the Owner.
- 4.2 In case of conflict between the drawings and specifications, the specifications shall govern. Figure dimensions on drawings shall govern over general drawings.
- 4.3 Any discrepancies found between the drawings and specifications and site conditions or any inconsistencies or ambiguities in the drawings and specifications shall be immediately reported to the Engineer, in writing, who shall promptly connect such inconsistencies or ambiguities in writing. Work done by the

Contractor after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.

5. **SHOP DRAWINGS**

- 5.1 The Contractor shall provide shop drawings as may be necessary for the prosecution of the work as required by the contract documents. The engineer shall promptly review all shop drawings. The Engineer's approval of any shop drawing shall not release the Contractor from responsibility for deviations from the contract documents. The approval of any shop drawing which substantially deviates from the requirement of the contract documents shall be evidenced by a change order.
- 5.2 When submitted for the Engineer's review, shop drawings shall bear the Contractor's certification that he has reviewed, checked and approved the shop drawings and that they are in conformance with the requirements of the contract documents. A minimum of three copies of the shop drawings shall be submitted by the Contractor to the Engineer for review. After review by the Engineer the dispersal of any shop drawing shall be as follows: one copy to be retained by the Engineer for his records, one copy shall be forwarded to the Owner by the Engineer, all remaining copies shall be returned to the Contractor.
- 5.3 Portions of the work requiring a shop drawing or sample submission shall not begin until the shop drawing or submission has been approved by the Engineer. A copy of each approved shop drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Engineer and Owner.

6. **MATERIALS, SERVICES AND FACILITIES**

- 6.1 It is understood that, except as otherwise specifically stated in the contract documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary constriction of any nature, and all other services and facilities of any nature within the specified time.
- 6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection.
- 6.3 Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- 6.4 Materials, supplies, and equipment shall be in accordance with samples submitted by the Contractor and approved by the Engineer.

- 6.5 Materials, supplies, or equipment to be incorporated into the work shall not be purchased by the Contractor or the Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.
- 6.6 Any work necessary to be performed after regular hours, Saturdays, Sundays or Legal Holidays shall be performed without additional expense to, and only with the written approval of the Owner.

7. **INSPECTION AND TESTING**

- 7.1 All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the contract documents.
- 7.2 The Owner shall provide all inspection and testing services not required by the contract documents.
- 7.3 The Contractor shall provide, at the Contractor's expense, the testing and inspection services required by the contract documents.
- 7.4 If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to specially be inspected, tested, or approved by someone other than the Contractor, the Contractor will give the Engineer timely notice or readiness. The Contractor will then furnish the Engineer the required certificates of inspection, testing or approval.
- 7.5 Inspections, tests, or approvals by the Engineer or others shall not relieve the Contractor from the obligations to perform the work in accordance with the requirements of the contract documents.
- 7.6 The Engineer and the Engineer's representatives will all times have access to the work. In addition, authorized representative and agents of the Owner and any participating federal and state agency shall be permitted to inspect all work, materials, payrolls, records or personnel, invoices of materials, and other relevant data and records. The Contractor will provide proper facilities for such access and observation of the work and also for any inspection or testing thereof.
- 7.7 If any work is covered contrary to the written instructions of the Engineer it must, if requested by the Engineer, be uncovered for the Engineer's observation and replacement at the Contractor's expense.
- 7.8 If the Engineer considers it necessary or advisable that covered work be inspected or tested by others, the Contractor, at the Engineer's request, will uncover, expose or otherwise make available for observation, inspection or testing as the Engineer

may require, that portion of the work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such work is defective, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, if however, such work is not found to be defective, the Contractor will be allowed an increase in the contract price, or an extension of the contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and appropriate change order shall be issued.

8. **SUBSTITUTIONS**

- 8.1 Whenever a material, article, or piece of equipment is identified on the drawings or specifications by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The Contractor may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the contract documents shall be appropriately modified by change order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the contract price or contract time.

9. **PATENTS**

- 9.1 The Contractor shall pay all applicable royalties and license fees, and shall defend all suits or claims for infringement of any patent rights and save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for any such loss when a particular process, design, or product of a particular manufacturer or manufacturers is specified, however, if the Contractor had reason to believe that the design, process or product specified is an infringement of a patent, the Contractor shall be responsible for such loss unless the Contractor promptly gives such information to the Engineer.

10. **SURVEYS, PERMITS, REGULATIONS**

- 10.1 The Owner shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the work together with a suitable number of bench marks adjacent to the work as shown on the contract documents. From the information provided by the Owner, unless otherwise specified in the contract documents, the Contractor shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, staking for pipe locations and other working points, lines, elevations and cut sheets.

- 10.2 The Contractor shall carefully preserve bench marks, reference points and stakes, and in case of willful or careless destruction, shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.
- 10.3 Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the Contractor unless otherwise stated in the Special Provisions to the General Conditions. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the contract documents are at variance therewith, the Contractor shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in Section 15, *Changes in Work*.

11. **CONTRACTOR'S OBLIGATIONS**

- 11.1 The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this contract, within the time herein specified in accordance with the provisions of this contract and said specification and in accordance with the plans and drawings covered by this contract and any and all supplemental plans and drawings, and in accordance with the directions of the Engineer as given from time to time during the progress of the work. He shall furnish, erect, maintain, and remove such temporary work as may be required. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Owner and Engineer.
- 11.2 The Contractor expressly undertakes at his own expense:
- 11.2.1 To take every precaution against injuries to persons or damages to property;
 - 11.2.2 To store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractor;
 - 11.2.3 To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;

- 11.2.4 To clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
 - 11.2.5 Before final payment to remove all surplus material, false work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations and to put the site in a neat, orderly condition;
 - 11.2.6 To effect all cutting, fitting or patching of his work required to make the same to conform to the plans and specification and, except with the consent of the Engineer, not to cut or otherwise alter the work of any other Contractor.
- 11.3 The Contractor will pay all sales, consumer, use and other similar taxes required by the laws of the place where the work is performed. The Contractor shall also pay for all construction permit fees and other similar fees required by local or state agencies as may be required and necessary for construction of the project.

12. **WEATHER CONDITIONS**

- 12.1 In the event of temporary suspension of work, or during inclement weather, or whenever the Engineer shall direct, the Contractor will cause his subcontractors, to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his subcontractors to so protect his work, such materials shall be removed and replaced at the expense of the Contractor.

13 **PROTECTION OF WORK, PROPERTY, AND PERSONS**

- 13.1 The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The Contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the work and other persons who may be affected thereby, all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 13.2 The Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Contractor will erect and maintain, as required by the conditions and progress of the work, all necessary

safeguards for safety and protection. The Contractor will notify owners of adjacent utilities when prosecution of the work may affect them. The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone of whose acts any of them be liable, except damage or loss attributable to the fault of the contract documents or to the acts or omissions of the Owner, of the Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault of negligence of the Contractor.

- 13.3 The emergencies affecting the safety of persons or the work or property at the site or adjacent thereto, the Contractor, without special instructions or authorization from the Engineer or Owner, shall act to prevent threatened damage, injury or loss. The Contractor will give the Engineer prompt written notice of significant changes in the work or deviations from the contract documents caused thereby, and a change order shall thereupon be issued covering the changes and deviations involved.

14. **SUPERVISION BY CONTRACTOR**

- 14.1 The Contractor will supervise and direct the work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain on the job a qualified supervisor or superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

15. **CHANGES IN WORK**

- 15.1 The Owner may at any time, as the need arises, order changes within the scope of work without invalidating the agreement. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, and equitable adjustment shall be authorized by change order.
- 15.2 The Engineer, also, may at any time, by issuing a field order, make changes in the details of the work. The Contractor shall proceed with the performance of any changes in the work so ordered by the Engineer unless the Contractor believes that such field order entitles the Contractor to a change in the contract price or time, or both, in which event the Contractor shall give the Engineer written notice thereof within seven (7) days after the receipt of the ordered change. Thereafter the Contractor shall document the basis for the change in contract price or time within

(30) days. The Contractor shall not execute such changes pending the receipt of any executed change order or further instruction from the Owner.

16. **CHANGES IN CONTRACT TIME**

16.1 The contract price may be changed only by a change order. The value of any work covered by a change order or any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below:

16.1.1 Unit prices previously approved.

16.1.2 An agreed lump sum.

16.1.3 The actual cost of:

- a) Labor, including foreman;
- b) Materials entering permanently into the work;
- c) The ownership or rental cost of construction plant and equipment during the time of use on the extra work;
- d) Power and consumable supplies for the operation of power equipment;
- e) Insurance;
- f) Social Security and old age and unemployment contributions;

To the cost under 16.1.3 there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the estimated cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

17. **TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

17.1 The date of beginning and the time for completion of the work are essential conditions of the contract document and the work embraced shall be commenced on a date specified in the Notice to Proceed.

- 17.2 The Contractor will proceed with the work at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the contract time for the completion of the work described herein is reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.
- 17.3 If the Contractor shall fail to complete the work within the contract time, or extension of time granted by the Owner, then the Contractor will pay to the Owner the amount for liquidated damages as specified in the bid for each calendar day that the Contractor shall be in default after the time stipulated in the contract documents.
- 17.4 The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following and the contractor has promptly given written notice of such delay to the Owner or Engineer:
- 17.4.1 To any preference, priority or allocation order duly issued by the Owner;
- 17.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and
- 17.4.3 To any delays of Subcontractor occasioned by any of the causes specified in Paragraphs 17.4.1 and 17.4.2 of this article.

18. **CORRECTION OF WORK**

- 18.1 All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used.
- 18.2 The Contractor shall promptly remove from the premises all work rejected by the Engineer for failure to comply with the contract documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the work in accordance with the contract documents and without expense to the Owner and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.

- 18.3 All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected work within ten (10) days after receipt of written notice, the Owner may remove such work and store the materials at the expense of the Contractor.
- 18.4 If, in the opinion of the Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the contract documents, the compensation to be paid to the Contractor thereunder shall be reduced by such amount as in the judgment of the Engineer shall be equitable.

19. **SUBSURFACE CONDITIONS**

- 19.1 The Contractor shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the Owner by written notice of:
- 19.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the contract documents; or
- 19.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract documents.
- 19.2 The Owner shall promptly investigate the conditions, and if it is found that such conditions do so materially differ and cause an increase in the cost of, or in the time required for, performance of the work, and equitable adjustment shall be made and the contract documents shall be modified by a change order. Any claim of the Contractor for adjustment hereunder shall not be allowed unless the required written notice has been given; provided that the Owner may, in the Owner determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

20. **SUSPENSION OF WORK, TERMINATION, AND DELAY**

- 20.1 The Owner may suspend the work or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the Contractor, by written notice to the Contractor and the Engineer which shall fix the date on which work shall be resumed. The Contractor will resume that work on the date so fixed. The Contractor will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to any suspension.
- 20.2 If the Contractor is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or is a trustee or receiver is appointed for the Contractor or for any of its property, or if the Contractor files a petition to

take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or repeatedly fails to supply sufficient skilled workman or suitable materials or equipment, or repeatedly fails to make prompt payments to Subcontractors or for labor, materials, or equipment or disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the work or disregards the authority of the Engineer, or otherwise violates any provisions of the contract documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and its surety a minimum of the ten (10) days from delivery of a written notice, terminate the services of the Contractor and take possession of the project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the work by whatever method the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Engineer and incorporated in a change order.

- 20.3 Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys by the Owner due the Contractor will not release the Contractor from compliance with the contract documents.
- 20.4 After ten (10) days from delivery of the written notice to the Contractor and the Engineer, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the contract. In such case the Contractor shall be paid for all work executed and any expense sustained plus reasonable profit.
- 20.5 If, through no act or fault of the Contractor, the work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, or the Engineer fails to act on any request for payment within thirty (30) days after it is submitted, or the Owner fails to pay the Contractor substantially the sum approved by the Engineer or award by arbitrators within thirty (30) days of its approval and presentation, the Contractor may after ten (10) days from delivery of a written notice to the Owner and Engineer terminate the contract and recover from the Owner payment for all work executed and all expenses sustained. In addition and in lieu of terminating the contract, if the Engineer has failed to act on a request for payment or if the Owner has failed to make any payment as aforesaid, the Contractor may upon ten (10) days written notice to the Owner and the Engineer stop the work until paid all amounts then due, in which event and upon resumption of the work, change orders shall be

issued for adjusting the contract price or extending the contract time or both to compensate for the costs and delays attributable to the stoppage of the work.

- 20.6 If the performance of all or any portion of the work is suspended, delayed, or interrupted as a result of a failure of the Owner or Engineer to act within the time specified in the contract documents, or if no time is specified, within a reasonable time, and adjustment in the contract price or an extension of the contract time, or both, shall be made by change order to compensate the Contractor for the costs and delays necessarily caused by the failure of the Owner or Engineer.

21. **PAYMENT TO CONTRACTOR**

- 21.1 At least ten (10) days before each progress payment fall due (but not more often than once a month), the Contractor will submit to the Engineer a partial payment estimate filled out and signed by the Contractor covering the work performed during the period covered by the partial payment estimate and supported by such data as the Engineer may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the Owner, as will establish the Owner's title to the material and equipment and protect the Owner's interest therein, including applicable insurance. The Engineer will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing approval of payment, and present the partial payment estimate to the Owner, or return the partial payment estimate to the Contractor indicating in writing the reasons for refusing to approve payment. In the latter case the Contractor may make the necessary corrections and resubmit the partial payment estimate. The Owner will within ten (10) days of presentation of an approved partial payment estimate, pay the Contractor a progress payment on the basis of the approved partial payment estimate less the retainage. The retainage shall be an amount equal to 5% of said estimate. At any time when the progress of the work is not satisfactory, additional amounts may be retained. Upon substantial completion of the work, any amount retained may be paid to the Contractor. When the work has been substantially completed except for work which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgment of the Owner are valid reasons for non-completion, the Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed.

- 21.1.1 No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the Contractor.
- 21.2 The request for payment may also include an allowance for the cost of such materials and equipment which are suitably stored either at or near the site.
- 21.3 Prior to substantial completion, the Owner, with the approval of the Engineer and with the concurrence of the Contractor, may use any completed or substantially completed portions of the work. Such use shall not constitute and acceptance of such portions of the work.
- 21.4 The Owner shall have the right to enter the premises for the purpose of doing work not covered by the contract documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the work, or the restoration of any damaged work except such as may be caused by agents or employees of the Owner.
- 21.5 Upon completion and acceptance of the work, the Engineer shall issue a certificate attached to the final payment requesting that the work has been accepted under the conditions of the contract documents. The entire balance found to be due the Contractor, including the retained percentages, but except some sums as may be lawfully retained by the Owner, shall be paid to the Contractor within thirty (30) days of completion and acceptance of the work.
- 21.6 The Contractor will indemnify and save the Owner of the Owner's agents harmless from all claims growing out of the lawful demand of subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, tools and all supplies, incurred in the furtherance of the performance of the work. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so the Owner may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed in accordance with the terms of the contract documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor, the Contractor's Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Owner shall be considered as a payment made upon the contract documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

21.7 If the Owner fails to make payment thirty (30) days after approval by the Engineer, in addition to other remedies available to the Contractor, there shall be added to each such payment interest at the rate of 1½% per month or the maximum legal rate permitted by law, whichever is less, commencing on the first day after said payment is due and continuing until the payment is received by the Contractor.

22 **ACCEPTANCE OF FINAL PAYMENT AS RELEASE**

22.1 The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor for all things or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work. Any payment, however, final or otherwise, shall not release the Contractor or its sureties from any obligations under the contract documents or the Performance and Payment bonds.

23 **INSURANCE**

23.1 The Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of, or result from, the Contractor's execution of the work, whether such execution be by the Contractor, and subcontractor, or by anyone directly employed by any of them, or by anyone for whose acts any of them may be liable:

23.1.1 Claims under workman's compensation, disability benefit and other similar employee acts;

23.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of employees;

23.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees;

23.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person; and

23.1.5 Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom;

- 23.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the work. These Certificates shall contain a provision the coverage afforded under the policies will not be canceled unless at least fifteen (30) days prior written notice has been given to the Owner.
- 23.3 The Contractor shall procure and maintain, at the Contractor's own expense, during the contract time, liability insurance as hereinafter specified:
- 23.3.1 Contractor's General Public Liability and Property Damage Insurance including vehicle coverage issued to the Contractor and protecting the Contractor from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the contract documents, whether such operations be by the Contractor or by any subcontractor employed by the Contractor or anyone directly or indirectly employed by the Contractor or by a subcontractor employed by the Contractor. Insurance shall be written with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting therefore, sustained by any one person in any one accident; and a limit of liability of not less than \$2,000,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$1,000,000 for all property damage sustained by any one person in any one accident; and a limit of liability on not less than \$2,000,000 aggregate for such damage sustained by two or more persons in any one accident. The policy shall be endorsed to state that the aggregate limit of Commercial General Liability shall apply separately to the Contract.
- 23.3.2 Contractor's Commercial Automobile Liability Insurance covering all owned, non-owned, and hired vehicles, This coverage may be written in combination with the Commercial General Liability Insurance with separate limits for Commercial Automobile Liability and Commercial General Liability. Combined single limit per occurrence shall not be less than \$1,000,000. If this coverage is written in combination with Commercial General Liability, the aggregate limit for Commercial General Liability shall not be less than \$2,000,000 and the policy shall be endorsed to state that the aggregate limit of Commercial General Liability shall apply separately to the Contract.
- 23.3.3 The Contractor shall acquire and maintain, if applicable, Extended Coverage insurance upon the project to the full insurable value thereof for the benefit of the Owner, the Contractor, and subcontractors as their interest may appear. This provision shall in no way release the Contractor or Contractor's surety from obligations under the contract documents to fully complete the project.

23.3.4 Additional Insured - The liability insurance coverages shall include the owner, its governing body, board, members, officials, agents, employees, and consultants. Also, Sisul Engineering, but only with respect to the Contractor's activities to be performed under the Contract. Coverage shall be primary and non-contributory with any other insurance or self-insurance.

23.4 The Contractor shall procure and maintain, at the Contractor's own expense, during the contract time, in accordance with the provisions of the law of the state in which the work is performed, Workman's Compensation Insurance, including occupational disease provisions, for all of the Contractor's employees at the site of the project and in case any work is sublet, the Contractor shall require such subcontractor similarly to provide Workman's Compensation Insurance, including occupational disease provisions for all of the Contractor employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under Workman's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of its employees not otherwise protected.

23.5 The Contractor shall secure if applicable, "All Risk" type Builder's Risk Insurance for work to be performed. Unless specifically authorized by the Owner, the amount of such insurance shall not be less than the contract price totaled in the bid. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the contract time, and until the work is accepted by the Owner. The policy shall name as the insured the Contractor, and the Owner.

24. **CONTRACT SECURITY**

24.1 The Contractor shall within the ten (10) days after the receipt of the Notice to Award, furnish the Owner with a Performance Bond and Payment Bond in penal sums equal to the amount of the contract price, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements of the contract documents, and upon the prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the work provided by the contract documents. Such bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the state in which the work is to be performed. The expense of these bonds shall be borne by the Contractor. If at any time a surety on any such bond is declared a bankrupt or loses its right to do business in the state in which the work is to be performed, the Contractor shall within ten (10) days after notice from the Owner to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The

premiums on such shall be made until the new surety or sureties shall have furnished an acceptable bond to the Owner.

25. **ASSIGNMENTS**

25.1 Neither the Contractor nor the Owner shall sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or of any right, title or interest therein, or any obligations thereunder, without written consent of the other party.

26 **INDEMNIFICATION**

26.1 The Contractor will indemnify and hold harmless the Owner and the Engineer and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the work, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or to destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the Contractor, and subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

26.2 In any and all claims against the Owner or the Engineer, or any of their agents or employees, by any employees of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose act any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workman's compensation acts, disability benefit acts or other employee benefits acts.

26.3 The obligation of the Contractor under this article shall not extend to the liability of the Engineer, its agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change order, design or specifications.

27 **SEPARATE CONTRACTS**

27.1 The Owner reserves the right to let other contracts in connection with this project. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate the work with theirs. If the proper execution or results of any part of the Contractor's work depends upon the work of any other Contractor, the Contractor shall inspect and promptly report to the

Engineer any defects in such work that render it unsuitable for such proper execution and results.

- 27.2 The Owner may perform additional work related to the project or the Owner may let other contracts containing provision similar to these. The Contractor will afford the other contractors who are parties to such contracts (or the Owner, if the Owner is performing the additional work) reasonable opportunity for the introduction and storage of materials and equipment and the executing of work, and shall properly connect and coordinate the work with theirs.
- 27.3 If the performance of additional work by other Contractors or the Owner is not noted in the contract documents prior to the execution of the contract, written notice thereof shall be given to the Contractor prior to starting any such additional work. If the Contractor believes that the performance of such additional work by the Owner or others involves it in additional expense or entitles it to an extension of the contract time, the Contractor may make a claim thereof as provided in Articles 16 and 17.

28 **SUBCONTRACTING**

- 28.1 The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.
- 28.2 The Contractor shall not award work to subcontractor(s), in excess of fifty (50%) percent of the contract price, without prior written approval of the Owner.
- 28.3 The Contractor shall be fully responsible to the Owner for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as the Contractor is for the acts and omissions of persons directly employed by the Contractor.
- 28.4 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- 28.5 Nothing contained in this contract shall create any contractual relationship between any subcontractor and the Owner.

29 **ENGINEER'S AUTHORITY**

- 29.1 The Engineer shall act as the Owner's representative during the construction period, shall decide questions which may arise as to quality and acceptability of materials furnished and work performed, and shall interpret the intent of the contract documents in a fair and unbiased manner. The Engineer will make visits to the site and determine if the work is proceeding in accordance with the contract documents.
- 29.2 The Contractor will be held strictly in the intent of the contract documents in regards to the quality of materials, workmanship, and execution of the work. Inspections may be made at the factory or fabrication plant of the source of material supply.
- 29.3 The Engineer will not be responsible for the construction means, controls, techniques, sequence, procedures, or construction safety.
- 29.4 The Engineer shall promptly make decision relative to interpretation of the contract documents.

30 **LAND AND RIGHTS-OF-WAY**

- 30.1 Prior to the issuance of the Notice of Proceed, the Owner shall obtain all land, easements and rights-of-way necessary for carrying out and for the completion of the work to be performed pursuant to the contract document, unless otherwise mutually agreed.
- 30.2 The Owner shall provide to the Contractor information which delineates and describes the lands owned and easements and rights-of-way acquired.
- 30.3 The Contractor shall provide at its own expense and without liability to the Owner any additional land and access thereto that the Contractor may desire for temporary construction facilities, or for storage of materials.

31 **QUANTITIES OF ESTIMATE**

- 31.1 Wherever the estimated quantities of work to be done and materials to be furnished on a unit price basis under this contract are shown in any of the documents including the proposal, they are given for use in comparing bids, and the right is expressly reserved, except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the Owner to complete the work contemplated by this contract, and such increase or diminution shall in no way vitiate this contract, nor shall any such increase or diminution give cause for claims or liability for damages.

32 **GUARANTEE**

32.1 The Contractor shall guarantee all materials and equipment furnished and work performed for a period of one (1) year from the date of substantial completion. The Contractor warrants and guarantees for a period of one (1) year from the date of substantial completion of the system that the completed system is free from all defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The Owner will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, the Owner may do so and charge the Contractor the cost thereby incurred. The Performance Bond shall remain in full force and effect through the guarantee period.

33 **CONFLICTING CONDITIONS**

33.1 If there be conflicting variance between the drawings and the specification, the provisions of the specification shall control. In case of conflict between the General Conditions of the contract or any modifications thereof and the Technical Specifications, the Technical Specifications requirements shall control.

33.2 Any discrepancies found between the drawings and the Technical Specification and the actual site conditions, or any errors or omissions in the drawings or Technical Specification, shall be immediately reported to the Engineer who shall promptly correct such error or omission in writing. Any work done by the Contractor after his discovery of such discrepancies, errors or omissions shall be done at the Contractor's risk.

33.3 Responsibility for adequacy of the design and for sufficiency of the drawings and Technical Specifications shall be borne by the Owner. The complete requirements of the work to be performed under the contract shall be set forth in drawings and Technical specification to be supplied by the Owner through the Engineer, or by the Engineer as representative of the Owner. Drawings and Specifications furnished shall be in accordance with the contract documents and shall be true and accurate developments thereof.

34 **ARBITRATION BY MUTUAL AGREEMENT**

34.1 All claims, disputes, and other matters in question arising out of, or relating to, the contract documents or the breach thereof, except for claims which have been waived by making an acceptance of final payment as provided by Section 22, may be decided by arbitration if the parties mutually agree. Any agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

- 34.2 Notice of the request for arbitration shall be filed in writing with the other party to the contract documents and a copy shall be filed with the Engineer. Request for arbitration shall in no event be made on any claim, dispute, or other matter in question which would be barred by the applicable statute of limitations.
- 34.3 The Contractor will carry on the work and maintain the process schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

SPECIAL PROVISIONS TO THE GENERAL CONDITIONS

All numbers referenced in these Special Provisions shall be understood to refer to the subsection of the General Conditions bearing like numbers.

1. 21.1. Revise the noted sentence of the subsection as indicated below:

“The retainage shall be an amount equal to 10% of said estimate.”

2. Where a conflict exist between the technical specifications of these contract documents and the specifications noted on the construction plans, the specifications on the construction plans shall supersede.