

SECTION 00500

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification.

**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
ON THE BASIS OF A STIPULATED PRICE**

**MAINE FUNDING AGENCY EDITION**

*Prepared by*

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

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This document has been accepted by  
United States Department of Agriculture  
Rural Utilities Service, Water and Waste Programs

This Standard Form of Agreement has been prepared for use with the Standard General Conditions of the Construction Contract, Funding Agency Edition (No. 1910-8-FA, 1997 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. The suggested language for instructions to bidders contained in the Guide to the Preparation of Instructions to Bidders (No. 1910-12, 1996 Edition) is also carefully interrelated with the language of this Agreement. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). See also Guide to the Preparation of Supplementary Conditions (No. 1910-17, 1996 Edition).

**EJCDC  
STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
ON THE BASIS OF A STIPULATED PRICE**

**MAINE FUNDING AGENCY EDITION**

**THIS AGREEMENT** is by and between Portland Water District

(hereinafter called OWNER) and \_\_\_\_\_

(hereinafter called CONTRACTOR).

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

**ARTICLE 1 - WORK**

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The Disinfection and Dechlorination Systems Upgrade consists of, but is not limited to: demolition of the existing chlorine gas disinfection and sulfur dioxide dechlorination systems, installation of new sodium hypochlorite disinfection and sodium bisulfite dechlorination systems, and miscellaneous modifications to the existing chlorine contact.

**ARTICLE 2 - THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Portland Water District - Disinfection and Dechlorination Systems Upgrade

**ARTICLE 3 - ENGINEER**

3.01 The Project has been designed by Wright-Pierce, who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 - CONTRACT TIMES**

4.01 *Time of the Essence*

A. All time limits for Milestones as specified in Section 01010, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work will be substantially completed within **300 consecutive calendar days** after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph SC-14.07 of the Supplementary Conditions within **330 consecutive calendar days** after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER **\$1,000 for each consecutive calendar day** that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER **\$1,000 for each day consecutive calendar day** that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

## **ARTICLE 5 - CONTRACT PRICE**

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 5.01.A below:

A. For all Work at the prices stated in Contractor's Bid, attached hereto as an exhibit.

## **ARTICLE 6 - PAYMENT PROCEDURES**

### 6.01 *Submittal and Processing of Payments*

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions and Supplementary Conditions.

### 6.02 *Progress Payments; Retainage*

A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 30<sup>th</sup> day of each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to 50% Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:

- a. 90% of Work completed (with the balance being retainage); and
- b. 90% of cost of materials and equipment not incorporated in the Work but delivered and suitably stored in a location and manner agreed to in writing and pursuant to paragraph 14.02.A.1 of the General Conditions (with the balance being retainage).

2. At 50% completion, further progress payments shall be made in full to CONTRACTOR and no additional amounts retained unless ENGINEER determines that the Project is not proceeding satisfactorily. Amounts previously retained shall remain so until Substantial Completion. At 50% completion or any time thereafter when progress of the Work is not satisfactory, additional amounts may be retained, but in no event shall the total retainage be more than 10% of the value of the Work completed.

3. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 98% of the Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions. Retainage of 2% of the total Work shall be retained by OWNER for a period of one (1) year from the date of Substantial Completion.

### 6.03 *Final Payment*

A. Upon final completion, acceptance of the Work, and completion of the one (1) year warranty period from the date of substantial completion, in accordance with paragraph SC-14.07 of the Supplementary Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER.

#### **ARTICLE 7 - INTEREST**

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall not bear interest.

#### **ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS**

8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or continuous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

#### **ARTICLE 9 - CONTRACT DOCUMENTS**

9.01 *Contents*

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 6 inclusive);
  2. Performance Bond (pages 00610-1 to 00610-2, inclusive);
  3. Payment Bond (pages 00620-1 to 00620-2, inclusive);
  4. Insurances, as required by the Supplementary Conditions.
  5. General Conditions Section 00700;
  6. Supplementary Conditions Section 00800;
  7. Specifications as listed in the table of contents of the Project Manual;
  8. Drawings consisting of a cover sheet and sheets numbered 1 through 56, inclusive, with each sheet bearing the following general title: Portland Water District – Disinfection and Dechlorination Systems Upgrade;
  9. Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive);
  10. Exhibits to this Agreement (enumerated as follows):
    - a. Notice to Proceed (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
    - b. CONTRACTOR's Bid (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
    - c. Documentation submitted by CONTRACTOR prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
  11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Written Amendments;
    - b. Work Change Directives;
    - c. Change Order(s).

B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.05 of the General Conditions.

## **ARTICLE 10 - MISCELLANEOUS**

### 10.01 *Terms*

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

### 10.02 *Assignment of Contract*

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but 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.

10.03 *Successors and Assigns*

A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed four copies of this Agreement. One counterpart each has been delivered to OWNER, CONTRACTOR, Maine DEP and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on \_\_\_\_\_, \_\_\_\_\_ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

License No. \_\_\_\_\_  
(Where applicable)

Agent for service of process: \_\_\_\_\_

\_\_\_\_\_

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

Designated Representative:

Designated Representative:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_