

CONTRACT CONDITIONS

SECTION III

CONTRACT CONDITIONS

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DEFINITION OF TERMS

Whenever the following terms are used in these specifications, in the Agreement, in any documents or in other instruments pertaining to construction where these specifications govern, the intent and meaning shall be interpreted as follows, all of which are applicable to both the singular and plural thereof.

AGREEMENT: The written agreement between LPID and CONTRACTOR covering the work to be performed; other Contract Documents are attached to the Agreement.

ADDENDUM: A supplement to any of the Contract Documents issued, in writing, after advertisement of, but prior to, the opening of bids for an Agreement.

ADVERTISEMENT: An announcement inviting bids for work to be performed and materials to be furnished.

APPLICATION FOR PAYMENT: A statement and invoice provided by CONTRACTOR to LPID for MATERIALS DELIVERED.

AS APPROVED: The words "as approved", unless otherwise qualified, shall be understood to be followed by the words "by LPID".

BIDDER: Wherever the word "bidder" occurs in these Contract Documents, the word shall signify any person, firm, partnership, or corporation submitting a proposal on this project.

BID SECURITY: The certified check, cashier's check, or surety bond, which is required to be submitted with the Proposal to insure execution of the Agreement and the furnishing of the required bonds.

BLAST PLAN & BLASTING CONSULTANT: The Contractor shall submit a blast plan (ODOT specifications) prepared by an approved ODOT blasting consultant. The CONTRACTOR can do the pre-blast surveys.

CHANGE ORDER: A written order to the CONTRACTOR signed by LPID, authorizing an addition, deletion, or revision in the work, or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement.

CONTRACT: See Agreement.

CONTRACT DOCUMENTS: The "Contract Documents" consist of the invitation to bid, the instructions to bidders, the proposal, the agreement, the general conditions, the supplementary conditions, the specifications, and the drawings, including all modifications thereof incorporated

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into the documents before their execution, and including all other requirements incorporated by specific reference thereto. These form the Agreement.

CONTRACT PRICE: The total amount payable to CONTRACTOR under the Agreement.

CONTRACTOR: The person or persons, co-partnership, corporation, or joint venture who have entered into an agreement with LPID as party or parties of the second part, or its or their legal representatives. The word "CONTRACTOR", although used herein as terming an individual, shall be taken to mean the CONTRACTOR, its agents, employees, officials, sub-CONTRACTORS, or anyone connected with the work herein set forth on behalf of the CONTRACTOR.

CONTRACT TIME: The number of calendar days stated in the Contract Documents, allowed for delivery of materials, including authorized time extensions. If a calendar date of completion is stated in the proposal, in lieu of a number of calendar days, the contract shall be completed by that date.

DAY: Unless otherwise stated, the term "day" shall be taken to mean a calendar day of 24 hours, beginning at 12:00 midnight. Saturdays, Sundays and holidays shall be included.

LPID: Unless otherwise provided, wherever the word "LPID" occurs in these Contract Documents, the word shall signify Lone Pine Irrigation District.

INSPECTOR: An authorized representative of LPID or LPID assigned to make field observations of the materials furnished or being furnished by the CONTRACTOR.

INSURANCE: Required amounts of insurance to be carried by CONTRACTOR.

INTENTION OF TERMS: Whenever, in these specifications, the words "required", "permitted", "ordered", "designated", "prescribed", or words of the like import are used, it shall be understood that the requirement, permission, order, designation, or prescription of LPID is intended; and similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, or acceptable to, or satisfactory to LPID, subject in each case to the final determination of LPID.

LABORATORY: The official testing laboratories of LPID or such other laboratories as may be designated by LPID.

MATERIALS: Any substance incorporated in the bid proposals.

MODIFICATION: (a) A written amendment of the Contract Documents signed by both parties, (b) a Change Order, (c) a written clarification or interpretation issued by LPID.

NOTICE OF AWARD: The written notice by LPID to the apparent successful Bidder stating that upon compliance with the conditions precedent to be fulfilled by Bidder within the time specified, LPID will execute and deliver the Agreement to Bidder.

NOTICE TO PROCEED: A written notice to the CONTRACTOR fixing the date on which to begin the actual manufacturing the materials. If applicable, the Notice to Proceed shall state the date on which the Contract Time will commence to run.

PROPOSAL: The written offer of the bidder submitted on the approved proposal form setting forth the prices for the materials.

SPECIFICATIONS: The terms, provisions, and requirements contained herein as supplemented by such special conditions as may be necessary, pertaining to either the materials and/or work to be furnished under the Agreement.

STANDARD SPECIFICATIONS: Codes, rules and regulations referred to in these specifications by basic name or designation only, shall be considered to be of the latest issue with all amendments as of the date of these specifications. Applicable portions of such shall become a part of these Contract Documents.

SURETY: A corporation, licensed to conduct the business of surety in the State of Oregon, and named in the current list of approved sureties published by the U.S. Treasury Department Circular 570. All bonds signed on behalf of the Surety must be accompanied by a certified copy of the authority to act.

If the Surety on any bond furnished by the CONTRACTOR is declared bankrupt or becomes insolvent or its rights to do business is terminated in the State of Oregon or it ceases to meet the requirements outlined above, CONTRACTOR shall within five days thereafter, substitute another Bond and Surety, both of which shall be acceptable to LPID.

TSID: Unless otherwise provided, wherever the word "TSID" occurs in these Contract Documents, the word shall signify Three Sisters Irrigation District.

WRITTEN NOTICE: Wherever the term "Written Notice" occurs in these Contract Documents, the term shall signify a written communication 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 or sent by registered mail, to the last business address known to it who gives the notice.

CONTRACT DOCUMENTS

INTENT OF CONTRACT DOCUMENTS:

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. Materials described in words that so applied have a well known technical and trade meaning shall be held to refer to such recognized standards.

INCONSISTENCIES AND OMISSIONS:

Any inconsistency, conflict, error, or omission found in the Contract Documents shall be reported to LPID in writing immediately and before proceeding with the work affected thereby; however, CONTRACTOR shall not be liable to LPID or LPID for its failure to discover any conflict error or inconsistency in the Contract Documents. LPID will clarify inconsistencies or omission, in writing, within a reasonable time. The decision of LPID shall be final.

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

- Modifications - the last in time being the first in precedence, including all Addenda to the Contract Documents
- Agreement
- Supplementary Conditions
- Instructions to Bidders
- General Conditions
- Specifications

ALTERATIONS AND CHANGE ORDERS:

LPID, without invalidating the Agreement, may at any time order additional materials. All additional materials shall be authorized by Change Order and executed under the conditions of the original Agreement, except that claim by either party for time and payment increase or decrease caused thereby shall be adjusted at the time of ordering such change.

THE CONTRACTOR AND ITS EMPLOYEES

CONTRACTOR, AN INDEPENDENT AGENT:

The Contractor shall perform all work under this Agreement as an Independent Agent and shall not be considered as an agent of the Owner, nor shall the Contractor's subcontractors or employees be subagents of the Owner.

SUBCONTRACTING:

The Contractor shall include, in the space provided in the proposal form, the legal corporate names of all proposed subcontractors and the portion of the work that these proposed subcontractors intend to perform. The Contractor shall not employ any subcontractor or other person or organization that the Owner deems unqualified or unfit for said work.

The Contractor agrees that it is as fully responsible to the Owner for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them as Contractor is for the acts and omissions of persons directly employed by it.

Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the Owner.

Subcontractors shall be in accordance with, and the Contractor shall be bound by, the following provisions:

All subcontracts shall be subject to the approval of the Engineer.

All subcontracts shall be in writing and shall provide that all work to be performed thereunder shall be performed in accordance with the terms of these Contract Documents.

If requested, true copies of any and all subcontracts shall be furnished to the Engineer; however, prices may be omitted.

Subcontractors shall conform to the regulations governing employment of labor.

The subcontracting of any part of the work will in no way relieve the Contractor of its responsibility or liability or obligation under these Contract Documents.

INSURANCE:

As a condition of this agreement, the CONTRACTOR shall provide, at its own expense, public liability insurance of not less than five million (\$5,000,000) dollars for bodily injury and property damage resulting from drilling, blasting or other operations by the CONTRACTOR. CONTRACTOR will be ultimately responsible for any damages to any LPID, TSID and/or private equipment or buildings sustained during a blast. In addition to the public liability insurance, the CONTRACTOR shall furnish LPID proof of coverage of its employees or any sub-contractor by a valid policy of worker's compensation insurance.

The CONTRACTOR shall procure, maintain, and provide proof of insurance coverage for injuries to persons and/or property damage as may arise from, or in conjunction with, the work performed on behalf of LPID by the CONTRACTOR, his agents, representatives, employees, or subcontractors. A Certificate of Insurance shall be submitted within ten (5) Calendar Days after the Notice of Award has been received by the CONTRACTOR and such coverage shall be

maintained by the Successful Proposer for the duration of the contract period, for occurrence policies.

Commercial General Liability

Coverage shall be as broad as: Comprehensive General Liability endorsed to include Broad Form, Commercial General Liability Form including Products/Completed Operations.

Minimum Limits:

\$5,000,000 General Aggregate Limit

\$5,000,000 Products & Completed Operations

\$5,000,000 Personal & Advertising Injury

\$5,000,000 Each Occurrence Limit

\$50,000 Fire Damage Limit

\$5,000 Medical Expense Limit

Business Commercial Automobile Liability

Coverage sufficient to cover all vehicles owned, used, or hired by the Successful Proposer, his agents, representatives, employees, or subcontractors.

Minimum Limits:

\$1,000,000 Combined Single Limit

\$1,000,000 Each Occurrence Limit

\$5,000 Medical Expense Limit

Workers' Compensation

Limits as required by the State of Oregon, to include state's endorsement for businesses outside of Oregon.

NO PERSONAL LIABILITY OF PUBLIC OFFICIALS:

In carrying out any of the provisions hereof in exercising any authority granted by the Agreement, there will be no personal liability upon any public official.

GENERAL LIABILITY & INDEMNITY:

The CONTRACTOR shall hold harmless LPID and TSID its employees, offices, agents, and representative, from any loss or damage to person or property arising out of the negligent acts of the CONTRACTOR or CONTRACTOR's staff, agents, or representatives in the performance of this Contract, and shall indemnify LPID and TSID for any and all damages, including legal costs and attorney's fees, arising from such negligent acts Nothing in this paragraph shall be interpreted to require the CONTRACTOR to hold harmless or indemnify LPID and TSID for damages resulting from the negligent acts of LPID and TSID, its employees, officers, agents and representatives.

SUPERVISION:

The Contractor shall keep on the project, during its progress, competent supervisory personnel. The Contractor shall designate, in writing, before starting work, an authorized representative who shall have complete authority to represent and to act for the Contractor. The Contractor shall give efficient supervision to the work, using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, and procedures, and for providing adequate safety precautions and coordinating all portions of the work under the Agreement. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents.

NONRESPONSIBILITY OF THE OWNER:

Indebtedness incurred for any cause in connection with this work must be paid by the Contractor, and the Owner is hereby relieved at all times from any indebtedness or claim other than payments under terms of the Agreement.

PROPERTY RIGHTS IN MATERIAL:

Nothing in the Agreement shall be construed as vesting in the CONTRACTOR any right of property in the material used after they have been attached or affixed to the work or the soil and accepted by LPID. All such materials shall become the property of LPID upon being so attached or affixed and accepted.

EMPLOYEES:

The Contractor shall employ only competent skillful workers to do the work. The Contractor shall at all times enforce strict discipline and good order among its employees. The Contractor shall comply with all applicable labor rules, wage scales, and regulations, including nondiscriminatory laws, of the Government of the United States, the State, County, and City or Town in which the work is to be done.

REQUIREMENTS OF OREGON LAW FOR PUBLIC CONTRACTS:

When the Contract Documents concern public works of the state or any county, municipality, or political subdivision created by its laws, the applicable statutes of the State of Oregon shall apply. For this reason, Sections 279C.800 through 279C.875 of the Oregon Revised Statutes, as amended or superseded, including the latest additions and revisions, are incorporated by reference as part of these Contract Documents. However, if federal funding is provided for the project, provisions of the Davis-Bacon Act (40 U.S.C. 276a) shall govern in any case where the Act conflicts with ORS.

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The Contractor shall comply with the appropriate provisions of state or federal law, as applicable, regarding payment of workers. The Contractor shall pay not less than the state prevailing wages or the federal wages in accordance with the Davis-Bacon Act, as applicable.

It is understood and agreed that all parties to this Agreement shall determine the contents of these applicable statutes and comply with their provisions throughout the performance of the Agreement.

SAFETY:

The Engineer has not been retained or compensated to provide design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences or procedures required for the Contractor to perform its work.

The Contractor will be solely and completely responsible for conditions of the worksite, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable State, County, and local laws, ordinances and codes, and to the current safety regulations as set forth in the Oregon Safety codes adopted and published by the Workmen's Compensation Board, Salem, Oregon.

The Contractor shall also comply with "U.S. Department of Labor Occupational Safety and Health Act," the "Construction Safety Act" administered by the U.S. Department of Labor, the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, and the "Manual on Uniform Traffic Control Devices," except where these are in conflict with state laws, in which case the more stringent requirements shall be followed.

The Contractor shall maintain at its office or other well known place at the worksite, all articles necessary for giving first-aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of all persons (including employees) who may be injured on the worksite.

The duty of the Engineer to conduct construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the construction site.

If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the Engineer and the Owner. In addition, the Contractor must promptly report in writing to the Engineer all accidents whatsoever arising out of, or in connection with, the performance of the work whether on, or adjacent to, the site, giving full details and statements of witnesses.

If any claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.

PROTECTION OF PROPERTY:

The Contractor shall adopt every practical means and comply with all laws, ordinances, and regulations in order to minimize interferences to traffic and inconveniences, discomfort, and damage to the public, including the provision of adequate dust control measures. All obstructions to traffic shall be guarded in accordance with the "Manual on Uniform Traffic Control Devices".

The Contractor shall not trespass upon private property and shall be responsible for all injury or damage to persons or property, directly or indirectly, resulting from its operations in completing this work. Contractor shall comply with the laws and regulations of the Owner, county, and state, relating to the safety of persons and property, and will be held responsible and required to make good any injury or damage to persons or property caused by carelessness or neglect on the part of the Contractor or subcontractor(s), or any agent or employee of either during the progress of the work and until its final acceptance.

The Contractor shall protect against injury to any pipes, sewer conduits, utility conduits, lawns, gardens, shrubbery, trees, fences, or other structures or property, public and/or private, encountered in this work except as stipulated elsewhere herein. The Contractor shall be responsible and liable for any injury to such pipe, structures, and property.

The Contractor shall protect this work and materials from damage due to the nature of the work, the elements, carelessness of other contractors, or from any cause until the completion and acceptance of the work. All loss or damages arising out of the nature of the work to be done under the terms of these Contract Documents, or from any unforeseen obstruction or defects which may be encountered in the prosecution of the work, or from the action of the elements, shall be sustained by the Contractor.

In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor, without special instruction or authorization from the Engineer, is hereby obligated to act, at its discretion, to prevent such threatened loss or injury; and it shall so act, without appeal, if so instructed or authorized. Any compensation claimed by the Contractor on account of emergency work shall be determined by agreement or as covered under the section "Change Orders".

FIRE PROTECTION AND SUPPRESSION:

Before starting any operations on the project, Contractor, shall prepare a written fire plan in cooperation with the Owner providing for the prevention and control of fires in the project area. The plan shall contain all contact numbers for emergency services, distance of service headquarters, and means of telecommunication.

MATERIALS AND APPLIANCES:

Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. The CONTRACTOR, shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

In selecting and/or approving equipment for installation in the project LPID and LPID assume no responsibility for injury or claims resulting from failure of the equipment to comply with applicable national, state, and local safety codes or requirements, or the safety requirements of a recognized agency, or failure due to faulty design concepts, or defective workmanship and materials.

SAMPLES, TESTING, AND INSPECTION:

The Contractor shall submit a blast plan (ODOT specifications) prepared by an approved ODOT blasting consultant. The CONTRACTOR can do the pre-blast surveys.

All materials to be incorporated in the work shall be subject to sampling, testing, and approval. Samples furnished by the CONTRACTOR shall be representative of the materials to be used. LPID may select samples or may require that samples be delivered to and tested as required by the Specifications at the laboratory designated by LPID.

All sampling and testing of materials shall be done in accordance with the latest designated standard methods of AASHTO, ASTM, etc. or in accordance with special methods designated in the Specifications.

The CONTRACTOR shall furnish, without extra charge the necessary test pieces and samples, including facilities and labor for obtaining the same, as requested by LPID. When required, the CONTRACTOR shall furnish certificates of tests of materials and equipment made at the point of manufacture by a recognized testing laboratory.

PERMITS AND LICENSES:

The CONTRACTOR shall keep himself fully informed of all local ordinances, State and Federal laws, ordinances and regulations, in any manner affecting the work herein specified. It shall at all times comply with said ordinances, laws, and regulations, and protect and indemnify LPID

and officers and agents against any claim or liability arising from or based on the violation of such laws, ordinances, or regulations.

CORRECTION OF DEFECTIVE WORK:

The CONTRACTOR shall drill a 4' by 5' pattern 8 feet wide and blast to a minimum depth of 8-8.5 feet deep and 8 feet wide. Contractor shall guarantee the depth and width of the blast zone. Any work not meeting the depth or width will need to be corrected.

This pattern will require approximately 3600 drilled holes over the 6000 feet. Additional holes and length if required will be compensated at the per hole drill & blast price on the bid schedule.

PAYMENT

BASIS OF PAYMENT:

In consideration of the faithful performance of all the covenants, stipulations, and conditions in these Contract Documents, LPID covenants and agrees to pay the CONTRACTOR the amount bid as adjusted when so stipulated in the CONTRACTOR's Proposal on the basis of the unit prices named in the CONTRACTOR's Proposal for the materials actually delivered as determined by the final estimate of LPID, and less any deductions for claims and damages paid by LPID due to acts or omissions of the CONTRACTOR and for which it is liable under this Agreement.

CONTRACTOR warrants and guarantees that title to all materials covered by any application for payment, whether incorporated in the project or not, will pass to LPID at the time of payment free and clear of all liens, claims, security interests and encumbrances.

CHANGE ORDERS:

Payment or credit for any alterations covered by a Change Order shall be determined by one or a combination of the methods set forth in 1, 2, or 3 below:

1. UNIT PRICES. If applicable, those unit prices stipulated in the Proposal, or unit prices negotiated and mutually acceptable to the CONTRACTOR and LPID.

In "1" above, CONTRACTOR's quotations for Change Orders shall be in writing and firm for a period of forty-five (45) days. Any compensation agreed upon, and subsequently paid by LPID for materials defined in a Change Order shall be deemed to include all costs and expenses related to such materials.

Material charges shall be substantiated by valid copies of vendors' invoices for materials used in the alterations covered by Change Orders.

ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE:

The acceptance by the CONTRACTOR of the final payment shall release LPID and LPID as agent of LPID from all claims and all liability to the CONTRACTOR for all things done or furnished in connection with the materials, and every act of LPID and others relating to or arising out of the work. No payment, however, final or otherwise, shall operate to release the CONTRACTOR from obligations under these Contract Documents.

NO WAIVER OF RIGHTS:

Neither the inspection by LPID, through LPID or any of its employees, nor any order by LPID for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by LPID or LPID, nor any extension of time, nor any possession taken by LPID or its employees, shall operate as a waiver of any provision of these Contract Documents, or any power herein reserved to LPID, or any right to damages herein provided, nor shall any waiver of any breach in this Agreement be held to be a waiver of any other or subsequent breach.

LITIGATION FEES AND EXPENSES

In the event suit or action is instituted to enforce any of the terms or conditions of this Agreement, the losing party shall pay to the prevailing party, in addition to the costs and disbursements allowed by statute, such sum as the court may adjudge reasonable as attorney's fees in such suit or action, in both trial and appellate courts.