REQUEST FOR PROPOSAL

NOME JOINT UTILITY SYSTEM

NJUS RFP 22-12-01

BATTERY ENERGY STORAGE SYSTEM

Due date: January 6, 2023
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1. Overview

Nome Joint Utility System (NJUS) is soliciting proposals for the procurement of a battery energy storage system (BESS). NJUS is located on the Seward Peninsula in Northwest Alaska and serves approximately 3,800 customers with approximately 2,400 electric service connections. Temperatures in the Nome, Alaska area can range from -40 to 80 degrees Fahrenheit. The City of Nome is located on the Bering Sea coast and is subject to a harsh marine environment.

NJUS currently has five diesel power generators ranging in size from 400kVA to 5.2MVA. Additionally, NJUS has two EWT wind turbines rated at 900kW each. The system load of the utility currently ranges from 2.0MW in the summer to 5.1MW during the winter months. NJUS is currently curtailing a significant amount of electricity production from its two EWT 900kW wind turbines due to the operating constraints of the current Wartsila generators typically in operation. The wind turbines are curtailed and limit renewable penetration into the system due to the diesel generator loading requirements. Due to operating constraints and air quality regulations the minimum load on the larger Wartsila units is approximately 2.8MW.

The Battery Energy Storage System will be designed to supply sufficient power while both EWT 900kW turbines are online at full capacity with a combination of smaller diesel generators to meet the system demand. The BESS shall act as a bridging system that allows for both EWTs to trip offline and sufficient time for a larger Wartsila generator to be started and put online without system frequency or voltage deviations.

This proposal has two BESS sizes, one to meet current system requirements and future expansion when additional renewable energy systems and funding become available. The goal is to expand the BESS system to allow for extended periods of diesel off. The BESS shall be expandable and allow for multiple inverters to operate in parallel.

NJUS is seeking competitive proposals for a BESS to support system frequency and voltage upon the loss of the existing EWT wind turbines while operating smaller diesel generators. The requested proposal response shall provide all hardware and software components this RFP outlines as a turn-key BESS solution.

NJUS seeks a BESS that will satisfy the following conditions:
Table 1: Summary of BESS Requirements

<table>
<thead>
<tr>
<th>Requirement</th>
<th>INITIAL BESS</th>
<th>FUTURE BESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nominal AC Power Capacity</td>
<td>2 MW / 2MWh</td>
<td>4+ MW / 4+ MWh</td>
</tr>
<tr>
<td>Expected Duration at Full Discharge Capacity</td>
<td>0.5 hours</td>
<td>0.5 - 1 hours</td>
</tr>
<tr>
<td>Capacity - while maintaining and operating</td>
<td>20% ≤ SOC ≤ 80%**</td>
<td></td>
</tr>
<tr>
<td>Use Case</td>
<td>Bridging system to allow maximum renewable penetration into existing power system, black start</td>
<td></td>
</tr>
<tr>
<td>Expected Cycles</td>
<td>365 cycles per year</td>
<td></td>
</tr>
<tr>
<td>Useful Economic Life</td>
<td>20 years from date of commercial operation</td>
<td></td>
</tr>
</tbody>
</table>

** Vendors to provide specific battery operation / maintenance State of Charge (SOC) information with proposals.

This RFP is expected to result in the selection of a manufacturer or company with whom NJUS will execute a contract agreement. NJUS will evaluate submitted proposals based on the matrix listed on page 15, Table 3 which includes past performance, project understanding and solution, technical specifications (hardware), technical specifications (software), and pricing.

The proposer selected shall be responsible for all design, engineering, material, equipment, testing, and commissioning required for the safe and reliable operation of the proposed BESS system described in this document. Installation and integration design into the NJUS system will be by others.
2. Project Description

2.1. Background

In 2021 NJUS generated approximately 32,500 MWh of electricity using the power generation units indicated in Table 2 below. Approximately 7% of this was derived from the wind turbines. It is estimated another 1.8 MWh was curtailed to help maintain Wartsila diesel minimums. A NJUS-commissioned study determined that if the Utility had an effective BESS in place facilitating more efficient diesel / wind operation, that wind penetration would have approached 11%.

<table>
<thead>
<tr>
<th>UNIT</th>
<th>DESCRIPTION</th>
<th>Rating/Size (kWe)</th>
<th>Min Load (kWe)</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Cat#3616</td>
<td>3,660</td>
<td>2,200</td>
</tr>
<tr>
<td>14</td>
<td>Cat#3516B-LS</td>
<td>1,875</td>
<td>1,200</td>
</tr>
<tr>
<td>15</td>
<td>Wartsila#12V32B</td>
<td>5,211</td>
<td>2,800</td>
</tr>
<tr>
<td>16</td>
<td>Wartsila#12V32B</td>
<td>5,211</td>
<td>2,800</td>
</tr>
<tr>
<td>18a</td>
<td>Cat#3456B (blackstart)</td>
<td>400</td>
<td></td>
</tr>
<tr>
<td>EWT1</td>
<td>EWT Wind Turbine</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>EWT2</td>
<td>EWT Wind Turbine</td>
<td>900</td>
<td></td>
</tr>
</tbody>
</table>

2.1.1. Use Case Description

The BESS will be designed to supply sufficient power while both EWT 900kW turbines are online at full capacity with a combination of smaller diesel generators to meet the system demand. The BESS shall act as a bridging system that allows for both EWTs to trip offline and provides sufficient time for a larger Wartsila generator to be started and put online without system frequency or voltage deviations. This proposal has two BESS sizes below to meet the system requirements currently and in the future. NJUS plans to add renewable energy sources to their system with the ultimate goal of going diesel off for extended periods of time. The BESS provided needs to be expandable and allow for multiple inverters to operate in parallel.
2.1.2. Site and Interconnection Requirements

The BESS will be located near the existing power plant. A single containerized enclosure energy storage solution is expected, with potential to also locate the power converter(s) and transformer(s). The enclosure and inverter system will be placed on a foundation provided by NJUS. Enclosure dimensions, a draft floor plan, the inverter and transformer dimensions (if not integrated within the enclosure) and weight must be included in the RFP response.

The proposed BESS shall interconnect to the NJUS 4.16 kV generation bus with the ability to detect ground fault currents on the connected bus. This can be achieved with a neutral ground (provided by NJUS) resistor on the transformer, sized to match the generator grounding resistors. The neutral grounding resistor will include ground fault protection that will coordinate with the existing ground fault protection.

The proposed BESS must integrate with NJUS’ existing SCADA system. It should have the ability for monitoring and control via Modbus TCP. The proposer shall provide a data map showing all monitoring and control points. The connection point shall be fiber for direct connection to the NJUS SCADA network.

2.2. Scope of Supply

2.2.1. Scope

NJUS seeks a proposal for a BESS system that will provide energy storage, grid forming islanded operation and enhance the ability to integrate other renewable resources into its power system. The proposer shall provide pricing for BESS engineering, design, procurement, and manufacturing/assembly of all components for a complete BESS.

The successful proposer shall:

- Design, fabricate, procure, deliver, assemble, test and commission, and warrant a fully functional BESS that meets or exceeds all requirements herein, including a BESS step-up transformer and termination points to connect to NJUS’ SCADA interface.
- Design, install, program and make ready for use all communications equipment/software, within the BESS, necessary for integration of the BESS to NJUS’ existing SCADA network. NJUS will be responsible for communication wiring and conduit between the BESS and NJUS’ network interface located at the powerhouse.
- Design, install, program and make ready for use a BESS Energy Management System (EMS) capable of integrating with NJUS’ SCADA, remote dispatch/operation, and performing any/all functions required for the operation of a BESS as described above.
- A containerized solution is expected. Proposer to furnish the design and installation for the structural components of the BESS. This task to be coordinated with NJUS.
structural design, and coordinate conduit required for the complete integration of BESS into the existing NJUS infrastructure.

- Provide all required equipment, materials, labor, and tools, test and commission the BESS as part of the NJUS power system.

### 2.2.2. Technical Requirements

Proposer shall be responsible for any details, equipment, components, software, labor, or services not stipulated below but which are required for satisfactory performance of the BESS.

- The BESS shall support autonomous operation, and shall be capable of being charged, discharged, and controlled via remote control, recognizing and responding to the dispatch control point signal or equivalent when online. Charging and discharging operations will be accomplished directly through NJUS' SCADA System.

- The BESS shall be capable of operating on a percent droop curve that is adjustable. The droop percentage setting shall range from 0-10% and shall be operational in both grid forming and grid following. The BESS shall be capable of charging while in droop mode, bi-direction inverter operation.

- The BESS will be integrated into the existing 4.16kV generation switchgear located at the Snake River Power Plant. NJUS will provide a foundation, conduit, cable, switchgear required for the BESS system.

- The proposer shall provide any and all component and system technical data required by NJUS to conduct the interconnection studies.

- The proposer shall provide auxiliary load requirements for powering the system during normal and emergency conditions.

- Modes of operation shall include standby, grid following, and grid forming. The BESS shall be capable of a bumpless transfer between modes with no interruption to the grid. For example, the BESS shall be capable of transferring from grid forming to following without requiring a shutdown (off mode). Once initiated in an operating mode, the BESS shall remain at the designated output until terminated by local/remote signal or the BESS discharge limit is reached. The BESS shall be capable of synchronizing to an energized bus.

- The EMS shall include functionality for remote charging and discharging operations for all 24 hours in a day.

- The EMS shall be capable of maintaining a selectable resting state of charge of 30% while being synced to the system grid behind the step-up transformer.

- The ramp rate and output level shall be selectable, and the output level shall be programmable, on a continuous real-time basis by the remote signal from NJUS' SCADA system. The BESS shall be capable of ramping to a predetermined output level as set by a remote signal from NJUS' SCADA system or by entering a ramp rate
into the EMS HMI and discharging upon remote command. Minimum selectable ramp must be 100% nominal AC nameplate capacity per second, ramping to full load in 150-300 milliseconds or less. Ramp rate should be programmable for each dispatch interval.

- The EMS shall provide monitoring points throughout the BESS including, but not limited to: inverter AC and DC voltage, current, kW, kVA, kVAR, power factor; battery rack voltage and current, battery module min/max voltage, auxiliary system critical parameters, fire detection/suppression monitoring points, state of charge of battery modules, and three temperature monitoring points per battery rack including an average of temperature sensors in battery rack (average, max, min).

- The EMS shall allow remote access to the NJUS network to monitor data and shall maintain a minimum of 30-day on-site memory storage capacity.

- Provide additional connections independent of the EMS using a modbus connection between the battery and the NJUS SCADA for a supplementary monitoring system.

- The BESS shall utilize DNP3 and MODBUS protocols for network integration.

- The BESS shall utilize a multi-level, redundant safety architecture, including cell-level, element/module/tray-level, rack/string-level, and system-level safety and supervision functionality.

- EMS shall provide an emergency stop via a pushbutton and a station E-Stop that will trip all string DC breakers, open any make/break rate contactors, etc. The proposer shall provide a trip sequence for this E-Stop.

- The thermal management system must maintain battery temperatures to within manufacturer specifications (temperature differential, minimum temperature, maximum temperature).

- The proposer shall design battery systems and the enclosure to the site-specific seismic criteria and weather conditions.

- Proposals shall include a recommended spare parts list with pricing and availability.

**2.2.3. Code Requirements**

Proposers shall ensure the BESS complies with the following codes:

- American National Standards Institute (ANSI 62.41, ANSI C12.1)
- Federal Communications Commission (FCC Part 15A)
- Institute of Electrical and Electronics Engineers (IEEE 519, 929, 1537, & 1547)
- Underwriters Laboratories (UL1741, UL1973, UL9540, UL9540a)
- National Electric Code
2.2.4. Commercial Terms

The proposer shall incorporate the following terms and conditions into any pricing offering in response to this RFP:

- Proposer is responsible for delivery of FOB the Port of Seattle. NJUS will be responsible to arrange onward transportation from Port of Seattle to Port of Nome.

2.2.5. Commercial Operation Certification

The proposer shall be responsible for the development and performance of a commissioning and acceptance testing program that will demonstrate the BESS will perform as designed, meets the technical requirements, and performs as expected. Commissioning documentation shall include, but is not limited to:

- Electrical design verification
- Certificates of code compliance
- Energy and power capacity acceptance testing
- Modes of operation testing in local/remote control
- Functional acceptance testing of fire detection and suppression
- SCADA integration and point verification
- First responder orientation
3. RFP Communications

3.1. Administration of RFP

The primary NJUS contact for and administrator of this RFP is Ken Morton, NJUS Assistant Manager and Utility Engineer. All questions or other communications regarding this RFP shall be in writing directed by e-mail to: KenM@njus.org.

RFP Addenda will be posted to NOME JOINT UTILITY SYSTEM’s website: NJUS.org. Potential proposers are encouraged to notify Ken Morton by email to register their interest.

3.2. Submittal Instructions

The proposer shall submit one electronic copy of its proposal to KenM@njus.org no later than January 06, 2023 at 3PM Alaska Standard Time.

All proposal submissions must include a completed version of all relevant appendices and a narrative response conforming to the format stipulated in Section 5. The proposer must ensure its proposal complies with all requirements and instructions as defined in this RFP.

3.3. RFP Attachments and Addenda

Should any addenda to the RFP become necessary, NJUS will issue such addenda via email to all proposers who attend the pre-proposal meeting.

As of the time of the RFP’s release, the following attachments are active and must be completed or acknowledged as part of any proposal:

- Attachment A – Pricing Matrix & Bid Schedule
- Attachment B – Technical Requirements
- Attachment C – Sample Contract
4. Schedule

NJUS has developed the following schedule to govern key dates associated with this RFP. NJUS reserves the right to modify this schedule as needed.

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>12-02-2022</td>
<td>RFP release</td>
</tr>
<tr>
<td>12-16-2022</td>
<td>Pre-bid meeting via conference call</td>
</tr>
<tr>
<td></td>
<td>Phone Number: 907-646-5183</td>
</tr>
<tr>
<td>12-21-2022</td>
<td>Deadline for RFP questions</td>
</tr>
<tr>
<td>12-28-2022</td>
<td>Published responses to all RFP questions</td>
</tr>
<tr>
<td>01-06-2023</td>
<td>Proposal due date</td>
</tr>
<tr>
<td>01-13-2023</td>
<td>Final selection and Contract negotiations</td>
</tr>
<tr>
<td>01-03-2024</td>
<td>Project Completion (COD)</td>
</tr>
</tbody>
</table>

NJUS, in its sole discretion, may waive any technicality or deem proposals submitted after the proposal due date to be non-responsive and excluded for consideration. To participate in the RFP pre-proposal meeting, interested proposers must provide contact information to the RFP email address specified in Section 3. During the pre-bid meeting, NJUS will provide supplemental information, as necessary, and answer proposers questions. All questions submitted by potential proposers, including those asked during the pre-proposal meeting and until December 16, 2022, along with NJUS’ responses, will be available via email.

NJUS anticipates a completion of project (COD) of January 3, 2024, approximately 12 months after completing contract negotiations. NJUS, in coordination with proposer, may refine the COD during negotiation of a contract to reflect project-specific requirements. If the proposer anticipates an alternative COD, the proposer shall state the alternative COD in its proposal.
5. **Proposal Content**

NJUS will review information submitted by a proposer and reserves the right to request additional information from the proposer during the proposal evaluation process. The proposer must organize its proposal in accordance with the following outline, with responses being ascribed to the same sections and question numbers as defined below.

The proposer shall guarantee that the entity and its principles as defined in 2 CFR section 180.995 are not suspended or debarred or otherwise excluded from participating in the RFP. The proposal shall include a statement that it is not suspended or debarred from participating in the transaction with their proposal.

**Executive Summary**

1. Short description of proposed BESS project
2. Pricing summary table
3. Primary contact information

**Firm Background and Relevant Experience**

1. Proposers company overview, including, but not limited to, organizational history, project management capabilities, and experience in providing energy storage hardware and software services in northern climates. Past experience in northern climates will be heavily weighted.
2. Proposers financial viability
3. Proposers history of providing similar projects over the past three years, including examples of prior coordination with municipal utilities
4. Experience with small, islanded power grids in remote locations
5. Three client BESS project references including contact organization, name, title, and email address
6. Possible conflicts of interest and disclosure of any related legal claims

**Project Description**

1. General project description
2. Project schedule, including requirements for installation and commissioning
3. Description of warranty and O&M management for the lifetime of the equipment
4. Description of proposers battery augmentation approach
5. Description of expansion to the initial BESS if only option 1 is chosen
6. Description of site acceptance testing
7. Onsite Training
8. Warranty for hardware and software

Technical Specifications – Hardware

1. Technical solution overview
2. Description of major components including documentation, safety procedures, and electrical requirements.
   a. Transformer
   b. Inverter
   c. Batteries
   d. Battery monitoring system
   e. Enclosure for energy storage
   f. Major material list
   g. Fire mitigation system
3. Description of proposers ability to support and integrate components from multiple OEMs
4. System architecture and augmentation strategy for the proposed system
5. Expected energy capacity curves for 20-year useful life
6. Expected monthly consumption and peak power of auxiliary loads. Operating losses will be evaluated at NJUS’ cost per kW-hr
7. Control system specification including interface data requirements, network parameters, and required communication protocols
8. Low and high voltage ride through capabilities, inverter protection
9. Decommissioning strategy and cost assumptions for battery disposal and equipment removal
10. BESS is co-located wind and diesel generation, describe proposers approach to integrating the combined resources and any associated performance guarantees
11. Description of proposers ability to support islanding and black start scenarios

Technical Specifications – Software

1. Overview of software solution, including ability to support operations within one platform across multiple OEMs and resource types
2. Ability to support SCADA integration with the existing NJUS’ system
3. Overview of cloud asset management capabilities, utility signal integration, system monitoring, and cyber security
4. Operating modes of the inverters and selectable options via the software interface

Other Required Documentation

1. Bid bond

To be responsive, a bid must include a bid guarantee equal to 5% of the amount bid. (When calculating the bid amount for purposes of determining the 5% value of the bid guarantee, a bidder shall include its base bid amount, plus the amount bid for alternate and supplemental bid items, if any.)

The apparent successful bidder must furnish a payment bond in the amount of 100% of the contract and a performance bond in the amount of 100% of the contract as security conditioned for the full, complete and faithful performance of the contract. The apparent successful bidder must execute the said contract and bonds within 15 calendar days, or such further time as may be allowed in writing by the Owner, after receiving notification of the acceptance of their proposal.
6. Evaluation Criteria and Scoring

NJUS will utilize the following scoring matrix to evaluate each proposal. NJUS’ evaluation will focus on both pricing and qualitative information. As such, NJUS may select proposals that do not represent the lowest cost. NJUS reserves the right to consider any additional information deemed to be relevant to a comprehensive analysis of submitted proposals.

NJUS will select shortlisted proposers based on the total score assigned to each proposal.

Table 3: Proposal Scoring Matrix

<table>
<thead>
<tr>
<th>Proposal Section</th>
<th>Potential Points</th>
<th>Awarded Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firm Background and Relative Experience to Northern Environment and installed capacity throughout North America</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Project Description</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Technical Specifications - Hardware</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>Technical Specifications - Software</td>
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<td></td>
</tr>
<tr>
<td>Pricing</td>
<td>40</td>
<td></td>
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<tr>
<td>Total</td>
<td>100</td>
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</table>
7. Confidentiality and Reserved Rights

All proposals shall become the exclusive property of NJUS. NJUS will not disclose to third parties, including other competing bidders, any information contained in a proposal unless such disclosures are required by law or by order of a court or government agency having appropriate jurisdiction, or to secure the approval of lenders. NJUS reserves the right to disclose proposals to legal or engineering consultants for the purpose of assisting in the evaluation of proposals but will require consultants to maintain the confidentiality of the documents. This RFP is solely an invitation for interested proposers to submit proposals.

NJUS reserves the right to:

- Waive irregularities or reject any and all proposals received in response to this RFP for any reason.
- Revise this RFP at any time, or reject all proposals and re-issue this RFP.
- Waive any requirement in this RFP.
- Negotiate project designs with more than one proposer simultaneously.
- Terminate negotiations.
- Accept proposals other than the lowest cost proposal.
- Request clarifications or additional information from the proposer at any time.

8. Incurred Costs

Proposers shall bear sole responsibility for any and all costs, both direct or indirect, related to the preparation of a proposal in response to this RFP. NJUS shall not reimburse proposer for any costs incurred in the preparation or submission of a proposal and/or associated with contract negotiations.

9. Contract Incorporation

The contents of a selected proposal might be incorporated into subsequent contractual agreements. If NJUS moves forward with a proposer, NJUS will negotiate a contract with such proposer that will embody the core aspects included in the proposal. In the event negotiations with a proposer do not, within a reasonable period of time, produce a satisfactory contract to NJUS, NJUS reserves the right to terminate those negotiations and pursue other options available to it including, without limitation, entering into negotiations with another party. Any successful proposal that results from the proposal evaluation and negotiation processes will be subject to approval by NJUS.
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Quantity</th>
<th>Total</th>
<th>Cost ($)</th>
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<tbody>
<tr>
<td>1</td>
<td>Initial deposit</td>
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<td></td>
<td>5%</td>
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<tr>
<td>2</td>
<td>Design Approval</td>
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<td>5%</td>
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<tr>
<td>3</td>
<td>Shipment</td>
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<td>65%</td>
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<td>4</td>
<td>Onsite performance testing</td>
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<td>5</td>
<td>Training</td>
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<tr>
<td>6</td>
<td>90 day operational test</td>
<td>1</td>
<td></td>
<td>15%</td>
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BID SCHEDULE

PROJECT: NOME JOINT UTILITY SYSTEM BATTERY ENERGY STORAGE SYSTEM

The Bidder shall insert a unit price, total price, unit weight and total weight in figures opposite each pay item in the Bid Schedule. No price is to be entered or tendered for any item not appearing in the Bid Schedule and all totals shall be based on the “Total Order Quantity”. The bid shall be signed by a person or persons duly authorized to sign on behalf of the proposer.

If in checking the extension of bids, the Nome Joint Utility finds any discrepancy between the amount written numerically and the amount written in words, the amount in words will prevail.

Contract award for the Bid schedule will be based on the total bid for that schedule. For purposes of award, offers made in accordance with this solicitation shall be good and firm for forty-five (45) days from the date proposals are due.

<table>
<thead>
<tr>
<th>Line Item</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Total Price</th>
<th>Unit Weight</th>
<th>Total Weight</th>
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<tr>
<td>1</td>
<td>BESS Step-up Transformers</td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2</td>
<td>BESS Inverters</td>
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<td>3</td>
<td>Batteries and Energy Storage System</td>
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</tbody>
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Bid Schedule Total Price & Weight

Total Base Bid Amount in Figures

Total Base Bid Amount in Words

Total Bid Price Includes Delivery to: Seattle, Washington Dock

Authorized Signatory          Date          Email Address
<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Telephone Number</th>
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<table>
<thead>
<tr>
<th>Business License Number/State of Issuance</th>
<th>Expiration Date</th>
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</table>

<table>
<thead>
<tr>
<th>Address of Business</th>
</tr>
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</table>
Attachment B – Technical Requirements

See Spreadsheet
Attachment C – Sample Contract
This page is solely for the information and convenience of ConsensusDocs users, and is not a part of the contract. Gray boxes indicate where you should click and type in your project information. The yellow shading is a Word® default function that displays editable text. Shading can be turned off by going to the Review tab, select “Restrict Editing” button and uncheck “Highlight the regions I can edit”. In Word 2003 you will find this option under the Tools tab, Options, Security tab, Protect Document button.

EMBEDDED INSTRUCTIONS are provided solely to help you complete the document. To display or hide instructions select the “¶” button under the “Home” tab to show all formatting marks.

Red Boxes: Instructions for fields that are typically required to complete contract.
Blue Boxes: Instructions for fields that may or may not be required for a complete contract.
Green Boxes: Provide general instructions or ConsensusDocs Coalition Guidebook comments, which can be found at www.ConsensusDocs.org/guidebook.

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STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTOR (Lump Sum)

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ARTICLE 1 AGREEMENT

Job Number: [_____]  Account Code: [_____]  

This Agreement is made this [_____] day of [_____] in the year [_____].

by and between the

OWNER, [_____]

and the

CONSTRUCTOR, [_____]

Tax identification number (TIN) [_____]  
Contractor License No., if applicable [_____]  

for construction and services in connection with the following

PROJECT [_____]  

Design Professional is [_____] .

ARTICLE 2 GENERAL PROVISIONS

2.1 PARTIES' RELATIONSHIP Each Party agrees to act on the basis of mutual trust, good faith, and fair dealing, and perform in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.
2.1.1 Neither Constructor nor any of its agents or employees shall act on behalf of or in the name of Owner.

2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest; and (b) promptly disclose to the other Party any conflicts that may arise. Each Party warrants it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers, employees, Subcontractors, Subsubcontractors, Suppliers, or Others to secure preferential treatment.

2.3 DESIGN PROFESSIONAL Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work excluding, however, (a) design services delegated to Constructor in accordance with §3.15, and (b) services within the construction means, methods, techniques, sequences, and procedures employed by Constructor, its Subcontractors and Subsubcontractors in connection with their construction operations.

2.3.1 Owner shall obtain from Design Professional either a license for Constructor and Subcontractors to use the design documents prepared by Design Professional or ownership of the copyrights for such design documents. Owner shall indemnify and hold harmless Constructor against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

2.4 DEFINITIONS

2.4.1 “Agreement” means this ConsensusDocs 200 Standard Agreement and General Conditions Between Owner and Constructor (Lump Sum), as modified, and exhibits and attachments made part of this agreement upon its execution.

2.4.1.1 The following exhibits are part of this Agreement:
   Exhibit A: Schedule of the Work, [_____] pages.
   Exhibit B: Labor Relations, if applicable.

2.4.2 “Business Day” means all Days, except weekends and official federal or state holidays where the Project is located.

2.4.3 A “Change Order” is a written order signed by the Parties after execution of this Agreement, indicating a change in the scope of the Work, Contract Price, or Contract Time, including substitutions proposed by Constructor and accepted by Owner.

2.4.4 The “Contract Documents” consist of (a) this Agreement; (b) documents listed in §14.1 as existing contract documents; (c) drawings, specifications, addenda issued and acknowledged before execution of this Agreement; (d) information furnished by Owner pursuant to §3.13.4; and (e) Change Orders, Interim Directives, and amendments issued in accordance with this Agreement.

2.4.5 “Contract Price” is the amount indicated in §7.1 and represents full compensation for performance by the Constructor of the Work in conformance with the Contract Documents.

2.4.6 “Contract Time” is the period between the Date of Commencement and the total time authorized to achieve Final Completion in §6.1.1.

2.4.7 “Constructor” is the person or entity identified in ARTICLE 1. References to General Contractor or Contractor in the Contract Documents may be a reference to Constructor.
2.4.8 “Cost of the Work” means the costs and discounts specified in §8.3.4.

2.4.9 “Date of Commencement” is as set forth in §6.1.

2.4.10 “Day” means a calendar day.

2.4.11 “Defective Work” is any portion of the Work that does not conform to the requirements of the Contract Documents.

2.4.12 “Design Professional” means the licensed architect or engineer, and its consultants, retained by Owner to perform design services for the Project.

2.4.13 “Final Completion” occurs on the date when Constructor's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by Parties.

2.4.14 “Hazardous Material” is any substance or material identified now or in the future as hazardous under the Law, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup.

2.4.15 “Law” means federal, state, or local law, ordinance, code, rule, and regulations applicable to the Work with which Constructor must comply that are enacted as of the Agreement date.

2.4.16 “Interim Directive” is a written order containing Work instructions directed by Owner pursuant to §8.2 and that is signed by Owner after execution of this Agreement and before Substantial Completion.

2.4.17 “Others” means Owner’s other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, subsubcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.

2.4.18 “Overhead” means (a) payroll costs, burden, and other compensation of Constructor's employees in Constructor's principal and branch offices; (b) general and administrative expenses of Constructor's principal and branch offices including charges against Constructor for delinquent payments; and (c) Constructor's capital expenses, including interest on capital used for the Work.

2.4.19 “Owner” is the person or entity identified in ARTICLE 1.

2.4.20 The “Parties” are collectively Owner and Constructor.

2.4.21 The “Project,” as identified in ARTICLE 1, is the building, facility, or other improvements for which Constructor is to perform Work under this Agreement. It may also include construction by Owner or Others.

2.4.22 The “Schedule of the Work” is the document prepared by Constructor that specifies the dates on which Constructor plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner.

2.4.23 A “Subcontractor” is a person or entity retained by Constructor as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or Others.
2.4.24 “Substantial Completion” of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that Owner may occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unapproved disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond Constructor's control. This date shall be confirmed by a Certificate of Substantial Completion signed by the Parties.

2.4.25 A “Subsubcontractor” is a person or entity who has an agreement with a Subcontractor, another subsubcontractor, or Supplier to perform a portion of the Work or to supply material or equipment.

2.4.26 A “Supplier” is a person or entity retained by Constructor to provide material or equipment for the Work.

2.4.27 “Terrorism” means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.4.28 “Work” means the construction and services necessary or incidental to fulfill Constructor's obligations for the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.4.29 “Worksite” means the area of the Project location identified in ARTICLE 1 where the Work is to be performed.

**ARTICLE 3 CONSTRUCTOR’S RESPONSIBILITIES**

Constructor shall use its diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. Such Work includes furnishing construction administration and management services.

3.1 GENERAL RESPONSIBILITIES

3.1.1 Constructor shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with the Contract Documents and shall include any Work reasonably inferable from the Contract Documents.

3.1.2 Constructor represents that it is an independent contractor and that it is familiar with the type of work required by this Agreement.

3.1.3 Unless the Contract Documents instruct otherwise, Constructor shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized. When following construction means, methods, techniques, sequences, or procedures instructed by the Contract Documents, Constructor is not liable to Owner for damages resulting from compliance with such instructions unless (a) Constructor recognized and (b) failed to timely report to Owner any error, inconsistency, omission, or unsafe practice that it discovered in such requirements.

3.1.4 Constructor shall perform Work only within locations allowed by the Contract Documents, Law, and applicable permits.
3.2 COOPERATION WITH WORK OF OWNER AND OTHERS

3.2.1 Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.2.2 If Owner elects to perform work at the Worksite directly or by Others, the Parties shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to cooperate with Constructor and to assist with the coordination of activities and the review of construction schedules and operations. In accordance with §6.3, Contract Price and Contract Time may be equitably adjusted for changes resulting from the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

3.2.3 With regard to the work of Owner and Others, Constructor shall: (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of Owner or Others or cause the work of Owner or Others to become defective; (b) afford Owner and Others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate Constructor's Work with theirs.

3.2.4 Before proceeding with any portion of the Work affected by the construction or operations of Owner or Others, Constructor shall give Owner prompt written notification of any defects Constructor discovers in their work which will prevent the proper execution of the Work. Constructor's obligations in this subsection do not create a responsibility for the work of Owner or Others, but are for the purpose of facilitating the Work. If Constructor does not notify Owner of defects interfering with the performance of the Work, Constructor acknowledges that the work of Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from Constructor of defects, Owner shall promptly issue an Interim Directive informing Constructor what action, if any, Constructor shall take with regard to the defects.

3.3 CONTRACT DOCUMENT REVIEW

3.3.1 Before commencing the Work, Constructor shall examine and compare the drawings and specifications with information furnished in the Contract Documents, relevant field measurements made by Constructor, and any visible conditions at the Worksite affecting the Work.

3.3.2 Should Constructor discover any errors, omissions, or inconsistencies in the Contract Documents, Constructor shall promptly report them to Owner. It is recognized, however, that Constructor is not acting in the capacity of a licensed design professional, and that Constructor's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions, or inconsistencies or to ascertain compliance with a Law, building code, or regulation. Following receipt of written notice from Constructor of errors, omissions, or inconsistencies, Owner shall promptly inform Constructor what action, if any, Constructor shall take with regard to the errors, omissions, or inconsistencies.

3.3.3 In accordance with this Agreement, Constructor may be entitled to adjustments of the Contract Price or Contract Time because of clarifications or instructions arising out of Constructor's reports described in this §3.3.
3.3.4 Nothing in §3.3 shall relieve Constructor of responsibility for its own errors, inconsistencies, or omissions.

3.4 CONSTRUCTION PERSONNEL AND SUPERVISION

3.4.1 Constructor shall provide competent supervision for the performance of the Work. Before commencing the Work, Constructor shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager so Owner may review their qualifications. If, for reasonable cause, Owner refuses to approve an individual, or withdraws its approval after once giving it, Constructor shall name a different superintendent or project manager for Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

3.4.2 Constructor shall be responsible to Owner for acts or omissions of a person or entity performing on behalf of Constructor or any of its Subcontractors and Suppliers.

3.4.3 Constructor shall permit only qualified persons to perform the Work. Constructor shall enforce safety procedures, strict discipline, and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned Work, Constructor shall immediately reassign the person upon receipt of Owner's Interim Directive to do so.

3.4.4 CONSTRUCTOR'S REPRESENTATIVE Constructor's authorized representative is [_____].. Constructor's Representative shall possess full authority to receive instructions from Owner and to act on those instructions. If Constructor changes its representative or the representative's authority, Constructor shall immediately notify Owner in writing.

3.5 WORKMANSHIP The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except as otherwise provided in the Contract Documents.

3.6 MATERIALS FURNISHED BY OWNER OR OTHERS If the Work includes installation of materials or equipment furnished by Owner or Others, it shall be the responsibility of Constructor to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of Constructor shall be the responsibility of Constructor and may be deducted from any amounts due or to become due Constructor. Any defects discovered in such materials or equipment shall be reported at once to Owner. Following receipt of written notice from Constructor of defects, Owner shall promptly inform Constructor what action, if any, Constructor shall take with regard to the defects.

3.7 TESTS AND INSPECTIONS

3.7.1 Constructor shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. Constructor shall give proper notice to all required parties of such tests, approvals, and inspections. If feasible, Owner and Others may timely observe the tests at the normal place of testing. Except as provided in §3.7.3, Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents, which shall be conducted by an independent testing laboratory or entity retained by Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by Constructor and promptly delivered to Owner.
3.7.2 If Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, Constructor shall arrange for the procedures and give timely notice to Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at Owner's expense except as provided in the subsection below.

3.7.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents, Constructor shall be responsible for costs of correction and retesting.

3.8 WARRANTY

3.8.1 Constructor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At Owner's request, Constructor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Constructor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Constructor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others, or abuse. Constructor's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.8.2 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. For such incorporated items, ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

3.8.3 Constructor shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. Constructor's liability for such warranties shall be limited to the one-year correction period as provided in the section below. After that period, Constructor shall provide reasonable assistance to Owner in enforcing the obligations of Subcontractors or Suppliers for such extended warranties.

3.9 CORRECTION OF WORK WITHIN ONE YEAR

3.9.1 Before Substantial Completion and within one year after the date of Substantial Completion of the Work, if any Defective Work is found, Owner shall promptly notify Constructor in writing. Unless Owner provides written acceptance of the condition, Constructor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Constructor or give Constructor an opportunity to test or correct Defective Work as reasonably requested by Constructor, Owner waives Constructor's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.9.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of the Work is substantially complete. Correction periods shall not be extended by corrective work performed by Constructor.
3.9.3 If Constructor fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due Constructor. If payments then or thereafter due Constructor are not sufficient to cover such amounts, Constructor shall pay the difference to Owner.

3.9.4 Constructor's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Constructor and allow Constructor an opportunity to correct the Work if Constructor elects to do so. If Constructor elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Constructor does not elect to correct the Work, Owner may have the Work corrected by itself or others, and, if Owner intends to seek recovery of those costs from Constructor, Owner shall promptly provide Constructor with an accounting of actual correction costs.

3.9.5 If Constructor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, Constructor shall be responsible for the cost of correcting the destroyed or damaged property.

3.9.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Constructor's other obligations under the Contract Documents.

3.9.7 Before final payment, at Owner's option and with Constructor's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such case, the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.10 CORRECTION OF COVERED WORK

3.10.1 Upon issuance of an Interim Directive, Work that has been covered without a requirement that it be inspected before being covered shall be uncovered for Owner's inspection. Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by Owner or Others. If the uncovered Work proves to be defective, Constructor shall pay the costs of uncovering and replacement.

3.10.2 If any Work is covered contrary to requirements in the Contract Documents, Owner may issue an Interim Directive to uncover the Work for Owner's observation and recover the Work all at Constructor's expense and with no Contract Time adjustment.

3.11 SAFETY

3.11.1 SAFETY PROGRAMS Constructor holds overall responsibility for safety programs. However, such obligation does not relieve Subcontractors their safety responsibilities and to comply with the Law. Constructor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored onsite or offsite for use in the Work; and (c) property located at the Worksite and adjacent to work areas.
3.11.2 CONSTRUCTOR’S SAFETY REPRESENTATIVE Constructor shall designate an individual at the Worksite in its employ as its safety representative. Unless otherwise identified by Constructor in writing to Owner, Constructor's project superintendent shall serve as its safety representative. Constructor shall report promptly in writing to Owner all recordable accidents and injuries occurring at the Worksite. When Constructor is required to file an accident report with a public authority, Constructor shall furnish a copy of the report to Owner.

3.11.3 Constructor shall provide Owner with copies of all notices required of Constructor by Law. Constructor's safety program shall comply with the requirements of authorities having jurisdiction.

3.11.4 Damage or loss not insured under property insurance which may arise from the Work, to the extent caused by the negligent or intentionally wrongful acts or omissions of Constructor, or anyone for whose acts Constructor may be liable, shall be promptly remedied by Constructor.

3.11.5 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Constructor's safety program, may require by Interim Directive, Constructor to stop performance of the Work, take corrective measures satisfactory to Owner, or both. If Constructor does not adopt corrective measures, Owner may perform them and deduct their cost from the Contract Price. Constructor agrees to make no claim for damages, for an increase in the Contract Price or Contract Time based on Constructor's compliance with Owner's reasonable request.

3.12 EMERGENCIES

3.12.1 In an emergency affecting the safety of persons or property, Constructor shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the Contract Price or Contract Time resulting from the actions of Constructor in an emergency situation shall be determined as provided in ARTICLE 8.

3.13 HAZARDOUS MATERIALS

3.13.1 Constructor shall not be obligated to commence Work until any Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate governmental agency.

3.13.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, Constructor shall be entitled to immediately stop Work in the affected area. Constructor shall promptly report the condition to Owner, Design Professional, and, if required, the governmental agency with jurisdiction.

3.13.3 Constructor shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.13.4 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effect upon the Work.

3.13.5 If Constructor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Constructor shall be entitled to an equitable adjustment in the Contract Price or the Contract Time in accordance with this Agreement.
3.13.6 To the extent permitted by §6.6 and to the extent not caused by the negligent or intentionally wrongful acts or omissions of Constructor, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, Owner shall defend, indemnify, and hold harmless Constructor, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.13.7 MATERIALS BROUGHT TO THE WORKSITE

3.13.7.1 Safety Data Sheets (SDS) as required by Law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Constructor, Subcontractors, Owner, or Others, shall be maintained at the Worksite by Constructor and made available to Owner, Subcontractors, and Others.

3.13.7.2 Constructor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Constructor and used or consumed in the performance of the Work. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by Constructor if such materials or substances are required by the Contract Documents.

3.13.7.3 To the extent caused by the negligent or intentionally wrongful acts or omissions of Constructor, its agents, officers, directors, and employees, Constructor shall indemnify and hold harmless Owner, its agents, officers, directors, and employees, from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Constructor.

3.13.8 §3.13 in its entirety shall survive the completion of the Work or Agreement termination.

3.14 SUBMITTALS

3.14.1 Constructor shall submit to Owner and Design Professional all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form if required by §4.6.1. Constructor shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, Constructor shall prepare and deliver its submittals in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of Owner and Others. Constructor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Constructor submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval by Owner. Neither Design Professional nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Constructor. If the Contract Documents do not contain submittal requirements pertaining to the Work, Constructor agrees upon request to submit in a timely fashion to Design Professional and Owner for review any
shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by Owner.

3.14.2 Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

3.14.3 Constructor shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 8 are followed. Approval does not relieve Constructor from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.

3.14.4 Record copies of the following, incorporating field changes and selections made during construction, shall be accessible at the Worksite and available to Owner upon request: drawings, specifications, addenda, Change Order and other modifications, and required submittals including product data, samples, and shop drawings.

3.14.5 Constructor shall prepare and submit to Owner:

☐ Final marked-up as-built drawings;
☐ Updated electronic data, in accordance with §4.6.1; or
☐ Other documentation required by the Contract Documents that specifies how various elements of the Work were actually constructed or installed.

3.15 DESIGN DELEGATION If the Contract Documents specify that Constructor is responsible for the design of a particular system or component to be incorporated into the Project, then Owner shall specify all required performance and design criteria. Constructor shall not be responsible for the adequacy of such performance and design criteria.

As required by the Law, Constructor shall procure design services and certifications necessary to satisfactorily complete the Work from a licensed design professional. The signature and seal of Constructor’s design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by Constructor’s design professional.

3.16 WORKSITE CONDITIONS

3.16.1 WORKSITE VISIT Constructor acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.16.2 CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) subsurface or other physical condition materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Constructor shall stop affected Work after the concealed or unknown condition is first observed and give prompt written notice of the condition to Owner and Design Professional. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Constructor is to proceed. Constructor shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties. Any change in the Contract Price or the Contract Time as a result of the condition, including any dispute about its existence or nature, shall be determined as provided in ARTICLE 8.

3.17 PERMITS AND TAXES
3.17.1 Constructor shall give public authorities all notices required by Law and, except for permits and fees that are the responsibility of Owner, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. Constructor shall provide to Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

3.17.2 Constructor shall pay applicable taxes for the Work provided by Constructor.

3.17.3 If, in accordance with Owner's direction, Constructor claims an exemption for taxes, Owner shall indemnify and hold Constructor harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Constructor as a result of any such claim.

3.18 CUTTING, FITTING, AND PATCHING

3.18.1 Constructor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or Others.

3.18.2 Cutting, patching, or altering the work of Owner or Others shall be done with the prior written approval of Owner. Such approval shall not be unreasonably withheld.

3.19 CLEAN UP

3.19.1 Constructor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Constructor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Constructor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Constructor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.19.2 If Constructor fails to commence compliance with cleanup duties within two (2) Business Days after written notification from Owner of non-compliance, Owner may implement appropriate cleanup measures without further notice and shall deduct the reasonable costs from any amounts due or to become due to Constructor in the next payment period.

3.20 ACCESS TO WORK Constructor shall facilitate the access of Owner, Design Professional, and Others to Work in progress.

3.21 COMPLIANCE WITH THE LAW Constructor shall comply with the Law at its own cost. Constructor shall be liable to Owner for all loss, cost, or expense attributable to any acts or omissions by Constructor, its employees, subcontractors, suppliers, and agents for failure to comply with the Law, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if prior approval by appropriate authorities and Owner is received.

3.21.1 The Contract Price or Contract Time shall be equitably adjusted by Change Order for additional costs or time needed resulting from any change in Law, including increased taxes, enacted after the date of this Agreement.

3.22 CONFIDENTIALITY Constructor shall treat as confidential and not disclose to third-persons, nor use for its own benefit ("Treat as Confidential"), any of Owner's confidential information, know-how, discoveries, production methods, and the like disclosed to Constructor or which Constructor may acquire in performing the Work. To the extent necessary to perform the Work, Constructor's confidentiality obligations do not apply to disclosures to Subcontractors, Subsubcontractors, and Suppliers. Owner shall
Treat as Confidential information all of Constructor’s estimating systems and historical and parameter cost data disclosed to Owner in performing the Work. Each Party shall specify and mark confidential items as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party’s legal objection.

ARTICLE 4 OWNER’S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Owner’s responsibilities under this article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Before commencing the Work and thereafter, at the written request of Constructor, Owner shall provide Constructor with evidence of Project financing. Evidence of such financing shall be a condition precedent to Constructor’s commencing or continuing the Work. Constructor shall be notified before any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide Constructor the following:

4.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law;

4.3.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and

4.3.4 any other information or services requested in writing by Constructor which are required for Constructor’s performance of the Work and under Owner’s control.

4.4 BUILDING PERMIT, FEES, AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of Constructor, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving Constructor’s written request, Owner shall provide Constructor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner’s real property interests in the Worksite and the record legal title.

4.6 CONTRACT DOCUMENTS Unless otherwise specified, Owner shall provide [_____] ([_____]) hard copies of the Contract Documents to Constructor without cost.

4.6.1 ELECTRONIC DOCUMENTS If Owner requires that Owner, Design Professional, and Constructor exchange documents and data in electronic or digital form, before any such exchange, Owner, Design Professional, and Constructor shall agree on and follow a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate addenda, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g)
4.7 OWNER’S REPRESENTATIVE Owner’s Representative is [______]. Owner’s Representative shall be fully acquainted with the Project, and shall have authority to bind Owner in all matters requiring Owner’s approval, authorization, or written notice. If Owner changes its Representative or its Representative’s authority, Owner shall immediately notify Constructor in writing.

4.8 OWNER’S CUTTING AND PATCHING Cutting, patching, or altering the Work by Owner or Others shall be done with the prior written approval of Constructor, which approval shall not be unreasonably withheld.

4.9 OWNER’S RIGHT TO CLEAN UP In case of a dispute between Constructor and Others with regard to respective responsibilities for clean up at the Worksite, Owner may implement appropriate cleanup measures after two (2) Business Days’ notice and allocate the cost among those responsible during the following pay period.

4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of Owner or Others and not to Constructor, Owner shall either (a) promptly remedy the damage or loss (and assume affected warranty responsibilities), (b) accept the damage or loss, or (c) issue an Interim Directive or Change Order to remedy the damage or loss. If Constructor incurs costs or is delayed due to such loss or damage, Constructor may seek an equitable adjustment in the Contract Price or Contract Time under this Agreement.

ARTICLE 5 SUBCONTRACTS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Promptly after executing this Agreement, Constructor shall provide Owner and, if directed, Design Professional with a written list of the proposed Subcontractors and significant Suppliers. If Owner has a reasonable objection to any proposed Subcontractor or Supplier, Owner shall notify Constructor in writing. Failure to promptly object shall constitute acceptance.

5.1.2 If Owner has reasonably and promptly objected, Constructor shall not contract with the proposed Subcontractor or Supplier, and Constructor shall propose another acceptable Subcontractor or Supplier to Owner. An appropriate Change Order shall reflect any increase or decrease in the Contract Price or Contract Time because of the substitution.

5.2 BINDING OF SUBCONTRACTORS AND SUPPLIERS Constructor agrees to bind every Subcontractor and Supplier (and require each Subcontractor to so bind its subcontractors and significant suppliers) to the Contract Document’s applicable provisions to that portion of the Work.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

If this Agreement is terminated, each subcontract and supply agreement shall be assigned by Constructor to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to §11.3 or §11.4; and

(b) Owner accepts such assignment after termination by notifying Constructor and Subcontractor or Constructor and Supplier in writing, and assumes all rights and obligations of Constructor pursuant to each subcontract or supply agreement.
5.3.1 If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, Subcontractor’s or Supplier’s compensation shall be equitably adjusted as a result of the suspension.

ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth below: [_____

6.1.1 SUBSTANTIAL/FINAL COMPLETION Substantial Completion of the Work shall be achieved in [_____] ([_____]) Days from the Date of Commencement. Unless otherwise specified in the Certificate of Substantial Completion, Constructor shall achieve Final Completion within [_____] ([_____]) Days after the date of Substantial Completion. The deadlines for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence with regard to the obligations of the Contract Documents.

6.1.3 Unless instructed by Owner in writing, Constructor shall not knowingly commence the Work before the effective date of Constructor’s required insurance.

6.2 SCHEDULE OF THE WORK

6.2.1 Before submitting its first application for payment, Constructor shall submit to Owner, and if directed, to Design Professional, a Schedule of the Work showing the dates on which Constructor plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner. Except as otherwise directed by Owner, Constructor shall comply with the approved Schedule of the Work. Unless otherwise agreed, the Schedule of the Work shall be formatted in a detailed precedence-style critical path method that (a) provides a graphic representation of all activities and events, including float values that will affect the critical path of the Work, and (b) identifies dates that are critical to ensure timely and orderly completion of the Work. Constructor shall update the Schedule of the Work on a monthly basis or as mutually agreed by the Parties.

6.2.2 Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. Owner may require Constructor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or Others. If Constructor consequently incurs costs or is delayed, or both, Constructor may seek an equitable adjustment in the Contract Price or Contract Time under ARTICLE 8.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If Constructor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Constructor, Constructor shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of Constructor include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §11.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Constructor; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable
accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Constructor shall submit any requests for equitable extensions of Contract Time in accordance with ARTICLE 8.

6.3.2 In addition, if Constructor incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Constructor shall be entitled to an equitable adjustment in the Contract Price subject to §6.6.

6.3.3 NOTICE OF DELAYS If delays to the Work are encountered for any reason, Constructor shall provide prompt written notice to Owner of the cause of such delays after Constructor first recognizes the delay. The Parties each agree to take reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If Constructor requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in §6.3, Constructor shall give Owner written notice of the claim in accordance with §8.4. If Constructor causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs subject to §6.6. Owner shall process any such claim against Constructor in accordance with ARTICLE 8.

6.5 LIQUIDATED DAMAGES

6.5.1 SUBSTANTIAL COMPLETION Liquidated damages based on Substantial Completion date ☐ shall/ ☐ shall not apply.

6.5.1.1 Owner will suffer damages which are difficult to determine and accurately specify if the Substantial Completion date, which may be amended by Change Order, is not attained. Constructor shall pay Owner [_____] dollars ($[_____]) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Substantial Completion date. These liquidated damages are in lieu of all liability for all extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining the Substantial Completion date.

6.5.2 FINAL COMPLETION Liquidated damages based on the Final Completion date ☐ shall/ ☐ shall not apply.

6.5.3 Owner will suffer damages which are difficult to determine and accurately specify if the Final Completion date, as may be amended by subsequent Change Order, is not attained. Constructor shall pay Owner [_____] dollars ($[_____]) as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Final Completion date. These liquidated damages are in lieu of all liability for any extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining Final Completion date.

6.5.4 Other applicable liquidated damages shall be included as Agreement exhibit.

6.6 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in §6.5 and excluding losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. Owner agrees to waive damages, including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. Constructor agrees to waive damages, including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The
provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The following are excluded from this mutual waiver: [_____] .

6.6.1 The Parties shall each require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 PRICE

7.1 LUMP SUM Lump sum is the Contract Price of [_____] dollars ($[_____] ) subject to adjustment as provided in this Agreement.

7.2 ALLOWANCES

7.2.1 All allowances stated in the Contract Documents shall be included in the Contract Price. While Owner may direct the amounts of, and the particular Suppliers or Subcontractors to supply specific allowance items, if Constructor reasonably objects to a Supplier or Subcontractor, it shall not be required to contract with them. Owner shall select allowance items in a timely manner so as not to delay the Work.

7.2.2 Allowances shall include the costs of materials, supplies, and equipment delivered to the Worksite, less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. Constructor's Overhead and profit for the allowances is included in the Contract Price, not in the allowances. If incurred costs are greater or less than the allowances, a Party may seek an equitable adjustment in the Contract Price or Contract Time under ARTICLE 8.

ARTICLE 8 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directive.

8.1 CHANGE ORDER

8.1.1 Constructor may request or Owner may order changes in the Work or the timing or sequencing of the Work that impact the Contract Price or the Contract Time. All such changes in the Work that affect Contract Time or Contract Price shall be formalized in a Change Order and processed in accordance with this article.

8.1.2 For changes in the Work, the Parties shall negotiate an appropriate adjustment to the Contract Price or the Contract Time in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or Contract Time shall not be unreasonably withheld.

8.1.3 NO OBLIGATION TO PERFORM Constructor shall not be obligated to perform changes in the Work without a Change Order or Interim Directive.

8.2 INTERIM DIRECTIVES

8.2.1 Owner may issue an Interim Directive directing a change in the Work before agreeing on an adjustment to Contract Price or Contract Time, or directing Constructor to perform Work that Owner believes is not a change. If the Parties disagree that the Interim Directed work is within the scope of the Work, Constructor shall perform the disputed Work and furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.
8.2.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Directive. As the directed Work is performed, Constructor shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directive. If there is a dispute as to the cost to Owner, Owner shall pay Constructor fifty percent (50%) of its actual (incurred or committed) cost to perform such Work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 12. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work. Constructor's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work. Undisputed amounts may be included in applications for payment and shall be paid by Owner in accordance with this Agreement.

8.2.3 When the Parties agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directive, such agreement shall be the subject of a Change Order. The Change Order shall include all outstanding Interim Directives on which The Parties have reached agreement on Contract Price or Contract Time issued since the last Change Order.

8.3 DETERMINATION OF COST
8.3.1 An increase or decrease in the Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

8.3.2 unit prices set forth in this Agreement or as subsequently agreed;

8.3.3 a mutually accepted, itemized lump sum; or

8.3.4 COST OF THE WORK Cost of the Work as defined by this §8.3.4 plus [_____]% for Overhead and [_____]% for profit. “Cost of the Work” shall include the following costs reasonably incurred to perform a change in the Work:

8.3.4.1 Labor wages directly employed by Constructor performing the Work;

8.3.4.2 Salaries of Constructor's employees when stationed at the field office to the extent necessary to complete the applicable Work, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;

8.3.4.3 Cost of applicable employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Constructor's standard personnel policy, insofar as such costs are paid to employees of Constructor who are included in the Cost of the Work in §8.3.4.1 and §8.3.4.2;

8.3.4.4 Reasonable transportation, travel, and hotel expenses of Constructor’s personnel incurred in connection with the Work;

8.3.4.5 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling;

8.3.4.6 Payments made by Constructor to Subcontractors for performed Work;
8.3.4.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value of such items used, but not consumed that remain the property of Constructor;

8.3.4.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Constructor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Constructor or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment;

8.3.4.9 Cost of the premiums for all insurance and surety bonds which Constructor is required to procure or deems necessary, and approved by Owner including any additional premium incurred as a result of any increase in the cost of the Work;

8.3.4.10 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Constructor is liable;

8.3.4.11 Permits, fees, licenses, tests, and royalties;

8.3.4.12 Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work, provided that such did not arise from Constructor's negligence;

8.3.4.13 Water, power, and fuel costs necessary for the changed Work;

8.3.4.14 Cost of removal of all nonhazardous substances, debris, and waste materials;

8.3.4.15 Costs directly incurred to perform a change in the Work which are reasonably inferable from the Contract Documents for the changed Work;

8.3.4.16 DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Constructor, all cash discounts shall accrue to Constructor. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work;

8.3.4.17 COST REPORTING Constructor shall maintain complete and current records that comply with generally accepted accounting principles and calculate the Cost of Work. Owner shall be afforded access to Constructor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to requested payment for Cost of the Work. Constructor shall preserve all such records for a period of three years after the final payment or longer where required by Law;

8.3.4.18 COST AND SCHEDULE ESTIMATES Constructor shall use reasonable skill and judgment in the preparation of a cost estimate or schedule for a change to the Work, but does not warrant or guarantee their accuracy.

8.3.4.19 Cost of the Work pursuant to §8.3.4 is determined net of savings from the change. Constructor's Overhead and profit shall be added to any net increase in Cost of the Work. No Overhead and profit shall be applied to any net decrease in the Cost of the Work that is less than the Cost of the Work.
than ten (10) percent of the Contract Price. Overhead and profit shall be applied to any net decrease of ten (10) percent or more. Constructor shall maintain a documented, itemized accounting evidencing expenses and savings.

8.3.5 If unit prices are set forth in the Contract Documents or the Parties subsequently agree, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to either Party, such unit prices shall be equitably adjusted.

8.4 CHANGES NOTICE Except as provided in §6.3.2 and §6.4 for any claim for an increase in the Contract Price or the Contract Time, Constructor shall give Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after Constructor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, Constructor shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. Owner shall respond in writing denying or approving Constructor's claim no later than fourteen (14) Days after receipt of Constructor's claim. Owner's failure to so respond shall be deemed a denial of the claim. Any change in the Contract Price or the Contract Time resulting from such claim shall be authorized by Change Order.

8.5 INCIDENTAL CHANGES Owner may direct Constructor to perform incidental changes in the Work, upon concurrence with Constructor that such changes do not involve adjustments in the Contract Price or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing an Interim Directive.

ARTICLE 9 PAYMENT

9.1 SCHEDULE OF VALUES Within twenty-one (21) Days from the date of execution of this Agreement, Constructor shall prepare and submit to Owner and, if directed, Design Professional, a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the Contract Price.

9.2 PROGRESS PAYMENTS

9.2.1 APPLICATIONS Constructor shall submit to Owner, and if directed, Design Professional a monthly application for payment no later than the [_____] Day of the calendar month for the preceding calendar month. Constructor's applications for payment shall be itemized and supported by Constructor's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders or Interim Directives. Owner shall pay the amount due on a payment application, no later than fifteen (15) Days after accepting such application. Owner may deduct from any progress payment amounts that may be retained pursuant to §9.2.4.

9.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by Constructor of bills of sale and proof of required insurance, or such other documentation satisfactory to Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the Worksite.
9.2.3 LIEN WAIVERS AND LIENS

9.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by Owner as a prerequisite for payment, Constructor shall provide a partial lien and claim waiver in the amount of the application for payment and affidavits from its Subcontractors and Suppliers for the completed Work. Such waivers shall be conditional upon payment. Constructor shall not be required to sign an unconditional waiver of lien or claim, before receiving payment or in an amount in excess of what it has been paid.

9.2.3.2 REMOVING LIENS If Owner has made payments in the time required by this ARTICLE 9, Constructor shall, within thirty (30) Days after filing, remove any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If Constructor fails to take such action on a lien, Owner may cause the lien to be removed at Constructor's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to ARTICLE 12 relating to the subject matter of the lien.

9.2.4 RETAINAGE From each progress payment made before Substantial Completion, Owner may retain [_____] percent (_____%%) of the amount otherwise due after deduction of any amounts as provided in §9.3, provided such percentage doesn’t exceed the Law. If Owner chooses to use this retainage provision:

9.2.4.1 after the Work is fifty percent (50%) complete, Owner shall withhold no additional retainage and shall pay Constructor the full amount due on account of subsequent progress payments;

9.2.4.2 Owner may, in its sole discretion, reduce the amount to be retained at any time;

9.2.4.3 Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which Owner has accepted. In lieu of retainage, Constructor may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.

9.3 ADJUSTMENT OF CONSTRUCTOR'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Constructor is responsible under this Agreement:

9.3.1 Constructor's repeated failure to perform the Work as required by the Contract Documents;

9.3.2 Except as accepted by the insurer providing Builder's Risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by Constructor to Owner or to others to whom Owner may be liable;

9.3.3 Constructor's failure to properly pay either Subcontractors or Suppliers following receipt of payment from Owner for that portion of the Work or for supplies, provided that Owner is making payments to Constructor in accordance with this Agreement;

9.3.4 rejected or Defective Work not corrected in a timely fashion;

9.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time;
9.3.6 reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work; and

9.3.7 uninsured third-party claims involving Constructor, or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Constructor furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Constructor, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Constructor in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

9.4 ACCEPTANCE OF WORK Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

9.5 PAYMENT DELAY If for any reason not the fault of Constructor, Constructor does not receive a progress payment from Owner within seven (7) Days after the time such payment is due, then Constructor, upon giving seven (7) Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Constructor has been received, including interest for late payment. If Constructor incurs costs or is delayed resulting from shutdown, delay, and start-up, Constructor may seek an equitable adjustment in the Contract Price or Contract Time under ARTICLE 8.

9.6 SUBSTANTIAL COMPLETION

9.6.1 Constructor shall notify Owner and, if directed, Design Professional, when it considers Substantial Completion of the Work or a designated portion to have been achieved. Owner, with the assistance of its Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by Owner without excessive interference in completing any remaining unfinished Work. If Owner determines that the Work or designated portion has not reached Substantial Completion, Owner shall promptly compile a list of items to be completed or corrected so Owner may occupy or use the Work or designated portion for its intended use. Constructor shall promptly complete all items on the list.

9.6.2 When Substantial Completion of the Work or a designated portion is achieved, Constructor shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of each Party for interim items such as security, maintenance, utilities, insurance, and damage to the Work. In the absence of a clear delineation of responsibilities, Owner shall assume all responsibilities for items such as security, maintenance, utilities, insurance, and damage to the Work. The Certificate of Substantial Completion shall also list any items to be completed or corrected, and establish the time for their completion or correction. The Certificate of Substantial Completion shall be submitted by Constructor to Owner and, if directed, to Design Professional for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

9.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.
9.6.4 Upon Owner's written acceptance of the Certificate of Substantial Completion, Owner shall pay to Constructor the remaining retainage held by Owner for the Work described in the Certificate of Substantial Completion, less a sum equal to one hundred fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Parties as necessary to achieve Final Completion. Uncompleted items shall be completed by Constructor in a mutually agreed upon timeframe. Owner shall pay Constructor monthly the amount retained for unfinished items as each item is completed.

9.7 PARTIAL OCCUPANCY OR USE

9.7.1 Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon notification from Constructor that the Work is complete and ready for final inspection and acceptance, Owner with the assistance of its Design Professional shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

9.8.2 When Final Completion has been achieved, Constructor shall prepare for Owner's written acceptance a final application for payment stating that to the best of Constructor's knowledge, and based on Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

9.8.3 Final payment of the balance of the Contract Price shall be made to Constructor within twenty (20) Days after Constructor has submitted a complete and accurate application for final payment, including submissions required under §9.8.4, and a Certificate of Final Completion has been executed by the Parties.

9.8.4 Final payment is due upon Constructor's submission to Owner of the following:

9.8.4.1 An affidavit declaring any indebtedness connected with the Work to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;

9.8.4.2 As-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

9.8.4.3 Release of any liens, conditioned on final payment being received;

9.8.4.4 Consent of any surety; and

9.8.4.5 Any outstanding known and unreported accidents or injuries experienced by Constructor or its Subcontractors at the Worksite.

9.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of Constructor, Owner shall pay the balance due for any portion of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount before payment, Constructor shall submit to Owner,
and if directed, Design Professional, the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by these final payment provisions.

9.8.6 OWNER’S CLAIMS RESERVATION Owner’s claims not reserved in writing with final payment are waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

9.8.7 CONSTRUCTOR ACCEPTANCE OF FINAL PAYMENT Unless Constructor provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

9.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS

10.1 INDEMNITY

10.1.1 To the fullest extent permitted by law, Constructor shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees, Design Professional, and Others (the Indemnitees) from all claims for bodily injury and property damage, other than to the Work itself and other property insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Constructor, Subcontractors, Suppliers, Subsubcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Constructor shall be entitled to reimbursement of any defense costs paid above Constructor's percentage of liability for the underlying claim to the extent provided for by §10.1.2.

10.1.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Constructor, its officers, directors, members, consultants, agents, and employees, Subcontractors, Suppliers, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner, Design Professional, or Others, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Owner, Design Professional, or Others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for by §10.1.1.

10.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Constructor, anyone directly or indirectly employed by Constructor or anyone for whose acts Constructor 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 Constructor under workers' compensation acts, disability benefit acts, or other employment benefit acts.

10.2 INSURANCE

10.2.1 Before starting the Work and as a condition precedent to payment, Constructor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors,
products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Constructor shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. Constructor's Employers' Liability, Business Automobile Liability, and CGL policies, shall be written with at least the following limits of liability:

10.2.1.1 Employers' Liability Insurance
   (a) $[_____] bodily injury by accident per accident.
   (b) $[_____] bodily injury by disease policy limit.
   (c) $[_____] bodily injury by disease per employee.

10.2.1.2 Business Automobile Liability Insurance $[_____] per accident.

10.2.1.3 Commercial General Liability Insurance
   (a) $[_____] per occurrence.
   (b) $[_____] general aggregate.
   (c) $[_____] products/completed operations aggregate.
   (d) $[_____] personal and advertising injury limit.

10.2.2 Employers' Liability, Business Automobile Liability, and CGL coverage required under §10.2.1 may be provided by a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies.

10.2.3 Constructor shall maintain in effect all insurance coverage required under §10.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Constructor fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Constructor, or terminate this Agreement.

10.2.4 To the extent commercially available to Constructor from its current insurance company, insurance policies required under §10.2.1 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancelation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Constructor shall furnish Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §10.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Constructor shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

10.3 PROPERTY INSURANCE

10.3.1 Unless otherwise directed in writing by Owner, before starting the Work, Constructor shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also: (a) name Constructor, Subcontractors, Subsubcontractors, Suppliers, and Design Professional as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy; and (c) insure at least against and not exclude:

   10.3.1.1 the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood,
earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused;

10.3.1.2 damage resulting from defective design, workmanship, or material;

10.3.1.3 coverage extension for damage to existing buildings, plant, or other structures at the Worksit, when the Project is contained within or attached to such existing buildings, plant, or structures. Coverage shall be to the extent loss or damage arises out of Constructor’s activities or operations at the Project;

10.3.1.4 equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;

10.3.1.5 testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

10.3.1.6 physical loss resulting from Terrorism.

10.3.2 The Party that is the primary cause of a Builder’s Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder’s Risk Policy pursuant to §10.3.1 shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Constructor has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Constructor shall provide a copy of the property policy or policies obtained in compliance with §10.3.1

10.3.3 If Owner elects to purchase the property insurance required by this Agreement, including all of the same coverages and deductibles for the same duration specified in §10.3.1, then Owner shall give written notice to Constructor and the Design Professional before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with §10.3.1. Owner may then provide insurance to protect its interests and the interests of the Constructor, Subcontractors, Suppliers, and Subsubcontractors. The cost of this insurance shall be paid by Owner in a Change Order. If Owner gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Owner shall be responsible for costs reasonably attributed to such failure.

10.3.4 The Parties each waive all rights against each other and their respective employees, agents, contractors, subcontractors, suppliers, subsubcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.

10.3.5 To the extent of the limits of Constructor’s CGL specified in §10.2.1 or $[_____] dollars ($[_____] or $[_____] if the limit is specified as a range), whichever is more, Constructor shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys’ fees, in connection with or arising out of any damage or alleged damage to any of Owner’s existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent or intentionally wrongful acts or omissions of Constructor, Subcontractor, Supplier, Subsubcontractor,
or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

10.3.6 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss from damage to the Work shall be upon the Party obtaining and maintaining the Builder’s Risk Policy pursuant to section 10.3.1 until the Date of Final Completion.

10.3.7 POLLUTION LIABILITY INSURANCE Constructor ☐ is/ ☐ is not required to maintain pollution liability insurance. Unless indicated affirmatively, the obligation to procure such insurance is not triggered.

10.3.7.1 If applicable: in the following amounts: [_____] per occurrence, and shall apply for [_____] year(s) after Final Completion. The policy shall cover Constructor’s liability during construction, removal, storage, encapsulation, transport, and disposal of hazardous waste and contaminated soil, and asbestos abatement. The policy shall include coverage for on-site and off-site bodily injury and loss of damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials, or other irritants, contaminates, or pollutants into or upon the land, the atmosphere or any water body, whether it be gradual or sudden and accidental. The policy shall not have exclusions for mold or asbestos.

10.4 ADDITIONAL GENERAL LIABILITY COVERAGE Owner ☐ shall/ ☐ shall not require Constructor to purchase and maintain additional liability coverage. If required, Constructor shall provide:

10.4.1 ☐ Additional Insured. Owner shall be named as an additional insured on Constructor’s CGL specified for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Constructor, or those acting on Constructor’s behalf, in the performance of Constructor’s Work for Owner at the Worksite. The insurance (both primary and excess) of the Constructor and its Subcontractors shall be primary and non-contributory to any insurance available to the Additional Insureds.

10.4.2 ☐ OCP. Constructor shall provide an Owners’ and Contractors’ Protective Liability Insurance (“OCP”) policy with limits equal to the limits on CGL specified, or limits as otherwise required by Owner.

Any documented additional cost in the form of a surcharge associated with procuring the additional general liability coverage in accordance with this subsection shall be paid by Owner directly or the costs may be reimbursed by Owner to Constructor by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the coverage. Before commencing the Work, Constructor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Owner has been named as an additional insured, as applicable.

10.5 ROYALTIES, PATENTS, AND COPYRIGHTS Constructor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Constructor and incorporated in the Work. Constructor shall defend, indemnify, and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner agrees to defend, indemnify, and hold Constructor harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner or Design Professional.
10.6 BONDS Performance and Payments bonds ☐are/ ☐are not required. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to Owner. Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the bonds shall each be one hundred percent (100%) of the original Contract Price. Constructor shall endeavor to keep its surety advised of changes potentially impacting the Contract Time and Contract Price, though Constructor shall require that its surety waives any requirement to be notified of any alteration or extension of time.

10.7 PROFESSIONAL LIABILITY INSURANCE To the extent Constructor is required to procure design services in accordance with §3.15, Constructor shall require its design professional to obtain professional liability insurance for claims arising from the negligent performance of design services under this Agreement, with a company reasonably satisfactory to Owner, including coverage for all professional liability caused by any consultants to Constructor’s design professional, written for not less than [_____] dollars ($[_____] per claim and in the aggregate with the deductible not to exceed [_____] dollars ($[_____]). The Professional Liability Insurance shall contain a retroactive date providing prior acts coverage sufficient to cover all Services performed by the Constructor’s design professional for this Project. Coverage shall be continued in effect for [_____] (_______) year(s) following Substantial Completion. Constructor’s design professional shall pay the self-insured retention and deductible. The combined total deductible and self-insured retention maximum shall be [_____] dollars ($[_____]).

ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION

11.1 SUSPENSION BY OWNER FOR CONVENIENCE

11.1.1 OWNER SUSPENSION Should Owner order Constructor in writing to suspend, delay, or interrupt the performance of the Work for the convenience of Owner and not due to any act or omission of Constructor or any person or entity for whose acts or omissions Constructor may be liable, then Constructor shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by Owner.

11.1.2 Any action taken by Owner that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this section.

11.2 NOTICE TO CURE A DEFAULT If Constructor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work, or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards a Law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Constructor may be deemed in default.

11.2.1 After receiving Owner’s written notice, if Constructor fails within seven (7) Days after receipt of written notice from Owner to commence and continue satisfactory correction of such default with diligence and promptness, then Owner shall give Constructor a second notice to correct the default within three (3) Business Days after receipt. The second notice to Constructor, and if applicable, the surety, may include, that Owner intends to terminate this Agreement for default absent appropriate corrective action.

11.2.2 If Constructor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing reasonable means; (c) withhold payment due to Constructor; and (d) asOwner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge Constructor the costs and expenses, including reasonable Overhead, profit, and attorneys’ fees.
11.2.3 In the event of an emergency affecting the safety of persons or property, Owner may immediately commence and continue satisfactory correction of such default without first giving written notice to Constructor, but shall give Constructor prompt written notice.

11.3 OWNER’S RIGHT TO TERMINATE FOR DEFAULT

11.3.1 TERMINATION BY OWNER FOR DEFAULT Upon expiration of the second notice period to cure pursuant to §11.2 and absent appropriate corrective action, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner under §11.2. If Owner's costs arising out of Constructor's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid Contract Price, Constructor shall be liable to Owner for such excess costs. If Owner's costs are less than the unpaid Contract Price, Owner shall pay the difference to Constructor. If Owner exercises its rights under this section, upon the request of Constructor, Owner shall furnish to Constructor a detailed accounting of the costs incurred by Owner.

11.3.2 USE OF CONSTRUCTOR'S MATERIALS, SUPPLIES, AND EQUIPMENT If Owner or Others perform work under §11.3, Owner shall have the right to take and use any materials and supplies for which Owner has paid and located at the Worksite for the purpose of completing any remaining Work. Owner and others performing work under §11.3 shall also have the right to use construction tools and equipment located on the Worksite and belonging to the Constructor or Subsubcontractors for the purpose of completing the remaining Work, but only after Constructor's written consent. If Owner uses Constructor's construction tools and equipment in accordance with this subsection, then Owner shall indemnify and hold harmless Constructor and applicable Subcontractors and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys’ fees, costs, and expenses incurred in connection with Owner’s use of Constructor’s or applicable subcontractor’s construction tools and equipment. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work shall be returned to Constructor in substantially the same condition as when they were taken, reasonable wear and tear excepted.

11.3.3 If Constructor files a petition under the Bankruptcy Code, this Agreement shall terminate if: (a) Constructor or Constructor's trustee rejects the Agreement; (b) a default occurred and Constructor is unable to give adequate assurance of required performance; or (c) Constructor is otherwise unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.3.4 Owner shall make reasonable efforts to mitigate damages arising from Constructor default, and shall promptly invoice Constructor for all amounts due pursuant to §11.2 and §11.3.

11.4 TERMINATION BY OWNER FOR CONVENIENCE

11.4.1 Upon Constructor’s receipt of Owner’s written notice from Owner, Owner may, without cause, terminate this Agreement. Constructor shall immediately stop the Work, follow Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

11.4.2 If Owner terminates this Agreement for convenience, Constructor shall be paid: (a) for the Work performed to date including Overhead and profit; (b) for all demobilization costs and costs incurred resulting from termination, but not including Overhead or profit on Work not performed; (c) reasonable attorneys’ fees and costs related to termination; and (d) a premium as follows: [_______].

11.4.3 If Owner terminates this Agreement, Constructor shall:
11.4.3.1 execute and deliver to Owner all papers and take all action required to assign, transfer, and vest in Owner the rights of Constructor to all materials, supplies, and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders, and commitments which have been made in accordance with the Contract Documents;

11.4.3.2 exert reasonable effort to reduce to a minimum Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination;

11.4.3.3 cancel any subcontracts, orders, and commitments as Owner directs; and

11.4.3.4 sell at prices approved by Owner any materials, supplies, and equipment as Owner directs, with all proceeds paid or credited to Owner.

11.5 CONSTRUCTOR’S RIGHT TO TERMINATE

11.5.1 Seven (7) Days' after Owner’s receipt of written notice from Constructor, Constructor may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Constructor for any of the following reasons:

(a) under court order or order of other governmental authorities having jurisdiction;
(b) as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Constructor, materials are not available; or
(c) suspension by Owner for convenience pursuant to §11.1.

11.5.2 In addition, upon seven (7) Days' written notice to Owner and an opportunity to cure within three (3) Days, Constructor may terminate this Agreement if Owner:

11.5.2.1 fails to furnish reasonable evidence pursuant to §4.2 that sufficient funds are available and committed for Project financing; or

11.5.2.2 assigns this Agreement over Constructor's reasonable objection; or

11.5.2.3 fails to pay Constructor in accordance with this Agreement and Constructor has stopped Work in compliance with §9.5; or

11.5.2.4 otherwise materially breaches this Agreement.

11.5.3 Upon termination by Constructor in accordance with §11.5.2, Constructor is entitled to recover from Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable Overhead and profit on Work not performed.

11.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

ARTICLE 12 DISPUTE MITIGATION AND RESOLUTION
12.1 WORK CONTINUANCE AND PAYMENT Constructor shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution procedure. If Constructor continues to perform, Owner shall continue to make payments in accordance with this Agreement.

12.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected below.

12.3 MITIGATION If the Parties select one of the dispute mitigation procedures below, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in §12.5. The Parties agree that the dispute mitigation procedure shall be:

- Project Neutral ("Neutral"); or
- Dispute Review Board ("DRB").

12.3.1 MITIGATION PROCEDURES As soon as practicable after the execution of this Agreement, the Neutral or DRB shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of responsibilities, including requirements for nonbinding findings. Costs and expenses of Neutral or DRB shall be shared equally by the Parties. A Neutral or DRB shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Neutral or DRB to address matters in dispute between the Parties promptly and knowledgeably.

12.3.2 If the matter remains unresolved following the issuance of the nonbinding findings or such findings are not made within five (5) Business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in §12.5.

12.3.3 If the Parties execute a DRB Addendum, then the dispute mitigation procedures and time requirements in §12.3.1 and §12.3.2 shall be governed by that DRB Addendum.

12.4 MEDIATION If direct discussions pursuant to §12.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under §12.3, the Parties shall endeavor to resolve the matter by mediation. The mediation shall be convened within thirty (30) Business Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties. The Parties choose mediation through:

- the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), and administered by AAA.
- the current Mediation Guidelines of JAMS and administered by JAMS.
- the current rules and administration by [______].

Attachment C
If no box is checked the default is AAA rules and administration.

12.5 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

12.5.1 ARBITRATION

☐ The Parties choose binding arbitration for any claim or dispute arising out of or relating to this Agreement. EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW, with or without a jury. Arbitration does not involve a judge or jury. Instead, an arbitrator with the power to award damages and other appropriate relief will decide claims and disputes. An arbitrator’s award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

12.5.1.1 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

12.5.1.2 The arbitration shall use the following rules:

☐ the current AAA Construction Industry Arbitration Rules and AAA administration. AAA Construction Fast Track Rules shall apply to all two-party cases when neither Party’s disclosed claim or counterclaim exceeds $250,000. If arbitration is selected but no rules are selected, then this subsection shall apply by default;
☐ the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS; or
☐ the current arbitration rules of [_____] and administered by [_____].

12.5.2 LITIGATION

☐ Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

If not indicated, then litigation is the default and not arbitration.

12.5.3 COSTS The costs of any binding dispute resolution procedures and reasonable attorneys’ fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

12.5.4 VENUE The Project location shall serve as the venue.

12.6 MULTIPARTY PROCEEDING All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding, if possible. Appropriate provisions shall be included in all other
contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

12.7 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by Constructor that Constructor may have under lien laws.

ARTICLE 13 MISCELLANEOUS

13.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

13.2 ASSIGNMENT Except as to the assignment of proceeds, the Parties shall not assign their interest in this Agreement without the written consent of the other. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Constructor or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Constructor than this Agreement. If such assignment occurs, Constructor shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume Owner’s rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

13.3 GOVERNING LAW The law in effect at the location of the Project shall govern this Agreement.

13.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

13.5 NOTICE Unless changed in writing, a Party’s address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

13.6 NO WAIVER OF PERFORMANCE Either Party’s failure to insist upon any, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

13.7 TITLES The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.8 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

ARTICLE 14 CONTRACT DOCUMENTS

14.1 EXISTING CONTRACT DOCUMENTS
14.1.1 The Contract Documents in existence at the time of execution of this Agreement are as follows:

(a) Drawings: [_____]  
(b) Specifications: [_____]  
(c) Addenda: [_____]  
(d) Owner Provided information: [_____]  
(e) Other: [_____]  

14.2 INTERPRETATION OF CONTRACT DOCUMENTS

14.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, Constructor shall perform the Work as though fully described on both.

14.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, Constructor shall immediately submit the matter to Owner for clarification. Subject to an equitable adjustment in Contract Time or Contract Price pursuant to ARTICLE 8, or a dispute mitigation and resolution, Owner’s clarifications are final and binding.

14.2.3 Where figures are given, they shall be preferred to scaled dimensions.

14.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

14.3 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) subject to §14.2.2 the drawings (large scale governing over small scale), specifications, and addenda issued and acknowledged before Agreement execution or signed by both Parties; (d) information furnished by Owner pursuant to §3.13.4 or designated as a Contract Document in §14.1; (e) other Contract Documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control.

OWNER: [_____]  
BY: __________________________   NAME:  ______________________ TITLE:   _________________  
WITNESS: ____________________   NAME:  ______________________ TITLE:   _________________  
CONSTRUCTOR: [_____]  
BY: __________________________   NAME:  ______________________ TITLE:   _________________  
WITNESS: ____________________   NAME:  ______________________ TITLE:   _________________  

END OF DOCUMENT.
Attachment D – BONDS
BID BOND

KNOW ALL MEN BY THESE PRESENTS: that

__________________________________________
(Name of Contractor)

__________________________________________
(Address of Contractor)

As Principal, hereinafter called Principal, and

__________________________________________
(Name of Surety)

__________________________________________
(Address of Surety)

A corporation duly organized under the laws of the State of Alaska as Surety, hereinafter called Surety, are held and firmly bound unto

Nome Joint Utility System

__________________________________________
(Name of Owner)

P.O. Box 70 Nome, AK 99762

__________________________________________
(Address of Owner)

as Obligee, hereinafter called Obligee, in the sum of 5% of the bid amount, or

$______________________________

Dollars, ($______________________________ ) for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for the NOME JOINT UTILITY SYSTEM RFP 22-12-01 Battery Energy Storage System project located in Nome, Alaska.

NOW THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this __________ day of __________ 20__

__________________________________________
(Principal) Seal

__________________________________________
(Witness)

__________________________________________
(Title) Seal

__________________________________________
(Surety) Seal

__________________________________________
(Witness)
PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a (Corporation, Partnership or Individual), hereinafter called Principal,

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto Nome Joint Utility System

(Name of Owner)

P.O. Box 70 Nome, AK 99762

(Address of Owner)

hereinafter called Owner, in the penal sum of $( ) Dollars,

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by the presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the ___ day of _____________, 20__, a copy of which is hereto attached and made a part hereof for the construction of:

NJUS Battery Energy Storage System, RFP 22-12-01

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.
PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in six (6) counterparts, each one of which shall be deemed an original, this the ________ day of ___________________, 20___

ATTEST: ________________________________________________________ (Principal)  

__________________________ (Principal) Secretary  

(Seal)  

__________________________ (Witness to Principal)  

__________________________ (Address)  

__________________________ (Address)  

__________________________ Surety  

ATTEST: ________________________________________________________  

__________________________ (Surety) Secretary  

(Seal)  

__________________________ (Witness as to Surety)  

(Attorney in Fact)  

__________________________ (Address)  

__________________________ (Address)

NOTE: Date of Bond must not be prior to date of Contract.  
If Contractor is Partnership, all partners should execute bond.
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

__________________________________________
(Name of Contractor)

__________________________________________
(Address of Contractor)

a ____________________________ , hereinafter called Principal,
(Corporation, Partnership, or Individual)

and ____________________________,
(Name of Surety)

__________________________________________
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto ____________________________,
Nome Joint Utility System
(Name of Owner)

P.O. Box 70, Nome, AK 99762
(Address of Owner)

hereinafter called Owner, in the penal sum of ____________________________ Dollars,
$( __________________ )

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind
ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract
with the Owner, dated the ______ day of ________________, 20__, a copy of which is hereto attached and
made a part hereof for the construction of:

NJUS Battery Energy Storage System, RFP 22-12-01

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings,
covenants, terms, conditions, and agreements of said contract during the original term thereof, and any
extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if it shall
satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the
Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and
repay the Owner all outlay and expense which the Owner may incur in making good any default, then this
obligation shall be void; otherwise to remain in full force and effect.
PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in six (6) counterparts, each one of which shall be deemed an original, this the ________ day of ______________________, 20__. 

ATTEST: ________________________________

____________________________________ (Principal)

____________________________________ (Surety) Secretary

____________________________________ (Witness as to Surety)

____________________________________ (Address)

____________________________________ (Address)

____________________________________ (Principal) Secretary

____________________________________ (Witness as to Principal)

____________________________________ (Address)

____________________________________ (Address)

____________________________________ (Address)

ATTEST: ________________________________

____________________________________ (Principal)

____________________________________ (Surety) Secretary

____________________________________ (Witness as to Surety)

____________________________________ (Address)

____________________________________ (Address)

____________________________________ (Address)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute bond.