

Construction of FttP Feeder Distribution Network

Supplementary Conditions

January, 2023

The supplementary conditions amend or supplement the Standard General Conditions of the Construction Contract EJDC C-700. All provisions which are not so amended or supplemented remain in full force and affect.

The address system used in the Supplementary conditions is the same as the General Conditions with the prefix "SC"

- SC 1.01 40. *Substantial Completion* – Strike "(or a specified part thereof)" from the definition of substantial completion.
- SC 5.06 Add the following new paragraph immediately after 5.06. A:
- Owner or Engineer did not obtain, use or review any specific information regarding Hazardous Environmental conditions at the site.
- SC-5.06.F Add the following to Paragraph 5.06.F, "Contractor shall not be allowed any adjustment to Contract Price or Contract Times if such condition was caused by Contractor or anyone for whom Contractor is responsible. "
- SC-5.06.I Delete "To the fullest extent permitted by laws and regulations" and replace with the following "If the introduction onto the Project Site of a Hazardous Substance is identified or exacerbation of unknown Hazardous or Special Environmental Conditions was not caused by the Contractor or any of its subcontractors or suppliers of any tier, or any person or entity under the control of the Contractor or any of its subcontractors or suppliers of any tier, the".
- Delete, "a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible" and replace with "the performance of the Work in any area affected by Hazardous Substance."
- Delete, "to the extent allowed by law" from the last sentence.
- SC-5.06.J Delete, "To the fullest extent permitted by laws and regulations" from Paragraph 5.06.J.

SC-5.06 Add the following new paragraphs immediately following Paragraph 5.06.K:

L. Regardless of fault and regardless of any other clause in this Agreement, the Contractor shall not, as a result of the Hazardous Substance encountered on Site, be entitled to any compensatory damages, including without limitation, damages for delay, disruption, liquidated damages, including without limitation, damages for delay, disruption, liquidated damages or consequential damages or any type, including lost profits. If the Hazardous Substance introduction is caused by the Owner or was located at the Project Site before Work commenced on the Project, the Contractor shall only be entitled to an extension of the Contract Time or and the Owner shall assume responsibility for the remediation of such substances.”

M. If the Contractor, or any of its subcontractors or suppliers of any tier, or any person or entity under the control of the Contractor or any of its subcontractors or suppliers of any tier, is responsible for (i) introducing and discharging Hazardous Substance onto the Site which was not otherwise specified by the Contract Documents; and/or (ii) disturbing Hazardous Substance clearly identified in the Contract Documents, the Contractor shall hire a qualified remediation contractor at Contractor’s sole cost to eliminate the condition as soon as possible. Under no circumstances shall the Contractor perform Work for which it is not qualified. Owner, in its sole discretion, may require the Contractor to retain at its cost an independent testing laboratory.

N. The Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges or engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from (a) use, disturbance or storage of Hazardous Substance or execution of the Work; and (b) disturbing any Hazardous Substance found on the Site, provided that the Contractor had prior notice of the existence and location of the Hazardous Substance.

O. When the Contractor notifies the Owner of Hazardous Substance at the Project Site, the Contractor shall include with its notice a written and pictorial delineation of the affected area where the Contractor claims that the Work must stop. If the Owner objects to the delineation of the affected area, the Owner shall respond to the Contractor in writing within one business day explaining the objections and providing the Owner’s delineation, if any, of the affected area.

SC-6.01.A Delete “at least” from Paragraph 6.01.A.

SC-6.01.B Delete “prescribed by the Contract” and replace with “attached to the Supplementary Conditions” in the first sentence.

SC-6.03.A Add the following new paragraphs immediately following Paragraph 6.03.A.4

Coverages for Workers Compensation shall be as follows:

- a. State Statutory
- b. Applicable Federal (e.g. Longshoreman’s) Statutory
- c. Employer’s Liability \$500,000

SC-6.03.C Add the following new paragraphs immediately following Paragraph 6.03.C.8

Commercial General Liability coverages shall be as follows:

- a. General Aggregate \$2,000,000
- b. Products \$1,000,000
- c. Personal and Advertising Injury \$1,000,000
- d. Each Occurrence(Bodily Injury and Property Damage) \$1,000,000

SC-6.03.D Add the following new paragraphs immediately following Paragraph 6.03.D

Automobile Liability coverages shall be as follows:

- a. Bodily Injury:
 - Each Person \$1,000,000
 - Each Accident \$1,000,000
- b. Property Damage:
 - Each Person \$1,000,000
 - Combined Single Limit of \$1,000,000

SC-6.03.E Add the following new paragraphs immediately following Paragraph 6.03.E

Umbrella Coverage shall be as follows:

- A. Each Occurrence \$2,000,000
- B. Aggregate \$2,000,000

SC-6.03.I Add the following to Paragraph 6.03.I:

6. include the following:

a. The Contractor's commercial general liability policy shall include a per project endorsement providing that the limits of such insurance specified in the Contract Documents shall apply to the Project without erosion of such limits by other claims or occurrences.

b. Additional insured coverage afforded to the Owner pursuant to the Contractor's CGL policy shall apply as primary insurance and the Owner's liability insurance shall apply as excess.

c. The (lower tier parties') primary CGL coverage shall be enclosed to include the (upper-tier parties) as an additional insured pursuant to ISO form CG2010 0704 and CG2037 0704 or an endorsement providing equivalent coverage to the (upper-tier parties) with respect to the (lower-tier parties') ongoing operations and completed operations of the (lower-tier parties) for a period of at least two (2) years following the completion of the Project.

d. The Contractor's CGL policy shall be endorsed to specify that any person or organization that the named insured has agreed in writing to name as an additional insured is entitled to coverage as an additional insured under this policy.

e. Prior to commencing work on the Project, Contractor shall provide the Owner with a certificate of insurance reflecting the Owner's status as an additional insured and a summary of coverage provided under the Contractor's CGL and umbrella policies. In addition, the Contractor shall provide the Owner with a copy of his CGL and umbrella policies applicable to the Project, including a copy of the endorsement pursuant to which the owner is afforded additional insured status, within seven (7) days of issuance by the insurer.

f. Contractor shall pay, at its sole cost and expense, all deductibles under the builder's risk policy.

J. The policies of insurance required by this Paragraph 6.03 shall contain the following endorsements when including the Owner as an additional insured:

1. CANCELLATION AND MATERIAL CHANGE ENDORSEMENT: Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction in insurance coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to the City of Dubuque, Iowa at the office and attention of the Certificate Holder. This endorsement supersedes the Standard Cancellation Statement on Certifications of Insurance to which this endorsement is attached.

2. ADDITIONAL INSURED ENDORSEMENT: The Waverly Municipal Electric Utility, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members,

employees, and volunteers, and all its officers, agents, and consultants, are named as Additional Insureds with respect to liability arising out of the contractor's work and services performed for the Owner. Commercial General Liability and Automotive Liability coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess.

3. GOVERNMENT IMMUNITIES ENDORSEMENT:

a. **Nonwaiver of Government Immunity.** The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Dubuque, Iowa as an Additional Insured does not waive any defenses of government immunity available to the Waverly Municipal Electric Utility under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.

b. **Claims Coverage.** The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.

c. **Assertion of Government Immunity.** The Waverly Municipal Electric Utility shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier.

d. **Non-Denial of Coverage.** The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights or benefits accruing to the Waverly Municipal Electric Utility under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the Waverly Municipal Electric Utility.

e. **No Other Change In Policy.** The insurance carrier and the Waverly Municipal Electric Utility agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy

SC-6.06 Delete Article 6.06 *Waiver of Rights*, including subparagraphs A – D.

SC-7.03.B Add the following to the end of Paragraph 7.03.B:

“Suppliers shall be deemed to impliedly warrant that their products and all component materials incorporated into them are suitable and fit for the intended use of such products and shall be free from defect in material, workmanship or design, such warranty to run to the benefit of OWNER and ENGINEER. The foregoing applies whether the products or their component materials are specified in the Contract Documents or are of Supplier's design.

Extended warranties for specific materials and equipment shall be noted in the Specifications for those items.”

SC-7.15.A Add the following immediately after Paragraph 7.15.A:

B. CONTRACTOR shall immediately notify OWNER’s Representative and ENGINEER of all emergency situations associated with CONTRACTOR’s Work.

SC-7.17.A Add the following immediately after Paragraph 7.17.A:

1. The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be new, merchantable, of good quality, and that the Work will be free from defects, and that the Work will conform to the Contract Documents.

2. The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the workmanship will be free from defects not inherent in the quality required or permitted, that the workmanship will comply with all applicable laws, building codes, rules and regulations, and that the workmanship will conform to the requirements of the Contract Documents.

SC-7.18.A Delete Paragraph 7.17.A and replace it with the following:

“To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless Owner, Engineer, their agents, representatives, and employees (“Indemnitees”) from and against all claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from or in connection with the performance of the Work, provided that any such claim, damage, loss or expense is caused in whole or in part by any act or omission of Contractor, anyone directly or indirectly employed by it or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any party or person described in the Contract Documents.

In addition, CONTRACTOR shall indemnify, hold harmless, and pay for the defense of OWNER, ENGINEER, and ENGINEER’s subconsultants from and against claims, losses, or damages in regard to any act or failure to act by OWNER or ENGINEER in connection with general supervision, inspection and/or coordination of CONTRACTOR's operations.

CONTRACTOR shall, at its own expense, appear, defend, and pay all fees of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and, if any judgments shall be rendered against any individual or entity indemnified hereunder in any such action, CONTRACTOR shall, at its own expense, satisfy and discharge same. CONTRACTOR expressly understands and agrees that any Letter of Credit or insurance protection required by the Contract, or otherwise provided by CONTRACTOR, shall in no way limit the responsibility to indemnify, keep and, save harmless, and defend any individual or entity indemnified hereunder as herein provided.”

SC-7.18 Add the following immediately after Paragraph 7.18.C.2:

D. In the event the OWNER should prevail in any legal action arising out of the performance or non-performance of the Contract, the CONTRACTOR shall pay, in addition to any damages, all expenses of such action including reasonable attorney's fees, all expert witness fees, costs, and litigation expenses incurred by the OWNER, including those incurred on appeal. The term “legal action” shall be deemed to include any arbitration, administrative proceedings, and all actions at law or in equity, including appeals.

SC-9.11.A Delete Paragraph 9.11.A.

SC-11.08.A Add the following to the end of Paragraph 11.08.A:

“CONTRACTOR shall be responsible for notifying the surety of any assignment, modification, or change of the work covered thereby, or extension of time for the project. Failure to provide notice to the surety of any such change shall not exonerate the surety from its obligations under the bond.”

SC-13.02 Delete Article 13.02, including Paragraphs 13.02.A-D.

SC-15.01.D.1 Delete “Ten” and insert “Thirty” at the beginning of Paragraph 15.01.D.1.

SC-15.01.E.1.k Delete “Liens” and insert “Claims pursuant to Iowa Code Chapter 573” at the beginning of Paragraph 15.01.E.1k.

SC-15.02.A Delete “liens” and insert “claims pursuant to Iowa Code Chapter 573” in Paragraph 15.02.A.

SC-15.06.A.2.e Delete “Lien rights arising out of the Work” and insert “claims” in Paragraph 15.06.A.2.e.

SC-15.06.D Delete Paragraph 15.06 and insert the following:

“1. Except as provided in subparagraph (2), retained funds shall be retained by OWNER for a period of 30 calendar days after the completion and final acceptance of the improvement by OWNER. If at the end of the 30 calendar day period claims are on file as provided, OWNER shall continue to retain from the unpaid funds, a sum equal to double the total amount of all claims on file. The remaining balance of the unpaid fund, or if no claims are on file, the entire unpaid fund, shall be released and paid to CONTRACTOR.”

SC-15.06.D

Add the following subparagraph:

“2. If CONTRACTOR requests an early release of retained funds, payment shall be in accordance with Iowa Code Section 26.13. Retained funds will not be released prior to Substantial Completion of all Work on the project.”

SC-15.07.A

Delete “Liens” and insert “claims pursuant to Iowa Code Chapter 573” in Paragraph 15.07.A.