

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NORTHERN KENTUCKY)
WATER DISTRICT FOR APPROVAL OF)
ORDINARY EXTENSION OR) CASE NO. 2020-00127
THE ISSUANCE OF A CERTIFICATE OF)
CONVENIENCE AND NECESSITY AND)
APPROVAL OF FINANCING FOR)
WATER MAIN REPLACEMENT)

PETITION

Northern Kentucky Water District (NKWD), by counsel, petitions for an order approving the acquisition, installation and financing of SCADA improvements as described below as an ordinary extension pursuant to KRS 278.020(1)(a) and 807 KAR 5:001 (15)(3).

I. General Information:

In support of the application, the following information is provided:

1. NKWD's office address is 2835 Crescent Spring Rd., Erlanger, KY 41018-0640. Its principal officers are listed in its Annual Report (with the exception of Commissioner Jodie Lange who has replaced David Spaulding; the Commission was notified of this change via a September 13, 2019 letter from NKWD), which is filed with the Commission, as are its prior years Reports and is incorporated by reference. There have been no material changes to the District's financial condition since the 2018 Annual Report. A 2019 Annual Report will be filed by NKWD on or before June 30, 2020 per the filing deadline extension granted by the Commission.

Its contact officer is:

Lindsey Rehtin, Vice President of Finance & Support Services
2835 Crescent Spring Rd.
Erlanger, KY 41018-0640
(859) 578 9898 Phone
(859) 578-3668 fax

lrechtin@nkywater.org

2. NKWD is a non-profit water district organized under Chapter 74 and has no separate articles of incorporation.

3. A description of NKWD's water system and its property stated at original cost by accounts is contained in its Annual Report, which is incorporated by reference. No material changes have occurred since the filing of that report.

4. NKWD serves retail customers in Kenton, Boone, and Campbell Counties and sells water at wholesale to non-affiliated water distribution systems in Kenton, Boone, Pendleton, and Campbell Counties.

II. Proposed Construction:

5. NKWD proposes to acquire new SCADA technology and related facilities as described in Exhibit A. A petition for confidentiality for portions of Exhibit A, the Preliminary Engineering Report and Bid Plans and Specifications has been submitted with the Application. NKWD was awarded a \$4,000,000 loan by the Kentucky Infrastructure Authority (KIA) and authorized to supplement the executed Assistance Agreement with KIA and, under the terms of that Agreement, to borrow funds from KIA in Case NO. 2018-00316, which included the anticipated acquisition of these SCADA facilities. The KIA financing information and approval in Case 2018-00316 are incorporated into this application by reference. This is one of three projects funded by this \$4,000,000 loan. NKWD received approval of the total financing of \$4,000,000 in Case No. 2018-00316, but a certificate of convenience and necessity was approved only for the first project – the 36” main replacement project. This second project funded by this loan involves upgrades to the existing SCADA system to improve technology and hardware.

6. NKWD obtained a \$4,000,000 KIA loan approved in Case No. 2018-00316. A portion of that loan is allocated to the replacement of SCADA software and technology upgrades. The remaining funds from that loan will be allocated to the third and final SCADA replacement and upgrades. NKWD is seeking approval of the acquisition,

financing, and replacements of the SCADA software in this application. A separate application for the SCADA hardware replacement will be filed when that project is finalized.

The amount of financing related to the SCADA project in this application is \$900,000. This project will be paid from the District's Five-Year Capital Budget, PSC No. 202 "Upgrade SCADA/Instrumentation/Security Equipment" with a total budget of \$3,000,000 which includes construction cost, engineering, and contingencies.

A summary of the project costs for this project is provided below:

○ Design Engineering	\$ 145,000
○ Construction Engineering	\$ 5,000
○ Contractor's Bid	\$ 671,031
○ Misc. & Contingencies	<u>\$ 78,969</u>
Total Project Cost	\$ 900,000

The project will be funded through multiple sources. The District received \$2,700,000 of SRF Loan F16-027 to this project. It is proposed that \$671,031 of this project be funded by the SRF loan and the remaining \$228,969 be funded with cash from the District's Improvement, Repair & Replacement account for a total of \$900,000 for this project.

7. In the final order in Case 2018-00316, issued on December 12, 2018, the Commission said:

(9) Northern Kentucky District has not yet applied for a CPCN for the project identified in its request for approval of financing or demonstrated that the other project is an ordinary extension. Instead Northern Kentucky District identified the project as upgrades to the existing SCADA system to improve safety and security. Northern Kentucky District should not be authorized to utilize any of the proceeds for any other project unless and until Northern Kentucky District obtains prior Commission approval for the use of the proceeds for any other project.

Based on the directive in this order that NKWD demonstrate that this project is an ordinary extension subject to the requirements of KRS 278.020(1)(a) and 807 KAR 5:001(15)(3),

NKWD requests that this project be declared an ordinary extension of facilities and that a certificate of convenience and necessity and approval of financing pursuant to KRS 278.020 and 278.300 are not required.

8. The project involves the replacement and upgrading of existing SCADA equipment and technology. This will improve the operational capability of the SCADA system and provide additional capabilities as described in Exhibit A. This project was approved by the Board of Commissioners at its meeting on April 23, 2020. Minutes of the meeting will not be available until approved at the next monthly meeting.

9. KRS 278.020(1) does not define "ordinary extensions of existing systems in the usual course of business," but 807 KAR 5:001, Section 15(3) defines this exception as follows:

A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

The regulation provides for three areas of inquiry: 1) whether there will be wasteful duplication of plant, including interference with another utility's certificates or services; 2) whether the capital required is so minimal that it will not "materially" affect the financial condition of the utility in question; and 3) whether the utility's rates will increase as a result of the construction project.

a. There is no wasteful duplication or interference with any other utility operations. The upgrades replace existing equipment to allow for more efficient operations. See Exhibit A. Also, in *City of Covington v. Board of Commissioners of Kenton County Water District*, 371 S.W.2d 20, 23 (Ky. 1963), the Court determined that a facility is not "duplicative" unless there is an existing facility that is

that a facility is not "duplicative" unless there is an existing facility that is "reasonably available for the present and future needs of those who will be served by it. The mere existence of a similar physical plant is not enough." Because this is a replacement and upgrade of outdated facilities, there is no wasteful duplication.

b. There will be no material financial impact on NKWD. The \$900,000 cost of the project is 0.26% of the district's net plant. Given that the estimated capital cost of the proposed construction represents approximately 0.26 percent of NKWD's utility plant, the proposed construction will have an insignificant impact on its financial condition.

c. Rates will not be raised as a result of this project. Because of the relatively limited scope of the project, and since NKWD is not incurring any additional debt that has not already been approved by the Commission, the proposed construction will not have an immediate or significant impact on rates.

10. Should the Commission determine that this project requires a certificate of convenience and necessity pursuant to KRS 278.020 and approval of financing pursuant to KRS 278.300, the following information is provided.

11. The construction is in the public interest and is required to allow NKWD to continue to provide adequate service to its customers. The project, its cost, need and other details are contained in the Project Description and Exhibit A.

12. Approval from the DOW for the Plans and Specifications and funding for this improvement has been received. See Exhibit B. Easements and rights of way are not required. All equipment is being installed into existing facilities.

13. This service will not compete with any other utility in the area.

14. The proposed construction project identified in Exhibit A is scheduled to begin construction in June 2020 or upon PSC approval and the expected in service date is in November 2020. See Exhibit B. Bid specifications for the project are included in Exhibit A. The bids were opened March 4, 2020 and are subject to acceptance for 90 days. Engineers recommendation and Bid tabs are included in Exhibit C. **Bids will expire**

June 2, 2020.

15. No new franchises are required.

16. SCADA specifications and descriptions are in Exhibit A and Bid Documents. Facts relied on to justify the public need are included in the project descriptions in Exhibit A.

17. Maps are included in the confidential portions of Exhibit A.

18. The construction costs will be funded as described above.

19. Estimated operating costs for operation and maintenance, depreciation and debt service after construction are shown in Exhibit D.

20. A description of the facilities and operation of the system are in Exhibit A.

21. A full description of the route, location of the project, description of construction and related information is in Exhibit A.

22. The total estimated cost of construction at completion is referenced in Exhibits A, B and C.

23. CWIP at end of test year is listed in the Annual Report incorporated by reference.

24. Plant retirements are listed in the Annual Report. No salvage values are included as booked.

25. The use of the funds and need for the facilities is justified based on the engineering report included as Exhibit A

26. No rate adjustment is being proposed.

27. Depreciation cost, cost of operation after installation and debt service are in Exhibit D.

28. The financing is based on the need to finance this SCADA project. The construction project, identified in Exhibit A, are scheduled to be constructed in 2020.

29. The following information is provided pursuant to 807 KAR 5:001(12):

a. Financial operations for twelve-month period not less than 90 days prior – See Exhibit E. NKWD requests a deviation pursuant to 807 KAR 5:001(22) from this

requirement. The most recent quarter financial statement is not complete due to the ongoing independent audit. The attached financial statement reflects the year end information which has not materially changed.

b. No stock is authorized; no stock is issued.

c. There are no stock preferences.

d. Mortgages are listed in Exhibit E.

e. Bonds are listed in Exhibit E.

f. Notes are listed in Exhibit E.

g. Other indebtedness is listed in Exhibit E.

h. No dividends have been paid.

i. Current balance sheet and income statement are attached as Exhibits F.

NKWD requests a deviation pursuant to 807 KAR 5:001(22) from this requirement. The most recent quarter financial statement is not complete due to the ongoing independent audit. The attached financial statement reflects the year end information which has not materially changed.

30. The following information is provided as required by 807 KAR 5:001 (18):

a. A general description of the property is contained in the Annual Report.

The 2018 Report and attached financial information is the latest available from NKWD.

b. No stock is to be issued; No bonds are to be issued in this case;

c. There is no refunding or refinancing;

d. The proceeds of the KIA financing are to acquire and install the property described in Exhibit A.

e. The par value, expenses, use of proceeds, interest rates and other information is not applicable because no bonds are being issued at this time.

31. The following exhibits are provided pursuant to 807 KAR 5:001(18)(2):

a. There are no trust deeds. All notes, indebtedness and mortgages are included in Exhibit E.

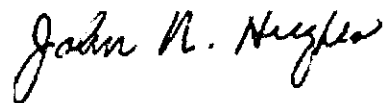
b. No property is to be acquired. 807 KAR 5:001(18)(2)(c).

32. Plant additions will be classified according to USoA. See Exhibit D.

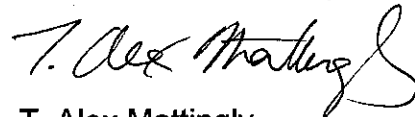
33. The Kentucky Debt Officer was notified of the KIA loan in Case No 2018-00316.

For these reasons, NKWD requests issuance of an order granting authority to acquire, install and finance the SCADA facilities as an ordinary extension or for the issuance of a certificate of convenience and necessity and approval of financing and for any other authorization that may be necessary.

SUBMITTED BY:



John N. Hughes
124 W. Todd St.
Frankfort, KY 40601
inhughes@johnnhughespsc.com
502 227 7270 Ph.



T. Alex Mattingly
General Counsel & Manager of
Legal, Compliance, and
Regulatory Affairs
Northern Kentucky Water District
2835 Crescent Springs Rd.
Erlanger, KY 41018
Phone - 859-578-5455 (Direct)
Fax - 859-426-2770
amattingly@nkywater.org

Attorneys for Northern
Kentucky Water District

EXHIBIT A

Preliminary Engineers Report – Confidential
Bid Specifications – Sections 40-90-00 to 02 –
Confidential

Project Description

Engineer's Estimated Cost

**Exhibit A - Preliminary Engineering Report is
confidential and filed separately with a petition for
confidentiality**



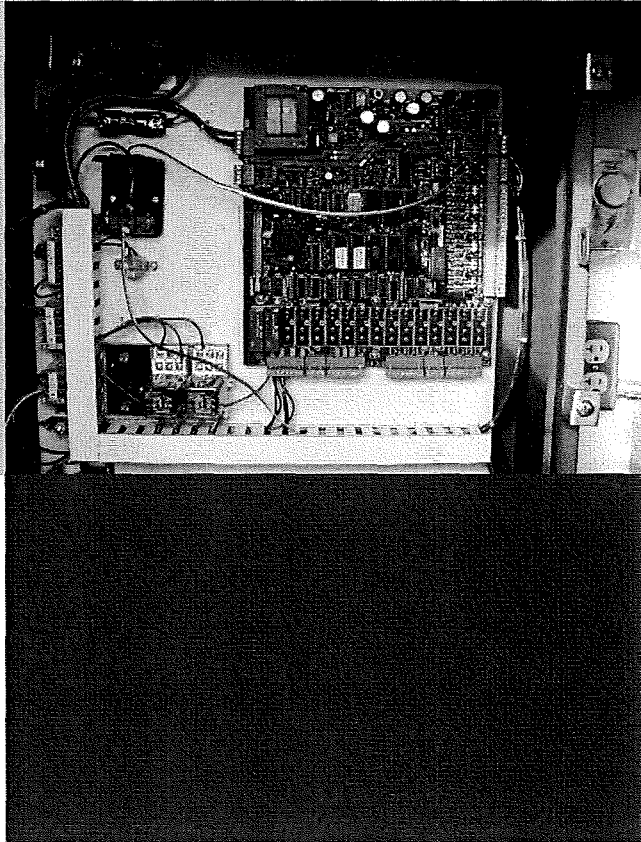
Preliminary Engineering Report

SCADA System Evaluation

Northern Kentucky Water District

Northern Kentucky

February 26, 2019



Supervisory Control and Data Acquisition System **Human Machine Interface Hardware and Software Upgrade**

Project 184-4003

Project Description:

The Supervisory Control and Data Acquisition (SCADA) system is a sophisticated network of computer hardware, software, and equipment that has two primary functions: 1) to automate the control of the treatment plants and the distribution system; and (2) to monitor the status of equipment and facilities and to collect and record data. NKWD relies on SCADA to automate monitoring and operating its 3 treatment plants, 17 pumping stations, and 19 storage tanks, 7 pits for metering wholesale customers or regulating pressure. This information can also be accessed from the NKWD main office.

Without this system in place, NKWD would have to operate the treatment plants and distribution system manually. Additional staffing would be needed to maintain sustained manual operations of the plants and/or the distribution system. With the current pandemic and the challenges it has presented to our operators, it further highlights the importance of having the resources to operate remotely and automatically.

The system consists of a centralized communication hub operated by two servers located at the Fort Thomas Treatment Plant that are connected, through various communication methods including radio and telephone, to many pieces of equipment at facilities throughout the system. In order for the plant operators to control the facilities and to utilize the real-time information available, a software package is required to provide a usable interface between the machines and equipment being controlled and the plant operator monitoring and supervising this system.

The current SCADA system was installed in phases between 1998 and 2004. Many components of the system's outdated software and hardware are no longer supported, making it very difficult to make repairs and to keep the system running. For example, Microsoft quit supporting the XP operating system in 2014.

In 2016, the District's engineer, HDR, completed a preliminary engineering study to identify the recommended improvements for the SCADA system and cost estimate. Due to challenges with the existing software and limitations with the equipment upon which it's installed, staff recommended to accelerate procuring the software upgrade and the supporting hardware located at the central hub at the Fort Thomas Treatment Plant as the first phase of bidding the upgrades. The second phase will replace the aging radios and analyzers in the distribution system and add monitoring and control to 16 new sites, including wholesale customer meter pits, an emergency interconnection meter pit, water hauling fill stations, and pressure regulating pits.

HDR is also in the process of conducting an update to the District's Asset Management Program. As part of the project, a risk and resiliency assessment was conducted and its

completion certified by staff to the U.S. EPA in March 2020. This assessment, required under the America's Water Infrastructure Act, confirmed that the SCADA system is one of the District's most important assets. It is anticipated this project will be ranked high with the on-going Asset Management Plan updates.

With this first project phase being bid, improvements to the SCADA system hardware and software will be made at the three treatment plants and at the main office. These include:

- Upgrades to update the existing software to 2017 version. The software product enables the operator to view plant processes and distribution status and make changes as needed.
- Adding Water Information Management Solution (WIMS) software. The WIMS system allows the District to properly monitor and control water quality based on information available through the SCADA system. WIMS communicates seamlessly to the SCADA software to create a comprehensive database. It is ideal for managing and reporting this data to the USEPA, the state, and other regulatory agencies.
- Hardware improvements include new servers for all three plants, 35 "Thin Clients" (i.e. lightweight computers with no hard drives) and eight touch screen displays for staff to view and operate the system, plus all cable, equipment racks, switches, etc. to make the system fully functional. The contractor will provide system start-up, testing, and training.

The recommended award amount for the upgrades is \$671,031.

The bids were opened March 4, 2020 and are subject to acceptance for 90 days. Therefore, the bids will expire June 2, 2020.

The estimated cost of the total project with engineering, construction, and contingencies is \$900,000.

**NKWD SCADA
HMI WIMS Cost
Opinion of Probable Construction Cost (OPCC)
February 7, 2020**

	Unit	Quantity	Unit Cost (\$)	Total Line Item Cost
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
HMI Upgrade				
Existing Software Upgrade	LS	1	\$ 55,000	\$ 55,000
InTouch Licenses	LS	1	\$ 205,000	\$ 205,000
Terminal Servers/Thin Clients	LS	1	\$ 115,000	\$ 115,000
Redundant Historian	LS	1	\$ 9,000	\$ 9,000
WIN 911 Alarm	LS	1	\$ 3,000	\$ 3,000
Training	LS	1	\$ 10,000	\$ 10,000
Server Hardware	LS	1	\$ 30,000	\$ 30,000
Monitors	EA	12	\$ 330	\$ 3,960
WIMS	LS	1	\$ 90,000	\$ 90,000
Subtotal				\$ 520,960
Miscellaneous (10%)	%	10%	\$ 520,960	\$ 53,000
Labor				
Off-Site Labor	HR	200	\$ 125	\$ 25,000
On-Site Labor	HR	120	\$ 150	\$ 18,000
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
Subtotal				\$ 616,960
Contractor O&P	%	25%	\$ 616,960	\$ 155,000
Subtotal				\$ 771,960
Contingency	%	10%	\$ 771,960	\$ 78,000
Construction Total				\$ 849,960

SPECIFICATIONS

NORTHERN KENTUCKY WATER DISTRICT

SCADA IMPROVEMENTS Human Machine Interface (HMI) Hardware and Software Upgrade (Phase 4 - Part A of WX21117003)

February 2020

COMPILED BY:
Northern Kentucky Water District (Owner)
2835 Crescent Springs Road
Erlanger, Kentucky 41018

S P E C I F I C A T I O N S

FOR

NORTHERN KENTUCKY WATER DISTRICT

SCADA IMPROVEMENTS **Human Machine Interface (HMI)** **Hardware and Software Upgrade** **(Phase 4 - Part A of WX21117003)**

February 2020

GOVERNING BODY

COMMISSIONERS:

DOUG WAGNER – CHAIR
JOSEPH J. KOESTER – VICE CHAIR
FRED MACKE, JR - SECRETARY
JODY R. LANGE, CPA, CGMA - TREASURER
CLYDE CUNNINGHAM - COMMISSIONER
DR. PATRICIA SOMMERKAMP – COMMISSIONER

RON LOVAN, PRESIDENT/CEO

COMPILED BY:

Northern Kentucky Water District (Owner)
2835 Crescent Springs Road
Erlanger, Kentucky 41018

TABLE OF CONTENTS

Subject	Pages
DIVISION 00 – PROCUREMENT AND CONTRACTING REQUIREMENTS	
BIDDING REQUIREMENTS	
00020 Invitation to Bid	1 - 3
00100 Instructions to Bidders	1 - 8
00150 Statement of Work	1 - 1
BID FORMS	
00300 Bid Form	1 – 7
00301 Supplements to Bid Form	1 - 5
00410 Bid Bond	1 - 2
OWNER'S FORMS	
00460 Non-Collusion Affidavit	1 - 1
00470 Resident Bidder Affidavit	1 - 1
CONTRACT FORMS	
00500 Agreement	1 - 7
00610 Performance Bond	1 - 2
00620 Payment Bond	1 - 2
00650 Certificate of Insurance	1 - 1
00652 Certificate of Property Insurance	1 - 1
CONDITIONS OF CONTRACT	
C-700 Standard General Conditions 2007	1 - 62
00800 Supplementary Conditions	1 - 21
00810 Supplemental General Conditions for Clean Water State Revolving Fund	1 - 59
00820 Wage Determination Schedule	1 - 15

TABLE OF CONTENTS (Continued)

Subject	Page
SPECIFICATIONS	
DIVISION 01 - GENERAL REQUIREMENTS	
01010 Summary of Work	1 - 2
01015 Project Requirements	1 - 5
01025 Measurement and Payment	1
01070 Abbreviations	1 - 2
01300 Submittals	1 - 3
DIVISION 02 – 35 NOT USED	
DIVISION 40 – PROCESS INTERCONNECTIONS	
40 90 00 SCADA – Basic Requirements	1 - 4
40 90 01 Computer Network and Human-Machine Interface (HMI) System	1 - 10
40 90 02 Water Information Management Solution (WIMS)	1 - 6
DIVISION 41 – 46 NOT USED	

Section 00020

INVITATION TO BID

Date: February 13, 2020

PROJECT: **SCADA IMPROVEMENTS – Human Machine Interface (HMI)
Hardware and Software Upgrade (Phase 4 - Part A of WX21117003)**

SEALED BIDS WILL BE RECEIVED AT:

Northern Kentucky Water District (Owner)
2835 Crescent Springs Road
P.O. Box 18640
Erlanger, Kentucky 41018

UNTIL: Date: March 4, 2020
Time: 2:00 PM (Local Time)

At said place and time, and promptly thereafter, all Bids that have been duly received will be publicly opened and read aloud.

The proposed Work is generally described as follows: Upgrade of the Wonderware Intouch HMI software, servers and operator workstations; and a new Water Information Management Solution (WIMS). The Bidder awarded the contract shall complete this project within 210 calendar days. Liquidated damages will be assessed at \$500 per calendar day.

All Bids must be in accordance with the Instructions to Bidders and Contract Documents on file, and available for examination at:

Northern Kentucky Water District (Owner)
2835 Crescent Springs Road
Erlanger, Kentucky 41018

Or

HDR Engineering, Inc.
2517 Sir Barton Way
Lexington, Kentucky 40509
Phone: (859) 629-4800

Copies of the Bidding Documents may be obtained from **ARC Document Solutions located at 1018 East New Circle Road, Suite 102, Lexington, KY 40505. Phone (859)-699-5105. Website: www.gcrepro.com**. Charges for all documents obtained will be made on the following basis:

	<u>Charge</u>
Complete set of Bidding Documents	\$ 100.00
Mailing and Handling (U.S. Mail) (if requested)	\$ 15.00

Mailing and Handling (FED EX) (if requested)

\$ 20.00

Charges for Bidding Documents and mailing and handling, if applicable, will not be refunded.

This project is funded with funds provided by the Kentucky Drinking Water State Revolving Fund (SRF) with federal funds provided by the Environmental Protection Agency. SRF requirements (including American Iron and Steel and Davis Bacon) and provisions must be met by the Bidder and all subcontractors. SRF requires federal prevailing wage rates to be paid to all employees of the Bidder and all employees of any subcontractor.

All Bidders must comply with the President's Executive Order No. 11246 as amended, which prohibits discrimination in employment regarding race, creed, color, sex, or national origin.

All Bidders must comply with Title VI of the Civil Rights Act of 1964, the Anti-Kickback Act, and the Contract Work Hours Standard Act.

All Bidders, Contractors and Subcontractors must comply with 41 CFR 60-4, in regard to Affirmative Action, to ensure equal opportunity to females and minorities and will apply the timetables and goals set forth in 41 CFR 60-4 as applicable to the area of the project.

All Bidders must comply with OSHA (P.L. 91-596) and the Contract Work Hours and Safety Standards Act (P.L. 91-54).

The Successful Bidder and all Subcontractors will be required to conform to the labor standards set forth in the Contract Documents. This procurement is subject to Kentucky Division of Water Procurement Guidance including the Davis-Bacon Act.

Bidders must make positive efforts to use small, minority, women-owned and disadvantaged businesses.

A non-mandatory pre-bid conference will be held for prospective Bidders on February 19, 2020 at 1:00 p.m. (local time) at the Fort Thomas Treatment Plant located at 700 Alexandria Pike. Following the pre-bid conference, NKWD will escort anyone interested to any or all of the three (3) treatment plants for prospective bidders to view each location.

Bids will be received on a unit price and/or lump sum basis as described in the Contract Documents.

Bid security, in the form of a certified check or a Bid Bond (insuring/bonding company shall be rated "A" by AM Best) in the amount of ten percent (10%) of the maximum total bid price, must accompany each Bid.

The Successful Bidder will be required to furnish a Construction Payment Bond and a Construction Performance Bond (insuring/bonding company shall be rated "A" by AM Best) as security for the faithful performance of the contract and the payment of all bills and obligations arising from the performance of the Contract.

Evaluation of Bids and the awarding of a final contract are subject to the reciprocal preference for Kentucky resident bidders pursuant to KRS 45A490 to 45A.494 and (KAR 200 5:400).

Owner reserves the right to reject any or all Bids, including without limitation the right to reject any or all nonconforming, non-responsive, incomplete, unbalanced, or conditional Bids, to waive informalities, and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of Owner to make an award to that Bidder. Owner also reserves the right to negotiate with the apparent successful Bidder to such an extent as may be determined by Owner.

Small, Minority, and Disadvantaged Business Enterprises are encouraged to bid.

Bids shall remain subject to acceptance for 90 days after the day of bid opening or for such longer period of time to which a Bidder may agree in writing upon request of the Owner. If a Contract is to be awarded, the Owner will give the successful Bidder a Notice of Award during the period of time during which the successful Bidder's bid remains subject to acceptance.

Award of the Contract will be made to the lowest, responsive, responsible bidder in accordance with Article 19, Award of Contract, specified in the Instructions to Bidders.

The Northern Kentucky Water District is an Equal Opportunity Employer.

Amy Kramer, Vice President of Engineering, Production & Distribution
Northern Kentucky Water District

End of Section

Section 00100

INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS. Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof:

- A. *Bidder* - The individual or entity who submits a Bid directly to Owner.
- B. *Successful Bidder* - The lowest responsible Bidder submitting a responsive Bid to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

2. COPIES OF CONTRACT DOCUMENTS. Complete sets of Contract Documents must be used in preparing Bids; Bidder shall have sole responsibility for errors or misrepresentations resulting from the use of incomplete sets of Bidding Documents.

Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

3. QUALIFICATIONS OF BIDDERS. To demonstrate Bidder's qualifications to perform the Work, within five days of Owner's request Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be requested by Owner. Bidders who have not, in the Owner's opinion, had sufficient experience in the size and type of work involved may not be considered.

Each Bid must contain evidence of Bidder's qualifications to transact business in the State of Kentucky or covenant to obtain such qualifications prior to award of the Contract. The Bidder's Organization Number from the Kentucky's Secretary of State and principal place of business as filed with Kentucky's Secretary of State must be included where applicable.

Each Bidder must be registered as a plan holder with the Issuing Office or Engineer on record in the advertised "Invitation to Bid". There shall be no substitution of bidders without proper registration with the Issuing Office or Engineer on record in the advertised "Invitation to Bid"

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE. It is the responsibility of each Bidder, before submitting a Bid, to:

- a. thoroughly examine and study the Instructions to Bidders and the Contract Documents, including any Addenda;
- b. visit the Site and become familiar with and satisfy Bidder as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work;
- c. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, or furnishing of the Work;

- d. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Contract Documents;
- e. correlate the information known to Bidder, information and observations obtained from visits to the Site, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents;
- f. promptly give Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Contract Documents and confirm that the written resolution thereof by Owner is acceptable to Bidder; and
- g. determine that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

4.01. Underground Facilities. Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner or others, and Owner and Engineer disclaim responsibility for the accuracy or completeness thereof, unless it is expressly provided otherwise in the Supplementary Conditions.

4.02. Additional Information. Before submitting a Bid, each Bidder may, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests, and studies and obtain any additional information and data which pertain to subsurface or physical conditions at or contiguous to the Site or otherwise, which may affect cost, progress, performance, or furnishing of the Work and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents. Each Bidder shall be responsible for any claims for personal injury, death or damage to property caused by Bidder's entry on public or private property and shall defend and indemnify Owner and all other parties against any such claims.

4.03. Bidder's Representation. The submission of a Bid will constitute an incontrovertible representation and covenant by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given Owner written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof are acceptable to Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

5. SITE AND OTHER AREAS. The Site is identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent

changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

6. INTERPRETATIONS AND ADDENDA. All questions about the meaning or intent of the Bidding Documents are to be submitted to Owner in writing. Any interpretations or clarifications that are considered necessary by Owner in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Owner as having received the Bidding Documents. Questions received less than 72 hours prior to the date for opening of Bids may not be answered. The person submitting questions shall be responsible for their prompt delivery. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

Owner will not be responsible for explanations or interpretations of the Bidding Documents or Contract Documents except as issued in accordance herewith.

7. BID SECURITY. Each Bid must be accompanied by Bid security made payable to Owner in an amount of 10 percent of Bidder's maximum Bid price and in the form of a Bid Bond (on the form attached) issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General Conditions and shall be rated "A" by AM BEST.

Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may annul the Notice of Award and Bid security of that Bidder will be forfeited. Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or one day after the last day the Bids remain subject to acceptance, whereupon Bid security furnished by such Bidders will be returned.

8. CONTRACT TIMES. The numbers of days within which, or the dates by which, the Work is to be (a) Substantially Completed and (b) also completed and ready for final payment are set forth in the Agreement.

9. LIQUIDATED DAMAGES. Provisions for liquidated damages, if any, are set forth in the Agreement.

10. SUBSTITUTE OR "OR-EQUAL" ITEMS. The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Owner, application for such acceptance will not be considered by Owner until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Owner is set forth in the General Conditions and may be supplemented in the General Requirements.

11. PREPARATION OF BID. The Bid form is included with the Bidding Documents. Additional copies may be obtained from Owner.

All blanks on the Bid form shall be completed by printing in ink or by typewriter and the Bid signed. A Bid price shall be indicated for each lump sum bid item and/or unit price item listed therein, or the words "No Bid", "No Change", or "Not Applicable" entered.

A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.

A Bid by a limited liability company shall be executed in the name of the firm by a member (if member-managed) or manager (if manager-managed) and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown below the signature.

A Bid by an individual shall show the Bidder's name and official address.

A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid form. The official address of the joint venture must be shown below the signature.

All names shall be typed or printed in ink below the signatures.

The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid form.

The address and telephone number for communications regarding the Bid shall be shown.

The Bid shall identify whether the Bidder is a resident or nonresident bidder for purposes of Kentucky's reciprocal preference statute (KRS 45A.490 to 45A.494 and 200 KAR 5:400). If the Bidder is claiming a "resident bidder" status as defined in KRS 45A.494(2), the Bid shall include a properly executed and notarized affidavit affirming that it meets the criteria to be considered such a resident bidder. If requested by Owner, Bidder shall also provide documentation proving such resident bidder status; failure to do so shall result in disqualification of the Bidder or contract termination.

While the Bidder should consult the applicable statutes and regulation, generally speaking, a "resident bidder" is an individual or business entity that, on the date the contract is first advertised or announced as available for bidding: (a) is authorized to transact business in the Commonwealth; AND (b) has for one (1) year prior to and through the date of the advertisement, (i) filed Kentucky corporate income taxes, (ii) made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and (iii) maintained a Kentucky workers' compensation policy in effect. A "nonresident bidder" is any other individual or business entity.

12. BASIS OF BID. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule. The total of all estimated prices will be determined as the sum of the products of the estimated quantity of each item and the unit price Bid for the item. The final quantities and Contract Price will be determined in accordance with paragraph 11.03 of the General Conditions and as amended in the Supplemental Conditions.

Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

13. SUBMITTAL OF BID. A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to Bid and shall be enclosed in an opaque sealed envelope plainly marked with the Project title, the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "Bid Enclosed".

Bids shall be addressed to Owner at:

Northern Kentucky Water District (Owner)
2835 Crescent Springs Road
P.O. Box 18640
Erlanger, Kentucky 41018

The unbound copy of the bid booklet that includes the Bid Form and Supplements to Bid Form are to be completed and submitted with the Bid Security and the following data:

1. Certification Regarding Debarment, Suspension and Other Responsibility Matters (EPA Form 5700-49).
2. Certification Regarding Lobbying, Certification for Contracts, Grants, Loans and Cooperative Agreements.
3. Statement of Bidder's Qualifications
4. Bidder's Experience Record
5. Proposed Subcontractors
6. Bid Security
7. Non-Collusion Affidavit
8. Required Notarized Affidavit for Bidders, Offerors, and Contractors Claiming Kentucky Resident Bidder Status

Two complete and executed Bid Form along with "Non-Collusion Affidavit" and Bid Bond shall be submitted. Bids shall be typed or in ink. Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids. Bids received after the time and date for receipt of Bids may be returned unopened. Oral, telephone, facsimile, or telegraph Bids are invalid and will not receive consideration.

14. MODIFICATION AND WITHDRAWAL OF BIDS. A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. For a period ending 72 hours after Bids are opened, any Bidder may request the withdrawal of its Bid by filing with Owner a duly signed written notice and otherwise demonstrating by clear and convincing evidence to the reasonable satisfaction of Owner that the Bid was submitted in good faith but there was a material and/or substantial mistake in the preparation of its Bid. If the withdrawal of the Bid is approved by the Owner in its sole discretion, the Bid security will be returned. Without the advanced full disclosure by the withdrawing Bidder to and written consent of the Owner, (a) no Bid shall be withdrawn under this section when the result would be the awarding of the contract on another Bid of the same Bidder or of another Bidder in which the withdrawing Bidder has a direct or indirect equitable interest and (b) no Bidder who is permitted to withdraw a Bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the Bidder to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the Project.

15. OPENING OF BIDS. Bids will be opened at the time and place indicated in the advertisement or Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

16. BIDS TO REMAIN SUBJECT TO ACCEPTANCE. All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

17. AWARD OF CONTRACT. Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, non-responsive, incomplete, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder which it finds, after reasonable inquiry and evaluation, to be non-responsive. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Owner to make an award to that Bidder. Owner also reserves the right to waive all and to negotiate with the apparent Successful Bidder to such an extent as may be determined by Owner. The Owner also reserves the right to increase or decrease the quantities of work per the General Conditions.

In the case of Bids for equipment and materials only, Owner may award the Contract to a responsible Bidder other than the lowest in the interest of standardization or ultimate economy, as determined by Owner.

In evaluating Bids, Owner will consider, among other lawful considerations, the following:

- a. Whether or not the Bid complies with the prescribed requirements, and provides such alternates, unit prices and other information or data as may be requested in the Bid Form or prior to the Notice of Award.
- b. The qualifications of the Bidder.
- c. If the Bidder maintains a permanent place of business.
- d. If the Bidder has adequate personnel, plant and equipment to perform the Work properly and expeditiously.
- e. Bidder's financial status to meet all obligations and incidentals to the Work.
- f. Whether the Bidder has appropriate technical expertise and experience.
- g. Bidder's performance record.
- h. The amount of the TOTAL BASE BID, exclusive of any additive alternates, if applicable. Any additive alternates will be considered after selection of the lowest Total Base Bid. Each additive alternate will be considered and selected or not selected individually, at Owner's discretion, for inclusion in the work.

In addition, the evaluation of Bids will be subject to the reciprocal preference for Kentucky resident bidders pursuant to KRS 45A.490 to 45A.494 and KAR 200 5:400. These statutes and regulation provide in part as follows: (a) a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state; (b) the preference shall be equal to the preference given or required by the state of the nonresident bidder; (c) this preference shall not be applied against nonresident bidders residing in states that do not give preference against Kentucky bidders; (d) if a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder; and (e) the preference shall not result in a nonresident bidder receiving a preference over another nonresident bidder.

Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders to perform the Work in accordance with the Contract Documents, including, without limitation, a Bidder's claim that it is a resident bidder for purposes of Kentucky's preference statute.

18. CONTRACT SECURITY AND INSURANCE. Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment Bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by such Bonds.

19. SIGNING OF AGREEMENT. When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents identified in the Agreement as attached thereto. Within **15 days** thereafter, the Successful Bidder shall sign, leaving the dates blank, and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within **15 days** thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

20. RETAINAGE. Provisions concerning retainage are set forth on the Agreement.

21. DRINKING WATER STATE REVOLVING FUND LOAN. A portion of the funding for this project comes from a Drinking Water State Revolving Fund (DWSRF) loan. This loan originates with the United States Environmental Protection (USEPA) and has several provisions that directly impact the Bidder. These include:

1. A certificate that the Bidder, and any subcontractors used by the Bidder, are not on the Federal List of Debarred Contractors. (CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER MATTERS – EPA Form 5700-49) addresses this item and must be executed and included with the bid
2. A certification from the Bidder that no appropriate funds were or will be used for the purposes of lobbying the legislative or executive branches of the Federal government. (CERTIFICATION REGARDING LOBBYING) addresses this item and must be submitted with the Bid.

The DWSRF loan creates additional documentation requirements on both the Contractor and the Owner. These are set forth in the Supplemental General Conditions for Drinking Water State Revolving Fund Loans (DWSRF Supplemental General Conditions). The items identified, but not limited to, in this section must be submitted with the Bid. The remaining items identified in the DWSRF Supplemental General Conditions Section will be submitted by the low bidder within 21 days of the Bid opening. The project will not be awarded until this information is received.

DWSRF funding requires a recipient to utilize minority or women owned businesses as subcontractors where possible. Certain information and documentation is required by the funding agencies and other governing bodies prior to awarding a necessary approval for this project. The BIDDER acknowledges, through the act of submitting a Bid, a commitment to submit the following documentation or information within 7 days of bid Opening or within 5 days of the formal request to do so, whichever is greater. Failure to produce any of this documentation or information within the prescribed period will serve as grounds for rejection of the Bid. If the information is required from a subcontractor or vendor and is not produced within the prescribed, it will serve as grounds to replace the subcontractor or vendor with another company or product.

Specific items to be submitted within 7 days of the Bid opening include:

- A. EPA Form 6100-2, DBE Subcontractor Participation (Attachment 11- Section 00810).
- B. EPA Form 6100-3, DBE Subcontractor Performance (Attachment 11-Section 00810).
- C. EPA Form 6100-4 DBE Subcontractor Utilization (Attachment 11-Section 00810).
- D. Disadvantage Enterprise Participation Policy (Attachment 11-Section 00810).
- E. List of DBE Bidders of Subcontractors (Attachment 11-Section 00810).

End of Section

Section 00150

Statement of Work

The following items are to be completed under this contract. These items include:

- Upgrade of the Wonderware Intouch Human-Machine Interface (HMI) software, servers and operator workstations. Upgrades to include providing equipment, installation and any and all appurtenances such as cable, connectors, switches, etc. to make the system fully operational.
- Provide and install a Water Information Management Solution (WIMS) software and hardware.
- Miscellaneous cabling as required.
- Installation, start-up, testing and training of all systems.

End of Section

Section 00300

BID FORM

PROJECT IDENTIFICATION: **SCADA IMPROVEMENTS - Human Machine Interface (HMI) Hardware and Software Upgrade (Phase 4 - Part A of WX21117003)**

THIS BID IS SUBMITTED TO:

Northern Kentucky Water District (Owner)
P.O. Box 18640
2835 Crescent Springs Road
Erlanger, Kentucky 41018

THIS BID IS SUBMITTED BY: _____
(Bidder's Company Name)

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Contract Documents to perform all Work as specified or indicated in the Contract Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Invitation to Bid and the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 90 calendar days after the Bid opening, or for such longer period of time to which the Bidder may agree in writing upon request of Owner. Bidder understands that certain extensions to the time for acceptance of this Bid may require the consent of the surety for the Bid Bond.
3. In submitting this Bid, Bidder represents and covenants, as set forth in the Agreement, that:
 - a. Bidder has examined and carefully studied the Contract Documents, the other related data identified in the Contract Documents, and the following Addenda, receipt of all of which is hereby acknowledged:

No. _____ Dated _____

No. _____ Dated _____

No. _____ Dated _____
 - b. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - c. Bidder is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

- d. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary explorations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- e. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- f. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- g. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- h. Bidder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Owner is acceptable to Bidder.
- i. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- j. **[Check the one that applies]**

_____ Bidder is a “resident bidder” as defined in KRS 45A.494(2) of Kentucky’s resident bidder reciprocal preference statute AND submits with this Bid a properly executed and notarized Affidavit that affirms that Bidder meets the resident bidder criteria, which Affidavit is hereby incorporated herein and made a part of this Bid.

OR

_____ Bidder is a “nonresident bidder” as defined in KRS 45A.494(3) of Kentucky’s resident bidder reciprocal preference statute AND its principal place of business as identified its Certificate of Authority to transact business in Kentucky as filed with Kentucky’s Secretary of State or, if Bidder hereby represents and covenants that it is not required to obtain a Certificate of Authority to transact business in Kentucky, its mailing address, is:

- k. Bidder's Organization Number from Kentucky's Secretary of State is #_____ [if applicable] and Bidder is qualified to transact business in the State of Kentucky or hereby covenants to obtain such qualifications prior to award of the Contract.
4. Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.
5. The Bidder understands and agrees that during the performance of the Contract, it shall maintain a presence within such proximity of the Site which will allow it to respond to an emergency at the Site within one hour of receiving notice of an emergency, including emergencies occurring during non-working hours. The Bidder shall provide a list of emergency phone numbers for such purposes. If the Bidder does not have such a presence, it may satisfy this requirement by sub-contracting with a sub-contractor that does have such a presence, provided that any such sub-contractor must be approved by the Owner, in its sole discretion, prior to the project pre-construction meeting.
6. Bidder will complete the Work for the following unit prices, computed in accordance with paragraph 11.03.B of the General Conditions. Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.

Note: Bidder agrees to perform all the following work described in the specifications and shown on the diagrams, for the following unit prices:

NO	ITEM	LUMP SUM PRICE
1	SCADA HMI Hardware & Software	
2	WIMS	
	TOTAL LUMP SUM BASE BID	

Total bid in words

7. Bidder agrees that the Work will be substantially complete within 180 calendar days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions within 210 calendar days after the date when the Contract Times commence to run.

The terms used in this Bid with initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

8. References

Contact Person	Company Name	Phone No.	Project Name
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

SUBMITTED on _____, 2020.

9. Communications concerning this Bid shall be sent to Bidder at the following address:

10. The terms in this Bid, which are defined in the General Conditions included as part of the Contract Documents, have the meanings assigned to them in the General Conditions.

SIGNATURE OF BIDDER

If an Individual

Name (typed or printed): _____

By _____ (SEAL)
(Individual's signature)

doing business as _____

Business address _____

Phone No.: _____ Fax No.: _____

Date _____

If a Partnership

Partnership Name: _____ (SEAL)

By _____
(Signature of general partner - attach evidence of authority to sign)

Name (typed or printed): _____

Business address _____

Phone No. _____ Fax No.: _____

Date _____

If a Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____

Type (General, Professional Service): _____

By _____
(Signature - attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____ (CORPORATE SEAL)

Attest _____

Business address _____

Phone No. _____ Fax No.: _____

Date _____

If a Limited Liability Company

Company Name: _____ (SEAL)

State of Organization: _____

Type (General, Professional): _____

By _____
Signature of Member or Manager (as applicable)- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____ (COMPANY SEAL)

Attest _____

Business address _____

Phone No. _____ Fax No.: _____

Date _____

If a Joint Venture

(Each joint venturer must sign. The manner for signing for each individual, partnership, and corporation that is party to the joint venture should be in the manner indicated above.)

Joint Venturer Name: _____ (SEAL)

By: _____
(Signature - attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Business address: _____

Phone No.: _____ Fax No.: _____

Date _____

Joint Venturer Name: _____ (SEAL)

By: _____
(Signature - attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Business address: _____

Phone No.: _____ Fax No.: _____

Date _____

Section 00301

SUPPLEMENTS TO BID FORM

1. FORMS TO BE SUBMITTED WITH BID

- A. Certification Regarding Debarment, Suspension and Other Responsibility Matters - EPA Form 5700-49 (Attachment No. 9 – Section 00810)
- B. Certification Regarding Lobbying (Attachment No. 10 – Section 00810)
- C. Statement of Bidder's Qualifications (Attachment No. 1)
- D. Bidder's Experience Record (Attachment No. 2)
- E. Proposed Subcontractors (Attachment No. 3)
- F. Bid Security (Specification Section 00410)
- G. Non-Collusion Affidavit (Specification Section 00460)
- H. Required Notarized Affidavit for Bidders, Offerors, and Contractors Claiming Kentucky Resident Bidder Status (Specification Section 00470)

2. FORMS TO BE SUBMITTED WITHIN 7 DAYS OF BID OPENING

Certain information and documentation is required by the funding agencies and other governing bodies prior to awarding a necessary approval for this project. The BIDDER acknowledges, through the act of submitting a Bid, a commitment to submit the following documentation or information within 7 days of Bid Opening or within 5 days of the formal request to do so, whichever is greater. Failure to produce any of this documentation or information within the prescribed period will serve as ground for rejection of the Bid. If the information is required from a subcontractor or vendor and is not produced within the prescribed time, it will serve as grounds to replace the subcontractor or vendor with another company or product.

Specific items to be submitted within 7 days of the Bid opening include:

- A. EPA Form 6100-2 DBE Participation (Attachment 11 – Section 00810)
- B. EPA Form 6100-3 DBE Subcontractor Performance (Attachment 11 – Section 00810)
- C. EPA Form 6100-4 DBE Subcontractor Utilization (Attachment 11 – Section 00810)
- D. Disadvantage Enterprise Participation Policy (Attachment 11 – Section 00810)
- E. List of DBE Bidders of Subcontracts (Attachment 11 – Section 00810)

STATEMENT OF BIDDER'S QUALIFICATIONS

All questions shall be answered or the bid document will be incomplete. All data given shall be clear and comprehensive. This statement shall be notarized. If necessary, questions may be answered on separate sheets. The Bidder may submit any additional information it desires. If the Bidder is a joint venture, submit pervious joint venture projects. If joint venture has not completed prior projects of this magnitude then submit projects completed by joint venture partners.

1. Name of Bidder:
2. Permanent main office address:
3. When organized:
4. If a corporation, where incorporated:
5. How many years have you been engaged in operation of your business under your present firm or trade name:
6. Contracts on hand. (Schedule these, showing amount of each contract and the appropriate anticipated dates of completion.):
7. General character of work performed by your company:
8. Have you ever failed to complete any job awarded to you? If so, where and why?
9. Have you ever defaulted on a contract? If so, where and why?
10. List the more important projects completed by your firm, stating the approximate cost for each, and the month and year completed on attached sheet.
11. List your major equipment available for this work.
12. Experience in work similar in complexity, size and/or dollar value to this project. List and describe at least four on the table "Project References".
13. Background and experience of the principal members of your organization, including the officers in this type of work. (Attach)
14. Credit available: \$ _____
15. Give bank reference: \$ _____
16. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? Yes No

17. The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information required by the Owner in verification of the statements made comprising this Statement of Bidder's Qualifications:

Dated at _____ this _____ day of _____

NAME OF BIDDER

BY _____

TITLE _____

STATE OF _____

COUNTY OF _____

_____ being duly sworn deposes and says that he or she is

_____ of _____
(NAME OF ORGANIZATION)

And that the answers to the foregoing questions and all statements contained therein are true and correct.

Subscribed and sworn to before me this _____ day of _____, of this year _____.

(NOTARY PUBLIC)

My commission expires _____

BIDDER'S EXPERIENCE RECORD
(Projects need to be of similar size and nature)

Change Order Value				
Contract Value				
Size of Project (Length, Contract Duration)				
Project Type, Year of Completion				
Engineer Contact Name, Telephone #				
Project Name, Owner, Address, Telephone #				

PROPOSED SUBCONTRACTORS

The BIDDER's proposed subcontractors shall be listed below for the various branches of work included in the proposed contract. All subcontractors are subject to the approval of the OWNER.

Unless rejected or otherwise permitted by the OWNER, no substitutions or changes to the listing of the entities proposed to perform that branch of the work will be allowed following opening of the Bids.

Where the BIDDER proposes to perform the work with its own forces, the phrase "Prime Contractor" shall be entered in the box provided

Failure to submit a completed list shall be cause for rejection of the Bid.

Branch of Work	Name of Subcontractor
1.	
2.	
3.	
4.	
5.	

BID BOND

BIDDER (Name and Address)

SURETY (Name and Address of Principal Place of Business)

OWNER (Name and Address)

BID

BID DUE DATE _____

PROJECT (Brief Description Including Location)

BOND

BOND NUMBER _____

DATE (Not later than Bid due date) _____

PENAL SUM _____ (Words) _____ (Figures)

IN WITNESS WHEREOF Surety and Bidder intending to be legally bound hereby subject to the terms printed on the reverse side hereof do each cause this Bid Bond to be duly executed on its behalf by its authorized officer agent or representative

BIDDER

SURETY

_____(Seal)
Bidder's Name and Corporate Seal

_____(Seal)
Surety's Name and Corporate Seal

By _____
Signature and Title

By _____
Signature and Title
(Attach Power of Attorney)

Attest _____
Signature and Title

Attest _____
Signature and Title

- Note (1) Above addresses are to be used for giving required notice
(2) Any singular reference to Bidder Surety OWNER or other party shall be considered plural where applicable

1 Bidder and Surety jointly and severally bind themselves their heirs executors administrators successors and assigns to pay to OWNER upon default of Bidder the penal sum set forth on the face of this Bond

2 Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents

3 This obligation shall be null and void if

3 1 OWNER accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents or

3 2 All Bids are rejected by OWNER or

3 3 OWNER fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and if applicable consented to by Surety when required by paragraph 5 hereof)

4 Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from OWNER which notice will be given with reasonable promptness identifying this Bond and the Project and including a statement of the amount due

5 Surety waives notice of and any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by OWNER and Bidder provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent

6 No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date

7 Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located

8 Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond Such notices may be sent by personal delivery commercial courier or by United States Registered or Certified Mail return receipt requested postage pre paid and shall be deemed to be effective upon receipt by the party concerned

9 Surety shall cause to be attached to this Bond a current and effective Power or Attorney evidencing the authority of the officer agent or representative who executed this Bond on behalf of Surety to execute seal and deliver such Bond and bind the Surety thereby

10 This Bond is intended to conform to all applicable statutory requirements Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length If any provision of this Bond conflicts with any applicable statute then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect

11 The term Bid as used herein includes a Bid offer or proposal as applicable

Section 00460

NON-COLLUSION AFFIDAVIT

STATE OF: _____)

COUNTY OF: _____) SS

_____, being first duly sworn, deposes

and says that he/she is the _____ of
(sole owner, a partner, president, secretary, etc.)

_____, the party making the foregoing bid; that such bid is genuine and not collusive or sham; that said bidder is not financially interested in, or otherwise affiliated in a business way with any other bidder on the same contract; that said bidder has not colluded, conspired, connived, or agreed, directly or indirectly, with any bidder or person, to put in a sham bid, or that such other person shall refrain from bidding, and has not in any manner directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the price or affidavit of any other bidder, or that of any other bidder, or to secure any advantage against Owner, or any person or persons interested in the proposed Contract; and that all statements contained in said bid are true; and further, that such bidder has not, directly or indirectly submitted this bid, or the contents thereof, or divulged information of data relative thereto to any association or to any member or agent thereof.

AFFIANT

Sworn to and subscribed before me, a Notary Public in and for the above named

State and County, this _____ day of _____, 20 _____.

NOTARY PUBLIC

End of Section

(Note: The following standard form will be used for preparation of the agreement, after award of contract.)

Section 00500

AGREEMENT

**SCADA IMPROVEMENTS - Human Machine Interface (HMI)
Hardware and Software Upgrade (Phase 4 - Part A of WX21117003)
184-4003**

THIS AGREEMENT is by and between the Northern Kentucky Water District (herein called Owner) and _____ (herein called Contractor).

Owner and Contractor, in consideration of the mutual covenants herein set forth, agree as follows:

Article 1. WORK.

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Upgrade of the Wonderware Intouch HMI software, servers, and operator workstations; and a new Water Information Management Solution (WIMS).

Article 2. ENGINEER.

The Project has been designed by **HDR Engineering, Inc.**, who is referred to in the Contract Documents as Engineer.

Article 3. CONTRACT TIMES, LIQUIDATED DAMAGES, DELAYS, AND DAMAGES.

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

3.1. Contract Times. The Work will be substantially completed within **180** days after the date when the Contract Times commence to run as provided in paragraph 2.03.A of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within **210** days after the date when the Contract Times commence to run.

3.2. Liquidated Damages. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$ **500.00** for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times or any proper extension

thereof granted by Owner, Contractor shall pay Owner as liquidated damages (but not as a penalty) \$ 500.00 for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment until the Work is completed and ready for final payment.

Owner shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to Contractor, or to initiate action to recover liquidated damages for nonperformance of this Contract within the time stipulated.

3.3. Delays and Damages. In the event Contractor is delayed in the prosecution and completion of the Work because of any delays caused by Owner or Engineer, Contractor shall have no claim against Owner or Engineer for damages (including but not limited to acceleration costs or damages) or contract adjustment other than an extension of the Contract Times and the waiving of liquidated damages during the period occasioned by the delay.

Contractor shall provide advance written notice to Owner and Engineer of Contractor's intention to accelerate the Work prior to commencing any acceleration. Such written notice shall include a detailed explanation of the nature and scope of the acceleration, the reason for the acceleration, the anticipated duration of the acceleration, and the estimated additional costs to Contractor, if any, related to the acceleration. This requirement shall not in any way affect or alter the agreement of Owner and Contractor with respect to delays and damages as set forth above and in Article 7 of the General Conditions.

Article 4. CONTRACT PRICE.

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the Contractor's Bid, attached hereto as an exhibit, for the total amount of:

(words)	(figures)
As provided in paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made as provided in paragraph 9.08 of the General Conditions and as modified by the Supplementary Conditions. Unit Prices have been computed as provided in paragraph 11.03 of the General Conditions.	

Article 5. PAYMENT PROCEDURES.

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Owner as provided in the General Conditions and as modified by the Supplementary Conditions.

5.1. Progress Payments. Owner shall make progress payments on account of the Contract Price

on the basis of Contractor's Applications for Payment on or about the 25th day of each month during performance of the Work. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.2. Retainage. In addition to any amounts withheld from payment in accordance with Paragraph 14.02 of the General Conditions, Owner shall retain from progress payments amounts equal to the following percentages:

- a. Ten percent (10%) of the amount of the Work completed. This amount may be reduced by the Owner in its sole and absolute discretion, if the project is substantially completed; and
- b. Ten percent (10%) of the value of materials and equipment that are not incorporated in the Work but are delivered, suitably stored, and accompanied by documentation satisfactory to Owner as provided in paragraph 14.02 of the General Conditions. Retainage for stored materials and equipment will be released when the materials and equipment are incorporated in the Work.

All retainage will be paid to Contractor when the Work is completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions. Consent of the Surety shall be obtained before retainage is paid by Owner. Consent of the Surety, signed by an agent, must be accompanied by a certified copy of such agent's authority to act for the Surety.

5.3. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraphs 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as provided in said paragraph 14.07.

Article 6. CONTRACTOR'S REPRESENTATION

In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- a. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents
- b. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- c. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- d. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary explorations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground

- Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.
- e. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
 - f. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 - g. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
 - h. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Contractor.
 - i. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS.

The Contract Documents, which are incorporated as part of the Agreement, consist of the following:

- A. This Agreement;
- B. Performance Bond;
- C. Payment Bond;
- D. General Conditions;
- E. Supplementary Conditions;
- F. Specifications as listed in the table of contents of the Project Manual;
- G. Addenda (numbers ___ to ___, inclusive);
- H. Exhibits to this Agreement (enumerated as follows):
 - 1. Notice to Proceed;
 - 2. Contractor's Bid;
 - 3. Documentation submitted by Contractor prior to Notice of Award;
- I. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - 1. Written Amendments;
 - 2. Work Change Directives;

3. Change Orders.

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified, or supplemented as provided in paragraphs 3.05 of the General Conditions.

Article 8. COMPLIANCE WITH KENTUCKY LAW

Contractor represents and warrants that it has revealed to Owner any and all final determinations of a violation of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 by Contractor or any subcontractor within the past five years. Contractor further represents and warrants that it and each of its subcontractors will remain in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 for the duration of this Agreement. Contractor understands that its failure to reveal a final determination of a violation or to comply with the above statutory requirements constitutes grounds for cancellation of the Agreement and for disqualification of Contractor from eligibility for any contracts for a period of two years.

Article 9. EQUAL OPPORTUNITY

Unless exempted under KRS 45.590, during the performance of the Agreement, the Contractor agrees as follows:

a. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin;

b. Contractor will take affirmative action in regard to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees during employment are treated without regard to their race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin;

c. Contractor will state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age forty (40) or over, disability, veteran status, or national origin;

d. Contractor will post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of the nondiscrimination clauses required by this section; and

e. Contractor will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of Contractor's commitments under the nondiscrimination clauses.

Article 10. MISCELLANEOUS.

- a. Terms used in this Agreement will have the meanings indicated in the General Conditions.
- b. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- c. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.
- d. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. One counterpart each has been delivered to Owner, Contractor, Surety, and Engineer.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER: **Northern Kentucky Water District**

Amy Kramer
Vice President of Engineering, Production and Distribution

Address for giving notices

2835 Crescent Springs Road
PO Box 18640
Erlanger, Kentucky 41018

CONTRACTOR: _____

By: _____
Signature

Printed Name

Title

(Corporate Seal)

Address for giving notices

Joint Venture

CONTRACTOR: _____

By: _____
(Corporate Seal)

Address for giving notices

Performance Bond

Any singular reference to Contractor Surety Owner or other party shall be considered plural where applicable

CONTRACTOR (Name and Address)

SURETY (Name and Address of Principal Place
of Business)

OWNER (Name and Address)

CONTRACT

Date
Amount
Description (Name and Location)

BOND

Date (Not earlier than Contract Date)
Amount
Modifications to this Bond Form

Surety and Contractor intending to be legally bound hereby subject to the terms printed on the reverse side hereof do each cause this Performance Bond to be duly executed on its behalf by its authorized officer agent or representative

CONTRACTOR AS PRINCIPAL

Company _____ (Corp Seal)

Signature _____
Name and Title

SURETY

Company _____ (Corp Seal)

Signature _____
Name and Title
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties if required)

CONTRACTOR AS PRINCIPAL

Company _____ (Corp Seal)

Signature _____
Name and Title

SURETY

Company _____ (Corp Seal)

Signature _____
Name and Title

EJCDC No 1910 28 A (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America Engineers Joint Contract Documents Committee the Associated General Contractors of America and the American Institute of Architects

1 The CONTRACTOR and the Surety jointly and severally bind themselves their heirs executors administrators successors and assigns to the Owner for the performance of the Contract which is incorporated herein by reference

2 If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond except to participate in conferences as provided in paragraph 3 1

3 If there is no OWNER Default, the Surety's obligation under this Bond shall arise after

3 1 The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10 below that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract If the OWNER the CONTRACTOR and the Surety agree the CONTRACTOR shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the OWNER's right if any subsequently to declare a CONTRACTOR Default and

3 2 The OWNER has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3 1 and

3 3 The OWNER has agreed to pay the Balance of the Contract Price to

3 3 1 The Surety in accordance with the terms of the Contract,

3 3 2 Another contractor selected pursuant to paragraph 4 3 to perform the Contract

4 When the OWNER has satisfied the conditions of paragraph 3 the Surety shall promptly and at the Surety's expense take one of the following actions

4 1 Arrange for the CONTRACTOR, with consent of the OWNER to perform and complete the Contract, or

4 2 Undertake to perform and complete the Contract itself through its agents or through independent contractors or

4 3 Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER's concurrence to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR Default or

4 4 Waive its right to perform and complete arrange for completion or obtain a new contractor and with reasonable promptness under the circumstances

4 4 1 After investigation, determine the amount for which it may be liable to the OWNER and as soon as practicable after the amount is determined tender payment therefor to the OWNER, or

4 4 2 Deny liability in whole or in part and notify the OWNER citing reasons therefor

5 If the Surety does not proceed as provided in paragraph 4 with reasonable promptness the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond and the OWNER shall be entitled to enforce any remedy available to the OWNER If the Surety proceeds as provided in paragraph 4 4 and the OWNER refuses the payment tendered or the Surety has denied

liability in whole or in part without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER

6 After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under paragraph 4 1 4 2 or 4 3 above then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract To a limit of the amount of this Bond but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract the Surety is obligated without duplication for

6 1 The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract

6 2 Additional legal design professional and delay costs resulting from the CONTRACTOR's Default and resulting from the actions or failure to act of the Surety under paragraph 4 and

6 3 Liquidated damages or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non performance of the CONTRACTOR

7 The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs executors administrators or successors

8 The Surety hereby waives notice of any change including changes of time to the Contract or to related subcontracts purchase orders and other obligations

9 Any proceeding legal or equitable under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CONTRACTOR Default or within two years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond whichever occurs first If the provisions of this paragraph are void or prohibited by law the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable

10 Notice to the Surety the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was performed any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein The intent is that this Bond shall be construed as a statutory bond and not as a common law bond

12 Definitions

12 1 Balance of the Contract Price The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract

12 2 Contract The agreement between the OWNER and the CONTRACTOR identified on the signature page including all Contract Documents and changes thereto

12 3 CONTRACTOR Default Failure of the CONTRACTOR, which has neither been remedied nor waived to perform or otherwise to comply with the terms of the Contract

12 4 OWNER Default Failure of the OWNER, which has neither been remedied nor waived to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof

(FOR INFORMATION ONLY Name Address and Telephone)
AGENT or BROKER OWNER'S REPRESENTATIVE (Engineer or other party)

Payment Bond

Any singular reference to Contractor Surety Owner or other party shall be considered plural where applicable

CONTRACTOR (Name and Address)

SURETY (Name and Address of Principal Place
of Business)

OWNER (Name and Address)

CONTRACT

Date

Amount

Description (Name and Location)

BOND

Date (Not earlier than Contract Date)

Amount

Modifications to this Bond Form

Surety and Contractor intending to be legally bound hereby subject to the terms printed on the reverse side hereof do each cause this Payment Bond to be duly executed on its behalf by its authorized officer agent or representative

CONTRACTOR AS PRINCIPAL

Company (Corp Seal)

Signature _____
Name and Title

SURETY

Company (Corp Seal)

Signature _____
Name and Title
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties if required)

CONTRACTOR AS PRINCIPAL

Company (Corp Seal)

Signature _____
Name and Title

SURETY

Company (Corp Seal)

Signature _____
Name and Title

EJCDC No 1910 28 B (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America Engineers Joint Contract Documents Committee the Associated General Contractors of America the American Institute of Architects the American Subcontractors Association, and the Associated Specialty Contractors

1 The CONTRACTOR and the Surety jointly and severally bind themselves their heirs executors administrators successors and assigns to the OWNER to pay for labor materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference

2 With respect to the OWNER this obligation shall be null and void if the CONTRACTOR

2 1 Promptly makes payment directly or indirectly for all sums due Claimants and

2 2 Defends indemnifies and holds harmless the OWNER from all claims demands liens or suits by any person or entity who furnished labor materials or equipment for use in the performance of the Contract provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims demands liens or suits and tendered defense of such claims demands liens or suits to the CONTRACTOR and the Surety and provided there is no OWNER Default

3 With respect to Claimants this obligation shall be null and void if the CONTRACTOR promptly makes payment directly or indirectly for all sums due

4 The Surety shall have no obligation to Claimants under this Bond until

4 1 Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy or notice thereof to the OWNER stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim

4 2 Claimants who do not have a direct contract with the CONTRACTOR.

1 Have furnished written notice to the CONTRACTOR and sent a copy or notice thereof to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating with substantial accuracy the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed and

2 Have either received a rejection in whole or in part from the CONTRACTOR or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly and

3 Not having been paid within the above 30 days have sent a written notice to the Surety and sent a copy or notice thereof to the OWNER stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR

5 If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or to the Surety that is sufficient compliance

6 When the Claimant has satisfied the conditions of paragraph 4 the Surety shall promptly and at the Surety's expense take the following actions

6 1 Send an answer to the Claimant with a copy to the OWNER within 45 days after receipt of the claim stating the amounts that are undisputed and the basis for challenging any amounts that are disputed

6 2 Pay or arrange for payment of any undisputed amounts

7 The Surety's total obligation shall not exceed the amount of this Bond and the amount of this Bond shall be credited for any payments made in good faith by the Surety

8 Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims if any under any Performance Bond By the CONTRACTOR furnishing and the OWNER accepting this Bond they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond subject to the OWNER's priority to use the funds for the completion of the Work

9 The Surety shall not be liable to the OWNER Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond and shall have under this Bond no obligations to make payments to give notices on behalf of or otherwise have obligations to Claimants under this Bond

10 The Surety hereby waives notice of any change including changes of time to the Contract or to related Subcontracts purchase orders and other obligations

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4 1 or paragraph 4 2 3 or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs If the provisions of this paragraph are void or prohibited by law the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable

12 Notice to the Surety the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page Actual receipt of notice by Surety the OWNER or the CONTRACTOR however accomplished shall be sufficient compliance as of the date received at the address shown on the signature page

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond

14 Upon request of any person or entity appearing to be a potential beneficiary of this Bond the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made

15 DEFINITIONS

15 1 Claimant An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor materials or equipment for use in the performance of the Contract The intent of this Bond shall be to include without limitation in the terms labor materials or equipment that part of water gas power light, heat, oil gasoline telephone service or rental equipment used in the Contract architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor materials or equipment were furnished

15 2 Contract. The agreement between the OWNER and the CONTRACTOR identified on the signature page including all Contract Documents and changes thereto

15 3 OWNER Default. Failure of the OWNER which has neither been remedied nor waived to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof

(FOR INFORMATION ONLY--Name Address and Telephone)

AGENCY or BROKER

OWNER'S REPRESENTATIVE (Engineer or other party)

CERTIFICATE OF INSURANCE						Issue Date:	
PRODUCER:		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.					
		COMPANIES AFFORDING COVERAGE					
Code	Sub-Code	COMPANY LETTER A					
INSURED:		COMPANY LETTER B					
		COMPANY LETTER C					
		COMPANY LETTER D					
		COMPANY LETTER E					
COVERAGES							
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.							
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	ALL LIMITS IN THOUSANDS		
	GENERAL LIABILITY				GENERAL AGGREGATE	\$1,000,	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	(Completed Operations & Products Liability remains in force for 2 years after final payment)			PRODUCTS-COMP/OPS AGGREGATE	\$1,000,	
	<input checked="" type="checkbox"/> OCCURRENCE				PERSONAL & ADVERTISING INJURY	\$1,000,	
	<input checked="" type="checkbox"/> BLANKET CONTRACTUAL				EACH OCCURRENCE	\$1,000,	
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT EACH OCCURRENCE Bodily Injury & Property Damage	\$1,000,	
	<input checked="" type="checkbox"/> ANY AUTO						
	<input checked="" type="checkbox"/> HIRED AUTOS						
	<input checked="" type="checkbox"/> NON-OWNED AUTOS						
	EXCESS LIABILITY				EACH OCCURRENCE	\$4,000,	
	<input checked="" type="checkbox"/> UMBRELLA FORM	(Follows Form of the Primary)			AGGREGATE	\$4,000,	
	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY		
		(Includes US Longshoremen and Harbor Workers Act and Maritime Coverage Where Applicable and All States Endorsement)			EACH ACCIDENT	\$1,000,	
					DISEASE-POLICY LIMIT	\$1,000,	
					DISEASE-EACH EMPLOYEE	\$1,000,	
	OTHER				EACH OCCURRENCE		
					AGGREGATE		
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS:							
<ol style="list-style-type: none"> Certificate Holder(s) & their Officers, Directors, Partners, Employees, & Agents Named as Additional Insured (all policies except WC). The coverage afforded the Additional Insured under these policies shall be primary insurance. If the Additional Insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. (Copy of Additional Insured Endorsement attached.) Blanket Coverage for XCU Hazards (General Liability & Excess Liability). Waiver of Subrogation Against Certificate Holder(s), Their Officers, Directors, Partners, Employees, & Agents (all policies). Contractual Coverage covers liability assumed in the Indemnification Clause of the Contract between Certificate Holder and Insured (General Liability & Excess Liability). General and Products/Completed Operations aggregates apply for each Certificate Holder contract(s) or amendments (General Liability & Excess Liability). Contractual Liability Limitation Endorsement CG2139 or its equivalent is not included in either General or Excess Liability policies. Severability of Interest or Cross Liability clause or endorsement included (General Liability & Excess Liability). 							
CERTIFICATE HOLDERS				CANCELLATION			
1.		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED, TERMINATED, OR MATERIALLY CHANGED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDERS NAMED TO THE LEFT. ANY IMPAIRMENT OR EXHAUSTION OF AGGREGATES WILL BE THE SUBJECT OF IMMEDIATE NOTICE TO THE CERTIFICATE HOLDERS.					
2.		AUTHORIZED REPRESENTATIVE					

CERTIFICATE OF PROPERTY INSURANCE		ISSUE DATE _____ (mm/dd/yy)
THIS IS EVIDENCE THAT INSURANCE AS IDENTIFIED BELOW HAS BEEN ISSUED IS IN FORCE AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICY		
PRODUCER Code Sub-Code	COMPANY	
INSURED	POLICY NUMBER	
	EFFECTIVE DATE (mm/dd/yy)	EXPIRATION DATE (mm/dd/yy)
PROPERTY INFORMATION		
LOCATION/DESCRIPTION		
COVERAGE INFORMATION		
COVERAGES/PERILS/FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
BUILDERS RISK/INSTALLATION FLOATER All Risk of Physical Damage or Loss to Equipment and Materials at or incidental to the Jobsite on Completed Value Form	Insurable value of completed work. _____	
REMARKS (including Special Conditions)		
1 Certificate Holder and others identified in the property insurance paragraph of the Contract Documents are Named Insureds 2 Waiver of Subrogation against Named Insureds 3 Any similar insurance carried by Named Insureds is excess of coverage described hereon 4 Losses are payable to Owner as fiduciary for the Named Insureds		
CANCELLATION		
THIS POLICY IS SUBJECT TO THE PREMIUMS FORMS AND RULES IN EFFECT FOR EACH POLICY PERIOD SHOULD THE POLICY BE TERMINATED OR MATERIALLY CHANGED THE COMPANY WILL GIVE THE CERTIFICATE HOLDERS IDENTIFIED BELOW 30 DAYS' WRITTEN NOTICE, AND WILL SEND NOTIFICATION OF ANY CHANGES TO THE POLICY THAT WOULD AFFECT THAT INTEREST IN ACCORDANCE WITH THE POLICY PROVISIONS OR AS REQUIRED BY LAW		
CERTIFICATE HOLDERS		
Name and Address 1 2	Nature of Interest <input checked="" type="checkbox"/> Additional Named Insured	
		SIGNATURE OF AUTHORIZED AGENT OF THE COMPANY

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES



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of Civil Engineers

PE National Society of
Professional Engineers
Professional Engineers in Private Practice

AMERICAN COUNCIL OF ENGINEERING COMPANIES

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Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

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**STANDARD GENERAL CONDITIONS OF THE
CONSTRUCTION CONTRACT**

TABLE OF CONTENTS

	Page
Article 1 – Definitions and Terminology	1
1.01 Defined Terms.....	1
1.02 Terminology	5
Article 2 – Preliminary Matters	6
2.01 Delivery of Bonds and Evidence of Insurance	6
2.02 Copies of Documents	6
2.03 Commencement of Contract Times; Notice to Proceed.....	6
2.04 Starting the Work	7
2.05 Before Starting Construction	7
2.06 Preconstruction Conference; Designation of Authorized Representatives	7
2.07 Initial Acceptance of Schedules	7
Article 3 – Contract Documents: Intent, Amending, Reuse	8
3.01 Intent.....	8
3.02 Reference Standards.....	8
3.03 Reporting and Resolving Discrepancies.....	9
3.04 Amending and Supplementing Contract Documents	9
3.05 Reuse of Documents	10
3.06 Electronic Data.....	10
Article 4 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions; Reference Points.....	11
4.01 Availability of Lands.....	11
4.02 Subsurface and Physical Conditions.....	11
4.03 Differing Subsurface or Physical Conditions	12
4.04 Underground Facilities.....	13
4.05 Reference Points.....	14
4.06 Hazardous Environmental Condition at Site	14
Article 5 – Bonds and Insurance.....	16
5.01 Performance, Payment, and Other Bonds.....	16
5.02 Licensed Sureties and Insurers.....	16
5.03 Certificates of Insurance	17
5.04 Contractor’s Insurance	17
5.05 Owner’s Liability Insurance.....	19
5.06 Property Insurance.....	19
5.07 Waiver of Rights	20
5.08 Receipt and Application of Insurance Proceeds	21

5.09	Acceptance of Bonds and Insurance; Option to Replace	21
5.10	Partial Utilization, Acknowledgment of Property Insurer.....	22
Article 6 – Contractor’s Responsibilities		22
6.01	Supervision and Superintendence.....	22
6.02	Labor; Working Hours	22
6.03	Services, Materials, and Equipment	22
6.04	Progress Schedule	23
6.05	Substitutes and “Or-Equals”	23
6.06	Concerning Subcontractors, Suppliers, and Others.....	25
6.07	Patent Fees and Royalties	27
6.08	Permits.....	27
6.09	Laws and Regulations	28
6.10	Taxes	28
6.11	Use of Site and Other Areas.....	28
6.12	Record Documents.....	29
6.13	Safety and Protection	29
6.14	Safety Representative.....	30
6.15	Hazard Communication Programs.....	30
6.16	Emergencies	30
6.17	Shop Drawings and Samples	31
6.18	Continuing the Work.....	32
6.19	Contractor’s General Warranty and Guarantee	33
6.20	Indemnification	33
6.21	Delegation of Professional Design Services.....	34
Article 7 – Other Work at the Site.....		35
7.01	Related Work at Site	35
7.02	Coordination.....	35
7.03	Legal Relationships.....	36
Article 8 – Owner’s Responsibilities.....		36
8.01	Communications to Contractor.....	36
8.02	Replacement of Engineer	36
8.03	Furnish Data	36
8.04	Pay When Due.....	36
8.05	Lands and Easements; Reports and Tests.....	36
8.06	Insurance.....	36
8.07	Change Orders.....	37
8.08	Inspections, Tests, and Approvals	37
8.09	Limitations on Owner’s Responsibilities	37
8.10	Undisclosed Hazardous Environmental Condition	37
8.11	Evidence of Financial Arrangements.....	37
8.12	Compliance with Safety Program.....	37
Article 9 – Engineer’s Status During Construction.....		37
9.01	Owner’s Representative	37

9.02	Visits to Site	37
9.03	Project Representative.....	38
9.04	Authorized Variations in Work	38
9.05	Rejecting Defective Work.....	38
9.06	Shop Drawings, Change Orders and Payments	39
9.07	Determinations for Unit Price Work	39
9.08	Decisions on Requirements of Contract Documents and Acceptability of Work	39
9.09	Limitations on Engineer’s Authority and Responsibilities	39
9.10	Compliance with Safety Program	40
Article 10 – Changes in the Work; Claims		40
10.01	Authorized Changes in the Work	40
10.02	Unauthorized Changes in the Work.....	41
10.03	Execution of Change Orders.....	41
10.04	Notification to Surety.....	41
10.05	Claims.....	41
Article 11 – Cost of the Work; Allowances; Unit Price Work		42
11.01	Cost of the Work	42
11.02	Allowances	45
11.03	Unit Price Work	45
Article 12 – Change of Contract Price; Change of Contract Times		46
12.01	Change of Contract Price	46
12.02	Change of Contract Times	47
12.03	Delays	47
Article 13 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work.....		48
13.01	Notice of Defects.....	48
13.02	Access to Work	48
13.03	Tests and Inspections	49
13.04	Uncovering Work.....	49
13.05	Owner May Stop the Work.....	50
13.06	Correction or Removal of Defective Work	50
13.07	Correction Period	50
13.08	Acceptance of Defective Work.....	51
13.09	Owner May Correct Defective Work	52
Article 14 – Payments to Contractor and Completion		52
14.01	Schedule of Values.....	52
14.02	Progress Payments	52
14.03	Contractor’s Warranty of Title.....	55
14.04	Substantial Completion.....	55
14.05	Partial Utilization	56
14.06	Final Inspection	57
14.07	Final Payment.....	57
14.08	Final Completion Delayed	58

14.09 Waiver of Claims	58
Article 15 – Suspension of Work and Termination	59
15.01 Owner May Suspend Work.....	59
15.02 Owner May Terminate for Cause	59
15.03 Owner May Terminate For Convenience	60
15.04 Contractor May Stop Work or Terminate.....	60
Article 16 – Dispute Resolution	61
16.01 Methods and Procedures	61
Article 17 – Miscellaneous	61
17.01 Giving Notice	61
17.02 Computation of Times	62
17.03 Cumulative Remedies	62
17.04 Survival of Obligations	62
17.05 Controlling Law	62
17.06 Headings.....	62

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 Copies of Documents

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on

Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

**ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS;
HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

- A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:
1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
 2. is of such a nature as to require a change in the Contract Documents; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. *Engineer’s Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and

contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the

consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, 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 of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to 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. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, 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 of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also

meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

- a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
 2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
 5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
 6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors,

members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's

interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. "*Or-Equal*" Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be

required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner,

Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, 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 of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, 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 of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought

by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and

shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is

required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by Engineer;
 - 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. use or occupancy of the Work or any part thereof by Owner;
 - 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 - 6. any inspection, test, or approval by others; or
 - 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, 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 of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

- A. Owner may perform other work related to the Project at the Site with Owner’s employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner’s employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor’s Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor’s Work. Contractor’s failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor’s Work except for latent defects and deficiencies in such other work.

7.02 Coordination

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. the extent of such authority and responsibilities will be provided.

- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or

continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not

exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data

shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of

said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not

limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:*
 1. Contractor agrees that:
 - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:*
 1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to

the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee*: The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or

neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments:*

- 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an

Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or

- involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
- b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. *Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before

final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying

documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when

so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days

to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
 - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 - 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

Section 00800

SUPPLEMENTARY CONDITIONS

SCOPE. These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (C-700, 2007 Edition) and other provisions of the Contract Documents as indicated herein. All provisions which are not so amended or supplemented remain in full force and effect.

SC-1. DEFINITIONS AND TERMINOLOGY.

SC-1.01. DEFINED TERMS. The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (C-700, 2007 Edition) have the meanings assigned to them in the General Conditions.

Amend the terms as follows:

3. Application for Payment: Strike out the word "Engineer" and insert the word "Owner" in its place.
9. Change Order: Strike out the words "recommended by Engineer".
12. Contract Documents: In the first sentence, strike out the word "Engineer's" and insert the word "Owner's" in its place.
14. Contract Times: Strike out the words "as evidenced by Engineer's written recommendation of final payment".
15. Contractor: Delete the term "Contractor" and substitute therefore the terms "Contractor or Prime Contractor."
17. Drawings: Add the following sentence to the definition: "Drawings may also be described as Plans."
20. Field Order: Strike out the word "Engineer" and insert the word "Owner" in its place.
22. Hazardous Environmental Conditions: Delete the words "or Radioactive Material" and substitute therefore the words "Radioactive Material or other pollutants or contaminants".
44. Substantial Completion: Strike out the word "Engineer" and insert the word "Owner" in its place. Add the following to the first sentence: "and a Certificate of Substantial Completion has been completed."
51. Work Change Directive: In the first sentence strike out the words "and recommended by Engineer".

Additional terms used in these Supplementary Conditions have the meanings indicated herein, which are applicable to both the singular and plural thereof.

Add the following new definitions to paragraph 1.01:

- “52. Final Completion – The time when all work is complete, including all punch list items, and all documents required for occupancy of the facility are completed and submitted to the OWNER. These documents include, but are not limited to, Certificate of Occupancy, Letters of Approval from various regulatory agencies, inspection certificates, and all other items as required in paragraph 14.07.”
- “53. General Contractor – The person, firm, or corporation with whom OWNER has entered into an Agreement for a complete project, general trades, or complete project less a part of the project.”
- “54. Without exception – The term “without exception”, when used in the Contract Documents following the name of a Supplier or a proprietary item of equipment, product, or material, shall mean that the sources of the product are limited to the listed Suppliers or products and that no like, equivalent, or “or-equal” item and no substitution will be considered.”
- “55. Written Notice – Notice to any party which is in writing and which shall be considered delivered and the service thereof completed once posted by certified or registered mail to the party to whom the notice is sent at its last given address or delivered in person to said party or its authorized representative on the work.”

SC-102. TERMINOLOGY. Add the following paragraphs G, H, and I.

"G. Imperative Mood. These specifications are written to the BIDDER before the award of the Contract and to the CONTRACTOR after award of the Contract. The sentences that direct the CONTRACTOR to perform work are mostly written as commands. For example, a requirement to provide cold-weather protection would be expressed as, 'Provide cold-weather protection for concrete,' rather than 'The Contractor shall provide cold-weather protection for concrete.' In the imperative mood, the subject "the Bidder" or "the Contractor" is understood.

SC-2. PRELIMINARY MATTERS.

SC-2.02. Copies of Documents. Delete the second sentence of paragraph 2.02.A and insert the following new sentence in its place:

“Two (2) sets of contract drawings and specifications will be furnished the Contractor without charge. Additional sets will be furnished upon request at the cost of reproduction. The Contractor shall keep one (1) set of approved plans and specifications on the site of the work. This set shall be kept current by addition of all approved changes, addenda and amendments thereto. One set of as-built plans shall be returned to the Owner after the project is complete.”

The plans and specifications are intended to be complementary; but should any discrepancy appear or any misunderstanding arise as to the import of anything

contained in either, the decision of the District shall be final and binding on the Contractor. The District may make any corrections of errors or omissions in the drawings and specifications when such corrections are necessary for the proper fulfillment of their intention as construed by the District.

All work or materials shown on the plans and not mentioned in the specifications or any work specified and not shown on the plans, shall be furnished, performed and done by the Contractor as if the same were both mentioned in the specifications and shown on the plans.

Should the Contractor in preparing its bid find anything necessary for the construction of the project that is not mentioned in the specifications or shown on the plans, or any discrepancy, it shall notify the District so that such items may be included. Should the Contractor fail to notify the District of such items, it will be assumed that its bid included everything necessary for the complete construction in the spirit and intent of the designs shown.

In case of discrepancy, figure dimensions shall govern over scale dimensions, large-scale details shall govern over small-scale drawings, plans shall govern over specifications, detailed technical specifications shall govern over general specifications, and the more restrictive specifications shall prevail."

SC-2.03. Commencement of Contract Times; Notice to Proceed. Delete the paragraph and insert in its place:

"A. The Contract Times will commence to run on the day indicated in the Notice to Proceed. The date for the Contract Times may be extended by mutual agreement between the OWNER and the CONTRACTOR."

SC-2.05. Before Starting Construction. Amend paragraphs 2.05.A and 2.05.B by striking out the word "Engineer" in all locations where it appears in the paragraphs and inserting the word "Owner" in its place.

SC-2.06. Preconstruction Conference. Delete paragraph 2.06.A in its entirety and insert the following new paragraph in its place:

If requested by Owner, within 20 days after the Contract Times start to run, but before any work at the Site is started, a conference attended by Contractor, Owner, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

SC-2.07. Initial Acceptance of Schedules. Amend paragraph 2.07.A, including paragraphs 2.07.A.1, 2.07.A.2, and 2.07.A.3, by striking out the word "Engineer" in all locations where it appears in the paragraph and inserting the word "Owner" in its place.

SC-3. CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE.

SC-3.01. Intent. Amend paragraph 3.01.C by striking out the word “Engineer” and inserting the word “Owner” in its place.

SC-3.03. Reporting and Resolving Discrepancies. Amend paragraph 3.03.A by striking out the word “Engineer” and inserting the word “Owner” in its place.

SC-3.04. Amending and Supplementing Contract Documents. Amend paragraph 3.04.B by striking out the word “Engineer” and inserting the word “Owner” in its place.

SC-4. AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS.

SC-4.02. Subsurface and Physical Conditions. Delete Paragraph 4.02.A in its entirety and insert the following new paragraph in its place:

- A. *Reports and Drawings:* No reports of explorations and tests of subsurface conditions at or contiguous to the Site have been prepared, and no drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site are available.

SC-4.03. Differing Subsurface or Physical Conditions.

Replace paragraph 4.03.A with the following:

"A. Notice: If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

"1. Is of such nature as to require a change in the Contract Documents; or

"2. Differs materially from that shown or indicated in the Contract Documents; or

"3. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent on work of the character provided for in the Contract Documents;

"then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any work in connection therewith (except as aforesaid) until receipt of written order to do so."

Delete paragraph 4.03.B in its entirety and insert the following new paragraph in its place:

- B. *Owner's Review.* After receipt of written notice as required by paragraph 4.03.A, Owner will promptly review the pertinent condition, determine the necessity if obtaining additional explorations or tests with respect thereto, and advise Contractor in writing of Owner's findings and conclusions.

SC-4.04. Underground Facilities.

Add the following immediately after paragraph 4.04.A.2.

"4.04.A.3 Location of Subsurface Utilities.

"a. The location of subsurface utilities is shown on the plans from information furnished by the utility owners.

"b. The CONTRACTOR shall, no later than 2 working days, excluding Saturdays, Sundays, and legal holidays, prior to construction in the area of the subsurface utility, notify the subsurface utility Owner in writing, by telephone, or in person. The marking or locating shall be coordinated to stay approximately 2 days ahead of the planned construction.

"c. The CONTRACTOR shall alert immediately the occupants of nearby premises as to any emergency that it may create or discover at or near such premises.

"d. The CONTRACTOR shall have full responsibility for coordination of the work with owners of such underground facilities during construction, for the safety and protection thereof as provided in paragraph 6.13 and repairing any damage thereto resulting from the work, the cost of all of which will be considered as having been included in the Contract Price.

"4.04.A.4 Where existing utilities and structures are indicated as being in the line of the proposed improvement, the CONTRACTOR shall expose them sufficiently in advance of the construction operations to permit adjustments in line or grade, if required, to eliminate interferences.

"4.04.A.5 Existing pipes or conduits crossing a trench, or otherwise exposed, shall be adequately braced and supported to prevent movement during construction.

"4.04.A.6 Broken Utility Services.

"a. Utility services broken or damaged shall be repaired at once to avoid inconvenience to customers and utility owners.

"b. Temporary arrangements, as approved by the ENGINEER, may be used until any damaged items can be permanently repaired.

"c. All items damaged or destroyed by construction and subsequently repaired must be properly maintained by the CONTRACTOR.

"d. CONTRACTOR must work 24 hours a day until service is restored to a damaged utility.

"4.04.A.7 Existing Utility Relocation.

"a. Where it is necessary to relocate an existing utility or structure, the work shall be done in such manner as is necessary to restore it to a condition equal to that of the original utility or structure.

"b. No such relocation shall be done until approval is received from the authority responsible for the utility or structure being changed."

Amend the first sentence of paragraph 4.04.B.1 by striking out the words "and Engineer".

Amend the second sentence of paragraph 4.04.B.2 by striking out the word "Engineer" and inserting the word "Owner" in its place.

Amend the first sentence of paragraph 4.04.B.2 by striking out the word "Engineer" and inserting the word "Owner" in its place.

Add the following new paragraph immediately after paragraph 4.04.B:

Generally, service connections are not indicated on the Drawings. Contractor shall be responsible for discovery of existing underground installations, in advance of excavating or trenching, by contacting all local utilities and by prospecting.

SC-4.06 Hazardous Environmental Conditions at Site.

Delete paragraph 4.06.A. in its entirety and substitute the following paragraph therefore:

A. The following reports and drawings related to Hazardous Environmental Conditions identified at the Site are known to Owner: (None).

Amend paragraph 4.06.B by adding the words "that is created by, or" immediately after the words "a Hazardous Environmental Condition" in the fourth line.

Amend paragraph 4.06.G by deleting all words following the words "Hazardous Environmental Condition" in the seventh line and substituting therefore the following words: "was created by Owner or by anyone for whom Owner is responsible, other than Contractor and all persons, subcontractors and entities for which Contractor is responsible."

SC-5. BONDS AND INSURANCE.

SC-5.02. Licensed Sureties and Insurers. Add the following new sentence at the end of paragraph 5.02.A:

The surety company shall be rated "A" by AM BEST.

SC-5.03. Certificates of Insurance. Add the following new sentence at the end of paragraph 5.03.A:

Contractor shall deliver to Owner properly completed certificates of insurance prior to the start of any Work at the Site, on the forms included in the Contract Documents.

SC-5.04. Contractor's Insurance.

Add the following new paragraphs immediately after paragraph 5.04.A.6:

7. Claims arising out of pollution and excluded from the Contractor's general liability and comprehensive automobile liability policies. This insurance shall be coordinated with the Contractor's general liability policy and shall provide bodily injury and property damage coverage similar to the Contractor's general liability policy. Coverage shall include contractual liability.

Add the following new paragraphs immediately after paragraph 5.04.B.6:

7. contain a cross liability or severability of interest clause or endorsement. Insurance covering the specified additional insureds shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance;
8. with respect to workers' compensation and employers' liability, comprehensive automobile liability, commercial general liability, and umbrella liability insurance, and all other liability insurance specified herein to be provided by Contractor, Contractor shall require its insurance carriers to waive all rights of subrogation against Owner, Engineer, and their respective officers, directors, partners, employees, and agents.

Add the following new paragraphs immediately after paragraph 5.04.B:

- C. The insurance required by paragraph 5.04 shall include coverage as necessary for the benefits provided under the United States Longshoremen's and Harbor Workers' Act and the Jones Act. This policy shall include an "all states" endorsement.
- D. The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts but shall provide coverage in greater amounts where required by Laws and Regulations. This coverage may be primary or a combination of primary and umbrella excess liability.
 1. Workers' Compensation, and related coverage under paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:
 - a. State Statutory
 - b. Applicable Federal (e.g., Longshoreman's) Statutory
 - b. Employer's Liability \$1,000,000 each occurrence
 2. Commercial General Liability under paragraphs 5.04.A.3 through 5.04.A.6 of the General Conditions shall be occurrence type, written in comprehensive form, and shall protect Contractor, Owner, and Engineer as additional insureds, against claims arising from injuries, sickness, disease, or death of

any person or damage to property arising out of performance of the Work. The policy shall also include a per project aggregate limit endorsement, personal injury liability coverage, contractual liability coverage for blasting, explosion, collapse of buildings, and damage to underground property.

- a. General Aggregate \$1,000,000
- b. Products – Completed Operations Aggregate \$1,000,000
- c. Personal and Advertising Injury \$1,000,000
- d. Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
- e. Property Damage liability insurance will provide Explosion, Collapse and Underground coverage's where applicable.

3. Automobile Liability under paragraph 5.04.A.6 of the General Conditions shall be occurrence type, written in comprehensive form, and shall protect Contractor, Owner, and Engineer as additional insureds, against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, either on or off the project site whether they are owned, nonowned, or hired. The liability limit shall be not less than:

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

4. Umbrella Liability Insurance shall protect Contractor, Owner, and Engineer as additional insureds, against claims in excess of the limits provided under workers' compensation and employers' liability, comprehensive automobile liability, and commercial general liability policies. The umbrella policy shall follow the forms of the primary insurance, including the application of the primary limits. The liability limits shall be not less than:

- Bodily injury and Property damage \$4,000,000 combined single limit for each occurrence
- \$4,000,000 general aggregate

SC-5.05. Owner's Liability Insurance. Delete paragraph 5.05 in its entirety and insert the following new paragraph in its place:

5.05. *Owner's Liability Insurance.* This insurance shall be obtained by Contractor and issued in the name of Owner, and shall protect and defend Owner against claims arising as a result of the operations of Contractor or Contractor's Subcontractors. The liability limits shall be not less than:

a.	Bodily Injury	
	Each Occurrence	\$1,000,000
	General Aggregate	\$1,000,000
b.	Property Damage	
	Each Occurrence	\$1,000,000
	General Aggregate	\$1,000,000

SC-5.06. Property Insurance. Delete paragraph 5.06 in its entirety and insert the following new paragraphs in their place:

5.06. *Property Insurance*

A. Contractor shall purchase and maintain property insurance coverage upon the Work at the Site in the amount of the full replacement cost thereof. This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, Engineer, Engineer's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;
2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, flood, damage caused by frost and freezing, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
3. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment accepted by Owner;
4. include expenses incurred in the repair or replacement of any insured property (including, but not limited to, fees and charges of engineers and architects);
5. allow for partial utilization of the Work by Owner;
6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer, with 30 days' written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Contractor shall be responsible for any deductible or self-insured retention.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 shall contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. If Owner requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, Contractor shall, if possible, include such insurance, and the cost thereof will be charged to Owner by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the Site, Contractor shall in writing advise Owner whether or not Contractor has procured such other special insurance.

SC-6. CONTRACTOR'S RESPONSIBILITIES.

SC-6.02. Labor; Working Hours. Add the following new paragraphs immediately after paragraph 6.02.B:

C. No Work shall be done between 6:00 p.m. and 7:00 a.m. without permission of Owner. However, emergency work may be done without prior permission.

D. Night Work may be undertaken as a regular procedure with the permission of Owner; such permission, however, may be revoked at any time by Owner if Contractor fails to maintain adequate equipment and supervision for the proper prosecution and control of the Work at night.

SC-6.03. Services, Materials, and Equipment. Amend the second sentence of paragraph 6.03.B by striking out the word "Engineer" and inserting the word "Owner" in its place.

SC-6.04. Progress Schedule. Amend the first sentence of paragraph 6.04.A.1 by striking out the word "Engineer" and inserting the word "Owner" in its place.

SC-6.05. Substitutes and "Or-Equals". Amend paragraph 6.05, including paragraphs 6.05.A, 6.05.A.1, 6.05.A.1.a, 6.05.A.1.b, 6.05.A.2, 6.05.A.2.a, 6.05.A.2.b, 6.05.A.2.c, 6.05.A.2.d, 6.05.B, 6.05.C, 6.05.D, and 6.05.E by striking out the words "Engineer" and "Engineer's" in all locations where they appear in the paragraph and inserting the words "Owner" and "Owner's", respectively, in their place.

Add the following new paragraph after paragraph 6.05.A.2.d:

e. "If a proposed substitute item is accepted, all incidental costs associated with the use of the substitute including, but not limited to, redesign, claims of other Contractors, changes to electrical supply equipment, additional equipment or material required for the installation, etc., shall be at the expense of the Contractor proposing the substitute unless otherwise agreed to by the Owner."

SC-6.08. Permits. Add the following new paragraph immediately after paragraph 6.08.A:

B. Owner will obtain and pay for the following permits: Road & Highway Encroachment Permits, Kentucky Division of Water, and Stream Crossing Permits.

SC-6.09. Laws and Regulations. Add the following new paragraph immediately after paragraph 6.09.C:

D. Employment requirements shall be as specified herein and in the attachments at the end of the Supplementary Conditions.

SC-6.10. Taxes. Add the following new paragraph immediately after Paragraph 6.10.A of the General Conditions:

B. Portions of this project may be exempt from taxes. It is the Contractor's responsibility to determine any applicable exemptions.

SC-6.12. Record Documents. Amend the second sentence of paragraph 6.12.A by striking out the word "Engineer" and inserting the word "Owner" in its place.

Amend the third sentence of paragraph 6.12.A by striking out the words "Engineer for".

SC-6.16. Emergencies. Amend paragraph 6.16 by striking out the word "Engineer" in all locations where it appears in the paragraph and inserting the word "Owner" in its place.

Add the following new paragraph immediately after paragraph 6.16.A:

B. The Contractor understands and agrees that during the performance of the Contract, it shall maintain a presence within such proximity of the Work Site which will allow it to respond to an emergency at the Work Site within one hour of receiving notice of an emergency, including emergencies occurring during non-working hours. The Contractor shall provide a list of emergency phone numbers for such purposes. If the Contractor does not have such a presence, it may satisfy this requirement by sub-contracting with a sub-contractor that does have such a presence, provided that any such sub-contractor must be approved by the Owner, in its sole discretion, prior to the project pre-construction meeting.

SC-6.17. Shop Drawings and Samples. Amend paragraph 6.17, including paragraphs 6.17.A, 6.17.B, 6.17.C, 6.17.D, 6.17.D.1, 6.17.D.1.a, 6.17.D.1.b, 6.17.D.1.c, 6.17.D.1.d, 6.17.D.2, 6.17.D.3, 6.17.E.1, 6.17.E.2, 6.17.E.3, and 6.17.F.1 by striking out the words "Engineer" and "Engineer's" in all locations where they appear in the paragraph and inserting the words "Owner" and "Owner's", respectively, in their place.

SC-6.19. Contractor's General Warranty and Guarantee. Amend paragraph 6.19.C.1 by adding the words "or Owner" at the end of the paragraph.

Amend paragraph 6.19.C.2 by striking out the words "recommendation by Engineer or".

Amend paragraph 6.19.C.3 by striking out the words "by Engineer".

Amend paragraph 6.19.C.6 by striking out the word "Engineer" and inserting the word "Owner" in its place.

Delete paragraph 6.19.C.7 and substitute the following new paragraph therefore:

7. any correction of defective Work by Owner; or

Add the following new paragraph immediately after paragraph 6.19.C.7:

8. any expiration of a correction period.

SC-7. OTHER WORK.

SC-7.01. Related Work at Site. Amend paragraphs 7.01.B and 7.01.C by striking out the word "Engineer" in all locations where it appears in the paragraphs and inserting the word "Owner" in its place.

SC-8. OWNER'S RESPONSIBILITIES.

SC-8.01. Communications to Contractor. Amend paragraph A by striking out "through Engineer".

SC-8.02. Replacement of Engineer. Delete paragraph 8.02 in its entirety.

SC-9. ENGINEER'S STATUS DURING CONSTRUCTION.

SC-9.01. Owner's Representative. Delete paragraph 9.01 in its entirety.

SC-9.02. Visits to Site. Amend paragraphs 9.02.A and 9.02.B by striking out the words "Engineer" and "Engineer's" in all locations where they appear in the paragraph and inserting the words "Owner" and "Owners", respectively, in their place. Add following new paragraph:

B. Engineer may make visits to the Site as Owner deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, at the request and benefit of Owner, may determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will advise Owner of the progress of the Work and will endeavor to guard Owner against defective Work.

SC-9.04. Clarifications and Interpretations. Amend paragraph 9.04 by striking out the word “Engineer” in all locations where it appears in the paragraph and inserting the word “Owner” in its place.

SC-9.05. Authorizing Variations in Work. Amend paragraph 9.05 by striking out the word “Engineer” in all locations where it appears in the paragraph and inserting the word “Owner” in its place.

SC-9.06. Rejecting Defective Work. Amend paragraph 9.06 by striking out the word “Engineer” in all locations where it appears in the paragraph and inserting the word “Owner” in its place.

SC-9.07. Shop Drawings, Change Orders and Payments. Delete paragraph 9.07 in its entirety.

SC-9.08. Determinations for Unit Price Work. Delete paragraph 9.08 in its entirety.

SC-9.09. Decisions on Requirements of Contract Documents and Acceptability of Work. Delete paragraph 9.09 in its entirety.

SC-9.10. Limitations on Engineer’s Authority and Responsibilities. Delete paragraph 9.10.D in its entirety.

SC-10. CHANGES IN THE WORK.

SC-10.03. Execution of Change Orders. Amend paragraph 10.03.A by striking out the words “recommended by Engineer”.

Amend paragraph 10.03.A.3 by striking out the word “Engineer” and inserting the word “Owner” in its place.

SC-10.05. Claims and Disputes. Amend paragraph 10.05 by deleting paragraphs 10.05.A, 10.05.B, 10.05.B.1, 10.05.B.2, and 10.05.C in their entirety and inserting the following new paragraphs in their place:

A. *Notice*. Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by Contractor to Owner no later than 30 days after the start of the event giving rise thereto. Notice of the amount of extent of the Claim, dispute, or other matter with supporting data shall be delivered to Owner within 60 days after the start of such event, unless the Owner allows, in writing, additional time for Contractor to submit additional or more accurate data in support of such Claim, dispute, or other matter. A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by Contractor’s written statement that the adjustment claimed is the entire adjustment to which Contractor believes it is entitled as a result of said event.

B. *Owner’s Decisions*. Owner will render a formal decision in writing within 30 days after receipt of the last submittal of Contractor.

C. If Owner does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of Contractor, unless Owner notifies Contractor in writing that a formal decision is pending and will be rendered within a specified number of days or by a specified date.

SC-11. COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK.

SC-11.01. Cost of the Work. Amend the second sentence of paragraph 11.01.A.3 by striking out the words “with the advice of Engineer”.

Amend paragraph 11.01.D by striking out the word “Engineer” and inserting the word “Owner” in its place.

SC-11.02. Cash Allowances. Amend paragraph 11.02.A by striking out the words “and Engineer”.

Amend paragraph 11.02.B by striking out the words “as recommended by Engineer”.

SC-11.9. Unit Price Work. Add the following new paragraph immediately after paragraph 11.9.3.3

11.9.4. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment by Change Order if the variation in the actual quantity of an item of Unit Price Work performed by Contractor differs by more than 25 percent from the estimated quantity of that item indicated in the Bid.

SC-12. CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES.

SC-12.01. Change of Contract Price. Delete paragraph 12.01.A in its entirety and insert the following new paragraph in its place:

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by Contractor to Owner in accordance with the provisions of paragraph 10.05.

SC-12.02. Change of Contract Times. Delete paragraph 12.02.A in its entirety and insert the following new paragraph in its place:

A. The Contract Times (or Milestones) may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by Contractor to owner in accordance with the provisions of paragraph 10.05.

SC-12.03. Delays. Insert the following new sentence following the first sentence of paragraph 12.03.A:

This extension shall be Contractor’s sole and exclusive remedy for such delay.

Insert the following new paragraph 12.03.F immediately after paragraph 12.03.E:

F. In no event shall Owner be liable to Contractor, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages (including acceleration costs) arising out of or resulting from any delay.

SC-13. TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK.

SC-13.02. Access to Work. Add the following new paragraph immediately after paragraph 13.02.A:

B. Authorized representatives of the U.S. Environmental Protection Agency and the Kentucky Division of Water shall have access to the Work whenever it is in preparation or progress. Contractor shall provide proper facilities for such access and inspection.

SC-13.03. Tests and Inspections. Amend paragraph 13.03.A by striking out the word "Engineer" and inserting the word "Owner" in its place.

Amend paragraph 13.03.C by striking out the word "Engineer" and inserting the word "Owner" in its place.

Amend paragraph 13.03.E by striking out the word "Engineer" in both locations where it appears in the paragraph and inserting the word "Owner" in its place.

Amend paragraph 13.03.F by striking out the word "Engineer" in both locations where it appears in the paragraph and inserting the word "Owner" in its place.

SC-13.04. Uncovering Work. Amend paragraph 13.04.A by striking out the words "Engineer" and "Engineer's" in all locations where they appear in the paragraph and inserting the words "Owner" and "Owner's", respectively, in their place.

Delete paragraph 13.04.B in its entirety and insert the following new paragraph in its place:

B. If Owner considers it necessary or advisable that covered Work be observed by Engineer or Owner's representatives, or inspected or tested by others, Contractor, at Owner's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the

parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in paragraph 10.05.

SC-13.06. Correction or Removal of Defective Work. Amend paragraph 13.06.A by inserting the words "or Owner" following the word "Engineer".

SC-13.07. Correction Period. Add the following new paragraph after paragraph 13.07.E:

F. Nothing in Article 13 concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time periods relates only to the specific obligations of Contractor to correct the Work, and has no relationship to the time within which Contractor's obligations under the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than to specifically correct the Work.

SC-13.08. Acceptance of Defective Work. Delete paragraph 13.08.A in its entirety and insert the following new paragraph in its place:

A. If, instead of requiring correction or removal and replacement of defective Work, Owner, prior to making final payment, prefers to accept it, Owner may do so. Contractor shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Owner making final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of the Work so accepted. If the acceptance occurs after making final payment, an appropriate amount will be paid by Contractor to Owner.

SC-13.09. Owner May Correct Defective Work. Amend paragraph 13.09.A by striking out the word "Engineer" in all locations where it appears in the paragraph and inserting the word "Owner" in its place.

SC-14. PAYMENTS TO CONTRACTOR AND COMPLETION.

SC-14.01. Schedule of Values. Amend paragraph 14.01.A by striking out the word "Engineer" and inserting the word "Owner" in its place.

SC-14.02. Progress Payments. Amend paragraph 14.02.A by striking out the word "Engineer" and inserting the word "Owner" in its place.

Add the following new paragraphs immediately after paragraph 14.02.A.3:

4. Contractor's Applications for Payment shall be accompanied by the documentation specified herein.

5. Payments for stored materials and equipment shall be based only upon the actual cost to Contractor of the materials and equipment and shall not include any overhead or profit to Contractor. Partial payments will not be made for undelivered materials or equipment.

6. During the progress of the Work, each Application for Payment shall be accompanied by Contractor's updated schedule of operations, or progress report, with such shop drawings schedules, procurement schedules, value of material on hand included in application, and other data specified in Contract Documents or reasonably required by Owner.

Delete paragraphs 14.02.B and 14.02.C in their entirety and insert the following new paragraphs in their place:

B. Review of Applications

1. Owner will, within 10 days after receipt of each Application for Payment, either begin processing the Application for Payment to Contractor or return the Application to Contractor indicating in writing Owner's reasons for refusing payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Owner's review of Contractor's Application for Payment will consider whether the following have been achieved:

- a. the Work has progressed to the point indicated;
- b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications as reasonably applied by Owner); and
- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as Owner or Engineer has observed the Work.

3. By processing and making such payment Owner will not thereby be deemed to have represented that:

- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
- b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Owner's review of Contractor's Work for the purposes of processing payments nor Owner's making any such payments, including final payment, will impose responsibility on Owner:

- a. to supervise, direct, or control the Work, or
- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
- c. for Contractor's performance of the Work.
- d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
- e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Owner may refuse to process or make the whole or any part of any payment if, in Owner's opinion, the criteria referred to in paragraph 14.02.B.2 has not been met. Owner may also refuse to process or make any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment previously made, to such extent as may be necessary in Owner's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
- d. Owner has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

Delete paragraphs 14.02.C in its entirety and insert the following new paragraphs in its place:

C. Payment Becomes Due

1. Twenty-five days after presentation of the Application for Payment to Owner, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

Amend paragraph 14.02.D.1 by striking out the words "recommended by Engineer" and inserting the words "requested by Contractor" in their place.

Delete paragraph 14.02.D.2 in its entirety and insert the following new paragraph in its place:

2. If Owner refuses to make payment of the full amount requested by Contractor, Owner must give Contractor immediate written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

SC-14.04. Substantial Completion. Delete paragraph 14.04.A in its entirety and insert the following new paragraph in its place:

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Owner issue a certificate of Substantial Completion.

B. Promptly thereafter, Owner and Contractor shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Contractor in writing giving the reasons therefor.

C. If Owner considers the Work substantially complete, Owner will within 14 days after the inspection of the Work execute and deliver to Contractor a statement of Substantial Completion.

D. At the time of delivery of the certificate of Substantial Completion, Owner will deliver to Contractor a statement as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor subsequently agree otherwise in writing, Owner's aforesaid statement will be binding on Owner and Contractor until final payment.

Add the following new paragraphs following paragraph 14.04.A:

To be considered substantially complete, the following portions of the Work must be operational and ready for Owner's continuous use as intended: Water main is tested and placed into service, services are connected to the new main if applicable to the project, and rough restoration is complete.

Portions of the Work not essential to operation, which can be completed without interruption of the Owner's operation, may be completed after the Work is accepted as substantially complete, and may include the following items: final restoration such as seeding and sodding.

SC-14.05. Partial Utilization. Amend paragraph 14.05.A by striking out the word "Engineer".

SC-14.06. Final Inspection. Delete paragraph 14.06.A in its entirety and insert the following new paragraph in its place:

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Owner and Contractor shall promptly make a final inspection of the

Work. Owner will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

SC-14.07. Final Application for Payment. Amend paragraph 14.07.A.1 by striking out the word “Engineer” and inserting the word “Owner” in its place.

Add the following new sentence immediately after the last sentence of paragraph 14.07.A.2.b.:

Consent of the surety, signed by an agent, must be accompanied by a certified copy of such agent's authority to act for the surety. The Contractor shall be responsible for providing all of the documents identified in this paragraph.

Delete paragraph 14.07.B in its entirety and insert the following new paragraph in its place:

B. *Review of Application and Acceptance*. If, on the basis of Owner’s observation of the Work during construction and final inspection, and Owner’s review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner is satisfied that the Work has been completed and Contractor’s other obligations under the Contract Documents have been fulfilled, Owner will process the final Application for Payment. Otherwise, Owner will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to process final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

Amend paragraph 14.07.C by striking out the words “recommended by Engineer” and inserting the words “requested by Contractor” in their place.

SC-14.08. Final Completion Delayed. Delete paragraph 14.08.A in its entirety and insert the following new paragraph in its place:

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, Owner shall, upon receipt of Contractor’s final Application for Payment, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Owner with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

SC-15. SUSPENSION OF WORK AND TERMINATION.

SC-15.01. Owner May Suspend Work. Amend paragraph 15.01.A by striking out the words “and Engineer”.

SC-15.02. Owner May Terminate for Cause. Amend paragraph 15.02.B by deleting the fourth sentence of the paragraph, in its entirety, which begins: "Such Claims, costs, losses, and damages incurred...".

SC-15.04. Contractor May Stop Work or Terminate. Delete paragraph 15.04.A and 15.04.B in their entirety and insert the following new paragraph in its place:

A. If, through no act or fault of Contractor, the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or Owner fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner, stop the Work until payment is made of all such amounts dues Contractor, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude Contractor from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

SC-16. DISPUTE RESOLUTION.

Delete Article 16 in its entirety and insert the following new article in its place:

ARTICLE 16 - DISPUTES.

Arbitration will not be acceptable as a means for settling claims, disputes, and other matters.

SC-17. MISCELLANEOUS.

SC-17.04. Survival of Obligations. Add the following new paragraph immediately after paragraph 17.04.A:

B. Contractor shall obtain from all Suppliers and manufacturers any and all warranties and guarantees of such Suppliers and manufacturers, whether or not specifically required by the Specifications, and shall assign such warranties and guarantees to Owner. With respect thereto, Contractor shall render reasonable assistance to Owner when requested, in order to enable Owner to enforce such warranties and guarantees. The assignment of any warranties or guarantees shall not affect the Correction Period or any other provisions of these Contract Documents.

End of Section

SUPPLEMENTAL GENERAL CONDITIONS

FOR

CLEAN WATER STATE REVOLVING FUND

DRINKING WATER STATE REVOLVING FUND

(Drinking Water and Wastewater)

Project Name: SCADA IMPROVEMENTS - Human Machine
Interface (HMI) Hardware and Software Upgrade

Project Number: Phase 4 - Part A of WX21117003

The attached instructions and regulations as listed below shall be incorporated into the Specifications and comprise Special Conditions.

	<u>Attachment No.</u>
SRF Special Provisions	1
KRS Chapter 45A-Kentucky Model Procurement Code	2
Equal Employment Opportunity (EEO) Documents:	
Notice of Requirement for Affirmative Action	3
Contract Specifications (Executive Order 11246)	4
EEO Goals for Region 4 Economic Areas	5
Special Notice #1 - Check List of EEO Documentation	6
Employer Information Report EEO-1 (SF 100)	7
Labor Standards Provisions for Federally Assisted Construction, EPA Form 5720-4	8
Certifications	
Debarment, Suspension and Other Responsibility Matters	9
Anti-lobbying	10
Region 4 Disadvantaged Business Enterprise (DBE)	11
Bonds and Insurance	12
Storm Water General Permit	13
Davis-Bacon Wage Rate Requirements under FY 2013 Continuing Resolution	14
American Iron and Steel Requirement	15

SRF SPECIAL PROVISIONS

- (a) Line crossings of all roads and streets shall be done in accordance with the Kentucky Transportation Cabinet requirements as may be set forth in the Special Conditions.
- (b) Construction is to be carried out so as to prevent by-passing of flows during construction unless a schedule has been approved by the State or EPA, whichever is applicable. Siltation and soil erosion must be minimized during construction. All construction projects with surface disturbance of more than 1 acre during the period of construction must have a KPDES Storm Water General Permit. The permit can be found at the following web address: <https://dep.gateway.ky.gov/eForms/default.aspx?FormID=7>.

If you have any questions regarding the completion of this form call the Surface Water Permits Branch at (502) 564-3410.

- (c) Restore disturbed areas to original or better condition.
- (d) **Use of Chemicals:** All chemicals used during project construction or furnished for project operation, whether herbicide, pesticide, disinfectant, polymer, reactant or of other classification, must show approval of either DOW or EPA. Use of all such chemicals and disposal of residues shall be in conformance with instructions on the manufacturer's label.
- (e) The construction of the project, including the letting of contracts in connection therewith, shall conform to the applicable requirements of state, territorial, and local laws and ordinances to the extent that such requirements do not conflict with Federal laws and this subchapter.
- (f) The owner shall provide and maintain competent and adequate supervision and inspection.
- (g) The Kentucky Infrastructure Authority and Kentucky Division of Water shall have access to the site and the project work at all times.
- (h) In the event Archaeological materials (arrowheads, stone tools, stone axes, prehistoric and historic pottery, bottles, foundations, Civil War artifacts, and other types of artifacts) are uncovered during the construction of this project, work is to immediately cease at the location and the Kentucky Heritage Council shall be contacted. The telephone number is (502) 564-7005. Construction shall commence at this location until a written release is received from the Kentucky Heritage Council. Failure to report a find could result in legal action.
- (i) This procurement will be subject to DOW Procurement Guidance including the Davis-Bacon Act.
- (j) Reasonable care shall be taken during construction to avoid damage to vegetation. Ornamental shrubbery and tree branches shall be temporarily tied back, where appropriate, to minimize damage. Trees which receive damage to branches shall be trimmed of those branches to improve the appearance of the tree. Tree trunks receiving damage from equipment shall be treated with a tree dressing.
- (k) No wastewater bypassing will occur during construction unless a schedule has been approved by the Kentucky Division of Water.
- (l) Change orders to the construction contract (if required) must be negotiated pursuant to DOW/KIA Procurement Guidance for Construction and Equipment Contracts.

KRS Chapter 45A
Kentucky Model Procurement Code

45A.075 Methods of awarding state contracts.

Except as otherwise authorized by law, all state contracts shall be awarded by:

- (1) Competitive sealed bidding, pursuant to KRS 45A.080; or
- (2) Competitive negotiation, pursuant to KRS 45A.085 and 45A.090 or 45A.180; or
- (3) Noncompetitive negotiation, pursuant to KRS 45A.095; or
- (4) Small purchase procedures, pursuant to KRS 45A.100.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 98, sec. 4, effective June 24, 2003. -- Created 1978 Ky. Acts ch. 110, sec. 16, effective January 1, 1979.

45A.080 Competitive sealed bidding.

(1) Contracts exceeding the amount provided by KRS 45A.100 shall be awarded by competitive sealed bidding, which may include the use of a reverse auction, unless it is determined in writing that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is not practicable shall include:

- (a) Whether specifications can be prepared that permit award on the basis of best value; and
- (b) The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.

(2) The invitation for bids shall state that awards shall be made on the basis of best value. In any contract which is awarded under an invitation to bid which requires delivery by a specified date and imposes a penalty for late delivery, if the delivery is late, the contractor shall be given the opportunity to present evidence that the cause of the delay was beyond his control. If it is the opinion of the purchasing officer that there is sufficient justification for delayed delivery, the purchasing officer may adjust or waive any penalty that is provided for in the contract.

(3) Adequate public notice of the invitation for bids and any reverse auction shall be given a sufficient time prior to the date set forth for the opening of bids or beginning of the reverse auction. The notice may include posting on the Internet or publication in a newspaper or newspapers of general circulation in the state as determined by the secretary of the Finance and Administration Cabinet not less than seven (7) days before the date set for the opening of the bids and any reverse auction. The provisions of this subsection shall also apply to price contracts and purchase contracts of state institutions of higher education.

(4) Bids shall be opened publicly or entered through a reverse auction at the time and place designated in the invitation for bids. At the time the bids are opened, or the reverse auction has ended, the purchasing agency shall announce the agency's engineer's estimate, if applicable, and make it a part of the agency records pertaining to the letting of any contract for which bids were received. Each written or reverse auction bid, together with the name of the bidder and the agency's engineer's estimate, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.

(5) The contract shall be awarded by written notice to the responsive and responsible bidder whose bid offers the best value.

(6) Correction or withdrawal of written or reverse auction bids shall be allowed only to the extent permitted by regulations issued by the secretary.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 63, sec. 3, effective July 15, 2010. -- Amended 2000 Ky. Acts ch. 509, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 120, sec. 10, effective July 15, 1998. -- Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 27, effective May 30, 1997. -- Amended 1996 Ky. Acts ch. 60, sec. 2, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 278, sec. 1, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 282, sec. 1, effective July 15, 1982. -- Amended 1979 (1st Extra. Sess.) Ky. Acts ch. 9, sec. 1, effective February 10, 1979. -- Created 1978 Ky. Acts ch. 110, sec. 17, effective January 1, 1979.

45A.085 Competitive negotiation.

(1) When, under administrative regulations promulgated by the secretary or under KRS 45A.180, the purchasing officer determines in writing that the use of competitive sealed bidding is not practicable, and except as provided in KRS 45A.095 and 45A.100, a contract may be awarded by competitive negotiation, which may include the use of a reverse auction.

(2) Adequate public notice of the request for proposals and any reverse auction shall be given in the same manner and circumstances as provided in KRS 45A.080(3).

(3) Contracts other than contracts for projects utilizing an alternative project delivery method under KRS 45A.180 may be competitively negotiated when it is determined in writing by the purchasing officer that the bids received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate.

(4) Contracts for projects utilizing an alternative project delivery method shall be processed in accordance with KRS 45A.180.

(5) The request for proposals shall indicate the relative importance of price and other evaluation factors, and any reverse auction procedures.

(6) Award shall be made to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the Commonwealth, taking into consideration price and the evaluation factors set forth in the request for proposals and the reciprocal preference for resident bidders required under KRS 45A.494.

(7) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:

(a) With respect to prices, where the prices are fixed by law, reverse auction, or administrative regulation, except that consideration shall be given to competitive terms and conditions;

(b) Where time of delivery or performance will not permit discussions; or

(c) Where it can be clearly demonstrated and documented from the existence of adequate competition or prior experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable best value procurement, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 63, sec. 4, effective July 15, 2010; and ch. 162, sec. 8, effective July 15, 2010. -- Amended 2003 Ky. Acts ch. 98, sec. 5, effective June 24, 2003. -- Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 28, effective May 30, 1997. -- Amended 1979 (1st Extra. Sess.) Ky. Acts ch. 9, sec. 2, effective February 10, 1979. -- Created 1978 Ky. Acts ch. 110, sec. 18, effective January 1, 1979.

45A.090 Negotiation after competitive sealed bidding when all bids exceed available funds.

(1) In the event that all bids submitted pursuant to competitive sealed bidding under KRS 45A.080 result in bid prices in excess of the funds available for the purchase, and the chief purchasing officer determines in writing:

DOW – Feb 2016

(a) That there are no additional funds available from any source so as to permit an award to the responsive and responsible bidder whose bid offers the best value; and
(b) The best interest of the state will not permit the delay attendant to a resolicitation under revised specifications, or for revised quantities, under competitive sealed bidding as provided in KRS 45A.080, then a negotiated award may be made as set forth in subsections (2) or (3) of this section.

(2) Where there is more than one (1) bidder, competitive negotiations pursuant to KRS 45A.085(3) shall be conducted with the three (3) (two (2) if there are only two (2)) bidders determined in writing to be the most responsive and responsible bidders, based on criteria contained in the bid invitation and the reciprocal preference for resident bidders under KRS 45A.494. Such competitive negotiations shall be conducted under the following restrictions:

(a) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and

(b) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of best value.

(3) Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with KRS 45A.095.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 162, sec. 9, effective July 15, 2010. -- Amended 2003 Ky. Acts ch. 98, sec. 6, effective June 24, 2003. -- Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 29, effective May 30, 1997. -- Created 1978 Ky. Acts ch. 110, sec. 19, effective January 1, 1979.

45A.095 Noncompetitive negotiation.

(1) A contract may be made by noncompetitive negotiation only for sole source purchases, or when competition is not feasible, as determined by the purchasing officer in writing prior to award, under administrative regulations promulgated by the secretary of the Finance and Administration Cabinet or the governing boards of universities operating under KRS Chapter 164A, or when emergency conditions exist. Sole source is a situation in which there is only one (1) known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, the supplier, or market conditions. Insofar as it is practical, no less than three (3) suppliers shall be solicited to submit written or oral quotations whenever it is determined that competitive sealed bidding is not feasible. Award shall be made to the supplier offering the best value. The names of the suppliers submitting quotations and the date and amount of each quotation shall be placed in the procurement file and maintained as a public record. Competitive bids may not be required:

(a) For contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services;

(b) Where rates are fixed by law or ordinance;

(c) For library books;

(d) For commercial items that are purchased for resale;

(e) For interests in real property;

(f) For visiting speakers, professors, expert witnesses, and performing artists;

(g) For personal service contracts executed pursuant to KRS 45A.690 to 45A.725; and

(h) For agricultural products in accordance with KRS 45A.645.

(2) The chief procurement officer, the head of a using agency, or a person authorized in writing as the designee of either officer may make or authorize others to make emergency procurements when an emergency condition exists.

(3) An emergency condition is a situation which creates a threat or impending threat to public health, welfare, or safety such as may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of government, the preservation or protection of property, or the health or safety of any person.

(4) The Finance and Administration Cabinet may negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency shall be fully explained, in writing, by the head of the agency for which the purchase is to be made. The explanation shall be approved by the secretary of the Finance and Administration Cabinet and shall include the name of the vendor receiving the contract along with any other price quotations and a written determination for selection of the vendor receiving the contract. This information shall be filed with the record of all such purchases and made available to the public. Where practical, standard specifications shall be followed in making emergency purchases. In any event, every effort should be made to effect a competitively established price for purchases made by the state.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 344, sec. 9, effective July 15, 2002. -- Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 30, effective May 30, 1997. -- Amended 1990 Ky. Acts ch. 496, sec. 4, effective July 13, 1990. -- Created 1978 Ky. Acts ch. 110, sec. 20, effective January 1, 1979

45A.100 Small purchases by state governmental bodies.

(1) Procurements may be made in accordance with small purchase administrative regulations promulgated by the secretary of the Finance and Administration Cabinet, pursuant to KRS Chapter 13A, as follows:

(a) Up to ten thousand dollars (\$10,000) per project for construction and one thousand dollars (\$1,000) for purchases by any state governmental body, except for those state administrative bodies specified in paragraph (b) of this subsection; and

(b) Up to forty thousand dollars (\$40,000) per project for construction or purchases by the Finance and Administration Cabinet, state institutions of higher education, and the legislative branch of government.

(2) Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. Reverse auctions may be used for small purchase procurements. At least every two (2) years, the secretary shall review the prevailing costs of labor and materials and may make recommendations to the next regular session of the General Assembly for the revision of the then current maximum small purchase amount as justified by intervening changes in the cost of labor and materials.

(3) The secretary of the Finance and Administration Cabinet may grant to any state agency with a justifiable need a delegation of small purchasing authority which exceeds the agency's small purchase limit provided in subsection (1) of this section. Delegations of small purchasing authority shall be granted or revoked by the secretary of the Finance and Administration Cabinet, in accordance with administrative regulations promulgated by the cabinet pursuant to KRS Chapter 13A. These administrative regulations shall establish, at a minimum, the criteria for granting and revoking delegations of small purchasing authority, including the requesting

agency's past compliance with purchasing regulations, the level of training of the agency's purchasing staff, and the extent to which the agency utilizes the Kentucky Automated Purchasing System. The administrative regulations may permit the secretary of the Finance and Administration Cabinet to delegate small purchase procurements up to the maximum amount specified in subsection (1)(b) of this section.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 63, sec. 5, effective July 15, 2010. -- Amended 2002 Ky. Acts ch. 320, sec. 2, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 225, sec. 1, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 60, sec. 1, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 323, sec. 1, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 496, sec. 5, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 384, sec. 1, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 384, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 282, sec. 2, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 242, sec. 1, effective July 15, 1980; and ch. 250, sec. 19, effective April 9, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 21, effective January 1, 1979.

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE
EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

The following excerpts are from 45 FR 65984 (October 3, 1980):

The minority and female goals apply to Federal and federally assisted construction contractors and subcontractors which have covered contracts. The goals are expressed as a percentage of the total hours worked by such a covered or subcontractor's entire onsite construction workforce, which is working on any construction site within a relevant area. The goal applies to each construction craft and trade in the contractor's entire workforce in the relevant area including those employees working on private non-federally involved projects.

Until further notice, the following goals for minority utilization in each construction craft and trade shall be included in all Federal or federally assisted construction contracts and subcontracts in excess of \$10,000 to be performed in the respective geographic area. The goals are applicable to each nonexempt contractor's total onsite construction workforce, regardless of whether or not part of that workforce is performing work on a Federal, federally assisted or non-federally related project, contract or subcontract.

Construction contractors which are participating in an approved Hometown Plan (see 41 CFR 60-4.5) are required to comply with the goals of the Hometown Plan with regard to construction work they perform in the area covered by the Hometown Plan. With regard to all their other covered construction work, such contractors are required to comply as follows:

- Goals for female participation in each trade.....6.9%
- Goals for minority participation in each trade.....Insert goals for each year
(see Attachment Number 5)

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area.

The following excerpts are from 45 FR 65977 (October 3, 1980):

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the covered area is (insert description of the geographical areas where the contract is to be performed giving the state, country, and city, if any).

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION
CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

EEO Specifications

Following is the standard language, which must be incorporated into all solicitations for offers and bids on all Federal and Federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in designated geographical areas:

1. As used in these specifications:
 - (a) Covered Area means the geographical area described in the solicitation from which this contract resulted.
 - (b) Director means Director, Office of Federal Contract Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority;
 - (c) Employer identification number means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - (d) Minority includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take a good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7-a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has

employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative actions steps at least as extensively as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligation.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7-b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and

by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, lay-off, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative actions obligations (7 a through p). The efforts of a contractor association, joint contractor-union, contractor-community, of other similar group of which the contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7 a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure

that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example: even though the Contractor has achieved its goal for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables for affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

EEO Goals for Economic Areas in Region 4

Source: Appendix B-80 in 45 FR 65984 (October 3, 1980)

Kentucky:

053 Knoxville, TN	
SMSA Counties:	
3840 Knoxville, TN	6.6
TN Anderson; TN Blount; TN Knox; TN Union.	
Non-SMSA Counties	4.5
KY Bell; KY Harlan; KY Knox; KY Laurel; KY McCreary; KY Wayne; KY Whitley; TN	
Campbell; TN Claiborne; TN Cocke; TN Cumberland; TN Fentress; TN Grainger, TN Hamblen;	
TN Jefferson; TN Loudon; TN Morgan; TN Roane; TN Scott;	
TN Sevier.	
054 Nashville, TN:	
SMSA Counties:	
1660 Clarksville - Hopkinsville, TN - KY	18.2
KY Christian; TN Montgomery.	
5360 Nashville - Davidson, TN	15.8
TN Cheatham, TN Davidson; TN Dickson; TN Robertson; TN Rutherford; TN Sumner; TN	
Williamson; TN Wilson.	
Non-SMSA Counties	12.0
KY Allen; KY Barren; KY Butler; KY Clinton; KY Cumberland; KY Edmonson; KY Logan; KY	
Metcalfe; KY Monroe; KY Simpson; KY Todd; KY Trigg; KY Warren; TN Bedford; TN Cannon;	
TN Clay; TN Coffee; TN DeKalb; TN Franklin; TN Giles; TN Hickman; TN Houston; TN	
Humphreys; TN Jackson; TN Lawrence; TN Lewis; TN Macon; TN Marshall; TN Maury; TN	
Moore; TN Overton; TN Perry; TN Pickett; TN Putnam; TN Smith; TN Stewart; TN Trousdale;	
TN Van Buren; TN Warren; TN Wayne; TN White.	
056 Paducah, KY:	
Non-SMSA Counties	5.2
IL Hardin; IL Massac; IL Pope; KY Ballard; KY Caldwell; KY Calloway. KY Carlisle; KY	
Crittenden; KY Fulton; KY Graves; KY Hickman; KY Livingston; KY Lyon. KY McCracken; KY	
Marshall.	
057 Louisville, KY:	
SMSA Counties:	
4520 Louisville, KY-IN	11.2
IN Clark; IN Floyd; KY Bullitt; KY Jefferson; KY Oldham.	
Non-SMSA Counties	9.6
IN Crawford; IN Harrison; IN Jefferson; IN Orange; IN Scott; IN Washington; KY Breckinridge;	
KY Grayson; KY Hardin; KY Hart; KY Henry; KY Larue; KY Marion;	
KY Meade; KY Nelson; KY Shelby; KY Spencer; KY Trimble; KY Washington.	
058 Lexington, KY	
SMSA Counties	
4280 Lexington-Fayette, KY	10.8
KY Bourbon; KY Clark; KY Fayette; KY Jessamine; KY Scott; KY Woodford.	
Non-SMSA Counties	7.0
KY Adair KY Anderson; KY Bath; KY Boyle; KY Breathitt; KY Casey; KY Clay; KY Estill; KY	
Franklin; KY Garrard; KY Green; KY Harrison; KY Jackson; KY Knott; KY Lee; KY Leslie; KY	
Letcher; KY Lincoln; KY Madison; KY Magoffin; KY Menifee; KY Mercer; KY Montgomery;	
KY Morgan. KY Nicholas; KY Owsley; KY Perry; KY Powell; KY Pulaski; KY Rockcastle; KY	
Russell; KY Taylor; KY Wolfe.	
059 Huntington, WV:	
SMSA Counties:	
3400 Huntington – Ashland, WV-KY-OH	2.9
KY Boyd; KY Greenup; OH Lawrence; WV Cabell; WV Wayne.	
Non-SMSA Counties	2.5
KY Carter; KY Elliott; KY Floyd; KY Johnson; KY Lawrence; KY Martin; KY Pike; KY Rowan;	
OH Gallia; WV Lincoln; WV Logan; WV Mason; WV Mingo.	
067 Cincinnati, OH:	
SMSA Counties:	
1640 Cincinnati, OH-KY-IN	11.0
IN Dearborn; KY Boone; KY Campbell; KY Kenton; OH Clermont;	
OH Hamilton; OH Warren.	

3200 Hamilton-Middletown, OH	5.0
OH Butler.	
Non-SMSA Counties	9.2
IN Franklin; IN Ohio; IN Ripley; IN Switzerland; KY Bracken; KY Carroll; KY Fleming; KY Gallatin; KY Grant; KY Lewis; KY Mason; KY Owen; KY Pendleton; KY Robertson; OH Adams; OH Brown; OH Clinton; OH Highland.	
080 Evansville, IN:	
SMSA Counties	
2440 Evansville, IN-KY	4.8
IN Gibson; IN Posey; IN Vanderburgh; IN Warrick; KY Henderson.	
5990 Owensboro, KY	4.7
KY Daviess.	
Non-SMSA Counties	3.5
IL Edwards; IL Gallatin; IL Hamilton; IL Lawrence; IL Saline; IL Wabash; IL White; IN Dubois; IN Knox; IN Perry; IN Pike; IN Spencer; KY Hancock; KY Hopkins; KY McLean; KY Muhlenberg; KY Ohio; KY Union; KY Webster.	

**CHECK LIST OF EEO DOCUMENTATION FOR BIDDERS
ON GRANT/LOAN CONSTRUCTION
(Required by Executive Order 11246 as amended)**

The low, responsive responsible bidder must forward the following items, in duplicate, to the owner no later than ten (10) days after bid opening. The owner shall have one (1) copy available for inspection by the Office of Federal Contracts Compliance within 14 days after the bid opening. The web site for the OFCC is http://www.dol.gov/ofccp/regs/compliance/ca_11246.htm.

1. Project Number. Project Location. Type of Construction.
2. Proof of registration with the Joint Reporting Commission. (See Attachment Number 7.)
3. Copy of Affirmative Action Plan of contractor. Indicate company official responsible for EEO.
4. List of current construction contracts, with dollar amount. List contracting Federal Agency, if applicable.
5. Statistics concerning company percent workforce, permanent and temporary, by sex, race, trade, handicapped, and age. 40 CFR Part 7.
6. List of employment sources for project in question. If union sources are utilized, indicate percentage of minority membership within the union crafts.
7. Anticipated employment needs for this project, by sex, race and trade, with estimate of minority participation in specific trades.
8. List of subcontractors (name, address and telephone) with dollar amount and duration of subcontract. Subcontractor contracts over \$10,000 must submit items 1- 8. The following information must be provided for all supplier contracts regardless of contract size: name of company, contact person, address, telephone number, dollar value of the contract, and a list of the materials to be supplied to the prime contractor.
9. List of any subcontract work yet to be committed with estimate of dollar amount and duration of contract.
10. Contract Price. Duration of prime contract.
11. DBE Documents - See special instructions regarding use of Minority, and Women Owned, and Small Businesses.

Employer Information Report EEO-1

Under the direction of the US Equal Employment Opportunity Commission, the Joint Reporting Committee is responsible for the full-length, multi-phase processing of employment statistics collected on the Employer Information Report EEO-1. This report, also termed Standard Form 100, details the sex and race/ethnic composition of an employer's work force by job category.

The Employer Information EEO-1 survey is conducted annually under the authority of Public Law 88-352, Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972. All employers with 15 or more employees are covered by Public Law 88-352 and are required to keep employment records as specified by Commission regulations. Based on the number of employees and federal contract activities, certain large employers are required to file an EEO-1 Report on an annual basis.

The EEO-1 Report must be filed by:

(A) All private employers who are: (1) subject to Title VII of the Civil Rights Act of 1964 (as amended by the Equal Employment Opportunity Act of 1972) with 100 or more employees EXCLUDING State and local governments, primary and secondary school systems, institutions of higher education, Indian tribes and tax-exempt private memberships clubs other than labor organizations; OR (2) subject to Title VII who have fewer than 100 employees if the company is owned or affiliated with another company, or there is centralized ownership, control or management (such as central control of personnel policies and labor relations) so that the group legally constitutes a single enterprise and the entire enterprise employs a total of 100 or more employees.

(B) All federal contractors (private employers), who: (1) are not exempt as provided for by 41 CFR 60-1.5, (2) have 50 or more employees, and (a) are prime contractors or first-tier subcontractors, and have a contract, subcontract, or purchase order amounting to \$50,000 or more; or (b) serve as depository of Government funds in any amount, or (c) is a financial institution which is an issuing or paying agent for U.S. Savings Bonds and Notes.

Only those establishments located in the District of Columbia and the 50 states are required to submit the EEO-1 Report. No Reports should be filed for establishments in Puerto Rico, the Virgin Islands or other American Protectorates.

When filing for the EEO-1 Report for the first time, go to the web site at:

<http://www.eeoc.gov/employers/eeo1survey/>

and select "Filing Time Filers" from the box labeled INFORMATION. File out the electronic questionnaire to enter your company into Joint Reporting Committee (JRC) system. Once you have completed the registration process, you will be contacted on how to proceed with the EEO-1 Report. If you have previously registered with the JRC, follow their instructions to update your information.

Labor Standards Provisions for Federally Assisted Construction

Labor standards provisions applicable to contracts covering federally financed and assisted construction (29 CFR 5.5, Contract Provisions and Related Matters) that apply to EPA Special Appropriations Projects grants are:

(a)(4)(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(a)(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(a)(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5 (a) (1) through (10) and such other clauses as the U.S. Environmental Protection Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(a)(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(b) Contractor Work Hours and Safety Standards Act. The Administrator, EPA shall cause or require the contracting officer to insert the following clauses set forth in paragraph (b)(1),(2),(3), and (4) of this section in full in any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by *Section 5.5(a) of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b) (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for unliquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The U.S. Environmental Protection Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally- assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such liabilities of such contractor or

subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in section 5.1, the Administrator of EPA shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly worked, deductions made, and actual wages paid. Further, the Administrator of EPA shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the U.S. Environmental Protection Agency and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

CERTIFICATIONS

Debarred Firms

All prime Construction Contractors shall certify that Subcontractors have not and will not be awarded to any firm that is currently on the EPA Master List of Debarred, Suspended and Voluntarily Excluded Persons in accordance with the provisions of 40 CFR 32.500(c). Debarment action is taken against a firm for noncompliance with Federal Law.

All bidders shall complete the attached certification (Attachment Number 9) and submit to the owner with the bid proposal.

Anti-lobbying Certification

All prime Construction Contractors must certify (Attachment Number 10) that no appropriated funds were or will be expended for the purpose of lobbying the Executive or Legislative Branches of the Federal Government or Federal Agency concerning this contract (contract in excess of \$100,000). If the Contractor has made or agreed to make payment to influence any member of Congress in regard to award of this contract, a Disclosure Form must be completed and submitted to the owner with the bid proposal.

All prime Contractors must require all Subcontractors to submit the certification, which must also be submitted to the owner.

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

_____ I am unable to certify to the above statements. My explanation is attached.

CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants,
Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

_____ I am unable to certify to the above statements. My explanation is attached.

EPA DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

EPA's Disadvantaged Business Enterprise Program rule applies to contract procurement actions funded in part by EPA assistance agreements awarded after May 27, 2008. The rule is found at Federal regulation Title 40, Part 33. Specific responsibilities are highlighted below.

Grant recipient responsibilities:

- Conduct an Availability Analysis and negotiate fair share objectives with EPA (§33.411), or adopt the fair share objectives of the oversight state agency revolving loan fund for comparable infrastructure. (§33.405(b)(3)).
- Include the Appendix A term and condition in each contract with a primary contractor (§3.106). The term and condition is included in the EPA Region 4 contract specifications insert *FEDERAL REQUIREMENTS AND CONTRACT PROVISIONS FOR SPECIAL APPROPRIATION ACT PROJECTS US ENVIRONMENTAL PROTECTION AGENCY, Region III, June 2008*.
- Employ the six Good Faith Efforts during prime contractor procurement (§33.301).
- Require prime contractor to comply with the following prime contractor requirements of Title 40 Part 33:
 - To employ the six Good Faith Efforts steps in paragraphs (a) through (e) of §33.301 if the prime contractor awards subcontracts (§33.301(f)).
 - To provide EPA form 6100-2 – *DBE Subcontractor Participation Form* to all DBE subcontractors (§33.302(e)).
 - To submit EPA forms 6100-3 – *DBE Program Subcontractor Performance Form* and 6100-4 – *DBE Program Subcontractor Utilization Form* with bid package or proposal. (§33.302 (f) and (g)).
 - To pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient (§33.302(a)).
 - To notify recipient in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor (§33.302(b)).
 - To employ the six good faith efforts described in §33.301 if soliciting a replacement subcontractor after a DBE subcontractor fails to complete work under the subcontract for any reason. (§33.302(c)).
 - To employ the six good faith efforts described in §33.301 even if the prime contractor has achieved its fair share objectives under subpart D of Part 33. (§33.302(d)).

- Semiannually complete and submit to Charles Hayes, EPA Region 4 DBE Coordinator EPA form 5700-52A summarizing DBE participation achieved during the previous six months (§33.502).
- Maintain records documenting its compliance with the requirements of Title 40 Part 33, including documentation of its, and its prime contractors', good faith efforts (§33.501(a)).

Prime Contractor Responsibilities:

- Employ the six Good Faith Efforts steps in paragraphs (a) through (e) of §33.301 if the prime contractor awards subcontracts (§33.301(f)).
- Provide EPA form number 6100-2 – *DBE Program Subcontractor Participation Form* and form number 6100-3 – *DBE Program Subcontractor Performance Form* to each DBE subcontractor prior to opening of the contractor's bid or proposal (§33.302(e) and (f)).
- Complete EPA form number 6100-4 – *DBE Program Subcontractor Utilization Form* (§33.302(g)).
- Submit to recipient with its bid package or proposal the completed EPA form number 6100-4, plus an EPA form number 6100-3 for each DBE subcontractor used in the contractor's bid or proposal (§33.302(f) and (g)).
- Pay subcontractors for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient (§33.302(a)).
- Notify the recipient in writing prior to prime contractor termination of a DBE subcontractor for convenience (§33.302(b)).
- Employ the six good faith efforts described in §33.301 if soliciting a replacement subcontractor after a DBE subcontractor fails to complete work under the subcontract for any reason. (§33.302(c)).
- Employ the six good faith efforts described in §33.301 even if the prime contractor has achieved its fair share objectives under subpart D of Part 33. (§33.302(d)).
- Semiannually inform recipient of DBE participation achieved (§33.502).
- Maintain records documenting its compliance with the requirements of Title 40 Part 33, including documentation of its, and its prime contractors', good faith efforts (§33.501(a)).

Subcontractor Responsibilities:

- May submit EPA form 6100-2 – *DBE Subcontractor Participation Form* to Charles Hayes, EPA Region 4 DBE Coordinator (§33.302(e)).
- Must complete EPA form 6100-3 – *DBE Program Subcontractor Performance Form*, and submit it to the prime contractor soliciting services from the subcontractor prior to the opening of bids for the prime contract.

SPAP Requirements:

Form	Requirement	Provided By:	Completed By:	Submitted To:
EPA Form 6100-2	Grant Recipients required to have prime contractors provide form to Subcontractors	Prime Contractors	DBE Subcontractors	EPA Region 4 DBE Coordinator Charles Hayes
EPA Form 6100-3	Grant Recipients required to have prime contractors provide form to Subcontractors	Prime Contractors	DBE Subcontractors	Grant Recipients as part of a bid or proposal package
EPA Form 6100-4	Grant Recipients required to have prime contractors complete the form	Grant Recipients	Prime Contractors	Grant Recipients as part of a bid or proposal package

SRF Requirements:

Form	Requirement	Provided By:	Completed By:	Submitted To:
EPA Form 6100-2	Recipients required to have prime contractors provide form to Subcontractors	Prime Contractors	DBE Subcontractors	DOW Project Administrator
EPA Form 6100-3	Recipients required to have prime contractors provide form to Subcontractors	Prime Contractors	DBE Subcontractors	Dow Project Administrator w/ATA Package
EPA Form 6100-4	Recipients required to have prime contractors complete the form	Recipients	Prime Contractors	DOW Project Administrator w/ATA Package
Pay Request DBE Form	Recipients required to have prime contractors complete the form	Recipients	Prime Contractors	DOW Project Administrator w/EACH PAYMENT

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form**

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services , Equipment or Supplies	Amount Received by Prime Contractor

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030
 Approved: 8/13/2013
 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE) Program
 DBE Subcontractor Participation Form**

Please use the space below to report any concerns regarding the above EPA-funded project:

Subcontractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractor's bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: ___ DOT ___ SBA ___ Other: _____		Meets/ exceeds EPA certification standards? ___ YES ___ NO ___ Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	__ YES	__ NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

Continue on back if needed

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION POLICY

PROJECT NAME: _____

BID DATE: _____

1. Name, address and telephone number of contact person on all DBE matters:

Prime Contractor's Name: _____

Contact Person: _____

Address: _____

Phone: _____

Cell Phone: _____

Email: _____

Total Contract Amount: _____

2. Total dollar amount/percent of contract of MBE participation: _____

3. Total dollar amount/percent of contract of WBE participation: _____

4. Are certifications* for each MBE/WBE/DBE subcontractor enclosed; if no, please explain: Yes No

5. Are MBE/WBE/DBE subcontracts or letters of intent signed by both parties enclosed; if no, please explain: Yes No

6. List of MBE Subcontractors:

Name: _____

Contact Person: _____

Address: _____

Phone: _____

Cell Phone: _____

Email: _____

Type of Contract: _____

Work to be Done: _____

Amount: _____

7. List of WBE Subcontractors:

Name: _____

Contact Person: _____

Address: _____

Phone: _____

Cell Phone: _____

Email: _____

Type of Contract: _____

Work to be Done: _____

Amount: _____

Attach Additional Sheets, If Necessary

*Self-certification: Self certification of MBE/WBE/DBE firms will NOT be accepted as a valid form of certification of MBE/WBE/DBE status.

8. **Information and documentation concerning efforts taken to comply with EPA’s “six good faith efforts”**

(i). Ensure DBE construction firms or material suppliers are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities; including placing DBEs on solicitation lists and soliciting them whenever they are potential sources. A good source for a list of DBEs is the Kentucky Transportation’s website: <http://transportation.ky.gov/Civil-Rights-and-Small-Business-Development/Pages/Certified-DBE-Directory.aspx>.

The prime contractor certifies that a bidders list (see example sheet below) of qualified vendors, including DBEs, was developed for current and future solicitations and that the list will be maintained. *Submit a copy of the list as documentation.*

(ii). Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process; including, whenever possible, posting solicitation for bids or proposals for a sufficient amount of time as to receive a competitive bid or proposal pool.

The prime contractor certifies that every opportunity was provided to a number of DBEs to encourage their participation in the competitive process and that an adequate amount of time was provided for response.

a. List each DBE construction firm or material supplier to which a solicitation was attempted. *Submit copies of letters, emails, faxes, telecommunication logs, certified mail receipts, returned envelopes, certified mail return receipts, etc. as documentation.*

Company name and phone number: _____

Area of work expertise: _____

Date of any follow-ups and person spoke to: _____

b. Advertisements, if applicable: List each publication in which an announcement or notification was placed. *Submit a tear sheet of each announcement from each publication as documentation.*

Name of publication: _____

Date(s) of advertisement: _____

Specific subcontract areas announced: _____

c. Other, if applicable: List each notification method in which an announcement or outreach was used; list serve, public meeting, etc. *Submit applicable information to document effort.*

Method of notification: _____

Date(s) of notification: _____

(iii). Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs; including dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

The prime contractor certifies that the project was broken into its basic elements (i.e., dirt hauling, landscaping, painting, pipe installation, material supplies, etc.) and that a determination was made whether it’s economically feasible to bid the elements separately and that the analysis of this effort was documented with a short memo to the project file.

- (iv). Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises.
 - The prime contractor certifies that they established delivery schedules which would allow DBEs to participate in the projects.

- (v). Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) of the U.S. Department of Commerce. The easiest way to utilize the services of SBA and MBDA is to visit their websites: www.sba.gov and www.mbda.gov and use the electronic tools available there or you may send the nearest SBA and MBDA office a certified letter that generally describes the solicitation, the dates it will be open, the types of vendors you are seeking and applicable Standard Industrial Classification (SIC) or North American Industry Classification System (NAIC) codes if known. You may also use the services and assistance of the Procurement Technical Assistance Center (PTAC). The easiest way to utilize the services of PTAC is to send an email: ptac@ksbdc.org and generally describe the solicitation, the dates it will be open, the types of vendors you are seeking and applicable SIC or NAIC codes if known.
 - The prime contractor certifies that the assistance of the SBA, MBDA, and/or PTAC was utilized. *Submit pages printed off the SBA and MBDA websites which evidence efforts to register a solicitation on those sites or submit copies of the letter sent and certified mail receipt as documentation; submit copies of emails with PTAC as documentation.*

- (vi). If a subcontractor awards any subcontracts, require the subcontractor to take the steps in numbers (i) through (v) above.
 - The prime contractor certifies that subcontractors used for this project will be required to follow the steps of the “six good faith efforts” as listed above.

9. Signature and date:

To the best of my knowledge and belief, all “six good faith efforts” have been met and the information contained in this document is true and correct; the document has been duly authorized by the legal representative.

Signature

Print name and title

Date

BIDDER'S LIST FORM

OWNER: _____

LOAN NO: _____

PROJECT TITLE: _____

BID DATE: _____

Instructions:

1. This list must include all firms that were solicited for participation, bid on, or quoted for a prime contract or subcontracts under EPA assisted projects, included both DBE's and non DBE's.
2. SRF loan participants must keep the Bidder's List until the project period for the identified loan has ended and no funds are remaining.
3. This list must be submitted to DOW in the ATA Package. Contract Award Approval cannot be given until this form has been received by DOW.
4. The following information must be obtained from all prime and subcontractors. Please complete the form below:

ENTITY'S NAME	MAILING ADDRESS	CONTACT PERSON	PHONE#	E-MAIL ADDRESS	M/WBE?

BONDS AND INSURANCE

The minimum requirements shall be as follows:

Bonding requirements for contracts of \$100,000 or less are contained in 40 CFR 31.36(h).

Bond requirements for contracts in excess of \$100,000 are:

- Bid guarantee equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a certified check or bid bond submitted with the bid;
- Performance bond equal to 100 percent of the contract price, and
- Payment bond equal to 100 percent of the contract price. Bonds must be obtained from companies holding Certificates of Authority as acceptable sureties, issued by the U.S. Treasury.

Insurance requirements are contained in the General Conditions of the contract. In addition to the other required insurance, the owner or the contractor, as appropriate, must acquire any flood insurance made available by the Federal Emergency Management Agency as required by 44 CFR Parts 59-79, if construction will take place in a flood hazard area identified by the Federal Emergency Management Agency. The owner's requirements on Flood Insurance are contained in the Special Conditions Section of the Contracts Documents.

NOTICE OF INTENT

All construction projects with surface disturbance of more than 1 acre during the period of construction must have a KPDES Storm Water General Permit. The permit can be found at the following web address:

<https://dep.gateway.ky.gov/eForms/default.aspx?FormID=7>.

If you have any questions regarding the completion of this form call the Surface Water Permits Branch, at (502) 564-3410.

Davis-Bacon Wage Rate Requirements

CWSRF: The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), or with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as set forth below titled “Wage Rate Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)”. This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

DWSRF: The recipient agrees to include in all agreements to provide assistance for any construction project carried out in whole or in part with such assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12), a term and condition requiring compliance with the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions All contracts and subcontracts for any construction project carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as set forth below entitled “Wage Rate Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)”. This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

Wage Rate Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)

Preamble

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients’ compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

I. Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6) For Subrecipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2013 Continuing Resolution with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. The recipient or subrecipient may also obtain additional guidance from DOL's website at <http://www.dol.gov/whd/>

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2013 Continuing Resolution, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2013 Continuing Resolution, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's website, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all

interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that

the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will

no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29

CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may

be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification.

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during

the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/contacts/whd/america2.htm>.

II. Requirements Under The Consolidated and further Continuing Appropriations Act, 2013 (P.L. 113-6) For Subrecipients That Are Not Governmental Agencies

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the FY2013 Continuing Resolution with respect to subrecipients that are not governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>.

Under these terms and conditions, the subrecipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2013 Continuing Resolution, Davis-Bacon prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients must obtain proposed wage determinations for specific localities at www.wdol.gov. After the Subrecipient obtains its proposed wage determination, it must submit the wage determination to (insert contact information for State recipient DB point of contact for wage determination) for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors

(ordering instruments unless subsequently directed otherwise by the State recipient Award Official).

(b) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including

painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2013 Continuing Resolution, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by

the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered

program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification.

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm> or its successor site.

American Iron and Steel Requirement

The Contractor acknowledges to and for the benefit of the _____ (“Purchaser”) and the State of Kentucky (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contactor pursuant to this Agreement.

The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser).

While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Sample Certification

The following information is provided as a sample letter of step certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

EMPLOYMENT REQUIREMENTS AND WAGE RATES

R-1. GENERAL. The successful bidder will be required to conform to all provisions of the federal Davis-Bacon and Related Acts (The Act) which requires that all laborers and mechanics employed by contractors and subcontractors performing on federal contracts (and contractors and subcontractors performing on federally assisted contracts under the related ACTS) in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits, as determined by the Department of Labor, for corresponding classes of laborers and mechanics employed on similar projects in the area.

This Contract shall be based upon payment by the Contractor and his Subcontractors of wage rates not less than the prevailing hourly wage rate for each craft or type of workman engaged on the Work as determined by the Department of Labor.

The Contractor and each Subcontractor shall keep accurate records indicating the hours worked each day by each employee in each classification of work and the amount paid each employee for his work in each classification. Such records shall be open to the inspection and transcript of the Commissioner of Labor or his duly authorized representatives at any reasonable time. These payroll records shall not be destroyed or removed from the state for one year following completion of the improvement.

The Contractor and each Subcontractor shall post and keep posted in a conspicuous place or places at the construction site a copy or copies of prevailing rates of wages and working hours as prescribed in these Contract Documents.

If, during the life of this Contract, the prevailing hourly rate of wages is changed by the Department of Labor, such change shall not be the basis of any claim by the Contractor against the Owner, nor will deductions be made by the Owner against sums due the Contractor by reason of any such change.

The prevailing wage law does not prohibit payment of more than the prevailing rate of wages.

R-2. PREVAILING WAGES.

The Contractor shall note that where a contract is not awarded within 90 days from the date of establishment of the prevailing wages, there shall be a redetermination of the prevailing rate of wage before the contract is awarded.

Davis Bacon wages can be obtained from the Wage Determinations Online website. Use this link to find the Davis Bacon wages:

<https://beta.sam.gov/search?index=wd&keywords=&sort=-modifiedDate&wdType=dbra&page=1> .

"General Decision Number: KY20200088 01/03/2020

Superseded General Decision Number: KY20190088

State: Kentucky

Construction Type: Building

County: Campbell County in Kentucky.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2020

* ASBE0008-011 07/01/2019

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 30.32	18.50

BOIL0040-002 03/01/2018

	Rates	Fringes
BOILERMAKER.....	\$ 35.10	27.56

BRKY0018-001 06/01/2017

	Rates	Fringes
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BRICKLAYER.....\$ 27.81 13.01

BRKY0018-002 09/01/2018

Rates Fringes

TILE SETTER.....\$ 28.74 14.06

BRKY0018-003 09/01/2018

Rates Fringes

TILE FINISHER.....\$ 24.20 14.01

CARP0002-020 06/01/2015

Rates Fringes

CARPENTER (Excludes Form Work)...\$ 22.20 13.74

ELEC0212-015 06/04/2018

Rates Fringes

ELECTRICIAN (Includes Low Voltage Wiring).....\$ 28.39 18.98

ELEV0011-001 01/01/2018

Rates Fringes

ELEVATOR MECHANIC.....\$ 44.31 32.645

PAID HOLIDAYS:

a. New Year's Day, Memorial Day, Independence Day, Labor Day, Vetern's Day, Thanksgiving Day, the Friday after Thanksgiving, and Christmas Day.

b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years; 6% for less than 5 years' service.

ENGI0181-054 06/01/2019

Rates Fringes

POWER EQUIPMENT OPERATOR (Drill).....\$ 32.45 16.50

ENGI0181-079 06/01/2019

Rates Fringes

POWER EQUIPMENT OPERATOR (Loader).....\$ 32.45 16.50

ENGI0181-090 06/01/2018

Rates Fringes

POWER EQUIPMENT OPERATOR
 (Crane).....\$ 32.99 15.75

CRANES WITH BOOM 150 FEET & OVER, INCLUDING JIB, SHALL
 RECEIVE \$.50 ABOVE THE WAGE RATE.

 ENGI0181-091 06/01/2018

	Rates	Fringes
POWER EQUIPMENT OPERATOR (Forklift).....	\$ 32.99	15.75

 ENGI0181-093 06/01/2018

	Rates	Fringes
POWER EQUIPMENT OPERATOR (Oiler).....	\$ 26.78	15.75

 IRON0044-016 06/01/2019

	Rates	Fringes
IRONWORKER, STRUCTURAL AND ORNAMENTAL.....	\$ 29.47	21.20

 IRON0044-018 06/01/2019

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 29.47	21.20

 LABO0265-013 06/01/2019

	Rates	Fringes
LABORER (Common or General).....	\$ 22.15	16.00

 LABO1445-002 06/01/2018

	Rates	Fringes
LABORER (Power Tool Operator)....	\$ 28.84	16.20

 PAIN0123-002 05/01/2018

	Rates	Fringes
PAINTER (Brush and Roller).....	\$ 24.61	9.74

 PAIN0387-003 11/01/2017

	Rates	Fringes
GLAZIER.....	\$ 26.00	14.15

 PLAS0132-015 06/01/2014

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 22.00	12.55

PLUM0452-015 11/01/2018		
	Rates	Fringes
PLUMBER.....	\$ 33.25	18.97

PLUM0452-020 11/01/2018		
	Rates	Fringes
PIPEFITTER.....	\$ 33.25	18.97

* ROOF0042-008 08/01/2019		
	Rates	Fringes
ROOFER.....	\$ 28.25	16.30

SFKY0669-002 04/01/2018		
	Rates	Fringes
SPRINKLER FITTER.....	\$ 35.05	19.74

SHEE0024-031 06/01/2016		
	Rates	Fringes
SHEET METAL WORKER (Includes HVAC Duct Installation).....	\$ 27.63	19.86

SUKY2015-027 06/02/2015		
	Rates	Fringes
CARPENTER (Form Work Only).....	\$ 23.87	9.66
LABORER: Mason Tender - Brick...	\$ 22.65	9.04
LABORER: Mason Tender - Cement/Concrete.....	\$ 25.10	13.67
LABORER: Pipelayer.....	\$ 20.36	9.90
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 24.66	10.81
OPERATOR: Bulldozer.....	\$ 19.69	4.71
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 22.52	4.00
OPERATOR: Roller.....	\$ 23.60	12.65
PAINTER: Spray.....	\$ 22.81	11.87
TRUCK DRIVER: Dump Truck.....	\$ 24.35	14.59

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.
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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing

this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

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200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

"General Decision Number: KY20200095 01/03/2020

Superseded General Decision Number: KY20190095

State: Kentucky

Construction Type: Building

County: Kenton County in Kentucky.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2020

* ASBE0008-011 07/01/2019

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 30.32	18.50

BOIL0040-002 03/01/2018

	Rates	Fringes
BOILERMAKER.....	\$ 35.10	27.56

BRKY0018-001 06/01/2017

	Rates	Fringes
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BRICKLAYER.....\$ 27.81 13.01

BRKY0018-002 09/01/2018

Rates Fringes

TILE SETTER.....\$ 28.74 14.06

BRKY0018-003 09/01/2018

Rates Fringes

TILE FINISHER.....\$ 24.20 14.01

ELEC0212-015 06/04/2018

Rates Fringes

ELECTRICIAN (Includes Low Voltage Wiring).....\$ 28.39 18.98

ELEV0011-001 01/01/2018

Rates Fringes

ELEVATOR MECHANIC.....\$ 44.31 32.645

PAID HOLIDAYS:

a. New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the Friday after Thanksgiving, and Christmas Day.

b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years; 6% for less than 5 years' service.

ENGI0181-054 06/01/2019

Rates Fringes

POWER EQUIPMENT OPERATOR (Drill).....\$ 32.45 16.50

ENGI0181-079 06/01/2019

Rates Fringes

POWER EQUIPMENT OPERATOR (Loader).....\$ 32.45 16.50

ENGI0181-090 06/01/2018

Rates Fringes

POWER EQUIPMENT OPERATOR (Crane).....\$ 32.99 15.75

CRANES WITH BOOM 150 FEET & OVER, INCLUDING JIB, SHALL RECEIVE \$.50 ABOVE THE WAGE RATE.

ENGI0181-091 06/01/2018		
	Rates	Fringes
POWER EQUIPMENT OPERATOR (Forklift).....	\$ 32.99	15.75

ENGI0181-093 06/01/2018		
	Rates	Fringes
POWER EQUIPMENT OPERATOR (Oiler).....	\$ 26.78	15.75

IRON0044-016 06/01/2019		
	Rates	Fringes
IRONWORKER, STRUCTURAL AND ORNAMENTAL.....	\$ 29.47	21.20

IRON0044-018 06/01/2019		
	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 29.47	21.20

LABO0265-013 06/01/2019		
	Rates	Fringes
LABORER (Common or General).....	\$ 22.15	16.00

LABO0265-020 06/01/2019		
	Rates	Fringes
LABORER (Mason Tender - Brick)...	\$ 22.15	16.00

LABO1445-002 06/01/2018		
	Rates	Fringes
LABORER (Power Tool Operator)....	\$ 28.84	16.20

PAIN0123-002 05/01/2018		
	Rates	Fringes
PAINTER (Brush and Roller).....	\$ 24.61	9.74

PAIN0387-003 11/01/2017		
	Rates	Fringes
GLAZIER.....	\$ 26.00	14.15

PLAS0132-015 06/01/2014		

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CEMENT MASON/CONCRETE FINISHER...	\$ 22.00	12.55

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SHEET METAL WORKER (Includes HVAC Duct Installation).....	\$ 27.63	19.86

SUKY2015-034 06/02/2015		
	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 23.85	12.37
LABORER: Mason Tender - Cement/Concrete.....	\$ 25.10	13.67
LABORER: Pipelayer.....	\$ 20.36	9.90
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END OF GENERAL DECISION

SECTION 01010
SUMMARY OF WORK

PART 1 - GENERAL

1.1 WORK INCLUDED

- A. Work to be completed at the following NKWD Water Treatment Plants and Facility:
 - 1. Fort Thomas Treatment Plant (FTTP).
 - 2. Memorial Parkway Treatment Plant (MPTP).
 - 3. Taylor Mill Treatment Plant (TMTP).
 - 4. Central Facility.
- B. The Contractor shall provide all materials, labor and equipment necessary for completion of the Project. The Contract Documents are intended to provide the basis for proper completion of the work suitable for the intended use of the Owner. Anything not expressly set forth but which is reasonably implied or necessary for proper performance of the Project shall be included.
- C. Continuous Operations: The existing system must be maintained in continuous operation in such a manner that it meets all local, state, and federal requirements as well as NKWD's operational requirements. The Contractor is responsible not to deactivate, demolish, or interfere with any system component required for the continuous operation until a new or temporary permanent-like system has been installed and is operational. The Contractor is responsible for payment of all fines resulting from any action or inaction on its part or the part of its subcontractors during performance of the Work that causes the facility/facilities to operate in an illegal manner or fail to operate in a legal manner.
- D. The following major Work items are included in the Contract:
 - 1. Terminal servers for all three (3) plants.
 - 2. Redundant tag servers for all three (3) plants.
 - 3. Historian servers for FTTP and TMTP.
 - 4. Twenty-One (21) Thin Clients at FTTP.
 - 5. Seven (7) Thin Clients at MPTP.
 - 6. Six (6) Thin Clients at TMTP.
 - 7. Two (2) Thin Client at Central Facility.
 - 8. One (1) Thin Manager V-Flex Perpetual.
 - 9. Eight (8) Touch Screen Displays.
 - 10. Thirty-six (36) office monitors.
 - 11. InTouch Licenses.
 - 12. Microsoft RDS per device Cals 2019.
 - 13. Increase available IP addresses by changing from a Class C network to a Class B.
 - 14. Wonderware software upgrades for:
 - a. Development Studio 2017.
 - b. Historian 2017.
 - c. InTouch 2017 Runtime.
 - d. WW Historian Client 2017.
 - e. Info Server Std Client 2017.
 - f. WW CAL with MS SQL CAL Runtime.
 - g. One (1) year software support on all licenses.
 - 15. WIN 911 alarm notification system for remote notification of alarms. Alarms and who to contact shall be user adjustable.
 - 16. Appurtenances as required such as cable, hubs, switches, connectors, etc. to make the system fully operational.
 - 17. Water distribution system information management system (WIMS).
 - 18. System start-up, testing and training.

1.2 PERMITS

- A. The Contractor shall obtain any permits related to or required by the Work in this Contract except those which the Owner has obtained, which are listed in the Supplementary Conditions, Section 00800.

1.3 CODES

- A. All components, equipment, and materials to be used on this project must be of American manufacture and comply with the "Buy America Requirements" for Drinking Water State Revolving Funds and the Kentucky Infrastructure Authority.
- B. Comply with applicable codes and regulations of authorities having jurisdiction. Submit copies of inspection reports, notices, citations and similar communications, to the Owner.

1.4 EXISTING CONDITIONS AND DIMENSIONS

- A. The Work in this Contract will primarily be performed in or around existing facilities of which a portion must remain functional. The Contractor must maintain the required items and/or systems functional without additional effort by the Owner's personnel and at no extra costs to the Owner.
- B. The Contractor is responsible for verifying all existing conditions, elevations, dimensions, etc., and providing its finished work to facilitate existing conditions.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

Section 01015

PROJECT REQUIREMENTS

1. GENERAL DESCRIPTION OF WORK. The Work to be performed under these Contract Documents is generally described as follows: Furnishing all plant, materials, equipment, supplies, labor and transportation, including fuel, power, water, (except any materials, equipment, utility, or service, if any, specified herein to be furnished by the District), and performing all work required in the scope of work in the Contract, in strict accordance with the specifications, schedules, and diagrams, all of which are made a part hereof and including such details as may be furnished by the District from time to time during the prosecution of the work in explanation of said documents.
2. COORDINATION. Contractor shall plan, schedule, and coordinate its operations in a manner which will facilitate the simultaneous progress of the work included under other contracts outside the scope of these Contract Documents if applicable.
3. MATERIALS TO BE FURNISHED BY OWNER. NOT USED.
4. RESPONSIBILITY FOR MATERIALS AND EQUIPMENT.
 - 4.01. Items Furnished by Owner. NOT USED.
 - 4.02. Items Furnished by Contractor. Contractor shall be fully responsible for all materials and equipment which it has furnished.
5. OFFSITE STORAGE. Offsite storage arrangement shall be approved by Owner for all materials and equipment not incorporated into the Work but included in Applications for Payment. Such offsite storage arrangement shall be presented in writing and shall afford adequate and satisfactory security and protection. Offsite storage facilities shall be accessible to Owner.
6. SUBSTITUTES AND "OR-EQUAL" ITEMS. Provisions for evaluation of substitutes and "or-equal" items of materials and equipment are covered in Paragraph 6.05 of the General Conditions. Requests for review of equivalency will not be accepted by Owner from anyone except Contractor, and such requests will not be considered until after the Contract has been awarded.
7. PREPARATION FOR SHIPMENT. All materials shall be suitably packaged to facilitate handling and protect against damage during transit and storage. Painted surfaces shall be protected against impact, abrasion, discoloration, and other damage. All painted surfaces which are damaged prior to acceptance of equipment shall be repainted to the satisfaction of Owner.

Each item, package, or bundle of material shall be tagged or marked as identified in the delivery schedule or on the Shop Drawings. Complete packing lists and bills of material shall be included with each shipment.

8. SALVAGE OF MATERIALS AND EQUIPMENT. Existing materials and equipment removed, and not reused as a part of the Work, shall become Contractor's property, except the following items which shall remain Owner's property: Hard drives or any other data storage devices.

Contractor shall carefully remove, in a manner to prevent damage, all materials and equipment specified or indicated to be salvaged and reused or to remain the property of Owner. Contractor shall store and protect salvaged items specified or indicated to be reused in the Work.

Salvaged items not to be reused in the Work, but to remain Owner's property, shall be delivered by Contractor in good condition.

Any items damaged in removal, storage, or handling through carelessness or improper procedures shall be replaced by Contractor in kind or with new items.

Existing materials and equipment removed by Contractor shall not be reused in the Work except where so specified or indicated.

9. EASEMENTS AND RIGHTS-OF-WAY. NOT USED.

10. OPERATION OF EXISTING FACILITIES. The existing SCADA system must be kept in continuous operation throughout the construction period. No interruption will be permitted which adversely affects the degree of service provided. Provided permission is obtained from Owner in advance, portions of the existing facilities may be taken out of service for short periods corresponding with periods of minimum service demands. This may facilitate work at night or weekends which is considered incidental to the project.

Contractor shall provide temporary facilities and make temporary modifications as necessary to keep the existing facilities in operation during the construction period.

11. NOTICES TO OWNERS AND AUTHORITIES. NOT USED.

12. LINES AND GRADES. NOT USED.

13. CONNECTIONS TO EXISTING FACILITIES. Unless otherwise specified or indicated, Contractor shall make all necessary connections to existing facilities, including telephone, and electric. In each case, Contractor shall receive permission from Owner or the owning utility prior to undertaking connections. Contractor shall protect facilities against deleterious substances and damage.

Connections to existing facilities which are in service shall be thoroughly planned in advance, and all required equipment, materials, and labor shall be on hand at the time of undertaking the connections. Work shall proceed continuously (around the clock) if necessary to complete connections in the minimum time. Operation of appurtenances on existing utilities, when required, shall be by or under the direct supervision of the owning utility.

14. UNFAVORABLE CONSTRUCTION CONDITIONS. NOT USED.

15. CUTTING AND PATCHING. As provided in General Conditions, Contractor shall perform all cutting and patching required for the Work and as may be necessary in connection with uncovering Work for inspection or for the correction of defective Work.

Contractor shall perform all cutting and patching required for and in connection with the Work, including but not limited to the following:

- Removal of improperly timed Work.
- Removal of samples of installed materials for testing.
- Alteration of existing facilities.
- Installation of new Work in existing facilities.

16. ASBESTOS REMOVAL. If, during the progress of the Work, suspected asbestos-containing products are identified, Contractor shall stop work in the affected area and engage an asbestos removal Subcontractor to verify the materials and, if necessary, encapsulate, enclose, or remove and dispose of all asbestos in accordance with current regulations of the Environmental Protection Agency and the U. S. Department of Labor - Occupational Safety and Health Administration, the state asbestos regulating agency, and any local government agency. Payment for such work will be made by Change Order.

16.01. Subcontractor's Qualifications. The Subcontractor for asbestos removal shall be regularly engaged in this type of activity and shall be familiar with the regulations which govern this work. The Subcontractor shall demonstrate to the satisfaction of Owner that it has successfully completed at least three asbestos removal projects, that it has the necessary staff and equipment to perform the work, and that it has an approved site for disposal of the asbestos. The Subcontractor shall carry insurance as specified in the Supplementary Conditions.

16.02. Removal Methods. The asbestos removal Subcontractor shall submit a work plan of its proposed removal procedure to Owner before beginning work and shall certify that the methods are in full compliance with the governing regulations. The work plan shall cover all aspects of the removal, including health and safety of employees and building occupants, hygiene facilities, employee certification, clearance criteria, transportation and disposal, enclosure techniques, and other techniques appropriate for the proposed work.

17. CLEANING UP. Contractor shall keep the premises free at all times from accumulations of waste materials and rubbish. Contractor shall provide adequate trash receptacles about the site and shall promptly empty the containers when filled.

Construction materials shall be neatly stacked by Contractor when not in use. Contractor shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids, and cleaning solutions from surfaces to prevent marring or other damage.

Volatile wastes shall be properly stored in covered metal containers and removed daily.

Wastes shall not be buried or burned on the site or disposed of into storm drains, sanitary sewers, streams, or waterways. All wastes shall be removed from the site and disposed of in a manner complying with local ordinances and anti-pollution laws.

Adequate cleanup will be a condition for processing of progress payment applications.

18. APPLICABLE CODES. References in the Contract Documents to local codes mean the following:

- Kentucky Building Code
- Kentucky Plumbing Code
- National Electric Code
- BOCA Mechanical Code

Other standard codes which apply to the Work are designated in the Specifications.

19. PRECONSTRUCTION CONFERENCE. Prior to the commencement of Work at the site, a pre-construction conference will be held at a mutually agreed time and place. The conference shall be attended by:

- Contractor and its superintendent.
- Principal Subcontractors.
- Representatives of principal Suppliers and manufacturers as appropriate.
- Representatives of Owner.
- Government representatives as appropriate.
- Others as requested by Contractor or Owner.

Unless previously submitted to Owner, Contractor shall bring to the conference a preliminary schedule for each of the following:

- Progress.
- Procurement.
- Values for progress payment purposes.
- Shop Drawings and other submittals.

The purpose of the conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The agenda will include:

- Contractor's preliminary schedules.
- Transmittal, review, and distribution of Contractor's submittals.
- Processing Applications for Payment.
- Maintaining record documents.
- Critical Work sequencing.
- Field decisions and Change Orders.
- Use of premises, office and storage areas, security, housekeeping, and Owner's needs.
- Contractor's assignments for safety and first aid.

Owner will preside at the conference and will arrange for keeping the minutes and distributing the minutes to all persons in attendance.

20. PROGRESS MEETINGS. Contractor shall schedule and hold regular progress meetings at least monthly and at other times as requested by Owner or required by progress of the Work. Contractor, Owner, and all Subcontractors active on the site shall

be represented at each meeting. Contractor may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors.

Contractor shall preside at the meetings. Meeting minutes will be prepared and distributed by Contractor. The purpose of the meetings will be to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop.

End of Section

Section 01025

MEASUREMENT AND PAYMENT

DESCRIPTION OF REQUIREMENTS

A. The Contractor shall furnish all necessary labor, machinery, tools, apparatus, equipment, software, materials, service and other necessary supplies and perform all Work shown on the Drawings and/or described in the Specifications and Contract Documents at the lump sum price as indicated by the Bidder in the Bid.

B. The Bidder declares that it has examined the site of the Work and informed himself / herself fully in regard to all conditions pertaining to the place where the Work is to be done; that it has examined the Specifications and Contract Documents for the Work, and has read all special provisions furnished prior to the opening of bids; and that it has further satisfied himself / herself relative to the Work to be performed.

Section 01300

SUBMITTALS

1. PROGRESS SCHEDULE. After the preconstruction conference and before Work is started, Contractor shall submit to Owner for review a schedule of the proposed construction operations. Owner shall cooperate with Contractor in arrangements for continuity of service and operation of control facilities. The progress schedule shall indicate the sequence of the Work, the time of starting and completion of each part, and the time for making connections to existing system.

2. PROGRESS REPORTS. A progress report shall be furnished to Owner with each Application for Payment. If the Work falls behind schedule, Contractor shall submit additional progress reports at such intervals as Owner may request.

Each progress report shall include sufficient narrative to describe current and anticipated delaying factors, their effect on the progress schedule, and proposed corrective actions. Any Work reported complete, but which is not readily apparent to Owner, must be substantiated with satisfactory evidence.

3. SURVEY DATA. NOT USED.

4. SHOP DRAWINGS AND ENGINEERING DATA.

4.01. General. Shop Drawings and engineering data (submittals) covering all equipment and fabricated and building materials which will become a permanent part of the Work under this Contract shall be submitted to Owner, at the Owner's address given in the Agreement. Submittals shall verify compliance with the Contract Documents, and shall include drawings and descriptive information in sufficient detail to show the kind, size, arrangement, and operation of component materials and devices; the external connections, anchorages, and supports required; performance characteristics; and dimensions needed for installation and correlation with other materials and equipment. When an item consists of components from several sources, Contractor shall submit a complete initial submittal including all components.

All submittals, regardless of origin, shall be stamped with the approval of Contractor and identified with the name and number of this Contract, Contractor's name, and references to applicable specification paragraphs and Contract Drawings. Each submittal shall indicate the intended use of the item in the Work. When catalog pages are submitted, applicable items shall be clearly identified and inapplicable data crossed out. The current revision, issue number, and date shall be indicated on all drawings and other descriptive data.

Contractor shall be solely responsible for the completeness of each submission. Contractor's stamp of approval is a representation to Owner that Contractor accepts sole responsibility for determining and verifying all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, and that Contractor has reviewed and coordinated each submittal with the requirements of the Work and the Contract Documents.

All deviations from the Contract Documents shall be identified as deviations on each submittal and shall be tabulated in Contractor's letter of transmittal. Such submittals shall, as pertinent to the deviation, indicate essential details of all changes proposed by Contractor.

One copy of each drawing and necessary data shall be submitted to Owner for its record. The Owner intends to use this for information only. If requested by Contractor, up to three additional copies may be submitted for review and approval by Owner. Owner will return marked copies (or one marked reproducible copy) to Contractor. Owner will not accept submittals from anyone but Contractor. Submittals shall be consecutively numbered in direct sequence of submittal and without division by subcontracts or trades.

4.02. Owner's Review of Submittals. Owner's review of submittals will cover only general conformity to the Drawings and Specifications, external connections, and dimensions which affect the layout. Owner's review does not indicate a thorough review of all dimensions, quantities, and details of the material, equipment, device, or item shown. Owner's review shall not relieve Contractor of Contractor's sole responsibility for errors, omissions, or deviations in the drawings and data, nor of Contractor's sole responsibility for compliance with the Contract Documents.

If Contractor requests a review and response, Owner's submittal review period shall be 14 consecutive calendar days in length and shall commence on the first calendar day immediately following the date of arrival of the submittal or resubmittal in Owner's office. The time required to mail the submittal or resubmittal back to Contractor shall not be considered a part of the submittal review period.

When the drawings and data are returned marked "NOT ACCEPTABLE" or "RETURNED FOR CORRECTION", the corrections shall be made as noted thereon and as instructed by Owner and corrected copies (or one corrected reproducible copy) resubmitted.

When the drawings and data are returned marked "EXCEPTIONS NOTED", "NO EXCEPTIONS NOTED", or "RECORD COPY", no additional copies need be furnished unless requested by Owner at time of review.

4.03. Resubmittal of Drawings and Data. Contractor shall accept full responsibility for the completeness of each resubmittal. Contractor shall verify that all corrected data and additional information previously requested by Owner are provided on the resubmittal.

When corrected copies are resubmitted, Contractor shall in writing direct specific attention to all revisions and shall list separately any revisions made other than those called for by Owner on previous submissions.

Requirements specified for initial submittals shall also apply to resubmittals. Resubmittals shall bear the number of the first submittal followed by a letter (A, B, etc.) to indicate the sequence of the resubmittal.

Re-submittals shall be made within 30 days of the date of the letter returning the material to be modified or corrected, unless within 14 days Contractor submits an acceptable request for an extension of the stipulated time period, listing the reasons the resubmittal cannot be completed within that time.

Any need for more than one resubmission, or any other delay in obtaining Owner's review of submittals, will not entitle Contractor to extension of the Contract Times unless delay of the Work is directly caused by a change in the Work authorized by a Change Order.

End of Section

**SECTIONS 40-90-00 to 40-90-02, pages 220 to 241
of the SCADA Bid Specifications are confidential
and filed separately with a petition for
confidentiality**

EXHIBIT B

DOW Permit

Franchises

Easements

Start/completion dates

Plant Retirements

Franchises required – None

Plan Review and Permit Status - The District has reviewed and approved the plans and specifications prepared titled “SCADA Human-Machine Interface (HMI) Hardware and Software Upgrade” dated February 2020.

The District received approval from the Division of Water on January 3, 2020 (see attached letter).

Easements and Right-of-Way Status - Easement and Right-of-Way statements are not required.

Start date of construction – June 2020

Proposed date in service – November 2020

Plant retirements – There are no retirements as a result of this project.

ANDY BESHEAR
GOVERNOR



REBECCA W. GOODMAN
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

ANTHONY R. HATTON
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601

January 3, 2020

Kyle Ryan, P.E.
Northern KY Water District
2835 Crescent Springs Rd
Erlanger, KY 41018-

RE: SCADA IMPROVEMENTS HMI Hardware
and Software Upgrade (Phase 4-Part A of
WX21117003)
F16-027
Campbell County, KY
Northern KY Water District
AI #: 2485, FGL20160012

Dear Mr. Ryan:

The Kentucky Division of Water (DOW) has reviewed for completeness and adequacy the specifications submitted for the above referenced contract. The DOW now approves the specifications. The specifications consist of upgrade of the Wonderware Intouch HMI software, operator workstations and a new Water Information Management Solution (WIMS). The approval conditions and a list of eligible/ineligible items are enclosed. Please note that ineligible items cannot be funded using State Revolving Fund (SRF) monies, and must be paid by other funding sources.

An identical set of approved specifications shall be made available at the project site at all times. If modifications are made to these specifications before bidding, two (2) complete sets of as-bid specifications must be submitted to the DOW for approval. A second DOW approval must be issued by separate correspondence before proceeding with advertising for bids.

You may now advertise for bids on the construction of this project. In addition to other notifications, this project must be advertised in the newspaper of the largest daily circulation in the project area.

You are cautioned not to advertise unless you have a proper wage decision. The Federal Davis-Bacon wage rates are applicable for this project. Please contact all other funding sources for their requirements pertaining to federal wage rates.

You are reminded that the construction contracts are subject to the equal employment

SCADA IMPROVEMENTS-HMI Hardware
And Software Upgrade (Phase 4-Part A of
WX21117003)
F16-027
Northern KY Water District
AI #: 2485, FGL20160012
January 3, 2020
Page 2 of 3

opportunity requirements contained in Executive Order 11246. Equal employment opportunity affirmative action by the prime contractors and all subcontractors is mandated throughout the duration of the contract. Documentation of efforts to comply with Executive Order 11246, Equal Employment Opportunity is required to be kept by the borrower.

Review the attached Project Review and Cost Summary form for details of the information to be collected and retained in your files or to be submitted to DOW for review and approval. This form must be completed, signed by the recipient, and with the necessary information be then forwarded to the DOW. This signature will certify that all the information to be retained by the recipient has been secured and is available for review by the Division at the pre-construction conference. The required information must be approved by the DOW before executing any contracts.

Along with the Project Review and Cost Summary form, the following items must be submitted to the DOW for review and approval before executing any contracts:

- The bid advertisement
- Revised Project Budget
- Certified bid tabulation
- Documentation of compliance with DBE Good Faith Effort in accordance with 40 CFR 33.301

These items will be reviewed as a part of the Authority to Award process. The DOW will authorize you to award the contracts once these documents are approved.

After the Notice to Proceed is signed, the DOW will need a copy of the executed contract documents, including the specifications.

Changes orders will require approval from the DOW before payment can be authorized from the State Revolving Fund. Submission of specifications may be required for change order work.

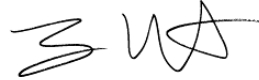
Upon completion of the project, a written certification stating that the project was completed according to the specifications shall be provided to the DOW by a professional engineer.

This approval has been issued under the provisions of KRS Chapter 224 and the regulations promulgated pursuant thereto. Issuance of this approval does not relieve the applicant from the responsibility of obtaining any other approvals, permits or licenses required by this Cabinet and other state, federal and local agencies.

You are cautioned that the advertisement and award of this contract will be subject to the laws and regulations that govern the State Revolving Fund (SRF) and to the conditions of your loan agreement. If we can be of further assistance, please call Michael Snyder, at (502) 782-1235.

SCADA IMPROVEMENTS-HMI Hardware
And Software Upgrade (Phase 4-Part A of
WX21117003)
F16-027
Northern KY Water District
AI #: 2485, FGL20160012
January 3, 2020
Page 3 of 3

Sincerely,



Terry Humphries, P.E.
Supervisor, Engineering Section
Water Infrastructure Branch
Division of Water

TH:MS
Enclosures

Eligible List, Ineligible List, Approval Conditions
Project Review and Cost Summary Form
1 set specification

C: HDR Engineering, Inc.
Kentucky Infrastructure Authority
Cabinet for Economic Development
Campbell; Kenton County Health Department
Division of Plumbing

F16-027
Northern KY Water District

SRF ELIGIBLE ITEMS:

No ineligible items identified.

SRF INELIGIBLE ITEMS:

No ineligible items identified

APPROVAL CONDITIONS:

1. Complete and return the Project Review and Cost Summary Form.
2. Include the most recent version of the SRF Supplemental General Conditions (8-2019) in the as-bid specifications.

PROJECT REVIEW AND COST SUMMARY

This questionnaire/checklist is furnished as an administrative aid and is required for use in supplying information and documents, reporting minor changes, and project status. The information and documents should be submitted to DOW as soon as possible after bid opening.

DRINKING WATER SRF

CLEAN WATER SRF

SECTION 1.

1. Project Name _____ Project Number _____
2. Changes: Have there been any changes in the project since DOW's approval of the plans and specifications?
- Yes No Construction Drawings. If yes, submit revised drawings and addenda. **See Note***
- Yes No Specifications. If yes, submit addenda. **See Note***
- Yes No Site Changes. If so, new Clear Site Certificates are required prior to start of construction.
- Yes No Authorized Representative (Mayor, City Manager, etc.). If so, provide name and title.

***Note:** Prior approval is required for changes in design, scope, type of treatment, size, capacity, time to complete the project, etc. Changes, which result in increase in the amount of a contract, must be procured in accordance with state and federal requirements, as applicable.

SECTION 2.

Date Bids Opened: _____ Date Bids Expire: _____

1. The following items should be submitted to DOW after bid opening:
- a) Executed Project Review & Cost Summary Form (this form).
 - b) Revised (As-bid) Budget (form attached).
 - c) Original bid advertisement or copy of advertisement with affidavit of publication.
 - d) Certified Bid Tabulations with engineer's seal.
 - e) Davis-Bacon ATA Certification form (with Project Wage Rate Sheet HUD-4720 form).
 - g) Clear Site Certificates.
 - h) DBE Documentation (See Attachment No. 11 of the Supplemental General Conditions (SGC)):
 - (1) Disadvantaged Business Enterprise Participation Policy form from the successful low bidder with DBE certifications and executed subcontracts with DBEs or letters of intent signed by both parties; and documentation on the level of effort taken

to obtain DBEs including copies of correspondence with DBE contractors, requesting quotes and copies of any advertisements soliciting DBE contractors, copies of returned envelopes and certified mail receipts, telephone log, etc.

(2) Bidder's List Form from recipient and successful bidder.

2. The following items must be submitted to DOW at the Pre-construction Meeting:

- a) Executed Contract Documents (once contract is signed).
- b) Notice of Award, Notice to Proceed, Bid Bond, Payment Bond, and Performance Bond (generally included in executed contract).
- c) Technical Specification (generally included in executed contract).
- d) Contractor's Certification Regarding Lobbying (See Attachment No. 11 in the SGC).
- e) Contractor's Debarred Firm Certification (See Attachment No. 10 in the SGC).

3. A copy of the items identified in Section 2.1 and Section 2.2, above, and the following must be retained by the owner. This documentation is subject for review, by DOW, at the time of the pre-construction conference.

- a) Name and qualifications of the proposed resident inspector(s).
- b) Proposal of the successful bidder(s).
- c) EEO documentation required by Executive Order 11246 as amended. Items 1 through 11 (See Attachment No. 7 in the SGC), is required for all contracts over \$10,000 except supplier contracts. Supplier contracts require:
 - (1) Name, address, and telephone number.
 - (2) Materials to be supplied and dollar value.For contracts below \$10,000, the same information required for supplier contracts must be submitted.
- d) Engineer's letter to the loan recipient recommending award of the contract. Letter must include a description of work, dollar amount, and name of the low bidder. If award is recommended to be made to other than the low bidder, a justification indicating why the low bidder is not responsive or responsible.
- e) Contractor project construction schedule and payment schedule.
- f) Applicable wage rate determination letter.
- g) Tentative Award Resolution.

4. **Comments:** _____

I hereby certify that all documentation outlined in Section 2.1, 2.2 and 2.3 will be retained in our project files and all documentation outlined in Section 2.1 has been submitted to DOW and all documentation outlined in Section 2.2 will be submitted to DOW during the Pre-construction meeting.

Signature of Authorized Representative

Date

Print Name and Title

SRF Project Cost Summary

Project Title: _____

WRIS#: _____

Project Budget: **Estimated** enter date

As Bid enter date

Revised enter date

Cost Classification	SRF KIA Loan	Funding Source 1	Funding Source 2	Funding Source 3	Funding Source 4	Funding Source 5	Local Funds	Unfunded Costs	Total
1	Administrative Expenses								
2	Legal Expenses								
3	Land, Appraisals, Easements								
4	Relocation Expenses & Payments								
5	Planning								
6	Engineering Fees – Design								
7	Engineering Fees – Construction								
8	Engineering Fees – Inspection								
9	Engineering Fees – Other								
10	Construction								
11	Equipment								
12	Miscellaneous								
13	Contingencies								
	Total								

Funding Sources	Amount	Date Committed
1		
2		
3		
4		
5		
	Total	

Local Funding Sources	Amount	Date Committed
1		
2		
3		
	Total	

Total Funding \$ _____

Cost Categories	Funding Source	Total Cost
Treatment (DW)		
Transmission and Distribution (DW)		
Source (DW)		
Storage (DW)		
WWTP Secondary Portion (CW)		
WWTP Advanced Portion (CW)		
Inflow and Infiltration Correction (CW)		
Major Sewer Rehabilitation (CW)		
Collector Sewers (CW)		
Interceptor Sewers including Pump Station (CW)		
Combined Sewer Overflow Correction (CW)		
Purchase of Systems (DW and CW)		
Restructuring (DW and CW)		
Land Acquisition (DW and CW)		
	Total Costs	

EXHIBIT C
Bid Tabulation
Engineers Recommendation

BID TAB

Northern Kentucky Water District
SCADA Improvements
Human Machine Interface Hardware and Software Upgrade

March 4, 2020

CONTRACTOR

BID AMOUNT

ATR Distributing

\$671,031.00



March 10, 2020

Kyle Ryan, P.E.
Northern Kentucky Water District
2835 Crescent Springs Road
P.O. Box 18640
Erlanger, KY 41018

RE: SCADA Improvements
Human Machine Interface (HMI)
Hardware and Software Upgrade
Phase 4 – Part A of WX21117003

Dear Mr. Ryan:

Bids were received and opened on March 4, 2020 with only a single bidder. Two other potential vendors were contacted and encouraged to consider bidding this project, however, they chose not to bid.

HDR has reviewed the bid and recommends that NKWD award the contract to ATR Distributing in the amount of \$671,031 for the following reasons:

1. Qualified bidders in this area for this type of project are limited.
2. The bid in hand is reasonable and below the engineers estimate.
3. The bidder is well qualified to perform the work.

Regards,

R. Larry Anderson, P.E.
HDR Engineering, Inc.

2517 Sir Barton Way, Lexington, KY 40509-2275
(859) 629-4800

hdrinc.com

EXHIBIT D
O&M costs
Depreciation
Debt Service

Northern Kentucky Water District

Customers Added and Revenue Effect: There will be zero new customers added and no revenue effect as a result of the SCADA HMI project.

Debt Issuance and Source of Debt: This project will be paid from the District's Five-Year Capital Budget, PSC No. 202 "Upgrade SCADA/Instrumentation/Security Equipment" with a total budget of \$3,000,000 which includes construction cost, engineering, and contingencies.

A summary of the project costs for this project is provided below:

○ Design Engineering	\$ 145,000
○ Construction Engineering	\$ 5,000
○ Contractor's Bid	\$ 671,031
○ Misc. & Contingencies	\$ 78,969
Total Project Cost	\$ 900,000

The project will be funded through multiple sources. The District received \$2,700,000 of SRF Loan F16-027 to this project. It is proposed that \$671,031 of this project be funded by the SRF loan and the remaining \$228,969 be funded with cash from the District's Improvement, Repair & Replacement account for a total of \$900,000 for this project.

USoA Accounts: The anticipated amounts for the project cost of \$900,000 will fall under the following Uniform System of Accounts Codes:

Code 346 "Communication Equipment" \$900,000

Additional Costs and O&M: Additional operating and maintenance costs incurred for the project are as follows:

Labor	\$ 0
Maintenance	\$ 10,000 (~1.5% of construction)
	\$ 10,000 Additional Annual O&M

Depreciation and Debt Service: Annual depreciation and debt service after construction are as follows:

Depreciation: \$90,000/year over 10 years for Code 346 Communication Equipment

Debt Service: \$40,054.66 over 20 years

EXHIBIT E
Notes, Mortgages, Bonds

Northern Kentucky Water District		
Bonds & Notes		
12/31/2019		
Bonds		
USDA 2000	\$1,692,000	
Series 2003C	\$0	
Series 2004A	\$0	
Series 2006	\$0	
Series 2009	\$0	
Series 2011	\$23,490,000	
Series 2012	\$37,825,000	
Series 2013A	\$22,440,000	
Series 2013B	\$14,135,000	
Series 2014A	\$1,733,000	
Series 2014B	\$6,155,000	
Series 2016	\$35,535,000	
Series 2019	\$17,845,000	
	\$160,850,000	
KIA Notes Currently Servicing		
F08-07	\$2,689,800	
F9-02	\$17,220,527	
F13-012	\$4,523,000	
F-14-015	\$3,320,688	
F-15-011	\$3,310,560	
B-15-003	\$1,263,565	
F16-027	\$569,581	
Total KIA	\$32,897,721	
Other Notes		
Deferred Note Kenton County	\$100,000	

EXHIBIT F
Income Statement

**NORTHERN KENTUCKY WATER DISTRICT
STATEMENT OF NET POSITION
DECEMBER 31, 2019**

ASSETS AND DEFERRED OUTFLOWS OF RESOURCES

Current Assets

Cash and Cash Equivalents	\$ 31,557,835
Investments	2,341,386
Accounts Receivable	
Customers, Net	6,756,320
Unbilled Customers	6,500,000
Others	425,504
Assessments Receivable	155,813
Inventory Supplies for New Installation and Maintenance, at Cost	1,667,269
Prepaid Items	813,405
Restricted Assets - Cash and Cash Equivalents	
Bond Proceeds Fund	339,699
Debt Service Account	2,898,212
Improvement, Repair & Replacement	453,827
	<hr/>
Total Current Assets	53,909,270

Noncurrent Assets

Restricted Assets - Cash and Cash Equivalents	
Bond Proceeds Fund	2,960,095
Debt Service Account	20,021,398
Improvement, Repair and Replacement	689,509
Customer Deposits Fund	942,820
Restricted Assets - Investments	
Debt Service Reserve Account	20,049,055
Miscellaneous Deferred Charges	4,480,781
	<hr/>
Capital Assets	
Land, System, Buildings and Equipment	504,213,721
Construction in Progress	13,054,987
	<hr/>
Total Capital Assets	517,268,708
Less Accumulated Depreciation	173,614,575
	<hr/>
Total Capital Assets, Net of Accumulated Depreciation	343,654,133
	<hr/>
Total Noncurrent Assets	392,797,791
	<hr/>
Total Assets	446,707,061

Deferred Outflows of Resources

Deferred Outflows Related to Pension	4,558,221
Deferred Outflows Related to OPEB	2,110,885
Deferred Loss on Refundings	4,007,079
	<hr/>
Total Deferred Outflows of Resources	10,676,185

Total Assets and Deferred Outflows of Resources \$ 457,383,246

**NORTHERN KENTUCKY WATER DISTRICT
STATEMENT OF NET POSITION
DECEMBER 31, 2019**

LIABILITIES, DEFERRED INFLOWS OF RESOURCES, AND NET POSITION

Liabilities and Deferred Inflows of Resources

Current Liabilities

Bonded Indebtedness	\$ 12,966,128
Bond Anticipation Note	
Notes Payable	1,690,053
Accounts Payable	1,011,597
Accrued Payroll and Taxes	457,354
Compensated Absences	107,575
Arbitrage Liability	412,209
Other Accrued Liabilities	278,026
Liabilities Payable-Restricted Assets	
Accrued Interest Payable	2,898,212
Accounts Payable	793,526
	<hr/>
Total Current Liabilities	<u>20,614,680</u>

Long-Term Liabilities (Net of Current Portion)

Liabilities Payable-Restricted Assets	
Accounts Payable	277,608
Customer Deposits	942,820
Compensated Absences	897,551
Arbitrage Liability	322,268
Bond Indebtedness	161,382,566
Notes Payable	30,738,087
Net Pension Liability	23,269,110
Net Unfunded OPEB Liability	5,563,369
	<hr/>
Total Long-Term Liabilities	<u>223,393,379</u>
Total Liabilities	244,008,059

Deferred Inflows of Resources

Deferred Inflows Related to Pension	726,617
Deferred Inflows Related to Pension	2,058,313
	<hr/>
Total Deferred Inflows of Resources	<u>2,784,930</u>

Total Liabilities and Deferred Inflows of Resources	<u>246,792,989</u>
---	--------------------

Net Position

Net Investment in Capital Assets	140,884,379
Restricted For	
Debt Service Funds	40,070,453
Capital Improvement Projects	3,711,694
Unrestricted	25,923,731
	<hr/>
Total Net Position	<u>210,590,257</u>

Total Liabilities, Deferred Inflows of Resources, and Net Position	2	<u><u>\$ 457,383,246</u></u>
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**NORTHERN KENTUCKY WATER DISTRICT
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
YEAR ENDED DECEMBER 31, 2019**

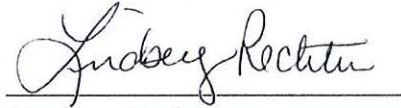
Operating Revenues	
Water Sales	\$ 55,764,231
Forfeited Discounts	830,599
Rents From Property	385,845
Other Water Revenues	<u>587,221</u>
 Total Operating Revenues	 <u>57,567,896</u>
Operating Expenses	
Operating and Maintenance Expense	28,738,891
Depreciation Expense	<u>12,179,078</u>
 Total Operating Expenses	 <u>40,917,969</u>
 Net Operating Income	 <u>16,649,927</u>
Non-Operating Income (Expense)	
Investment Income	1,881,532
Miscellaneous Non-Operating Income	494,746
Loss on Abandonment of Mains	(532,386)
Interest on Long-Term Debt	(7,075,292)
Amortization of Debt Premiums and Bond Issuance Cost	783,964
Pension Expense	(2,476,972)
Other Post Employment Benefit Expense	(97,596)
Arbitrage Expense	(178,770)
Gain on Sale of Capital Assets	<u>48,374</u>
 Total Non-Operating Expenses	 <u>(7,152,400)</u>
 Change in Net Position Before Capital Contributions	 9,497,527
 Capital Contributions	 <u>1,551,674</u>
 Change in Net Position	 11,049,201
 Net Position - Beginning of Year	 <u>199,541,056</u>
 Net Position - End of Year	 <u>\$ 210,590,257</u>

AFFIDAVIT

COMMONWEALTH OF KENTUCKY

COUNTY OF KENTON

Affiant, Lindsey Rechtin, after being first sworn, deposes and says that she is the Vice President - Finance and Support Services, that she is authorized to submit this Petition on behalf of Northern Kentucky Water District, and that the information contained in the Petition is true and correct to the best of her knowledge and belief except as to those matters that are based on information provided to her and as to those she believes to be true and correct.



Lindsey Rechtin

This instrument was produced, signed and declared by Lindsey Rechtin to be her act and deed the 28th day of APRIL, 2020.



Notary Public

Registration Number #577360

My Commission expires: 5/6/21

