



REQUEST FOR PROPOSAL

Residential Electric Off-Peak Charging Pilot Program

Issued:
6/27/2022

Proposal Due:
12:00 Noon EST Friday 7/29/2022

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1. PURPOSE

East Kentucky Power Cooperative (EKPC), on behalf of its 16 owner-member cooperatives, is requesting proposals for a provider of EV charging data from their end-use members. EKPC anticipates electric vehicle home charging loads to increase substantially over the next 10 years. At this point, little is known about residential EV home charging loads in our service territory. The residential electric vehicle off-peak charging program ("EV pilot"), seeks to acquire detailed information about EV charging patterns in our service territory and to gauge the effectiveness of this program's incentive structure at reducing localized and system-wide demand.

2. ABOUT US

East Kentucky Power Cooperative, Inc. (“East Kentucky Power”, “EKPC”) is a generation and transmission cooperative (“G&T”) headquartered in Winchester, Kentucky, which owns and operates two coal-fired generation plants, twelve combustion turbines and six landfill gas plants. In addition, EKPC also has rights to 170 megawatts of hydroelectric power from the Southeastern Power Administration. EKPC is regulated by the Kentucky Public Service Commission (PSC), and is an exempt organization under Section 501(c) (12) of the Internal Revenue Code.

The transmission system consists of 2,867 miles of transmission line and 448 transmission and distribution substations. EKPC generates and transmits electricity to 16 member rural electric distribution cooperatives that, in turn, supply energy to meters serving more than 554,219 homes, farms, and businesses in the eastern two-thirds of Kentucky. EKPC has interchange power transactions with all adjacent utilities in its service area.

EKPC is a member of PJM Interconnection LLC, a regional transmission organization. PJM coordinates and directs the operation of a regional transmission grid, administers a competitive wholesale electricity market and plans regional transmission expansion improvements for an area that includes 61 million people in all or portions of 13 states and the District of Columbia. Membership in PJM allows EKPC to mitigate market risk, ensure continued transmission reliability and provides access to a large power supply marketplace while offsetting rising costs to our members and increasing operating efficiencies.

For additional information, please visit our website at www.ekpc.coop.

East Kentucky Power Generation

Coal	Generation	Landfill	Generation
Spurlock	1,346 net MW	Bavarian	4.6 net MW
Cooper	341 net MW	Laurel Ridge	3.0 net MW
Total Coal*	1,687net MW	Green Valley	2.3 net MW
		Pearl Hollow	2.3 net MW
		Pendleton	3.0 net MW
		Glasgow***	0.8 net MW
		Total Landfill	16.0 net MW
Natural Gas	Generation	Hydro	Generation
Smith	Summer	Southeastern	170 MW
Combustion	753 net MW	Power Adm.	
Turbine	Winter	(SEPA)	
Units	989 net MW		
Bluegrass**	Summer		
Combustion	501 net MW		
Turbine	Winter		
Units	567 net MW		
Total Natural Gas Summer	1,254 net MW		
Total Natural Gas Winter	1,556 net MW		

* Dale Station ceased operations in April 2016 due to the cost to comply with new, more-stringent federal regulations.

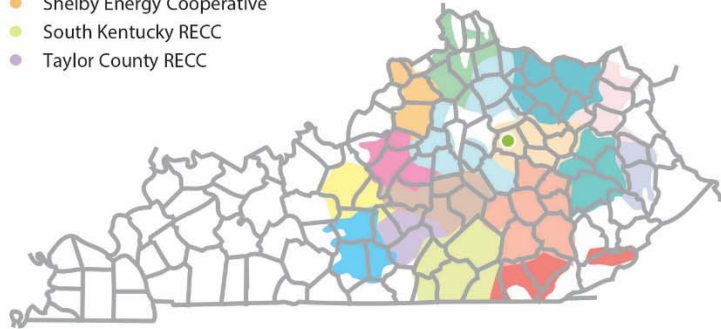
** Under an existing agreement, which continues until April 2019, a third party receives the output of one Bluegrass Generating Station unit.

*** Effective December, 2015, a third party began receiving the output of Glasgow in a 10-year power purchase agreement.

EKPC operates to serve its 16 distribution cooperative owner-members:

Sixteen distribution cooperatives, which are called the member systems, own EKPC. The 16 co-ops include:

- Big Sandy RECC
- Blue Grass Energy Cooperative
- Clark Energy Cooperative
- Cumberland Valley Electric
- Farmers RECC
- Fleming-Mason Energy Cooperative
- Grayson RECC
- Inter-County Energy
- Jackson Energy Cooperative
- Licking Valley RECC
- Nolin RECC
- Owen Electric Cooperative
- Salt River Electric Cooperative
- Shelby Energy Cooperative
- South Kentucky RECC
- Taylor County RECC
- EKPC headquarters



3. EKPC CONTACT INFORMATION

All questions and responses to this RFP must be emailed concurrently to all contacts listed below. Telephone and/or physical mail (if required) shall be addressed to the primary contact only.

No communication with any other EKPC employees related to this RFP is allowable during the solicitation period and until a contract is signed, unless specifically authorized in writing by the primary contact listed below. The primary contact will coordinate internally with EKPC operations personnel to address any technical/ operational questions bidders might have.

Failure to comply with this requirement will result in disqualification of the respondent. The conduct of bidders during the RFP process will play a part in the evaluation.

Primary Contact:

For email, telephone and physical mail.

Thip Hunt, CPSM
Sourcing Agent
East Kentucky Power Cooperative
4775 Lexington Rd
P.O. Box 707
Winchester, KY 40392-0707
thip.hunt@ekpc.coop
859 745-9395 Office

Alternate Contacts:

For email correspondence only.

Dan Pearce, CPSM
Category Sourcing Manager
East Kentucky Power Cooperative
4775 Lexington Rd
P.O. Box 707
Winchester, KY 40392-0707
dan.pearce@ekpc.coop
859 745-9439 Office

4. RFP CONDITIONS

- 1) All information in this RFP is the intellectual property of EKPC and should be treated as such. In addition, the information contained in any resulting contract from this solicitation is regarded as confidential and is not to be disclosed beyond the parties directly involved without the express written consent of EKPC.
- 2) In protecting bidder's confidential or proprietary information, such information must be clearly marked as being confidential and proprietary.
- 3) EKPC's answers to a bidder's questions will be shared to all bidders as appropriate.
- 4) EKPC reserves the right to accept and/or reject any and all proposals. Bidder may not claim any indemnity, nor may bidder contest for whatever reason, the choice made by EKPC.
- 5) EKPC is not under any obligation to award a contract and reserves the right to terminate the Request for Proposal process at any time, and to withdraw from discussions with any or all of the bidders who have responded.
- 6) All proposals will be considered final. No additions, deletions, corrections or adjustments will be accepted after the proposal due date unless mutually agreed between the parties.
- 7) This RFP shall not be construed as an authorization to perform development work at the expense of EKPC. Any development work performed or any expenses made by a bidder in order to respond to this RFP will be at the discretion and sole responsibility of the bidder. EKPC will not reimburse any expenses incurred by the bidder as a result of the bidder's participation in this solicitation. This RFP does not represent a commitment to purchase.
- 8) Bidder's offer must be firm for a period of one hundred and ninety (190) days from the date responses are due to EKPC. EKPC will be using a weighted method to evaluate proposals. In addition, EKPC reserves the right and flexibility to negotiate with multiple bidders to arrive at a mutually agreeable relationship. Furthermore, EKPC reserves the right to make an award in whole or in part to one or multiple bidders.
- 9) For time & material (T&M) contracts, EKPC shall not commit to or guarantee any level of spend or number of billable hours.
- 10) Bidder shall refrain from any publicity regarding this RFP or the contents thereof. Bidder shall not release any information to newspapers, magazines, journals or any other medium about the acceptance of the tender or the award of the contract without the prior written approval of EKPC.
- 11) As part of EKPC's Contractor Safety Program, EKPC has engaged an independent third party, ISN SOFTWARE CORPORATION ("ISN") to facilitate the collection of self-reported information from Consultants, which may include Health & Safety, Environmental, Sustainability & Quality Programs; Injury & Illness Records; Insurance Certificates; and Workers' Compensation & Experience Modifier.

The successful bidder(s) may be required to be a member of ISN and meet or exceed EKPC's minimum grading requirement within ISN prior to commencement of work onsite. The requirement for ISN membership is determined by the scope of services being performed and the cost of membership shall be solely at the Consultant's expense.

ISN membership shall be obtained from www.isnetworld.com

For purposes of this RFP, ISN membership: is required is not required

- 12) The [General Services Agreement](#) (GSA) shown in Part II of this RFP will form the basis for doing business between EKPC and the winning bidder. This RFP and bidder's proposal will be included and made part of the resulting contract. A fully executed contract must be in place prior to commencement of any work. No obligations on the part of EKPC will be incurred until a satisfactory contract has been executed and accepted by both parties.
- 13) An authorized officer of the company submitting the proposal must sign all proposals.
- 14) Any conditions of this RFP, which cannot be fulfilled, are to be clearly stated in bidder's proposal.
- 15) East Kentucky Power Cooperative, Inc. (EKPC) is authorized to report and pay all sales and use tax on tangible property, excluding energy and energy-producing fuels to the Kentucky Department of Revenue. EKPC was granted Direct Pay authorization with Permit #47507 attached. This Permit provided below was effective 9/15/2002 and does not need to be renewed each year.

With this authorization, EKPC is responsible for determining the correct amount of sales tax to be paid to the state of Kentucky. Bidder should identify in their proposal how much tax is to be paid; however, EKPC will report/pay any applicable tax directly to the Kentucky Department of Revenue.

51A110 (8-97)
Commonwealth of Kentucky
REVENUE CABINET

COMMONWEALTH OF KENTUCKY
REVENUE CABINET
FRANKFORT
40620

DIRECT PAY AUTHORIZATION

**EAST KENTUCKY POWER COOPERATIVE
4775 LEXINGTON ROAD
WINCHESTER, KY 40391**

EFFECTIVE DATE: 9/15/02

PERMIT # 047507

The above company is authorized to report and pay directly to the Revenue Cabinet the sales and use tax on all purchases of tangible personal property, excluding energy and energy-producing fuels.

Retailers are authorized to sell tangible personal property, excluding energy and energy-producing fuels, directly to the above company without receipt of the sales and use tax, provided they are issued a copy of this authorization and retain the copy in their records. Retailers making non-taxed sales under this authorization must report those sales in accordance with Kentucky Administrative Regulation 103 KAR 31:030, Section 5, Direct Pay Authorization.

Retailers shall not accept this document for unauthorized purchases or from unauthorized persons. **This authorization is not valid for use by construction contractors under contract with the above company.**

Division of Compliance
and Taxpayer Assistance
Sales and Use Tax Section
(502) 564-5170

5. CONTRACTING TIMELINE

#	Milestones	Dates
1	Invitation to bid & issuance of RFP	Monday 6/27/22
2	Deadline for bidders to submit intention to bid	Wednesday 7/6/22
3	Mandatory virtual (via Zoom or MS Teams) pre-bid meeting @ 1:00 PM EST. Bidders who have indicated their intent to bid will be sent a virtual meeting invite.	Tuesday 7/12/22
4	Deadline for bidders to submit additional questions not addressed in pre-bid meeting.	Wednesday 12:00 Noon 7/13/22
5	Deadline for EKPC to answer questions	Wednesday 12:00 Noon 7/20/22
6	Proposals due to EKPC by 12:00Noon EST. Please email your proposals in PDF format to the EKPC contacts previously identified. No hard copies are required. <u>Pricing must be in a separate document but sent under the same transmittal.</u> Please use the following convention for naming document files: "Proposal - Xxxx - Residential EV Off-Peak Charging Program RFP", "Pricing - Xxxx - - Residential EV Off-Peak Charging Program RFP", where Xxxx is bidder's company name	Friday 7/29/2022
7	EKPC conducting proposal evaluations and checking references. During the evaluation period, bidders are asked to be readily available by phone for any needed follow-ups.	8/1/2022 - 8/10/2022
8	EKPC may elect to meet face-to-face and/or virtually with short-listed bidders for a PRODUCT DEMONSTRATION.	8/11/2022- 8/19/2022
9	Notice of contract award	8/26/2022
10	Sign contract *Note - official contract signing/award subject to Kentucky Public Service Commission approval	Week of 9/6/2022 (estimated)
1	Kick-off meeting	9/13/2022 (estimated)

6. SCOPE OF WORK

Background

Most major car manufacturers have committed to offering electric vehicles. One of the main conveniences of an EV is the ability to fuel your vehicle at home during down time versus having to visit a fuel station. While not all EV charging will occur at home, it is estimated that 80% of charging will. Since this is the case, EKPC and its owner-member cooperatives need to prepare for home EV charging. Home charging is a significant opportunity for EKPC's owner-members, but in order to make the most of this opportunity, we need concrete charging data for vehicles in our service territory.

EKPC and its 16 owner-member cooperatives, branded as Kentucky's Touchstone Energy Cooperatives, will offer, after approval from the Kentucky Public Service Commission, an off-peak EV home charging incentive program. A per kwh incentive will be provided for charging the EV at home during off-peak hours. To facilitate the incentive payments and to collect EV energy and demand data, EKPC needs hourly kWh charging data. The incentive program and data will allow EKPC to learn more about EV home charging, locate our EV owners, and analyze the charging patterns of these vehicles.

Kentucky's Touchstone Energy Cooperatives seek assistance with obtaining hourly EV charging data at residential homes from a provider that can access EV telematics and share the hourly kWh consumption of that vehicle.

System Requirements & Deliverables

- Connect with EV telematics and provide charging data from enrolled EV's to EKPC's CIS platform via .CSV or SFTP in a format specified by EKPC
- At a minimum provide hourly kWh consumption by vehicle when at the residence, in a format specified by EKPC, on a monthly basis.
- Commit to delivering this information for a duration of 3 years with the capability to enroll at least 500 vehicles.
- Provide the time vehicle is plugged in to EVSE.
- Energy information platform
 - Public facing registration portal for pilot participants
 - Utility facing portal with data viewable to EKPC and its owner members
- Detailed regular charging analytics for education of EKPC and its owner-members.
- Provide a list of all electric vehicle manufacturers and level II residential chargers that your company integrates with.

How to Respond

- Provide a proposal detailing your company's knowledge and relevant experience supporting this scope of work.
- Fully describe the platform they are offering for our program.
- Provide company approach to the work identified in the System Requirements & Deliverables.
- Provide EKPC with a detailed overview of your company's product.
- Provide a detailed price quote to assist EKPC with its EV home charging needs.
- Provide a list of compatible EV manufacturers & vehicles.
- Provide a list of compatible level II home EV chargers.
- Provide a list of current utility partners utilizing the platform.
- Include a copy of Service Level Agreement ("SLA")
- Provide a timeline for Deliverables.
- Provide any additional value added services offered by your platform and associated cost as an alternative bid.

7. STRUCTURE OF RESPONSE

Bidders are requested to adopt the following response structure:

1) Executive Summary

High level summary of the Bidder's offering pertaining to the RFP.

2) Work Approach & Plan

1. Bidder's approach and detailed schematic time schedule to accomplish the Work as specified in the RFP.
2. A thorough description of the work plan.

3) Company Information

1. Legal name of company
2. Legal address of company
3. Dun & Bradstreet number & score
4. NAICS number (information may be found at www.naics.com)
5. Signed IRS W-9 - Request for Taxpayer Identification Number and Certification (must be current revision of W-9 Form)
6. Organizational structure including parent, subsidiary and partnership relationships
7. Full set of financial statements for most recent 3 years (balance sheet, income statement; cash flow; and Audit Letter and footnotes)
8. Risk factors including any pending bankruptcy filings or litigations

4) Company Qualification and Experience

1. The firm's experience with utilities and/or Generation & Transmission (G&T) cooperatives.
2. The firm's qualification/experience with the type of work solicited/proposed - specifically Service as a software for EV Off-Peak Charging Data.

5) Personnel Information

1. Name and title of personnel directly involved in this project, including their educational background and relevant experience in Section 4 above.
2. Name and title of highest ranking executive accountable for the successful performance of this project for EKPC.
3. Provide EKPC Account Service Structure (for Service escalation if required).

6) References

Provide the name of three to five clients for which Bidder has completed similar projects. References to include a brief description, location of work, year in which work was completed, contact name, title, phone and/or email.

7) Exceptions to the RFP

List any and all commercial and technical exceptions to the RFP requirements. Exceptions identified shall not constitute acceptance by EKPC. Indicate "No Exceptions Taken" if none is taken.

8) Pricing

Work Plan Task	Cost	Remarks
Option 1 - Total Lump Sum Price USD (\$)		
Option 2 - Total Not-to-Exceed Price USD (\$)		
Expenses Description (Expenses will be reimbursed at cost without markups)	Est. Cost	Remarks
Personnel Name & Title	Hourly Rate	Remarks
Personnel Name/Title/Position	Hourly Rate (As Needed Services)	Remarks
Deliverable	Amount	Payment Schedule

9) Please provide pricing in the following format. Note that pricing information must be submitted in a separate document and that no pricing information will be contained in the body of Bidder's non-pricing proposal.

PART II
GENERAL SERVICES AGREEMENT
EAST KENTUCKY POWER COOPERATIVE, INC.

This General Services Agreement (this "General Services Agreement") is made this _____ day of _____, 20____ by and between EAST KENTUCKY POWER COOPERATIVE, INC. ("East Kentucky", "EKPC" or "Company") and _____ ("Contractor"), a _____ Corporation.

WHEREAS, Contractor desires the opportunity to provide goods and/or services to East Kentucky from time to time, and East Kentucky desires the opportunity to engage Contractor to provide such goods and/or services; and

WHEREAS, the parties intend that this General Services Agreement sets forth the exclusive set of terms and conditions which shall govern the performance of the "Work" (as defined below) by Contractor for East Kentucky to engage Contractor to provide Work.

NOW THEREFORE, in consideration of the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do agree as follows:

ARTICLE 1 DEFINITIONS

- 1.01 Agreement:** "Agreement" shall mean this General Services Agreement, along with any "Statements of Work" (as defined below) and/or Purchase Order (as defined below) issued by Company and/or any other documentation as may be executed by the parties in accordance with Article 2, and/or or other agreed collateral document pursuant to which the Work is to be performed.
- 1.02 Applicable Laws:** "Applicable Laws" shall mean any and all applicable federal, state, or local laws, regulations, codes, ordinances, administrative rules, court orders, permits or executive orders. In addition, all applicable NERC Critical Infrastructure Protection ("CIP") Standards, including CIP-013, are incorporated by reference into this definition.
- 1.03 Contract Price:** "Contract Price" shall mean the aggregate of the particular consideration set forth in one or more Purchase Orders or other Statements of Work or as otherwise agreed upon. Unless otherwise agreed in writing, the Contract Price includes all applicable taxes, duties, fees, and assessments of any nature, including without limitation all sales and use taxes, due to any governmental authority with respect to the Work.
- 1.04 Contractor:** "Contractor" shall mean the entity designated as the "Contractor" in the opening paragraph of this Agreement.
- 1.05 Company:** "Company" shall mean East Kentucky Power Cooperative, Inc.
- 1.06 EKPC:** "EKPC" shall mean East Kentucky Power Cooperative, Inc.
- 1.07 East Kentucky Power Cooperative, Inc.** shall mean East Kentucky, a Kentucky corporation.
- 1.08 Purchase Order:** Company may, at its discretion, issue its own "Purchase Order Standard Terms and Conditions" and/or "Contractor's Purchase Agreement" (collectively referred to as a "Purchase Order") that may supplement, but in no way or manners ever supersede, this Agreement with respect to any conflicting terms and conditions.
- 1.09 PO Number:** "PO Number" shall mean a multi-digit number specifically issued to Contractor by EKPC.
- 1.10 Statements of Work:** "Statements of Work" shall mean any specifications, instructions, drawings, schedules, a Purchase Order, contracts, scopes of work, and/or statements of work.
- 1.11 Work:** "Work" shall include those services and/or goods set forth in this Agreement.
- 1.12 Tools and Equipment:** "Tools and Equipment" shall mean any tools, equipment, rigging and other general supplies on the Company's premises where the Work is being performed that is either owned and/or leased by Company.
- 1.13 ISN:** "ISN" shall mean, ISN SOFTWARE CORPORATION, an independent third party engaged by Company to facilitate the collection of self-reported information from Contractors,

which may include Health & Safety, Environmental, Sustainability & Quality Programs; Injury & Illness Records; Insurance Certificates; and Workers' Compensation & Experience Modifier.

ARTICLE 2 SCOPE BINDING EFFECT

Unless otherwise agreed in a writing executed by each of the parties which evidences a clear intention to supercede this Agreement, the parties intend that this Agreement apply to all transactions which may occur between East Kentucky on one hand and Contractor on the other hand during the term of this Agreement and which are related to the provision of goods and/or services by Contractor for the benefit of East Kentucky. East Kentucky makes no commitment to Contractor as to the exclusiveness of this relationship or as to the volume, if any, of business East Kentucky will do with Contractor. The parties do, however, anticipate that the parties will agree from time to time for the performance of Work by Contractor. Such agreement for the provision of Work shall be reflected by (a) each of the parties executing a mutually acceptable Statement of Work under this Agreement (which is attached hereto as Exhibit A and incorporated by reference) or (b) Company providing a purchase order or other Statement of Work to Contractor and Contractor accepting such purchase order or other Statement of Work (including by commencing performance pursuant to such purchase order or other Statement of Work). In the event Company provides a purchase order or other Statement of Work to Contractor and Contractor commences performance, unless such purchase order or other Statement of Work expressly provides otherwise, Contractor hereby agrees to the formation of a binding agreement as described in the purchase order or other Statement of Work upon Contractor's commencement of performance, waives any argument that it might otherwise have under Applicable Laws that the purchase order should have been executed by each of the parties to be enforceable and further agrees to not contest the enforceability of such purchase order or other Statement of Work on those grounds, and agrees to not contest the admissibility of Company's records related to such Purchase Order or other Statement of Work that are kept in the ordinary course by Company. In addition, in no event shall the terms and conditions of any proposal, purchase order or other Statement of Work, acknowledgement, invoice, or other document unilaterally issued by Contractor be binding upon Company without Company's explicit written acceptance thereof. Any Work performed by Contractor without Company's binding commitment for such Work either via a duly executed or accepted purchase order or other Statement of Work under this Agreement shall be at Contractor's sole risk and expense, and Company shall have no obligation to pay for any such Work. The fee schedule of Contractor is attached hereto as Exhibit B and incorporated by reference.

ARTICLE 3 CONDITIONS AND RISKS OF WORK

Unless the applicable Statement of Work expressly provides otherwise, Contractor agrees that before beginning any Work Contractor shall carefully examine all conditions relevant to such Work and its surroundings, and, unless Contractor notifies Company in writing that it will not perform the Work under such conditions, Contractor shall assume the risk of such conditions and shall, regardless of such conditions, the expense, or difficulty of performing the Work, fully complete the Work for the stated Contract Price applicable to such Work without further recourse to Company. Without limiting the foregoing, Contractor specifically recognizes that Company and other parties may be working concurrently at the site. Information on the site of the Work and local conditions at such site furnished by Company in specifications, drawings, or otherwise is made without representation or warranty of any nature by Company, is not guaranteed by Company, and is furnished solely for the convenience of Contractor. All drawings and other documents, if any, required to be submitted to Company for review shall be submitted in accordance with the mutually agreed to schedule, and, if no schedule applies, such drawings or other documents shall be submitted by Contractor without unreasonable delay. No Work affected by such drawings and other documents shall be started until Contractor is authorized to do so by Company. In case of a conflict between or within instructions, specifications, drawings, schedules, purchase order(s) and/or other Statements of Work, Company shall resolve such conflict; and Company's resolution shall be binding on Contractor. Contractor agrees that all labor employed by Contractor, its agents, or subcontractors for Work on the premises of Company shall be in harmony with all other labor being used by Company or other contractors working on Company's premises. Contractor agrees to give Company immediate notice of any threatened or actual labor dispute and will provide assistance as determined necessary by Company to resolved any such dispute. Contractor, its agents, or subcontractors shall remove from Company's premises any person objected to by Company in association with the Work.

Local Conditions Contractor represents that it has taken steps necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Site and/or the performance of the Work, including (i) conditions bearing upon access, egress, transportation, waste disposal, handling, laydown, parking and storage of materials; (ii) the availability of labor, water, electric power, other utilities and roads; (iii) uncertainties of weather or other observable physical conditions at the Site; and (iv) the character of equipment and facilities needed preliminary to and during the performance of the Work; (v) the location of all underground facilities including but not limited to gas, electric, water, sewer lines, and drain tiles; and (vi) all aerial facilities that may be encountered while performing Work. Any failure by Contractor to take the actions described in this section will not relieve Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to Owner.

Site Conditions All conditions, including geotechnical, topographical, geological, seismic, hydrographical, hydrological, or physical conditions related to the Work shall neither be deemed concealed or unknown conditions under this section nor constitute force majeure for purposes of this Agreement; it being expressly acknowledged and agreed by Contractor that the cost and delay risk for any such conditions shall be borne by Contractor, and that Contractor shall have no claim for an adjustment in the Schedule or the Contract Price as a result of such conditions. If, in performance of the Work, Contractor encounters unknown, concealed, man-made, subsurface conditions at the Site, then notice of such conditions shall be promptly given to Owner by Contractor and if Owner and Contractor thereafter mutually determine that such conditions are, in fact, of such nature, then Contractor may be entitled to seek an equitable adjustment in the Contract Price or the Schedule, or both.

ARTICLE 4 COMPANY CHANGES IN WORK

The scope of and conditions applicable to the Work shall be subject to changes by Company from time to time. Such changes shall only be enforceable if documented in a writing executed by Company. For all circumstances requiring Changes in Work, Contractor shall have prior written approval from of Company before performing said Work. Work completed without a prior approved Change Order will not be processed or paid. If Contractor believes that adjustment of the Contract Price or the Work schedule is justified, whether as a result of a change made pursuant to this Article or as a result of any other circumstance, then Contractor shall (a) give Company an immediate written notice of its claim and (b) shall supply a written statement supporting Contractor's claim, which statement shall include Contractor's detailed estimate of the effect on the Contract Price and/or the Work schedule. Contractor agrees to continue performance of the original Work during the time any claim hereunder is pending unless otherwise mutually agreed to in writing between the parties. Company shall not be bound to any adjustments in the Contract Price or the Work schedule unless expressly agreed to by Company in writing. Company will not be liable for, and Contractor waives, any claims of Contractor that Contractor knew or should have known and that were not reported by Contractor in accordance with the provisions of this Article.

ARTICLE 5 FORCE MAJEURE

Neither party shall be liable to the other for any damages for any failure to perform or for any delays or interruptions beyond that party's reasonable control in performing any of its obligations under this Agreement due to acts of God, fires, floods, earthquakes, riots, war, acts of terrorism, civil insurrection, acts of the public enemy, or acts or failures to act of civil or military authority, unless the time to perform is expressly guaranteed. Contractor shall advise Company immediately of any anticipated and actual failure, delay, or interruption and the cause and estimated duration of such event. Any such failure, delay, or interruption, even though existing on the date of this Agreement or on the date of the start of the Work, shall require Contractor to within five (5) days submit a recovery plan detailing the manner in which the failure, delay, or interruption shall be remedied and the revised schedule. Contractor shall diligently proceed with the Work notwithstanding the occurrence thereof. This Article shall apply only to the part of the Work directly affected by the particular failure, delay, or interruption, and shall not apply to the Work as a whole or any other unaffected part thereof.

ARTICLE 6 CONTRACTOR DELAYS

Time is an important and material consideration in the performance of this Agreement by Contractor. Contractor agrees to cooperate with Company in scheduling the Work so that the project and other activities at Company's site will progress with a minimum of delays. Company shall not be responsible for compensating Contractor for any costs of overtime or other premium time worked unless Company has provided separate prior written authorization for additional compensation to Contractor, and, if Company provides such written authorization, such additional compensation shall be limited to Contractor's actual cost of the premium portion of wages, craft fringe benefits, and payroll burdens. Contractor shall be liable for all failures, delays, and interruptions in performing any of its obligations under this Agreement which are not (a) caused by Company and reported in accordance with Article 4, (b) excused by Article 5, or (c) directed by Company pursuant to Article 7. Contractor shall, without adjustment to completion date or Contract Price, be obligated to make up time lost by such failures, delays, or interruptions. Company may deduct from amounts otherwise due to Contractor for any additional expenses incurred as a result of such failures, delays, or interruptions including but not limited to engineering, consulting, construction management, and inspection costs incurred by Company including those of its own or by a third party. Company may suspend payments under this Agreement during the period of any such failure, delay, or interruption.

ARTICLE 7 DELAY LIQUIDATED DAMAGES

Refer to Delay Liquidated Damages Exhibit if applicable to Statement of Work.

ARTICLE 8 COMPANY EXTENSIONS

Company shall have the right to extend schedules or suspend the Work, in whole or in part, at any time upon written notice to Contractor (except that in an emergency or in the event that Company identifies any safety concerns, Company may require an immediate suspension upon oral or written notice to Contractor). Contractor shall, upon receipt of such notice, immediately suspend or delay the Work. Contractor shall resume any suspended Work when directed by Company. If Contractor follows the requirements of Article 4, a mutually agreed equitable adjustment to the Contract Price or to the schedules for payments and performance of the remaining Work may be made to reflect Company's extension of schedules or suspension of the Work. Contractor shall provide Company all information Company shall request in connection with determining the amount of such equitable adjustment.

ARTICLE 9 INSPECTING, TESTING, AND AUDITING

9.01 Right of Inspecting and Testing: Company reserves the right, but shall not be obligated, to appoint representatives to follow the progress of the Work with authority to suspend any Work not in compliance with this Agreement. The appointment or absence of an appointment, of such representatives by Company shall not have any effect on warranties. Acceptance or approval by Company's representative shall not be deemed to constitute final acceptance by Company, nor shall Company's inspection relieve Contractor of responsibility for proper performance of the Work. Inspection by Company's representative shall not be deemed to be supervision or direction by Company of Contractor, its agents, servants, or employees, but shall be only for the purpose of attempting to ensure that the Work complies with this Agreement. In the event Contractor fails to provide Company with reasonable facilities and access for inspection when advised, and if in the opinion of Company it becomes necessary to dismantle the Work for such inspection, then Contractor shall bear the expenses of such dismantling, testing, and reassembly.

9.02 Right of Auditing: Contractor shall maintain complete records relating to any cost-based (i.e., Work not covered by firm prices) components of the Work billed under this Agreement or relating to the quantity of units billed under any unit price provisions of this Agreement (all the foregoing hereinafter referred to as "Records") for a minimum of five years following the latest of performance of, delivery to Company of, or payment by Company for, such Work or units. All such Records shall be open to inspection and subject to audit and reproduction during normal working hours, by Company or its authorized representatives to the extent necessary to adequately permit evaluation and verification of any invoices, payments, time sheets, or claims based on Contractor's actual costs incurred in the performance or delivery of Work under this Agreement. For the purpose of evaluating or verifying such actual or claimed costs, Company or its authorized representative shall have access to said Records at any time, including any time after final payment by Company to Contractor pursuant to this Agreement. All non-public information

obtained in the course of such audits shall be held in confidence except pursuant to judicial and administrative order. Company or its authorized representative shall have access, during normal working hours, to all necessary Contractor facilities and shall be provided adequate and appropriate work space to conduct audits in compliance with the provisions of this Article. Company shall give Contractor reasonable notice of intended audits. The rights of Company set forth in this paragraph shall survive the termination or expiration of this Agreement.

9.03 Use of Tools and Equipment: Company, in its sole discretion, may allow Contractor to use Company's Tools and Equipment for the Work and related activities at designated Company locations. Contractor shall indemnify and hold harmless Company, including its officers, directors, shareholders, agents, members and employees (each an "Indemnified Party"), from and against any and all claims, damages, losses or liabilities arising out of, relating to, or in connection with, the use of Company's Tools and Equipment by Contractor, its agents, servants, employees or subcontractors, and will reimburse each Indemnified Party for all expenses (including attorney's fees and expenses) as they are incurred in connection with investigating, preparing or pursuing or defending any action, claim, suit or investigation or proceeding related to, arising out of, or in connection with, the use of Company's Tools and Equipment by Contractor, its agents, servants, employees or subcontractors, whether or not threatened or pending and whether or not any Indemnified Party is a party, Contractor, on behalf of itself or its agents, affiliates, officers and directors, and all of their predecessors, successors, assigns, heirs, executors and administrators, hereby irrevocably release, discharge, waive, relinquish and covenant not to sue, directly, derivatively or otherwise, Company and its directors, officers, shareholders, members, partners (general or limited), employees and agents (including, without limitation, its financial advisors, counsel, information agents, depositories, consultants and public relations representatives) and its predecessors, successors, assigns, heirs, executors or administrators, and all persons acting in concert with any such person, with respect to any and all matters, actions causes of action (whether actually asserted or not), suits, damages, claims, or liabilities whatsoever, at law, equity or otherwise, arising out of, relating to, or in connection with the use of Company's Tools and Equipment by Contractor, its agents, servants, employees or subcontractors. Company shall in no event be liable for any claim whatsoever by or through Contractor, its employees, agents and/or subcontractors or by any third party, for any inoperability or failure of the Tools and Equipment to perform as designed or intended, whether such claim is based on warranty, contract, tort (including negligence), strict liability or otherwise and whether for direct, incidental, consequential, special, exemplary or other damages. Contractor shall ensure that its employees, agents, subcontractors or servants shall inspect, exercise the appropriate level of care in the use, maintenance and repair of the Tools and Equipment, so as to minimize the incidence of casualties and injuries occurring in connection therewith.

ARTICLE 10 COMPLIANCE WITH APPLICABLE LAWS; SAFETY; DRUG AND ALCOHOL TESTING

10.01 Applicable Laws and Safety: Contractor agrees to protect its own and its subcontractors' employees and be responsible for their Work until Company's acceptance of the entire project and to protect Company's facilities, property, employees, and third parties from damage or injury. Contractor shall at all times be solely responsible for complying with all Applicable Laws, Company's Supplier Code of Conduct, and facility rules, including without limitation those relating to health and safety, in connection with the Work and for obtaining at Contractor's expense (but only as approved by Company) all permits and approvals necessary to perform the Work. Without limiting the foregoing, Contractor agrees to strictly abide by and observe all standards of the Occupational Safety & Health Administration (OSHA) which are applicable to the Work being performed now or in the future, all of which are incorporated herein by reference. It is the obligation of the Contractor to request and receive any facility rules that may apply. Contractor shall maintain the Work site in a safe and orderly condition at all times. Company shall have the right but not the obligation to review Contractor's compliance with safety and cleanup measures. In the event Contractor fails to keep the work area clean, Company shall have the right to perform such cleanup on behalf of, at the risk of and at the expense of Contractor. In the event Contractor subcontracts any of the Work, Contractor shall notify Company in writing of the identity of the subcontractor before utilizing the subcontractor. Contractor shall conduct, and require its subcontractors to conduct, safety audits and job briefings during performance of the Work. In the event a subcontractor has no procedure for conducting safety audits and job briefings, Contractor shall include the subcontractor in its safety audits and job briefings. All safety audits shall be documented in writing by the Contractor and its subcontractors. Contractor shall provide documentation of

any and all audits identifying safety deficiencies and concerns and corrective action taken as a result of such audits to Company semi-monthly.

10.02 Hazards and Training: Contractor shall furnish adequate numbers of trained, qualified, and experienced personnel and appropriate safety and other equipment in first-class condition, suitable for performance of the Work. Such personnel shall be skilled and properly trained to perform the Work and recognize all hazards associated with the Work. Without limiting the foregoing, Contractor shall participate in any safety orientation or other of Company's familiarization initiatives related to safety and shall strictly comply with any monitoring initiatives as determined by Company. Contractor shall accept all equipment, structures, and property of Company as found and acknowledges it has inspected the property, has determined the hazards incident to working thereon or thereabouts, and has adopted suitable precautions and methods for the protection and safety of its employees and the property.

10.03 Drug and Alcohol: No person will perform any of the Work while under the influence of drugs or alcohol. All persons who will perform any of the Work may be subject to drug and alcohol testing under either of the following circumstances: (i) where the person's performance either contributed to an accident or cannot be completely discounted as a contributing factor to an accident which involves off-site medical treatment of any person; and (ii) where Company determines in its sole discretion that there is reasonable cause to believe such person is using drugs or alcohol or may otherwise be unfit for duty. Such persons will not be permitted to perform any Work until the test results are established. Contractor shall be solely responsible for administering and conducting drug and alcohol testing at Contractor's sole expense as well as criminal background investigations on all of its employees and/or subcontractors performing the Work and shall so certify in writing if so requested. As applicable and in addition to any other requirements under this Agreement, Contractor shall develop and strictly comply with any and all drug testing requirements as required by Applicable Laws.

Should Contractor have actual knowledge of violations of any of the herein stated policies of conduct in this Article 10, or have a reasonable basis to believe that such violations will occur in the future, whether by its own employees, agents, representatives or subcontractors, or by another vendor and/or supplier of the Company and its employees, agents, representatives or subcontractors, or by any employee agent and/or representative of Company, Contractor has an affirmative obligation to immediately report any such known, perceived and/or anticipated violations to the Company in care of EKPC Safety Manager at Headquarter Location.

10.04 Notice to Owners: Contractor shall promptly report in writing to Company all near misses, accidents or incidents, including property damage, arising out of or in connection with the Work, giving full details and statements of any witnesses, pictures and providing Company with a full and thorough investigation of the incident. Notice shall be given to EKPC's Safety Manager at Headquarters or to the onsite Safety Coordinator for the specific facility.

10.05 ISN Membership: If Company determines now or in the future that ISN membership is a requirement to conduct business, Contractor agrees that it shall: (1) be a member of ISN prior to Work commencement; (2) meet or exceed Company's minimum grading requirement within ISN. Contractor agrees that in addition to those other causes set forth in this Agreement, Company may terminate this Agreement for cause in the event Contractor's ISN rating is or drops below the minimum grading requirement of Company. ISN membership shall be obtained from www.isnetworld.com and shall be solely at Contractor's expense.

ARTICLE 11 STATUS OF CONTRACTOR

Company does not reserve any right to control the methods or manner of performance of the Work by Contractor. Contractor, in performing the Work, shall not act as an agent or employee of Company, but shall be and act as an independent contractor and shall be free to perform the Work by such methods and in such manner as Contractor may choose, doing everything necessary to perform such Work properly and safely and having supervision over and responsibility for the safety and actions of its employees and the suitability of its equipment. Contractor's employees and subcontractors shall not be deemed to be employees of Company. Contractor agrees that if any portion of Contractor's Work is subcontracted, all such subcontractors shall be bound by and observe the conditions of this Agreement to the same extent as required of Contractor. In such event, Company strongly encourages the use of Minority Business Enterprises, Women

Business Enterprises, and Disadvantaged Business Enterprises, as defined under federal law and as certified by a certifying agency that Company recognizes as proper.

ARTICLE 12 EQUAL EMPLOYMENT OPPORTUNITY

Contractor agrees that in performing under this General Services Agreement, it *shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. Contractor/subcontractor agrees to comply with all the provisions set forth in 29 CFR Part 471, Appendix A to Subpart A (Executive Order 13496).*

Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of Contractor's commitments under this Article 12, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of Contractor's noncompliance with the non-discrimination clauses of this General Services Agreement or with any of the said rules, regulations or orders, this General Services Agreement may be canceled, terminated or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

Contractor will include the provisions of this Article 12 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, dated September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 13 INDEMNITY BY CONTRACTOR

Contractor shall indemnify, defend, and hold harmless Company, its directors, officers, employees, and agents, from any and all damage, loss, claim, demand, suit, liability, penalty, fines, or forfeiture of every kind and nature, including but not limited to attorneys' fees and expenses and other costs and expenses of defending against the same and payment of any settlement or judgment therefore, by reason of (a) bodily and other personal injuries to or deaths of persons, (b) damages to tools or equipment owned or leased by Company, (c) damages to other property, (d) the release or threatened release of a hazardous substance or any pollution or contamination of or other adverse effects on the environment, (e) violations of any Applicable Laws, or (f) infringement of patent, copyright, trademark, trade secret, or other property right, to the extent resulting or alleged to have resulted from acts or omissions of Contractor, its employees, agents, subcontractors, or other representatives or otherwise from performance of this Agreement, whether suffered directly by Company or indirectly by reason of third party claims, demands, or suits. This obligation to indemnify, defend, and hold harmless shall survive termination or expiration of this Agreement.

ARTICLE 14 ENVIRONMENTAL

14.01 Control: As required under the OSHA Hazard Communication Standard (29 CFR 1910.1200) and certain other Applicable Laws, Contractor or its subcontractors shall provide Material Safety Data Sheets/Safety Data Sheets ("MSDS" or "SDS") covering any hazardous substances and materials furnished under or otherwise associated with the Work under this Agreement. Contractor and its subcontractors shall provide Company with either copies of the applicable MSDS/SDS or copies of a document certifying that no MSDS/SDS are required under any Applicable Laws in effect at the worksite. Contractor or its subcontractors shall provide notice of the presence of any toxic chemical subject to Toxic Release Inventory ("TRI") reporting under 40 CFR Part 372 in substances and materials furnished or otherwise associated with the Work either as part of the MSDS/SDS or a separate notification. **No asbestos or lead containing materials shall be incorporated into any Work performed by Contractor or otherwise left on the Work site without the prior written approval of Company.** Contractor and its subcontractors shall be solely responsible for determining if any chemical or material furnished, used, applied, or stored or Work performed under this Agreement is subject to any Applicable Laws.

14.02 Labeling: Contractor and its subcontractors shall label hazardous substances and materials and train their employees in the safe usage and handling of such substances and materials as required under any Applicable Laws.

14.03 Releases: Contractor and its subcontractors shall be solely responsible for the management of any petroleum or hazardous substances and materials brought onto the Work site and shall prevent the release of petroleum or hazardous substances and materials into the environment. All petroleum or hazardous substances and materials shall be handled and stored according to Contractor's written Spill Prevention Control and Countermeasures Plan or Best Management Practices Plan as defined under the provisions of the Clean Water Act, as amended, if either such Plan must be maintained pursuant to Applicable Laws. Contractor shall provide secondary containment for the storage of petroleum or hazardous substances and materials. The prompt and proper clean-up of any spills, leaks, or other releases of petroleum or hazardous substances and materials resulting from the performance of the Work under this Agreement and the proper disposal of any residues shall be Contractor's sole responsibility, but Contractor shall give Company immediate notice of any such spills, leaks, or other releases. Contractor shall be solely responsible for the storage, removal, and disposal of any excess or unused quantities of chemicals and materials that Contractor causes to be brought to the Work site.

14.04 Generated Wastes: Unless Company and Contractor expressly agree otherwise in writing, Contractor and its subcontractors shall be solely responsible for any wastes generated in the course of the Work, and Contractor shall handle, store, and dispose of such wastes in accordance with any Applicable Laws.

14.05 Survival: The obligations set forth in this Article shall survive termination or expiration of this Agreement.

ARTICLE 15 INSURANCE

Refer to EXHIBIT C for minimum insurance requirements.

ARTICLE 16 WARRANTIES

Contractor warrants that:

- (a) the Work will conform to any applicable Statement of Work; and any materials supplied in connection therewith shall be new, unused, free from defect, and shall meet the requirements of the latest ASTM, or other applicable standard specifications unless otherwise stipulated.
- (b) the Work will be suitable for the purposes specified by Company and will conform to each statement, representation, and description made by Contractor to Company;
- (c) the Work is not and shall not be subject to any encumbrance, lien, security interest, patent, copyright or trademark claims, infringements, or other defects in title; (d) any labor or services performed pursuant to this Agreement shall be performed in a competent, diligent, and timely manner in accordance with the highest professionally accepted standards' And
- (e) it has or will obtain the financial resources necessary to ensure completion of the Work and, in the sole discretion of Company, will provide, subject to the terms of a non-disclosure agreement, Company with the adequate financial statements to affirm such assurances.

Contractor shall respond in writing to any warranty claim by Company within five (5) business days of the delivery of notice of such claim to Contractor.

Correction of Defective Work: Contractor shall replace any portion of the Work which is unsound or improper and remove from the premises any materials furnished by Contractor whether worked or unworked, which do not comply with the requirements of the contract. No Work shall be enclosed or covered until it has been inspected by Company. Should any Work be covered without having been so inspected, Contractor shall, if so required, uncover at its expense such Work for inspection by Company, unless Company failed to inspect such Work within a reasonable time after receipt of notice of its readiness for inspection.

No payment shall be allowed for any defective Work. Contractor shall replace or correct any defective Work, and, upon proper replacement, or performance, shall be paid for such replacement or performance only for the amount that would have been payable if the Work had been performed properly in the first instance. Contractor shall bear the expense of making good all Work of other contractors destroyed or damaged in the replacement or performance of such defective Work. If any of Company's materials have been used in any defective Work, the cost of such materials will be back-billed to Contractor.

If Contractor fails to replace or correct any defective Work, Company may have same replaced or corrected and the cost of such replacement or performance, including any additional cost and expense thereby incurred shall be deducted from the contract price.

ARTICLE 17 OWNERSHIP OF INTELLECTUAL PROPERTY; PATENTS

17.01 Ownership: All inventions, discoveries, processes, methods, designs, drawings, blueprints, information, software, works of authorship and know-how, or the like, whether or not patentable or copyrightable (collectively, "Intellectual Property"), which Contractor conceives, develops, or begins to develop, either alone or in conjunction with Company or others, in connection with the Work, shall be "work made for hire" and the sole and exclusive property of Company. Upon request, Contractor shall promptly execute all applications, assignments, and other documents that Company shall deem necessary to apply for and obtain letters patent of the United States and/or copyright registration for the Intellectual Property and in order to evidence Company's sole ownership thereof.

17.02 Royalties and License Fees: Contractor shall pay all royalties and license fees which may be payable on account of the Work or any part thereof. In case any part of the Work is held in any suit to constitute infringement and its use is enjoined, Contractor within a reasonable time shall, at the election of Company and in addition to Contractor's obligations under Article 13, either (a) secure for Company the perpetual right to continue the use of such part of the Work by procuring for Company a royalty-free license or such other permission as will enable Contractor to secure the suspension of any injunction, or (b) replace at Contractor's own expense such part of the Work with a non-infringing part or modify it so that it becomes non-infringing (in either case with changes in functionality that are acceptable to Company).

ARTICLE 18 RELEASE OF LIENS

Contractor hereby releases for itself and its successors in interest, and for all subcontractors and their successors in interest, any and all claim or right of mechanics or any other type lien upon Company's or any other party's property, the Work, or any part thereof as a result of performing the Work. Contractor shall execute and deliver to Company such documents as may be required by Applicable Laws to make this release effective and shall give all required notices to subcontractors with respect to ensuring the effectiveness of the foregoing release against those parties. Contractor shall secure the removal of any lien that Contractor has agreed to release in this Article within five (5) working days of receipt of written notice from Company to remove such lien. If not timely removed, Company may remove the lien and charge all costs and expenses to Contractor, including without limitation costs of bonding off such lien.

ARTICLE 19 ASSIGNMENT OF AGREEMENT; SUBCONTRACTING

Contractor shall not, by operation of law or otherwise, assign and/or subcontract any part of the Work or this Agreement without Company's prior written approval. Such approval, if given by Company, shall not relieve Contractor from full responsibility for the fulfillment of any and all obligations under this Agreement. Under any and all circumstances, any permitted assignee of Contractor, whether or not such assignee shall be a division, subsidiary and/or affiliate entity of Contractor, shall also be fully bound by the terms of this Agreement and, furthermore, upon request by Company, each of Contractor and its permitted assignee shall provide sufficient financial information, as determined by Company in its sole discretion, necessary to validate such assignee's credit worthiness and ability to perform under this contract.

ARTICLE 20 INVOICES AND EFFECT OF PAYMENTS

20.01 Invoices: Within a reasonable period of time following the end of each calendar month or other agreed period, Contractor shall submit an invoice to Company that complies with this Article. Payments shall be made within sixty (60) days of Company's receipt of Contractor's proper invoice, and, in the event that Company's payment is overdue, Contractor shall promptly provide Company with a notice that such payment is overdue. Such invoices shall reference the applicable PO Number and shall also show labor, material, taxes paid (including without limitation sales and use taxes, duties, fees, and other assessments imposed by governmental authorities), freight, and all other charges (including without limitation equipment rental) as separate items. All invoices shall be submitted with supporting documentation and in acceptable form and quality to Company's authorized representative. Should Company dispute any invoice for any reason, payment on such invoice shall be made within thirty (30) days of the dispute resolution. Payment of the invoice shall not release Contractor from any of its obligations hereunder, including but not limited to its warranty and indemnity obligations. Invoices shall not be delivered with goods, but all correspondence and packages related to this Agreement shall reference the applicable PO Number assigned by Company. Unless otherwise specified by EKPC, Contractor shall forward invoices electronically to ap@ekpc.coop or mail in hardcopy format to EKPC, PO Box 707, Winchester, Kentucky 40392-0707 ATTN: Accounts Payable.

20.02 Taxes: If Company provides Contractor with an exemption certificate demonstrating an exemption from sales or use taxes in Kentucky, then Contractor shall not withhold or pay Kentucky sales or use taxes to the extent such exemption certificate applies to the Work (such exemption does not and shall not apply to any materials consumed by Contractor in performing the Work). **Contractor agrees that it shall not rely upon Company's direct pay authorization in not withholding or paying Kentucky sales or use taxes.** If Company does not provide Contractor with an exemption certificate demonstrating an exemption from sales or use taxes in Kentucky, Contractor shall be solely responsible for paying all appropriate sales, use, and other taxes and duties (including without limitation sales or use tax with respect to materials purchased and consumed in connection with the Work) to, as well as filing appropriate returns with, the appropriate authorities. To the extent specifically included in the Contract Price, Contractor shall bill Company for and Company shall pay Contractor all such taxes and duties, but Company shall in no event be obligated for taxes and duties not specifically included in the Contract Price or for interest or penalties arising out of Contractor's failure to comply with its obligations under this Section.

20.03 Billing of Additional Work: All claims for payments of additions to the Contract Price shall be shown on separate Contractor's invoices and must refer to the specific change order or written authorization issued by Company as a condition to being considered for payment.

20.04 Effect of Payments/Offset: No payments shall be considered as evidence of the performance of or acceptance of the Work, either in whole or in part, and all payments are subject to deduction for loss, damage, costs, or expenses for which Contractor may be liable under any Purchase Order or set-off hereunder. Company, without waiver or limitation of any rights or remedies of Company, shall be entitled from time to time to deduct from any and all amounts owing by Company to Contractor in connection with this Agreement or any other contract with Company any and all amounts owed by Contractor to Company in connection with this Agreement or any other contract with Company.

20.05 Evidence of Payment to Subcontractors: Contractor shall, if requested by Company, furnish Company with a certificate showing names of Contractor's suppliers and subcontractors hereunder, and certifying to Company that said suppliers and subcontractors have been paid in full.

20.06 Reimbursable Expenses: Where previously approved by EKPC, upon submission of an expense report and receipts, EKPC shall reimburse Contractor through the normal invoicing process for travel and living expenses. Contractor agrees that expenses for lodging, meals and incidentals shall be in line with those published on www.gsa.gov for Lexington, Kentucky. Alcoholic beverages are not reimbursable. Acceptable rental car reservations include economy, compact, full-size or standard. Other expenses are not reimbursable, unless mutually agreed upon and approved in writing by EKPC. Expenses shall be billed at actual cost without markup.

ARTICLE 21 ROUTING OF SHIPMENTS

Company shall have the option of specifying the routing of shipments. If freight is included in the Contract Price, and such specified routing increases Contractor's shipping costs, Contractor shall immediately so notify Company, and should Company still specify the more expensive routing, then Company shall reimburse Contractor for the increase actually incurred thereby.

ARTICLE 22 TERM AND TERMINATION

22.01 Term: This Agreement shall commence on the date set forth above and shall survive in full force and effect until terminated as set forth below. A termination under this Article 22 based on certain Work shall only apply to the Statement of Work that covers such Work. Any Statements of Work that do not relate to such Work shall not be affected by such a termination.

22.02 Termination for Contractor's Breach: If the Work to be done under this Agreement shall be abandoned by Contractor, if this Agreement or any portion thereof shall be assigned by operation of law or otherwise, if the Work or any portion thereof is sublet by Contractor without the permission of Company, if Contractor is placed in bankruptcy, or if a receiver be appointed for its properties, if Contractor shall make an assignment for the benefit of creditors, if at any time the necessary progress of Work is not being maintained, or if Contractor is violating any of the conditions or agreements of this Agreement, or has executed this Agreement in bad faith, Company may, without prejudice to any other rights or remedies it may have as a result thereof, notify Contractor to discontinue any or all of the Work and terminate this Agreement in whole or part. In the event that Section 365(a) of the Bankruptcy Code or some successor law gives Contractor as debtor-in-possession the right to either accept or reject this Agreement, then Contractor agrees to file an appropriate motion with the Bankruptcy Court to either accept or reject this Agreement within twenty (20) days of the entry of the Order for Relief in the bankruptcy proceeding. Contractor and Company acknowledge and agree that said twenty (20) day period is reasonable under the circumstances. Contractor and Company also agree that if Company has not received notice that Contractor has filed a motion with the Bankruptcy Court to accept or reject this Agreement within said twenty (20) day period, then Company may file a motion with the Bankruptcy Court asking that this Agreement be accepted or rejected, and Contractor shall not oppose such motion.

22.03 Effect of Termination for Contractor's Breach: From the effective date of such termination notice, Contractor shall vacate the site, whereupon Company shall have the right but not the obligation to take possession of the Work wherever located, and Contractor shall cooperate with Company and cause Contractor's subcontractors to cooperate with Company so that Company can effect such possession. In obtaining replacement services, Company shall not be required to request multiple bids or obtain the lowest figures for completing the Work and may make such expenditures as shall best accomplish such completion and are reasonable given the circumstances. The expenses of completing the Work in excess of the unpaid portion of the Contract Price, together with any damages suffered by Company, shall be paid by Contractor, and Company shall have the right to set off such amounts from amounts due to Contractor.

22.04 Termination for Company's Convenience: Company may terminate this Agreement or one or more Statements of Work in whole or in part for its own convenience by thirty (30) days' written notice at any time. In such event, Company shall pay Contractor all direct labor and material costs incurred on the Work that is subject to such Termination prior to such notice, plus any reasonable unavoidable cancellation costs which Contractor may incur as a result of such termination, plus indirect costs or overhead on the portion of the Work completed, computed in accordance with generally accepted accounting principles less salvage value. As an alternative to salvage value reduction, Company shall have the right in its sole discretion to take possession of all or part of the Work.

ARTICLE 23 PUBLICITY

Contractor shall not issue news releases, publicize or issue advertising pertaining to the Work or this Agreement without first obtaining the written approval of Company.

ARTICLE 24 CONFIDENTIAL INFORMATION

All information relating to the Work or the business of Company, including, but not limited to, drawings and specifications relating to the Work, and customer information, shall be held in confidence by Contractor and shall not be used by Contractor for any purpose other than for the performance of the Work or as authorized in writing by Company. In the event that the Contractor assigns the work to one or more subcontractors, a signed confidentiality agreement between the Contractor and each subcontractor(s) will be provided to the Company prior to the provision of any information described in the immediately preceding sentence or the performance of any Work by the subcontractor. All drawings, specifications, or documents furnished by Company to Contractor or developed in connection with the Work shall either be destroyed or returned to Company (including any copies thereof) upon request at any time.

ARTICLE 25 BUY AMERICAN.

To the extent applicable, in the performance of this General Services Agreement, Contractor shall use or furnish or cause to be used or furnished only unmanufactured articles, materials and supplies which have been mined or produced in the United States or any eligible country, and only manufactured articles, materials and supplies which have been manufactured in the United States or any eligible country substantially all from articles, materials and supplies mined, produced or manufactured, as the case may be, in the United States or any eligible country, except to the extent the Rural Utilities Services ("RUS") shall have previously determined that such shall be impracticable or that the cost thereof shall be unreasonable. An "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative. Contractor shall provide to Company such information, documents, and certificates as may be requested by Company or the Administrator of the RUS from time to time with respect to any goods furnished under this General Services Agreement.

ARTICLE 26 DEBARMENT AND SUSPENSION.

Contractor represents and warrants that neither it nor any of its "principals" (as defined in 2 C.F.R. Part 417 or any successor regulation) is presently debarred, suspended, proposed for debarment, voluntarily excluded or declared ineligible by any federal department or agency from participation in any "covered transaction" (as defined in 2 C.F.R. Part 417 or any successor regulation). Contractor agrees to comply with Subpart C [Responsibilities of Participants Regarding Transactions] of 2 C.F.R. Part 417 or any successor regulation, in connection with the performance of this General Services Agreement. Contractor further agrees to cause any person, firm, corporation or entity with whom Contractor contracts to perform services or provide goods in a "covered transaction" at the next lower tier (as described in 2 C.F.R. Part 417.220(b) or any successor regulation), to provide a representation and warranty and agreement substantially identical to the representation and warranty and agreement set forth in the first two sentences of this paragraph.

ARTICLE 27 LOBBYING.

Federal regulations prohibit Company from using federal appropriated funds to pay any person for influencing or attempting to influence certain federal officers or agents in connection with the making of a federal loan. Contractor represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121, Section 319, 103 Stat. 701, 750-765 (31 U.S.C. 1352), entitled "Limitation on use of appropriated

funds to influence certain Federal contracting and financial transactions," and any rules and regulations issued pursuant thereto.

ARTICLE 28 MISCELLANEOUS.

28.01 Waiver: No waiver by Company of any provision herein or of a breach of any provision shall constitute a waiver of any other breach or of any other provision.

28.02 Headings: The headings of Articles, Sections, paragraphs, and other parts of this Agreement are for convenience only and do not define, limit, or construe the contents thereof.

28.03 Drawings: If applicable and if required by Company in the Statement of Work, Contractor shall prepare and, within thirty (30) days after the completion of the Project, submit a complete and detailed final set of as-built or as-installed drawings/documents to Company. Design and/or construction drawings/documents shall be updated and corrected to represent what was actually provided and installed. These drawings shall become the property of Company, and may be used in any manner and provided to any person at the sole discretion of Company. Drawings/documents may include maps, project cost estimate, design or project calculations, project studies, design drawings, construction drawings, equipment drawings, and bill of materials. When requested, design and/or construction documents to include engineer's stamp and signature. Contractor shall accompany all document submittal with a transmittal letter containing date, project title and number, Contractor's name and address, title and number of each record document, and Contractor's official signature.

28.04 Severability: If any provision of this Agreement shall be held invalid under law, such invalidity shall not affect any other provision or provisions hereof which are otherwise valid.

28.05 State Law Governing Agreement: This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky, without regard to its principles of conflicts of laws.

28.06 Enforcement of Rights: Company shall have the right to recover from Contractor all expenses, including but not limited to fees for and expenses of inside or outside counsel hired by Company, arising out of Contractor's breach of this Agreement or any other action by Company to enforce or defend Company's rights hereunder.

28.07 No Third Party Beneficiaries: Except for Contractor and Company, there are no intended third party beneficiaries of this Agreement and none may rely on this Agreement in making a claim against Company.

28.08 Order of Precedence This Agreement and the Exhibits hereto shall be considered complementary and what is required by one shall be binding as if required by all. The failure to specifically list a requirement in one document, once this requirement is specifically listed in another, shall not imply the inapplicability of such requirement and Contractor shall provide as part of this Agreement all items required to conform to the project scope and standards herein contained. In the event of a conflict between the body of this Agreement and the Exhibits, the body of this Agreement shall govern. Later dated Exhibits shall take precedence over earlier dated Exhibits. The latest date of an Amendment, Exhibit or Change Order shall take precedence over that part of this Agreement which it supersedes.

28.09 Notices: All notices and communications respecting this Agreement shall be in writing, shall be identified by the applicable PO Number, shall be designated for Company, and shall be addressed as follows (which address either party may change upon five (5) days prior notice to the other party):

To EKPC:

East Kentucky Power Cooperative

Attn: Director, Supply Chain

4775 Lexington Road

PO Box 707

Winchester, Kentucky 40392-0707

To Contractor:

Fax No. _____

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date set forth in the introductory paragraph of this Agreement.



EAST KENTUCKY POWER COOPERATIVE

Signature

Name (Please Print)

Title

Date

CONTRACTOR

Signature

Name (Please Print)

Title

Date

EXHIBIT A

STATEMENT OF WORK

***STATEMENT OF WORK FOR SPECIFIC PROJECT WILL BE INCORPORATED AS
EXHIBIT A AND ATTACHED TO PURCHASE ORDER***

LIST OF CONTRACT DOCUMENTS:

The General Services Agreement, including all Exhibits, Schedules, and any written Amendments and Addendums which may be agreed to by the parties; Purchase Order for a specific project, including the Project Schedule, or other Exhibits; Special Terms and Conditions; Drawings; Specifications; EKPC's Request for Proposal (if one is used) and Quote.

EXHIBIT B

FEE SCHEDULE

**FEE SCHEDULE FOR SPECIFIC PROJECT WILL BE INCORPORATED AS EXHIBIT
B AND ATTACHED TO PURCHASE ORDER**

EXHIBIT A

STATEMENT OF WORK

***CONSULTANT'S/CONTRACTOR'S STATEMENT OF WORK FOR SPECIFIC PROJECT
WILL BE INCORPORATED AS EXHIBIT A AND ATTACHED TO PURCHASE ORDER***

EXHIBIT B

ARTICLE 15 INSURANCE (Low)

15.01 Contractor's Insurance Obligations: Contractor shall provide and maintain, and shall require any and all subcontractors to provide and maintain, with an insurance company authorized to do business in the Commonwealth of Kentucky and otherwise acceptable to EKPC the following insurance:

- a) Workers Compensation and Employer's Liability Policy: Prior to the start of the Work, Contractor shall submit evidence of Contractors Workers' Compensation and Employer's Liability Insurance Policy, and each such policy shall include:
 - 1) Workers' Compensation (statutory benefits coverage) Insurance in accordance with the laws of the Commonwealth of Kentucky
 - 2) Employer's Liability with a minimum limit of Five Hundred Thousand Dollars (\$500,000) with respect to Bodily Injury Each Accident/(\$500,000) Bodily Injury by Disease Each Employee/(\$500,000) Bodily Injury by Disease Policy Limit.
 - 3) United States Longshoremen and Harbor Workers Act Endorsement (WC 00 0106); if exposures warrant.
 - 4) Maritime "Jones Act" Endorsement (WC 00 02 01); if exposures warrant.
 - 5) Federal Employer's Liability Act Endorsement "FELA" (WC 00 01 04); if exposures warrant.
 - 6) Federal Coal Mine Health and Safety Act Coverage Endorsement (WC 00 01 02); if exposures warrant.

- b) Commercial General Liability Policy: Prior to the start of Work, Contractor shall provide evidence of Contractor's Policy providing Commercial General Liability Insurance, with combined single minimum limit for bodily injury and property damage of One Million Dollars (\$1,000,000) each Occurrence/One Million Dollars (\$1,000,000) General Aggregate and the following coverages:
 - 1) Coverage for premises and operations, including Work let or sublet.
 - 2) No exclusion of coverage for Blanket Contractual Liability to the extent covered by the policy against liability assumed by Contractor under this Contract.
 - 3) No exclusion for Broad Form Property Damage hazard.
 - 4) No exclusion for liability arising out of blasting, collapse, and underground property damage hazards.
 - 5) Products and Completed Operations Liability Coverage with a One Million Dollar (\$1,000,000) Aggregate Limit. Said coverage must continue in force for a minimum of two (2) years from the Acceptance of Work.
 - 6) Personal and Advertising Injury Liability coverage with a Five Hundred Thousand Dollar (\$500,000) Limit and Contractual Liability Exclusion (#5) eliminated.
 - 7) Said policy shall name EKPC as an Additional Insured to the extent necessary to fulfill Contractor's indemnity obligations under this agreement, with Contractor's policy deemed to be primary.
 - 8) Said policy shall be endorsed to provide that the underwriter(s) have waived their Rights of Recovery Against Others (subrogation) against EKPC and EKPC's insurance carrier(s).
 - 9) Coverage shall be amended to provide for Aggregate Limit of Liability at each project or jobsite.
 - 10) Should policy contain a deductible clause for bodily injury or property damage liability, said deductible shall be shown on the Certificate of Insurance, and Contractor's carrier shall agree to pay any such claims "first dollar" and then recover the deductible amount from Contractor.

- c) Commercial Automobile Liability Insurance Policy: Prior to the start of Work, Contractor shall provide evidence of Contractor's Commercial Automobile Liability Insurance Covering the use of all owned, non-owned and hired automobiles, with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) each Accident with

respect to Contractor's vehicles assigned to or used in performance of Work under this Contract. Said policy shall name EKPC as an Additional Insured to the extent necessary to fulfill Contractor's indemnity obligations under this agreement, with said policy designated to be primary. Said policy shall include an endorsement providing that the underwriter(s) have waived their Rights of Recovery Against Others (subrogation) against EKPC and EKPC's insurance carrier(s).

- d) Aircraft Public Liability Insurance: If applicable, Contractor shall provide prior to the start of Work, evidence of Contractor's Aircraft Public Liability Insurance covering fixed wing and rotorcraft aircraft whether owned, non-owned, leased, hired or assigned with a combined single minimum limit for bodily injury and property damage of Eight Million Dollars (\$8,000,000) including passenger liability coverage. Said policy shall include an endorsement providing that the underwriter(s) have waived their rights of subrogation against EKPC and EKPC's insurance carrier(s).
- e) Marine Liability Insurance: If applicable, Contractor shall provide prior to the start of Work, evidence of Contractor's Marine Liability Insurance, including if appropriate Wharfinger's Liability, covering the operation of waterborne vessels whether owned, non-owned, leased, hired or assigned with a combined single minimum limit for bodily injury and property damage of Five Million Dollars (\$5,000,000) including passenger liability coverage. Said policy shall include an endorsement providing that the underwriter(s) have waived their rights of subrogation against EKPC and EKPC's insurance carrier(s). Said policy shall name EKPC as an Additional Insured to the extent necessary to fulfill Contractor's indemnity obligations under this agreement, with Contractor's policy deemed to be primary.
- f) Environmental Impairment ("Pollution") Liability Insurance: If applicable, Contractor shall provide prior to the start of work, evidence of Contractor's Environmental Impairment Liability Insurance covering Contracting operations. Said policy shall extend to Contractor's use of vehicles as well as Contractor's operations and work, and shall provide for monitoring, testing, cleanup and remediation expenses. Limits of liability shall not be less One Million Dollars (\$1,000,000) Each Occurrence. Said policy shall be endorsed to provide Additional Insured status of EKPC and shall be endorsed to provide Waiver of Subrogation in favor of EKPC.
- g) Cyber Liability Insurance: Cyber/ Professional/Errors and Omissions Liability Insurance: Contractor shall provide prior to the start of work, evidence of Contractor's Cyber/ Professional Liability Insurance insuring Contractor and any persons under Contractor's direction, for negligent professional acts, errors, omissions in planning, operation, design, and for claims and losses with respect to IT systems risks (such as data breaches, malicious computer code, unauthorized access/use, damage/loss/theft of data, degradation, downtime, failures in electronic and physical security). IT systems include those systems used for the supervision and control of the plant boiler, turbine, generator and air quality control equipment. These systems are comprised of all forms of hardware and software used for the purposes of data input and output, transmission, processing and data storage. Said insurance will have as minimum limits of liability Ten Million Dollars (\$10,000,000) Each Claim. Should policy contain a deductible clause, said deductible shall be shown on the Certificate of Insurance."
- h) Aviation Unmanned Aerial System/Unmanned Aerial Vehicle Comprehensive Liability and Accident insurance covering contractors liability arising out of or based on the use of any owned, non-owned, chartered or temporary substitute unmanned aerial system/unmanned aerial vehicle (UAS/UAV) in the performance of Services, including coverage for any liability arising from UAS/UAV maintenance, or the use of premises incidental to the operations of the contractors operations. This insurance must: (i) provide coverage to a single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence including bodily injury and property damage; (ii) include war risk and allied perils coverage appropriate for domestic operations of

aircraft; (iii) include contractual liability coverage; and (iv) include severability of interest for each insured.

- i) Professional/Errors and Omissions Liability Insurance: Contractor shall provide prior to the start of work, evidence of Contractor's Professional Liability Insurance insuring Contractor and any other firms or persons under Contractor's direction, professional acts, errors, omissions in planning, operation, design, and completion of the contracted work. Said insurance will have as minimum limits of liability One Million Dollars (\$1,000,000) Each Occurrence and One Million Dollars (\$1,000,000) Aggregate. Should policy contain a deductible clause, said deductible shall be shown on the Certificate of Insurance, and Contractor's carrier shall agree to pay any such claims "first dollar" and then recover the deductible amount from Contractor.
- j) It is understood and agreed that East Kentucky Power Cooperative, Inc. is included as additional insured on a primary non-contributory basis with respect to General Liability, Marine, Environmental/Pollution, Professional, UAS/UAV, Cyber, and Auto policies. Waiver of Subrogation is afforded for General Liability, Marine, Pollution, Environmental and Auto policies; Umbrella policy follows form.

15.02 Quality of Insurance Coverage: The above policies to be provided by Contractor shall be written by companies satisfactory to EKPC or having a Best Rating of not less than A- ("Excellent"). These policies shall not be materially changed or cancelled except with thirty (30) days written notice to EKPC from the Contractor and the Insurance Carrier.

15.03 Implication of Insurance: EKPC shall not be obligated to review any of Contractor's Certificates of Insurance, insurance policies, or endorsements, or to advise Contractor of any deficiencies in such documents. Minimum limits and coverages required under this Article should not be construed to necessarily be adequate for Contractor's own insurance and risk management needs. Any receipts of such documents or their review by EKPC shall not relieve Contractor from or be deemed a waiver of EKPC's rights to insist on strict fulfillment of Contractor's obligations under the Contract.

15.04 Certificates of Insurance: EKPC reserves the right to request and receive a summary of coverage of any of the above policies or endorsements.

15.05 Insurance Verification: EKPC utilizes myCOI to track and verify Contractor's insurance coverage. Upon EKPC's receipt of this executed Agreement and approval as a contractor, Contractor will receive an email from registration@mycoitracking.com. Contractor must follow the instructions contained in the email and complete the online registration. Upon completion of registration, myCOI will request proof of insurance directly from Contractor's insurance agent(s). In addition to other terms and conditions contained herein, Contractor shall not commence work unless Contractor is registered with myCOI and a compliant COI has been received.