

Contract Documents
and
Specifications

**NORTH WATER TREATMENT PLANT
FILTER MEDIA REMOVAL / REPLACEMENT &
BASIN REPAIR**

for

The City of Meridian



CITY OF MERIDIAN

Prepared by



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City of Meridian Bid No. 18-13
DWSIRLF Project No. DWI-L380005-01
BKI Project No. TU.18.003



North Water Treatment Plant
Filter Media Removal / Replacement & Basin Repair
City of Meridian

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ADVERTISEMENT FOR BIDS

City of Meridian 601 23rd Avenue, Meridian, MS 39301
(Owner) (Address)
Separate Sealed Bids for the Construction of (detailed description) filter media removal / replacement and basin repairs at the North Water Treatment Plant which will include the following: removal and replacement of approximately 2,400 cubic yards of existing filter sand, removal and replacement of approximately 3,000 cubic yards of filter anthracite, removal and replacement of 1,800 square feet of filter block media retainer caps, repairs to the existing grout around the filter block, and installation of a protective coating on the filter basin walls
will be received by the City of Meridian herein called the "owner" at the office of Purchasing at City Hall until 11:00 AM local time Tuesday, August 21, 2018 and then at said office publicly opened and read aloud. (Date)

The PLANS, SPECIFICATIONS AND CONTRACT DOCUMENTS may be examined at the following locations:

1. City of Meridian 601 23rd Ave, Meridian MS 39301 (Call - Eugene Perry) 601-485-1938
(City Clerk's Office, Chancery Clerk's or Loan Recipient's Office)
2. MSDH/DWSRF 570 E Woodrow Wilson Jackson MS (Call – Colleen Cook) 601-576-7518
3. Burk-Kleinpeter, Inc. 2121 5th St, Ste 210 Meridian, MS 39301 (Call - Cheryl Reed) 601-482-5092
(Consulting Engineer's Office)

The BID SCHEDULE may be examined at the following locations:

- A. Mississippi Procurement Technical Assistance Program (MPTAP)
Mississippi Development Authority, Minority & Small Business Development
Woolfolk Building
501 North West Street, Suite B 01
Jackson, MS 39201
Contact: Carlyn McGee, 601-359-3448
- B. Contract Procurement Center closest to your project area; Natalie Purvis 601-531-3194

Minority and women's business enterprises are solicited to bid on this contract as prime contractors and are encouraged to make inquiries regarding potential subcontracting opportunities and equipment, material and/or supply needs.

This contract is funded in whole or in part by funds from the Consolidated Appropriations Act of 214 (H.R. 3547); therefore, this project must comply with the American Iron and Steel requirements of the Act.

Any contract or contracts awarded under this invitation for bids are expected to be funded in whole or in part by anticipated funds from the Drinking Water Systems Improvements Revolving Loan Fund (DWSIRLF) Loan Program from the State of Mississippi. Neither the State of Mississippi, the Local Governments and Rural Water Systems Improvements Board, nor any of their employees is or will be a party to this invitation for bids or any resulting or related contracts. This procurement will be subject to all applicable sections of the Mississippi Code of 1972, Annotated, as they apply to local governments, in accordance with Appendix D of the DWSIRLF Program Regulations.

INSTRUCTIONS TO BIDDERS

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ARTICLE 1 – DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meaning indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.
- A. Issuing Office: The office from which the Bidding Documents are to be issued and where bidding procedures are to be administered.

ARTICLE 2 – BIDS RECEIVED

- 2.01 Refer to the Advertisement for Bids for information on receipt of Bids.

ARTICLE 3 – LOCATION AND DESCRIPTION OF PROJECT

- 3.01 The City of Meridian North Water Treatment Plant (NWTP) is located at 4609 48th Place, Meridian MS 39305.
- 3.02 The plant has one filter basin with eight filter cells. The filter media and filter media retainer caps will be removed and replaced. The filter cells will be cleaned and repairs will be made to the grout surrounding the filter block. A protective coating will be installed on the filter basin walls.
- 3.03 The NWTP is an operating treatment plant and the Contractor must coordinate their activities with the plant operators in order to maintain the plant functions while allowing for various parts of the plant to be shut down for short periods to make the necessary repairs.

ARTICLE 4 – COPIES OF BIDDING DOCUMENTS

- 4.01 Refer to the Advertisement for Bids for information on location where Bidders may examine and obtain the Bidding Documents.
- 4.02 Complete set of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 4.03 Owner and Engineer in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not grant permission for any other use.

ARTICLE 5 – QUALIFICATIONS OF BIDDERS

- 5.01 Bidders shall be experienced in the kind of Work to be performed, shall have the necessary equipment therefor, and shall possess sufficient capital to properly execute the Work within the time allowed. Bids received from Bidders who have previously failed to complete work within the time required, or who have previously performed similar work in an unsatisfactory manner, may be rejected. A Bid may be rejected if Bidder cannot show the Bidder has the necessary ability, plant, and equipment to commence the Work at the time prescribed and thereafter to prosecute and complete the Work at a rate or within the times specified. A Bid may be rejected if Bidder is already obligated for the performance of other work, which would delay the commencement, prosecution, or completion of the Work.
- 5.02 To demonstrate qualifications to perform the Work, Bidder shall complete and submit with its Bid the Bidder Qualifications Statement which is bound to the Project Manual. Bidders may be asked to and shall furnish data to demonstrate Bidder's qualifications.
- 5.03 Bid will be received only from contractors licensed or registered by the State of Mississippi.

ARTICLE 6 – EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

6.01 Subsurface and Physical Conditions

- A. Neither Owner nor Engineer has performed explorations of subsurface conditions in connection with preparation of the Bidding Documents nor have Owner nor Engineer utilized any investigation that may be been performed by others.

6.02 Underground Facilities – Physical Conditions

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

6.03 Hazardous Environmental Conditions

- A. Owner has no knowledge of a Hazardous Environmental Condition at the Site.

6.04 Provisions concerning responsibilities for the adequacy of data, furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unforeseen subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environment Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated on the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in Paragraph 5.06 of the General Conditions.

6.05 Other Related Data (Not Used)

6.06 On request, and to the extend Owner has control over the Site, and schedule permitting, the Owner will provide Bidder access to the Site to perform such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site.

6.07 Bidder shall conduct the required Site visit during normal working hours and shall not disturb any ongoing operations at the Site.

6.08 Reference is made to Supplementary Conditions for identification of the general nature of other work to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work for which a Bid is to be submitted. On request, Owner will provide to Bidder, for examination, access to or copies of the contract documents for such other work.

6.09 It is the responsibility of Bidder, before submitting a Bid to:

- A. examine and carefully study the Bidding Documents, the other related data identified in the Bidding Documents;
- B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. become familiar with and satisfy Bidder as to the Laws and Regulations that may affect cost, progress and performance of the Work;
- D. carefully study all:
 - 1. reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structure at the Site (except Underground Facilities), if any, that have been identified in the Supplementary Conditions in Paragraph SC-5.03 as containing reliable "technical data", and
 - 2. reports and drawings of Hazardous Environmental Conditions identified at the Site, if any, that have been identified in the Supplementary Conditions in Paragraph SC-5.06 as containing reliable "technical data";
- E. consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in Bidding Documents with respect to the effect of such information, observation, and documents on
 - 1. the cost, progress and performance of the Work;
 - 2. the means, methods, techniques, sequences and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences and procedures of construction expressly required by the Bidding Documents; and
 - 3. Bidder's safety precautions and programs;
- F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for the performance of the Work at the price(s) bid and within the times required and in accordance with the other terms and conditions of the Bidding Documents;
- G. become aware of the general nature of work (if any) to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;

- H. promptly give Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
 - I. determine that the Bidding documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 6.10 The submission of a Bid will constitute an incontrovertible representation by Bidder the Bidder has complied with every requirement of this Article 6, that without exception the Bid is premised upon performing the Work required by the Bidding documents and applying any specific means, methods, techniques, sequences, or procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing the Work.

ARTICLE 7 – PRE-BID CONFERENCE

- 7.01 A mandatory Pre-Bid conference will be held at **1:00 pm** local time on **August 7**, **2018** at the **City of Meridian Public Works, 311 27th Avenue, Meridian, MS 39301**. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are strongly encouraged to attend and participate at the conference. Engineer will transmit to all prospective Bidders of record such Addenda, as Engineer considers necessary in response to questions raised at the Pre-Bid conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 8 – SITE AND OTHER AREAS

- 8.01 The site is defined in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment, to be incorporated into the Work are to be obtained and paid for by Contractor.

ARTICLE 9 – INTERPRETATIONS AND ADDENDA

- 9.01 All questions about the meaning or intent of the bidding Documents shall be submitted to Engineer in writing. To receive consideration, questions must be received by Engineer at least ten (10) days prior to the date for opening of Bids. If interpretations or clarifications are considered necessary, the Engineer's response to such questions will be issued by Addenda, mailed or delivered to all parties recorded by Engineer as having received the Bidding documents for receipt not later than three (3) days prior to the date for the opening of Bids. Electronic transmission of Addenda by email will be an acceptable method for delivery. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

- 9.02 Addenda may also be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer. Such Addenda, if any, will be issued in the manner and within the time period stated in Paragraph 9.01 of these Instructions to Bidders.

ARTICLE 10 – BID SECURITY

- 10.01 A Bid shall be accompanied by Bid Security made payable to Owner in the amount of 5 percent of Bidder's maximum Bid price and in the form of certified or bank check or Bid Bond.
- 10.02 Bid Bond shall be on the form bound in the Project Manual. Bid Bond shall be issued by a surety complying with the requirements of Paragraph 6.01.B and 6.01.C of the General Conditions.
- 10.03 The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Contract Document, furnished the required contract security, and completed with the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to sign and deliver the Contract Documents and furnish the required contract security within ten (10) days after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited to the Owner as liquidated damages for such failure. Such forfeiture shall be Owner's sole exclusive remedy.
- 10.04 The Bid security of the three lowest Bidders may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the sixty-first day after the Bid opening whereupon the Bid security furnished by such Bidders will be returned. The Bid security of Bidders whom Owner believes do not have a reasonable chance of receiving an award will be returned within fourteen days of the Bid opening.

ARTICLE 11 – CONTRACT TIMES

- 11.01 The number of days within which the Work is to be Substantially Completed and also completed and ready for final payment (The Contract Times) are set forth in the agreement.

ARTICLE 12 – LIQUIDATED AND SPECIAL DAMAGES

- 12.01 Provisions for liquidated and special damages, if any, are set forth in the Agreement.

ARTICLE 13 – SUBSTITUTE AND "OR EQUAL" ITEMS

- 13.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if accepted by Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submittal

of any such application by Contractor and consideration by Engineer is set forth in the General Conditions which may be supplemented in the General Requirements.

ARTICLE 14 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 14.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening submit to Owner a list of all such Subcontractors, Suppliers, other individuals, and entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualifications for each such Subcontractor, Supplier, individual, and entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price.
- 14.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other individuals or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid Security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.
- 14.04 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has a reasonable objection.

ARTICLE 15 – PREPARATION OF BID

- 15.01 A Bid shall be made on the Bid Form bound in the Project Manual. The Bid Form shall not be altered in any way.
- 15.02 All blanks in the Bid Form shall be completed by typewriter or hand-printing in black ink. All bid items requested in the Bid Form, including alternate bid prices and unit prices for separate items of the Work, must be bid. If a gross sum of bid items is requested in the Bid Form, the gross sum shall be provided by the bidder.
- 15.03 A Bid shall be executed as stated below.
- A. A Bid by an individual shall indicate the Bidder's name and official address.
 - B. A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title shall appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be indicated.

- C. A Bid by joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be indicated.
 - D. A Bid by a corporation shall be executed in the corporate name by an officer of the corporation and shall be accompanied by a certified copy of a resolution of the board of directors authorizing the person signing the Bid to do so on behalf of the corporation. The corporate seal shall be affixed and attested by the secretary or an assistant secretary of the corporation. The state of incorporation and the office corporate address shall be indicated.
 - E. A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be indicated below the signature.
 - F. All names shall be printed in ink below the signature.
 - G. If applicable, the Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located.
 - H. Contractor's license or registration number, if any, shall be entered in the space provided on the Bid Form.
- 15.04 The Bid shall contain an acknowledgement of the receipt of all Addenda, the numbers of which shall be filled in at the space provided in the Bid Form.
- 15.05 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be indicated.
- 15.06 In addition to the Bid Form, the following listed documents, which are bound in the Project Manual shall be submitted with the Bid. Each document shall be executed in the manner described in paragraph 15.03 unless another manner is indicated.
- A. Bid Security Form.
 - B. Bidder Qualification Statement.
 - C. Non-collusive Bidding Certification (if required by statute).

ARTICLE 16 – BASIS OF BIDS; COMPARISON OF BIDS

16.01 Unit Prices

- A. For each unit price item on the Bid Form, Bidder shall enter the unit price Bid, and shall enter the computation of the respective quantity times the Bidder's unit price for that item. Bidder shall compute and enter in the space provided on the Bid Form, the total of the products of quantity and unit price Bid for each unit price item.
- B. For determination of the apparent low Bidder, Bids will be compared on the basis of the total of the products of the estimated quantity of each item and unit price Bid for each item.

- 16.02 Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- 16.03 For each allowance Bidder shall include, elsewhere in its Bid, all costs set forth in Paragraph 11.02 of the General Conditions to complete the Work associated with the material, equipment or other designated items to be furnished under cash allowance(s).

ARTICLE 17 – SUBMITTAL OF BID

- 17.01 A Bid shall be received no later than the date and time prescribed and at the place indicated in the Advertisement for Bids.
- 17.02 Bids shall be submitted on the bid form provided, sealed in an opaque envelope with the following plainly marked on the outside of the envelope:
1. Company Name and Address
 2. Bid Name and Number
 3. Bidder License Number
 4. Opening Date
 5. **“Bid on WATER FILTRATION REPAIRS – BID #18-13 – AUGUST 21, 2018”**

Bid shall be accompanied by Bid security and other required documents.

- 17.03 All Bids must be signed by an authorized officer or agent of the company submitting bid. **All signatures shall be in blue ink. DO NOT fax bid submittal.**
- 17.04 Any bidder who finds a discrepancy in or omission from the specifications, or is in doubt as to their meaning, or feels that the specifications are discriminatory, shall notify the City Purchasing Agent in writing not later than five (5) days prior to the scheduled opening of bid. Exceptions taken do not obligate the City to change the specifications.
- 17.05 The Mississippi State Board of Contractors is responsible for issuing Certificates of Responsibility to Contractors. To be awarded a Contract for public work, Sections 31-3-15 and 31-3-21 of the **Mississippi Code 1972, Annotated** requires a Contractor to have a current Certificate of Responsibility at bid time and during the entire length of the job. The Certificate of Responsibility number issued becomes a significant item in all public bidding.
1. Bid Under \$50,000: If a Contractor submits a bid not exceeding \$50,000, no Certificate of Responsibility number is required; however, a notation stating the bid does not exceed \$50,000 must appear on the face of the envelope, or a Certificate of Responsibility number.
 2. Bid over \$50,000: Each Contractor submitting a bid in excess of \$50,000 must show its Certificate of Responsibility number on the bid and on the face of the envelope containing the bid.

- 17.06 If the Bid is sent by mail or other delivery method, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED". A mailed Bid shall be addressed in the Advertisement for Bids.
- 17.07 The submission of a bid shall be considered an agreement to all the terms, conditions, and specifications provided herein and in the various bid documents, unless specifically noted otherwise in the bid.

All items quoted must comply with the specifications. If you are taking exception, indicate those exceptions on company letterhead and attach with this invitation to bid.

Exceptions taken do not obligate the City to change the specifications

ARTICLE 18 – MODIFICATION OR WITHDRAWAL OF BID

18.01 Withdrawal Prior to Bid Opening:

- A. A Bid may be withdrawn by an appropriate document duly executed, in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time fixed for the opening of Bids. Upon receipt of such written notice, the unopened Bid will be returned to the Bidder.

18.02 Modification Prior to Bid Opening:

- A. If a Bidder wishes to modify its Bid, Bidder must withdraw its initial Bid in the manner specified in Paragraph 18.01.A of these Instructions to Bidders and submit a new Bid.

ARTICLE 19 – OPENING OF BIDS

- 19.01 Bids will be opened at the time and place where Bids are to be submitted and, unless obviously non-responsive, read aloud publicly. It is the bidder's responsibility to assure that the bid is delivered at the proper time and place of the bid opening. An abstract of the Bids will be made available to Bidders after the opening.
- 19.02 No responsibility will attach the Purchasing Division for the premature opening of a bid not properly addressed and identified. Bidders or their authorized representatives are invited to be present at the opening of the bids.
- 19.02 Bids received by mail or otherwise after the date and time specified for the opening of Bids will not be accepted and will be returned to the Bidder unopened.

ARTICLE 20 – DISQUALIFICATION OF BIDDERS

- 20.01 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that bidder has an interest.

ARTICLE 21 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- _21.01 All Bids shall remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of that period.

ARTICLE 22 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 22.01 Owner reserves the right to reject any or all Bids, including without limitation the right to reject any or all nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be not responsible. Owner also reserves the right to waive any informality not involving price, time or changes in the Work.
- 22.02 Owner reserves the right to reject any Bid not accompanied by specified documentation and Bid security.
- 22.03 Owner reserves the right to reject any Bid that, in its sole discretion, is considered to be unbalanced or unreasonable as to the amount bid for any lump sum or unit price item.
- 22.04 In evaluating Bidders, Owner will consider the qualifications of Bidders, whether or not their Bids comply with prescribed requirement, the alternatives, if any, the lump sum and unit prices, and other data as may be requested in the Bid Form or prior to the Notice of Award.
- 22.05 Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.
- 22.06 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of the Bidders to perform the Work in accordance with the Contract documents. Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.
- 22.07 A Contract may be awarded to the lowest responsive responsible bidder as recommended by the City Purchasing Agent. In determining the lowest and best bid the Owner may consider factors other than the dollar amount of the bid.
- 22.08 Factors that may be used to assist in determining the lowest and best bid include information relative to the bidder's: past performance, quality of the bid, past work, skill, facilities for carrying out the contract, honesty and integrity, parts, service, warranty and any and all other relevant and reasonable factors.
- 22.09 The Owner reserves the right to reject any and/or all bids; waive technicalities, informalities or irregularities in the bids received; solicit new bids; or to choose that bid which is deemed to be in the best interest of the Owner.
- 22.10 References, from whom comparable work has been performed, shall be used to assist in evaluating each bid.

- 22.07 If a Contract is to be awarded, Owner will award the Contract to the lowest responsive and responsible Bidder who has neither been disqualified nor rejected pursuant to Article 20 of the Instructions to Bidders or this Article 22.
- 22.08 Any protest concerning the award of a contract shall be decided by the Purchasing Agent. Protests shall be made in writing to the Office of Purchasing and shall be filed within 48 hours of issuance of Award Notification. A protest is considered filed when received by the Office of Purchasing. The written protest shall include the name and address of the protestor, identification of the procurement, a statement of the specific reasons for the protest and supporting exhibits. The Office of Purchasing will respond to the written protest within seven (7) days. The Purchasing Agent's decision relative to the protest may be appealed to the City Council

ARTICLE 23 – CONTRACT SECURITIES

- 23.01 Performance Bond shall be in the form of Engineers Joint Contract Documents Committee (EJCDC) C-610, "Construction Performance Bond". Payment Bond shall be in the form of EJCDC C-615, "Construction Payment Bond". The amounts of and other requirements for Performance and Payment Bonds are stated in Paragraph 6.01 of the General Conditions and in the Supplementary Conditions. The requirements for delivery of Bonds are stated in Paragraph 2.01 of the General Conditions. Additional requirements may be stated in the Supplementary Conditions.
- 23.02 Successful Bidder shall within five (5) days from the date of the Notice of Award deliver to Owner, for Owner's review and approval, the Performance Bond and the Payment Bond.

ARTICLE 24 – CONTRACTOR'S INSURANCE

- 24.01 The requirements for Contractor's insurance are stated in Article 6 of the General Conditions and in the Supplementary Conditions. The requirements for delivery of certificates of insurance and other evidence of insurance are stated in Paragraph 2.01.B of the General Conditions.
- 24.02 Successful Bidder shall within five (5) days from the date of the Notice of Award deliver to Owner, for review and approval, the required policies of insurance. Upon approval, the policies will be returned to the Bidder and Bidder shall submit certificates of insurance and other evidence of insurance to the Owner as stated in the General Conditions.

ARTICLE 25 – SIGNING OF AGREEMENT

- 25.01 After the City Council approves the bid, the City will send a "Notice of Award" to the Successful Contractor along with two unsigned Contracts. Within ten (10) days thereafter, the Successful Contractor shall **sign** and **deliver** both sets of Contracts to Purchasing.

ARTICLE 26 – NOTICE TO PROCEED

- 26.01 Issuance of the Notice to Proceed shall be as stated in Article 2 of the General Conditions.

ARTICLE 27 – PARTNERING (Not Used)

ARTICLE 28 – SALES AND USE TAXES

28.01 The contractor shall be subject to all applicable Federal, State and Local Taxes. The contractor may contact either or both the Mississippi State Tax Commission in Meridian, MS at 601-483-2273 or the Mississippi State Tax Commission in Clinton, MS at 601-923-7015 for assistance in determining applicable taxes.

ARTICLE 29 – TERMINATIONS

29.01 Termination of Convenience: The City may terminate a contract, in whole or in part whenever the City determines that such termination is in the best interest of the City, without showing cause, upon giving written notice to the Successful Contractor.

The City shall pay all reasonable costs incurred by the Contractor up to the date of termination. However, in no event shall the Contractor be paid any amount that exceeds the price proposed for the work performed. The Contractor will not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.

29.02 Termination for Default: When the Contractor has not performed or has unsatisfactorily performed the contract, the City may terminate the contract for default.

Upon termination for default, payment may be withheld at the discretion of the City. Failure on the part of a Contractor to fulfill the contractual obligations shall be considered just cause for termination of the contract. The Contractor will be paid for work satisfactorily performed prior to termination less any excess costs incurred by the City in reprocurring and completing of work.

ARTICLE 30 – ADDITIONAL REQUIREMENTS

30.01 DWSRF Special Requirements:

- A. If all or any portion of the Project to which this contract applies is funded in whole or in part by the proceeds of a loan or loans from the Mississippi State Department of Health (MSDH) through the State Drinking Water Revolving Loan Fund (DWSRF), additional requirements for the Contractor exist (Requirements). These Requirements relate to Project objectives for utilization of Minority Business Enterprises/Women Business Enterprises (MBE/WBE). The Contractor must document efforts made to utilize MBE/WBE firms and submit to MSDH, with a copy to the City within ten (10) days after contract execution, evidence of the positive steps in accordance with the requirements to utilize small minority and women businesses in the procurement of subcontracts.
- B. Other Requirements relate to Federal Labor Standards, Title VI of the Civil Rights Act of 1964, Equal Employment Opportunity, Affirmative Action Equal Opportunity Clause, Goals and Timetables, compliance with Occupational Safety and Health Act of 1970 and Section

107 of Contract Work Hours and Safety Standards Act (PL91-54) which are adopted herein by reference to the extent applicable.

- C. For DWSRF funded projects, special requirements are also set forth in Supplemental General Conditions. If not attached to the contract documents, Contractors should contact the City representative and/or the City's consulting engineer for a copy of all special requirements and conditions.

30.02 **American Iron and Steel Requirements:**

- A. This contract is funded in whole or in part by funds from the Consolidated Appropriations Act of 2014 (H.R. 3547). Section 436 states:

(a)(1) None of the funds made available by a State drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the "Administrator") finds that –

(1) Applying subsection (a) would be inconsistent with the public interest;

(2) Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality; or

(3) Inclusion of iron and steel products in the United States will increase the cost of the overall project by more than 25 percent.

30.03 **Minority Business and Women's Business Utilization Requirements:**

- A. Positive efforts as required in the Drinking Water Systems Improvements Revolving Loan Fund Program Regulations shall be made by BIDDERS to utilize minority owned and women-owned businesses as sources of construction, materials, supplies and services. Such efforts must allow these sources the maximum feasible opportunity to compete for subagreements and contracts. Documentation of efforts made to utilize minority and women-owned firms must be maintained by all BIDDERS.
- B. The OWNER's goal for minority-owned business participation as a percentage of construction cost is 3.1%. The OWNER's goal for women-owned business participation is 1.1%.

- C. The lowest qualified **BIDDER** must submit to the **OWNER** within 10 days after **BID** opening, proof of compliance with the Contract Provisions including required documentation regarding the use of minority and women's businesses. **(Refer to "Section 4, Utilization of Disadvantaged Business Enterprises" of the "Supplemental General Conditions for Construction of the Drinking Water Systems Improvements Revolving Loan Fund Projects")**.
- D. The Supplemental General Conditions provide a list of qualified minority and women's business enterprises for assisting contractors in their MBE/WBE solicitation efforts.

BID FORM

North Water Treatment Plant
Filter Media Removal / Replacement & Basin Repair
DWSIRLF Project No. DWI-L380005-01

TABLE OF ARTICLES

1. Bid Recipient
2. Bidder's Acknowledgements
3. Bidder's Representatives
4. Bidder's Certifications
5. Basis of Bid
6. Time of Completion
7. Attachments to this Bid
8. Defined Terms

ARTICLE 1 – BID RECIPIENT

- 1.01 This Bid is submitted to:

The City of Meridian
601 23rd Avenue
Meridian, MS 39301

- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Project Manual to perform all Work as specified or indicated in the Bidding Documents for the price(s) and within the times indicated in this Bid and in accordance with the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

- 2.01 Bidder accepts all of the terms and conditions of the Advertisement for Bids and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such period of time that the Bidder may agree to in writing upon request of Owner. Bidder will sign the Agreement and will furnish the required contract security, and other required documents within the time periods set forth in the Bidding Documents.

ARTICLE 3 – BIDDER'S REPRESENTATIONS

- 3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, if any, and the following Addenda, receipt of all of which is hereby acknowledged.

Addendum No.	Date Received	Addendum No.	Date Received
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

- B. Bidder has visited the Site(s) and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all:
1. Reports of explorations and test of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities), if any, that have been identified in the Supplementary Conditions in SC-5.03 as containing reliable "technical data", and
 2. Reports and drawings of Hazardous Environmental Conditions identified at the Site, if any, that have been identified in SC-5.06 as containing reliable "technical data".
- E. Bidder has considered the information known to Bidder, information commonly known to contractors doing business in the locality of the Site, information and observations obtained from visits to the Site, the Bidding Documents, and the Site-related reports and drawings identified in the Bidding Documents with respect to the effect of such information, observations, and documents on
1. the cost, progress and performance of the Work
 2. the means, methods, techniques, sequences and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder; and
 3. Bidder's safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 3.01.E, Bidder does not consider that further examinations, investigations, explorations, tests, studied, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work (if any) to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicated and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

ARTICLE 4 – BIDDER’S CERTIFICATIONS

4.01 Bidder certifies that:

- A. This Bid is genuine and is not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation.
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding.

- D. Bidder has not engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract. For the purposes of Paragraph 4.01.D;
1. Corrupt practice means the offering, giving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.
 2. Fraudulent practice means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
 3. Collusive practice means to participate in a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, with a purpose to establish bid prices at artificial, non-competitive levels.
 4. Coercive practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

- 5.01 Bidder will complete the Work in Accordance with the Contract Documents for the following prices(s): **See Bid Form Attachment A - Bid Schedule**

Unit prices have been computed in accordance with Paragraph 13.03.A of the General Conditions.

Bidder acknowledges that estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Work items will be based on actual quantities of Unit Price Work, determined as provided in the Contract Documents.

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and completed and ready for final payment in accordance with Paragraph 15.03.B of the General Conditions on or before the dates or within the number of calendar days stated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated and special damages in the event of failure to complete the Work within the Contract Times.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are attached to and made a conditions of this Bid:

- A. Required Bid security in the form of a Bid Bond.
- B. Required Bidder Qualifications Statement with supporting data.
- C. A tabulation of Subcontractors, Suppliers, and other individuals and entities required to be identified in this Bid.
- D. Affidavit of non-collusion.

ARTICLE 8 – DEFINED TERMS

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

ARTICLE 9 – BID SUBMITTAL

9.01 This Bid submitted on _____, 2018 by:

If Bidder is:

AN INDIVIDUAL

Name (typed or printed): _____

By _____
(Individuals Signature)

Doing business as _____

License or Registration Number: _____

Certificate of Responsibility Number: _____

Business Address: _____

Phone No.: _____ Fax No.: _____

E-mail Address: _____

A PARTNERSHIP

Partnership Name: _____

By: _____

(Signature of General Partner – Attached evidence of authority to sign)

Name (typed or printed): _____

License or Registration Number: _____

Certificate of Responsibility Number: _____

Business Address: _____

Phone No.: _____ Fax No.: _____

E-mail Address: _____

A CORPORATION

Corporation Name: _____

(State of Incorporation)

By: _____

(Signature – Attach evidence of authority to sign)

Name and Title (typed or printed): _____

Attest: _____

(Secretary)

(Corporate Seal)

License or Registration Number: _____

Certificate of Responsibility Number: _____

Business Address: _____

Phone No.: _____ Fax No.: _____

E-mail Address: _____

LIMITED LIABILITY COMPANY

By: _____

(Firm Name)

(State of Formation)

By: _____

(Signature of Member/Authorized to Sign)

(Printed or Typed Name and Title of Member Authorized to Sign –
Attach evidence of authority to sign.)

License or Registration Number: _____

Certificate of Responsibility Number: _____

Business Address: _____

Phone No.: _____ Fax No.: _____

E-mail Address: _____

A JOINT VENTURE

Name of Joint Venture: _____

First Joint Venturer Name: _____

By: _____
(Signature of First Joint Venturer – Attach evidence of authority to sign)

Name (typed or printed): _____

(Title)

Second Joint Venturer Name: _____

By: _____
(Signature of Second Joint Venturer – Attach evidence of authority to sign)

Name (typed or printed): _____

(Title)

(Each joint venture must sign. The manner of signing for each individual, partnership, corporation or limited liability company that is party to the joint venture shall be in the manner indicated above.)

Business Address: _____

Phone and fax numbers and address of receipt of communications to joint venture:

Joint Venture Address: _____

Phone No.: _____ Fax No.: _____

E-mail Address: _____

- END OF BID FORM -

Bid Form Attachment A



CITY OF MERIDIAN

***City of Meridian
North Water Treatment Plant
Filter Media Removal/Replacement & Basin Repair***

Bid Schedule

July 17, 2018

PREPARED BY: BURK-KLEINPETER, INC.

ITEM NO.	APPROX. QTY.	UNIT	ITEM DESCRIPTION	UNIT PRICE	AMOUNT
BASE BID ITEMS					
General, Site Preparation					
1	1	LS	Mobilization and Demobilization		
2	1	LS	Removal and Disposal of Filter Media (8 Basins, Less than Approximately 150 CY)		
Basin Repairs and Media Replacement					
3	1,824	SF	Replace Media Retainers		
4	10	CF	Grout		
5	2,432	CYIP	Filter Sand		
6	3,040	CYIP	Filter Anthracite		
Erosion Control and Site Maintenance					
7	1	LS	Erosion Control Management and Maintenance		
TOTAL BASE BID					
ALTERNATE BID ITEMS					
Alternate No. 1					
100	10,880	SF	Filter Basin Coating		
TOTAL ALTERNATE NO. 1 BID					
TOTAL BASE BID + ALTERNATE NO. 1 BID					

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (*Name and Address*):

SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name— Include Location*):

BOND

Bond Number:

Date:

Penal sum _____ \$ _____
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

Bidder's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____ By: _____
Signature Signature (Attach Power of Attorney)

Print Name Print Name

Title Title

Attest: _____ Attest: _____
Signature Signature

Title Title

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

BIDDER QUALIFICATION STATEMENT

SUBMITTED BY:

Name of Organization: _____
(Print or Type Name of Bidder)

Name of Individual: _____

Title: _____

Business Address: _____

Telephone No.: _____

Fax No.: _____

E-mail Address: _____

Bidder's Website: _____

If address and phone number given above is for a branch office, provide address and phone number of principal home office:

Principal Home Office Address: _____

Principal Home Office Telephone No.: _____

Gentlemen:

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter.

(Note: Attach additional sheets as required.)

1.0 Bidder's General Business Information

1.1 Check if:

☐ Corporation ☐ Partnership ☐ Joint Venture ☐ Other

☐ Limited Liability Company ☐ Sole Partnership

If Corporation:

A. Date and State of Incorporation

B. List of Executive Officers:

Name	Title	Address

If Partnership:

A. Date and State of Organization:

B. Current General Partners (name and address for each):

C. Type of Partnership

☐ General ☐ Publicly Traded ☐ Limited

☐ Limited Liability ☐ Other (describe): _____

If Joint Venture:

A. Date and State of Organization:

B. Name, Address, Form of Organization, and State of Organization of Each Joint Venture Partner: (Indicate with an asterisk (*) the managing or controlling Joint Venturer if applicable):

If Limited Liability Company:

A. Date and State of Organization:

B. Members:

Name	Address
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If Sole Partnership:

A. Date and State of Organization:

B. Name and Address of Owner or Owners:

If Other Type of Organization:

A. Type of Organization: _____

B. Date and State of Organization:

C. Name and Address of Each Owner or Principal:

1.2 Certifications: In addition to the above categories of business entities, indicate whether Bidder's organization is a:

☐ Disadvantaged Business Enterprise, certified by: _____

☐ Minority Business Enterprise, certified by: _____

☐ Women's Business Enterprise, certified by: _____

☐ Historically Underutilized Business Zone Small Business Concern,
certified by: _____

2.0 How many years has your organization been in business as a general contractor?

3.0 If your organizational structure has changed within the past five years, provide data as listed above in Item 1.0 for your previous organization.

4.0 Do you plan to subcontract any part of this project? _ If so, give details.

5.0 Has any construction contract to which you have been a party been terminated by the Owner; have you every terminated work on a project prior to its completion for any reason; has any surety which issued a performance bond on your behalf ever completed the work in its own name or financed such completion on your behalf; has any surety expended any monies in connection with a contract for which they furnished a bond on your behalf? If the answer to any portion of this question is "Yes", furnish details of all such occurrences including name of owner, architect or engineer, and surety, and name and date of project.

6.0 Has any officer or partner of your organization ever been an officer or partner of another organization that had any construction contract terminated by the Owner; terminated work on a project prior to its completion for any reason; had any surety which issued a performance bond complete the work in its own name or financed such completion; or had any surety expend monies in connection with a contract for which they furnished a bond?

If the answer to any portion of this question is "Yes", furnish details of all such occurrences including name of owner, architect or engineer, and surety, and name and date of project.

- 7.0 In the last five years, has your organization, or any predecessor organization, failed to substantially complete a project in a timely manner? If the answer to this question is "Yes", furnish details of all such occurrences including name of owner, architect or engineer, and surety, and name and date of project.
- 8.0 On Schedule A, attached, list name, location and description of project, owner, architect or engineer, contract price, percent complete and scheduled completions of the major construction projects your organization has in progress on this date. Provide name, address and telephone number of a reference for each project listed.
- 9.0 On Schedule B, attached, list name, location and description of project, owner, architect or engineer, contract price, date of completion and percent of work with you own forces of major project of the same general nature as this project which your organization has completed in the past five years. Provide name, address and telephone number of a reference for each project listed.
- 10.0 On Schedule C, attached, list name and construction experience of the principal individuals of your organization directly involved in construction operations.

11.0 Licenses and Registrations:

- 11.1 Indicate the jurisdiction in which your firm is legally qualified to practice. Indicated license or registration number for each jurisdiction, if applicable and type of license or registration. Attach separate sheet as required.

Jurisdiction	License/Registration No.	Type

- 11.2 In the past five years, has Bidder had any business or professional license suspended or revoked?

☐ No

☐ Yes

If yes, describe on a separate attachment the circumstances, including the jurisdiction and basis for suspension or revocation.

12.0 Provide the following information for your surety:

12.1 Surety Company: _____

12.2 Agent: _____

A. Agent Address: _____

B. Agent Telephone No.: _____

12.3 What is your approximate total bonding capacity?

- ☐ \$500,000 to \$2,000,000
- ☐ \$2,000,000 to \$5,000,000
- ☐ \$5,000,000 to \$10,000,000
- ☐ \$10,000,000 or more

13.0 Statement of Potential Conflict of Interest: List below business associations, financial interests, or other circumstances that may create a conflict of interest with other entities that are involved with this Project. Attach additional documentation as required.

Company Name	Contact Name	Telephone Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

14.0 Dated at _____, this _____ day of _____, 2016.

Bidder: _____
(Print or Type Name of Bidder)

By: _____

Title: _____

Attachments A, B and C

(Seal, if Corporation)
_____(Acknowledgement)_____

_____ being duly sworn, deposes and says

that he/she is _____ of _____;
(Name of Bidder)

That he/she is duly authorized to make the foregoing affidavit and that he/she makes it on behalf of:

() himself/herself; () said partnership; () said corporation;
() said joint venture; () said limited liability company

Sworn to before me this _____, day of _____, 2016, in the County of _____,
_____, State of _____.

(Notary Public)

My commission expires _____

(Seal)

- END OF BIDDER QUALIFICATIONS STATEMENT -

SCHEDULE A
PROJECTS IN PROGRESS

<u>Name, Location and Description of Project</u>	<u>Owner</u>	<u>Architect or Engineer</u>	<u>Contract Price</u>	<u>Percent Complete</u>	<u>Scheduled Completion Date</u>	<u>Reference/Contact Include Address and Phone No.</u>
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SCHEDULE B
PROJECTS COMPLETED

<u>Name, Location and Description of Project</u>	<u>Owner</u>	<u>Architect or Engineer</u>	<u>Date Completed</u>	<u>Contract Price</u>	<u>Percent with Own Forces</u>	<u>Reference/Contact Include Address and Phone No.</u>
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**SCHEDULE C
PERSONNEL**

Name	Position	Date Started with This Organization	Date Started in Construction	Prior Positions and Experience in Construction
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CITY OF MERIDIAN
MERIDIAN, MISSISSIPPI
NORTH WATER TREATMENT PLANT
FILTER MEDIA REMOVAL / REPLACEMENT & BASIN REPAIR
DWSIRLF Project No. DWI-L380005-01

AGREEMENT

THIS AGREEMENT is by and between the City of Meridian, 601 23rd Avenue, Meridian, Mississippi 39301 (hereinafter called Owner) and _____ (hereinafter called Contractor).

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

ARTICLE 1 – WORK

- 1.01 Contractor shall at its own cost and expense furnish all labor, services, tools, materials, equipment, and incidentals necessary to complete all Work as specified or indicated in the Contract Documents to construct all Work as specified or indicated in the Contract Documents to construct the North Water Treatment Plant Filter Media Removal / Replacement & Basin Repair Project. The Work is generally described in Section 01010 Project Description and Scope of Work.

ARTICLE 2 – PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

North Water Treatment Plant Filter Media Removal / Replacement & Basin Repair Project

- The Work to be performed under this Contract includes but is not limited to the following: at the North Water Treatment Plant, in all eight (8) cells of the filter basin, remove and replace filter media, repair grout around the existing filter block, remove and replace all filter block media retainer caps, and install a protective coating on the filter basin walls.

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Burk-Kleinpeter, Inc. (hereinafter called Engineer), which is to act as Owner's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 Time of the Essence

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

4.02 Days to Achieve Substantial Completion and Final Payment

- A. The Work shall be substantially completed within 60 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 90 days from the date when the Contract Times commence to run.

4.03 Liquidated Damages

- A. Owner and Contractor recognize that time is of the essence as stated in Paragraph 4.01.A above and that Owner will suffer financial loss, apart from the costs described in Paragraph 4.04.A, if the Work is not substantially completed within the time specified in Paragraph 4.02.A for Substantial Completion, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. Owner and contractor also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner \$500.00 for each day that expires after the time specified in Paragraph 4.02.A above for Substantial Completion (adjusted for changes thereof, if any, made in accordance with Article 11 of the General Conditions) until the Work is substantially complete.

4.04 Special Damages

- A. In addition to the amount provided for liquidated damages, Contractor shall pay Owner the actual costs reasonably incurred by Owner for engineering and inspection forces employed by Owner relative to the Work for each day that expires after the days specified in Paragraph 4.02.A for Substantial Completion (adjusted for changes thereof, if any, made in accordance with Article 11 of the General Conditions) until the Work is substantially complete.
- B. After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the Contract Time or proper extension thereof, if any, granted by Owner, Contractor shall pay Owner the actual costs reasonably incurred by Owner for engineering and inspection forces employed by Owner relative to the Work for each day that expires after the time specified in Paragraph 4.02.A for Work to be completed and ready for final payment (adjusted for extensions thereof, if any, made in accordance with Article 11 of the General Conditions) until the Work is completed and ready for final payment.

- 4.05 Owner may deduct liquidated damages and special damages as determined by the provisions of this Article 4 from progress payments due Contractor under this Agreement.

ARTICLE 5 – ACCEPTANCE OF MATERIALS OR SERVICES

- 5.01 The material and/or services provided under this contract shall remain the property of the successful contractor until a physical inspection and actual usage of this material and/or services is made and thereafter accepted to the satisfaction of the Owner.
- 5.02 Materials and/or services must comply with all the terms herein. In the event the material and/or service supplied to the Owner is found to be defective or does not conform to the specifications, the Owner reserves the right to cancel the order upon written notice to the contractor. Materials shall be returned to the contractor at his expense.

ARTICLE 6 – CONTRACT PRICE

- 6.01 Owner shall pay Contractor, in current funds, for completion of the Work in accordance with the Contract Documents the prices stated in Contractor's Bid, which Bid is attached hereto and identified as Exhibit 1 of this Agreement. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determination of actual quantities and classifications are to be made by Engineer as provided in Paragraph 13.03 of the General Conditions. Unit prices have been computed as provided in Paragraph 13.03 of the General Conditions.

ARTICLE 7 – PAYMENT PROCEDURES

- 7.01 Submittal and Processing of Payments
- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed as provided in the General Conditions.
- 7.02 Progress Payments: Retainage
- A. Owner shall make monthly progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer. Contractor's Applications for Payment will be due on the 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1. All progress payments will be on the basis of progress of the Work measured by the Schedule of Values provided for in Paragraph 2.03 of the General Conditions (and in the case of Unit Price Work, based on the number of units completed) or, in the event there is no Schedule of Values, as provided in the General Requirements. A progress payment will not be made whenever the value of the Work completed since the last previous payment is less than \$5,000.00.
1. Prior to Substantial Completion

- a. Progress payments will be in the amount of 95 percent of the Work completed (with the balance being retainage), less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with Paragraph 15.01 of the General Conditions. If the Work has been 50 percent completed as determined by the Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner may determine that as long as the character and progress remain satisfactory, there will be no retainage on account of the Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be an amount equal to 100 percent of the value of the Work completed, less the aggregate payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with Paragraph 15.01 of the General Conditions; and
 - b. 95 percent of the cost of materials and equipment not incorporated in the Work by suitably stored (with the balance being retainage).
- 2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts as Engineer shall estimate as the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected as attached to the certificate of Substantial Completion.

7.03 Final Payment:

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provide in said Paragraph 15.06.

ARTICLE 8 – INTEREST

- 8.01 All monies not paid when due hereunder shall bear interest at the rate specified by Mississippi State law.

ARTICLE 9 – CONTRACTOR'S REPRESENTATIVE

- 9.01 As part of the inducement for Owner to enter into this Agreement, Contractor makes the following representations:
 - A. The Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to the Laws and Regulations that may affect cost, progress, and performance of the Work.

- D. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
1. the cost, progress, and performance of the Work;
 2. the means, methods, techniques, sequences and procedures of constructions to be employed by Contractor, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents, and;
 3. Contractor's safety precautions and programs.
- E. Based on the information and observations referred to in Paragraph 8.01.D above, Contractor does not consider that further examinations, investigations, explorations, tests, studies or data are necessary for the performance of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of work to be performed by Owner and other at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
- H. The Contract Documents are generally sufficient to indicated and convey understanding of all terms and conditions for the performance of the Work.

ARTICLE 10 – CONTRACT DOCUMENTS

10.01 The Contract Documents consist of the following:

- A. This Agreement (pages 1 to 8, inclusive).
- B. Performance Bond (pages 1 to 3, inclusive).
- C. Payment Bond (pages 1 to 3, inclusive).
- D. General Conditions (pages 1 to 66, inclusive).
- E. Supplementary Conditions (pages 1 to 8, inclusive).
- F. Specifications, as listed in the Table of Contents of the Project Manual.

G. The Drawings comprising a set entitled "North Water Treatment Plant Filter Media Removal / Replacement & Basin Repair", dated **June**, 2018 and including the following.

1. Title Sheet
2. Sheets numbered 1.1 through 1.2
3. Sheets numbered 2.1 through 2.3
4. Sheets numbered 3.1

H. Addenda consisting of Numbers ____ to ____, inclusive.

I. Exhibits to this Agreement enumerated as follows:

1. Exhibit 1, Contractor's Bid (pages 1 through 9 with Attached Bid Schedule, inclusive).

J. The following, which may be delivered or issued on or after the Effective Date of this Agreement, and are not attached hereto:

1. Notice to Proceed
2. Work Change Directive(s)
3. Change Order(s)

10.02 The documents listed in Paragraph 9.01 above are attached to this Agreement (except as expressly noted otherwise above). Documents not attached are incorporated by reference. There are not Contract Documents other than those listed in the Article 9.

10.03 The Contract Documents may only be amended or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 11 – MISCELLANEOUS

11.01 Terms

A. Terms used in this Agreement will have the meanings indicated in the General Conditions and Supplementary Conditions.

11.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, not assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

11.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

11.04 Severability

- A. Any provision or part of the Contract Documents, held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.05 Waiver

- A. The waiver by the Owner of any breach or violation of any term, covenant, or conditions of this Agreement or of any Law or Regulation shall not be deemed to be a waiver of any other term, covenant, condition, or Law or Regulation, or of any subsequent breach or violation of the same or of any other term, covenant, condition, or Law or Regulation. The subsequent payment of any monies or fees by the Owner which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by Contractor of any term, covenant, or condition of this Agreement or of any applicable Law or Regulation.

11.06 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of the Paragraph 10.06:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means and intentional misrepresentation of facts made to:
 - a. influence the bidding process or the execution of the Contract to the detriment of Owner,
 - b. establish Bid or Contract prices at artificial non-competitive levels, or
 - c. deprive Owner of the benefits of free and open competition.

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm directly or indirectly persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____, 2018 (which is the Effective Date of the Agreement).

Owner: _____	Contractor: _____
By: _____	By: _____
Title: _____	Title: _____
Attest _____	Attest _____
Title: _____	Title: _____
Address for giving notices	Address for giving notices
_____	_____
_____	_____

- END OF AGREEMENT -

PERFORMANCE BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed

by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

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

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

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

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

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

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

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

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all

valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

PAYMENT BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location)*:

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

(seal)

Contractor's Name and Corporate Seal

By: _____

Signature

Print Name

Title

Attest: _____

Signature

Title

(seal)

Surety's Name and Corporate Seal

By: _____

Signature *(attach power of attorney)*

Print Name

Title

Attest: _____

Signature

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in

the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

**STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT**

City of Meridian

**North Water Treatment Plant
Filter Media Removal / Replacement & Basin Repair**

DWSIRLF Project No. DWI-L380005-01

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision

regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.

23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and

submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the

result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.

- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract

Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

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

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. abnormal weather conditions;
 - 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 - 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated

with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.

- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

- A. *Limitation on Use of Site and Other Areas:*
 - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with

such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

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

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
2. is of such a nature as to require a change in the Drawings or Specifications; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Possible Price and Times Adjustments:*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

- d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.

3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
2. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take

corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the

Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 Contractor's Insurance

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
 - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
 - 1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 - 2. claims for damages insured by reasonably available personal injury liability coverage.
 - 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
 - 1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 - 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 - 3. Broad form property damage coverage.
 - 4. Severability of interest.
 - 5. Underground, explosion, and collapse coverage.
 - 6. Personal injury coverage.
 - 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.

8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability*: Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability*: Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance*: Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
1. include at least the specific coverages provided in this Article.
 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.

4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available

under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.

3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
 5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will

provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.

- E. *Additional Insurance*: If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of

recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.

- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

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

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *"Or Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

- 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

- a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.

- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 Patent Fees and Royalties

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

- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09 *Taxes*

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

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

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

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of

Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

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

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 *Shop Drawings, Samples, and Other Submittals*

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

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.
1. *Shop Drawings:*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.
 2. *Samples:*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.

3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by Engineer;
 - 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. use or occupancy of the Work or any part thereof by Owner;
 - 5. any review and approval of a Shop Drawing or Sample submittal;
 - 6. the issuance of a notice of acceptability by Engineer;
 - 7. any inspection, test, or approval by others; or
 - 8. any correction of defective Work by Owner.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for

Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner for whom the Owner is responsible causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable

adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

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

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

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

- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER’S STATUS DURING CONSTRUCTION

10.01 *Owner’s Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer’s efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer’s visits and observations are subject to all the limitations on Engineer’s authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer’s visits or observations of Contractor’s Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer’s consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer’s authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.

- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

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

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.
 - 3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change

involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
 - 1. a mutually acceptable fixed fee; or
 - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.04.C.2.a and

11.04.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;

- d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.
 - 1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 - 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole,

approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

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

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.
 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction,

the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

- G. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.
- E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:* Contractor agrees that:
 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.

- C. *Notice of Defects*: Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 - 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 - 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
 - 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
 - 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for

Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and

- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

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

E. *Reductions in Payment by Owner:*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction

imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor

may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

- A. *Application for Payment:*
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer

(less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with

respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs,

losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the

Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of

them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Headings*

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

SUPPLEMENTARY CONDITIONS TO THE GENERAL CONDITIONS

SCOPE

These Supplementary Conditions amend or supplement the General Conditions of the Construction Contract. All provisions of the General Conditions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to the singular and plural thereof.

The address system used in these Supplementary Conditions conforms to the address system used in the General Conditions, with the prefix "SC" added thereto.

SC-1.01.A.48 Add a new definition immediately following Paragraph 1.01.A.48 that is to read as follows:

SC-1.01.A.49 *Consulting Engineer*: The firm of Burk-Kleinpeter, Inc. and subsidiaries, affiliates, and its duly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.B:

C. The following drawings of physical conditions relating to existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities) are known to Owner:

1. Contract Documents for the Construction of City of Meridian, Mississippi North Water Treatment Plant, prepared by BCM Engineers Inc. and Luke & Kaye, August, 1995.

a. None of the contents of such drawings is Technical Data on whose accuracy Contractor may rely.

D. Contractor may request electronic copies of drawings identified in SC-5.03.C from Engineer.

SC-5.06 Delete Paragraphs 5.06.A and 5.06.B in their entirety and insert the following:

A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

B. Not Used.

SC-6.01

Add the following new paragraph immediately after Paragraph 6.01.F:

G. All projects costing in excess of \$25,000.00 and for the construction, alteration, or repair of any public building or public work shall be required to have the following bonds:

1. **Performance Bond** payable to, in favor of, or for the protection of the City for the work to be done in an amount not less than the amount of the contract, conditioned for the full and faithful performance of the contract.
2. **Payment Bond** payable to the City conditioned for the prompt payment of all persons supplying labor or material used in the prosecution of the work under said contract, for the use of each such person in an amount not less than the amount of the contract.

SC-6.03

Add the following new paragraphs immediately after Paragraph 6.03.J:

K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations

1. Workers' Compensation, and related coverage under Paragraphs 6.03.A.1 and A.2 of the General Conditions:

a. Applicable Federal or State:	Statutory
b. Maritime	Not Required
c. Railroad	Not Required
d. Employer's Liability	
Each Accident.....	\$1,000,000
Disease:	
Each Employee.....	\$1,000,000
Policy Limit.....	\$2,000,000

2. Contractor's Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:

a. Bodily Injury:	
Each Occurrence.....	\$1,000,000
Annual Aggregate.....	\$5,000,000
b. Property Damage:	
Each Occurrence.....	\$1,000,000
Annual Aggregate.....	\$5,000,000
c. Property Damage liability insurance shall provide Explosion, Collapse and Underground coverages.	

3. Automobile Liability under Paragraph 6.03D of the General Conditions:

- a. Bodily Injury:
 - Each Person.....\$1,000,000
 - Each Accident.....\$2,000,000
- b. Property Damage:
 - Each Occurrence.....\$1,000,000
- c. Combined Single Limit.....\$2,000,000

L. The Successful Contractor **shall have on file with the City of Meridian, prior** to the issuance of the “**Notice to Proceed**”, a current “Certificate of Insurance”.

M. The Successful Contractor shall have his Insurance provider furnish an explanation of any endorsements, included on the Certificate of Insurance.

SC-7.02 Add the following new subparagraphs immediately after Paragraph 7.02.B:

- 1. Except where otherwise prohibited by Laws or Regulations, regular working hours at the Site are defined as up to eight hours per day, beginning no earlier than 8:00 a.m. and ending no later than 5:00 p.m.
- 2. Maintenance and cleanup activities may be performed during hours other than regular working hours provided that such activities do not require the startup of operation of construction equipment.
- 3. If it shall become absolutely necessary to perform Work at night or on Saturdays, Sundays, or legal holidays, written notice shall be submitted to Owner and Engineer at least seven (7) days in advance of the need for such Work. Owner will only consider the performance of such Work as can be performed satisfactorily under the conditions. Good lighting and all other necessary facilities for carrying out and observing the Work shall be provided and maintained where such Work is being performed at night.

SC-7.11 Add the following new paragraph immediately after Paragraph 7.11.A:

B. Contractor will be required to review with Engineer the status of record documents in connection with Engineer’s review of an Application for Payment. Failure to maintain record documents current may be just cause for Engineer to recommend withholding of payments for Work performed.

SC-7.14 Add the following new paragraph immediately after Paragraph 7.14.A:

- B. Contractor shall provide a centralized location for the maintenance of the material safety data sheets or other hazardous communication information required to be made available to any employer on the Site. Location of the material safety data sheets or other hazard communication information shall be readily accessible to the employees or employers on the Site.

SC-7.16

Add the following new paragraph immediately after Paragraph 7.16.E:

- F. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval or acceptance of submittal with no more than three submittals. Engineer will record Engineer's time for reviewing subsequent submittals or Shop Drawings, Samples, or other submittals or items requiring approval or acceptance, and Contractor shall reimburse Owner for Engineer's charges for such time.
- G. In the event that Contractor requests a substitution for a previously approved item, Contractor shall reimburse Owner for Engineer's charges for such time unless the need for such substitution is beyond the control of Contractor.

SC-10.03

Add the following new paragraph immediately after Paragraph 10.03.A:

- B. Resident Project Representative (RPR) will be Engineer's employee or agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor keeping Owner advised as necessary. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
- 1. Duties and Responsibilities of RPR:
 - a. Schedules: Review the Progress Schedule, Schedule of Submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
 - b. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.
 - c. Liaison:
 - 1) Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, and assist in providing understanding of the intent of the Contract Documents; and assist Engineer in serving as Owner's

- liaison with Contractor when Contractor's operations affect Owner's operations on the Site.
- 2) Assist in obtaining from Owner additional details or information when required for proper execution of the Work.
- d. Shop Drawings and Samples:
- 1) Record the date of Shop Drawings and Samples that are received at the Site.
 - 2) Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - 3) Advise Engineer and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by Engineer.
- e. Review of Work, Rejection of Defective Work, Inspections and Tests:
- 1) Conduct observations of the Work in progress on the Site to assist Engineer in determining if the Work is, in general, proceeding in accordance with the Contract Documents.
 - 2) Report to Engineer when RPR believes that any Work is unsatisfactory, faulty, or defective or does not conform generally to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test, or approval required to be made; and advise Engineer of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
 - 3) Verify that tests, equipment, and systems startups, and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof; and observe, record, and report to Engineer appropriate details relative to the test procedures and startups.
 - 4) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to Engineer.
- f. Interpretations of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
- g. Modifications: Consider and evaluate Contractor's suggestions for modifications to Drawings or Specifications and report with RPR's recommendations to Engineer. Transmit to Contractor decisions issued by Engineer.
- h. Records:
- 1) Maintain at the Site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, and

- reproductions of original Contract Documents including all Addenda, Change Orders, Work Change Directives, Field Orders, additional Drawings issued subsequent to the execution of the Agreement, Engineer's clarifications and interpretations of the Contract Documents, progress reports, and other Project-related documents.
- 2) Keep a record recording Contractor's hours on Site, weather conditions, data relative to questions on Change Orders or changed conditions, list of visitors to the Site, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
 - 3) Record names, addresses, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- i. Reports:
- 1) Furnish Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and Schedule of Submittals.
 - 2) Consult with Engineer in advance of schedule major tests, inspections, or start of important phases of the Work.
 - 3) Prepare draft of proposed Change Order, obtaining backup documents from Contractor, and provide recommendations to Engineer regarding Change Orders and Field Orders.
 - 4) Report immediately to Engineer and Owner upon the occurrence of any Site accident, and Hazardous Environmental Condition, emergencies or acts of God endangering the Work, or property damage by fire or other cause.
- j. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission, and submit recommendations to Engineer, noting particularly the relationship of the payment request to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- k. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals, and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Engineer for review and forwarding to Owner prior to final payment for the Work.
- l. Completion:

- 1) Before Engineer issues a certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
 - 2) Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public authorities having jurisdiction over the Work.
 - 3) Conduct final inspection in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed or corrected.
 - 4) Observe that all items on final list have been completed or corrected and make recommendations to Engineer concerning acceptance of the Work.
2. The RPR shall not:
- a. Authorize any deviation from the Contract Documents or substitution of materials or equipment, including "or equal" items.
 - b. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
 - c. Undertake any of the responsibilities of Contractor, Subcontractors, or Contractor's superintendents.
 - d. Advise on, issue directives relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction, unless such advice or directions are specifically required by the Contract Documents.
 - e. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the Work.
 - f. Accept Shop Drawings or Sample submittals from anyone other than Contractor.
 - g. Authorize Owner to occupy the Project in whole or in part.
 - h. Participate in specialized field or laboratory tests or inspections conducted by other except as specifically authorized by Engineer.

SC-15.01 Delete Paragraph 15.01.D in its entirety and insert the following:

D. Payment Becomes Due:

1. No later than forty-five (45) days after approval of the Application for Payment by Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

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

- D. Payment Becomes Due: Sixty days after the presentation to Owner of the final Application for Payment and accompanying documentation,

the amount recommended by Engineer (less any further sum Owner is entitled to set-off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

- END OF SUPPLEMENTARY CONDITIONS -

U. S. CITIZENSHIP CERTIFICATION FOR DISADVANTAGED BUSINESS ENTERPRISES

I certify that _____ is
_____ MBE/WBE Company Name

a _____ owned business enterprise as defined in
Enter "Minority" or "Women"

Federal Regulations 40 CFR, Part 31. I further certify that I **am** a citizen of the United States of America (resident aliens are not eligible for minority or women owned business status under programs funded in part by DWSIRLF loans).

Signature of DBE Business Owner

Date

This form is required for a DBE firm that has not previously participated in a Drinking Water Systems Improvements Revolving Loan Fund funded project.

**CERTIFICATION BY PROPOSED PRIME OR SUBCONTRACTOR
REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

**DWI-L-380005-01
(DWSIRLF Project Number)**

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246, Part II, Section 203(b), (30 F.R. 12319-25). Any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clauses; and, if so, whether it has filed all compliance reports due under applicable instructions. Where this certification indicates that the prime or subcontractor has not filed a compliance report due under applicable instruction, such contractor shall be required to submit a compliance report.

THIS FORM ALONG WITH ITEMS LISTED IN SPECIAL NOTICE #1 IS TO BE SUBMITTED BY LOW BIDDER AND PROPOSED SUBCONTRACTORS WITH A PROCUREMENT VALUE OVER \$10,000 TO THE OWNER TEN (10) DAYS AFTER BID OPENING.

(SEE SUPPLEMENTAL GENERAL CONDITIONS, ATTACHMENT #3)

Prime or Subcontractor's Name: _____

Address: _____

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause. YES _____ NO _____

2. Compliance Reports were required to be filed in connection with such contract or subcontract. YES _____ NO _____

If YES, state what reports were filed and with what agency.

3. Bidder has filed all compliance reports due under applicable instructions YES _____ NO _____

4. If answer to item 3 is NO, please explain in detail on reverse side of this certification. The information above is true and complete to the best of my knowledge and belief. (A willfully false statement is punishable by law - U.S. Code, Title 18, Section 1001.)

NAME AND TITLE OF SIGNER (PLEASE TYPE)

SIGNATURE

DATE

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATTERS**

Under Executive Order 12549 individuals or organizations debarred from participation in Federal Assistance Programs may not receive an assistance award under a federal program or subagreement thereunder for \$25,000 or more. Accordingly each recipient of a Drinking Water Systems Improvements Revolving Loan Fund loan or a contract (engineering or construction) awarded under a loan must complete the following certification (see 40 CFR 32.510).

The loan recipient must obtain this certification from all contractors (prime construction contractor and subcontractors/equipment/material suppliers). The Department will not approve the award of a contract for DWSIRLF participation until the loan recipient certifies that certification has been obtained from the successful bidder and his sub-contractors. Prime and subcontractor/equipment/material suppliers' certifications must be included with the executed contract documents submittal to the Department.

The prospective participant certifies to the best of their knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and (d) Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 U.S.C. Subsection 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Prime or Subcontractor's Name

Signature/Date

() I am unable to certify to the above statements. Attached is my explanation.

**SUPPLEMENTAL GENERAL CONDITIONS
FOR
CONSTRUCTION OF DRINKING WATER SYSTEMS
IMPROVEMENTS REVOLVING LOAN FUND PROJECTS**

TABLE OF CONTENTS

The attached instructions and regulations as listed below shall be incorporated into the Contract Documents.

1.	Special Provisions	SGC-03
2.	General Conditions	SGC-04
	• Price Reduction For Defective Cost Or Pricing Data	
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	• Notice of Requirement for Affirmative Action	SGC-07
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7.	American Iron and Steel Provisions	SGC-37

Attachments:

DBE Directory

Attachment 1

These Supplemental General conditions shall supersede any conflicting provisions of this contract.

SECTION 1 - SPECIAL PROVISIONS:

- (a) Construction shall be carried out so as to prevent by-passing of wastewater during construction.
- (b) Best Management Practices (BMP's) shall be used for erosion and sediment control on the construction site.
- (c) Disturbed areas shall be restored to the original or better condition.
- (d) It is the duty of the Contractor, the owner and the engineer to insure the construction of the project, including the letting of contracts in connection therewith, complies with all applicable laws and regulations and requirements of the United States of America or any agency thereof, the State of Mississippi or any agency thereof, or any local government or political subdivision to the extent that such requirements do not conflict with Federal laws and regulations and any regulations or policies established by the Local Governments and Rural Water Systems Improvements Board (Board).
- (e) The Contractor agrees to indemnify and save, release and hold harmless the State of Mississippi, the Board, the Mississippi State Department of Health (Department), and all of their employees and officers from and against any and all claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of Contractor or Subcontractor or their agents or employees or any other parties arising out of or incident to, any and all work under the terms of this contract.
- (f) Upon execution of this contract between the Owner and the Contractor, the State of Mississippi, the Board, the Department, and all their employees and officers do not assume any authorities, duties, responsibilities, or liabilities under such contract.
- (g) The State of Mississippi, the Board, the Department and all their employees and officers, do not have any authority, duty, responsibility, or liability in contract claims identification, negotiation, resolution, or any other actions regarding contract claims under this contract.
- (h) No actions taken by the State of Mississippi, the Board, the Department and all their employees and officers either directly or indirectly, in regard to this contract constitute or establish any determinations, authority, duty, responsibility, or liability under this contract.
- (i) The Owner and the Contractor must resolve all claims and contract disputes, as provided in the contract documents, prior to the Owner's submission of any documents regarding DWSIRLF loan participation to the Department.

SECTION 2 - GENERAL CONDITIONS:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

(NOTE - The following clause applies to (1) any sub-agreement negotiated between the Loan Recipient and its Contractor in excess of \$100,000; (2) negotiated sub-agreement amendments or change orders in excess of \$100,000 affecting the price of formally advertised, competitively awarded, fixed price sub-agreement, or (3) any lower tier sub-agreement or purchase order in excess of \$100,000 under a sub-agreement other than a formally advertised, competitively awarded, fixed price sub-agreement. This clause does not apply to sub-agreements awarded on the basis of effective price competition.)

- (a) The Contractor and Subcontractor, where appropriate, assure that the cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated sub-agreements, lower tier sub-agreements and change orders is based on current, accurate and complete data supported by their books and records. If the Loan Recipient or Department Staff determine that any price (including profit) negotiated in connection with this sub-agreement, lower tier sub-agreement or amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate or not current at the time of submission, then such price or cost or profit shall be reduced accordingly and the recipient shall modify the sub-agreement in writing to reflect such action.
- (b) Failure to agree on a reduction shall be subject to the remedies clause of this sub-agreement.

(Note - Since the agreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with lower tier sub-agreements, the Contractor may wish to include a clause in each lower tier sub-agreement requiring the lower tier subcontractor to appropriately indemnify the Contractor. It is also expected that any lower tier Subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data submitted by lower tier contractors.)

AUDIT - ACCESS TO RECORDS

- (a) The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance on State funded work under this sub-agreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR Part 30 in effect on the date of execution of this sub-agreement. The Contractor shall also maintain the financial information and data used in the preparation or support of the cost submission required under 40 CFR 33.290 for any negotiated sub-agreement or change order and a copy of the cost summary submitted to the Loan Recipient. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the Loan Recipient, and (the State of Mississippi) or

any of their authorized representatives shall have access to all such books, records, documents and either evidence for the purpose of inspection audit and copying during normal business hours. The Contractor shall provide proper facilities for such access and inspection.

- (b) If this is a formally advertised, competitively awarded, fixed price sub-agreement, the Contractor agrees to make paragraphs (a) through (g) of this clause applicable to all negotiated change orders and sub-agreement amendments affecting the sub-agreement price. In the case of all other types of prime sub-agreements, the Contractor agrees to make paragraphs (a) through (g) applicable to all sub-agreements be awarded in excess of \$10,000, at any tier, and to make paragraphs (a) through (g) of this clause applicable to all change orders directly related to project performance.
- (c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).
- (d) The Contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).
- (e) Records under paragraphs (a) and (b) above shall be maintained by the Contractor during performance on State assisted work under this sub-agreement and for the time periods specified in 40 CFR Part 30. In addition, those records which relate to any controversy arising under a State assistance agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained by the Contractor for the time periods specified in 40 CFR Part 30.
- (f) Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.
- (g) This right of access clause applies to financial records pertaining to all sub-agreements (except formally advertised competitively awarded, fixed price sub-agreements) and all sub-agreement change orders regardless of the type of sub-agreement, and all sub-agreement amendments regardless of the type of sub-agreement. In addition this right of access applies to all records pertaining to all sub-agreements, sub-agreement change orders and sub-agreement amendments:
 - (1) To the extent the records pertain directly to sub-agreement performance;
 - (2) If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
 - (3) If the sub-agreement is terminated for default or for convenience.

COVENANT AGAINST CONTINGENT FEES

The Contractor assures that no person or selling agency has been employed or retained to solicit or secure this sub-agreement upon an agreement or understand for a commission, percentage, brokerage or contingent fee excepting bonafide employees or bonafide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this assurance, the Loan Recipient shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage brokerage or contingent fee.

GRATUITIES

- (a) If the Loan Recipient finds after a notice and hearing that the Contractor or any of the Contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the Loan Recipient, the State in an attempt to secure a sub-agreement or favorable treatment in awarding, amending or making any determination related to the performance of this sub-agreement, the Loan Recipient may, by written notice to the Contractor, terminate this sub-agreement. The Loan Recipient may also pursue other rights and remedies that the law or this sub-agreement provides. However, the existence of the facts on which the Loan Recipient bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this sub-agreement.
- (b) In the event this sub-agreement is terminated as provided in paragraph (a) the Loan Recipient may pursue the same remedies against the Contractor as it could pursue in the event of a breach of the sub-agreement by the Contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the recipient) which shall be not less than three nor more than ten times the costs the Contractor incurs in providing any such gratuities to any such officer or employee.

SECTION 3 - EEO DOCUMENTS:

EEO Notice

Following is the standard language which must be incorporated into all solicitations for offers and bids on all DWSIRLF Loan Program - assisted construction contracts or subcontracts in excess of \$10,000 to be performed in designated geographical areas:

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" which is included in the Nondiscrimination Provision, Labor Standards and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation in each trade:	Goals for female participation in each trade:
Insert goals for each year	6.9%

See Goals:

These goals are applicable to all the Contractor's construction work (whether or not it is DWSIRLF Loan Program assisted) performed in the covered area. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minority and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performance.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the “covered area” is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

SEE LABOR STANDARDS PROVISIONS AND NONDISCRIMINATION PROVISIONS

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION

CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

EEO Specifications

Following is the standard language which must be incorporated into all solicitations for offers and bids on all federal and federally-assisted construction contracts or subcontracts in excess of \$10,000 to be performed in designated geographical areas:

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:
 - a. “Covered area” means the geographical area described in the solicitation from which this contract resulted;
 - b. “Director” means Director, Office of Federal Contract Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. “Employer identification number” means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. “Minority” includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal

affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications. Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The

Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by

posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, lay-off, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associates.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligation.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of

Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

GOALS

The following goals for female and minority utilization shall be included in all federal and federally assisted construction contracts and subcontracts in excess of \$10,000.00.
EEO Goals applicable for this project:

Women: 1.1%
Minorities: 3.1%

Appendix B-80

Until further notice, the following goals for minority utilization in each construction craft and trade shall be included in all federal or federally assisted construction contracts and subcontracts in excess of \$10,000.00 to be performed in the respective geographical areas. The goals are applicable to each nonexempt contractor's total onsite construction workforce, regardless of whether or not part of that workforce is performing work on a federal, federally assisted or non-federally related project, contract or subcontract.

Construction contractors which are participating in an approved Hometown Plan (See 41 CFR 60-4.5) are required to comply with the goals of the Hometown Plan with regard to construction work they perform in the area covered by the Hometown Plan. With regard to all their other covered construction work, such contractors are required to comply with the applicable SMSA or EA goal contained in this Appendix B-80.

ECONOMIC AREAS

Area	Minority Goal (Percent)
1. MISSISSIPPI COUNTIES LOCATED IN MOBILE, AL AREA: 047 Mobile, AL	
SMSA Counties	
6025 Pascagoula - Moss Point, MS	16.9
MS – Jackson	
2. MISSISSIPPI COUNTIES LOCATED IN MEMPHIS, TN AREA: 055 Memphis, TN	
SMSA Counties	
4920 Memphis, TN-AR-MS	32.3
MS - Desoto,	
Non-SMSA Counties	
MS - Alcorn, Benton, Bolivar, Calhoun,	26.5
Carroll, Chickasaw, Clay, Coahoma, Grenada,	
Itawamba, Lafayette, Lee, Leflore, Marshall,	

Monroe, Montgomery, Panola, Pontotoc,
 Prentiss, Quitman, Sunflower, Tallahatchie,
 Tate, Tippah, Tishomingo, Union, Washington,
 Webster, Yalobusha

3. MISSISSIPPI:
 112 Jackson, MS
 SMSA Counties: 30.3
 3560 Jackson, MS
 MS - Hinds, Rankin
 Non-SMSA Counties 32.0
 MS - Attala, Choctaw, Claiborne, Clarke,
 Copiah, Covington, Franklin, Holmes,
 Humphreys, Issaquena, Jasper, Jefferson,
 Jefferson Davis, Jones, Kemper, Lauderdale,
 Lawrence, Leake, Lincoln, Lowndes, Madison,
 Neshoba, Newton

4. MISSISSIPPI COUNTIES LOCATED IN NEW ORLEANS, LA AREA:
 113 New Orleans, LA
 SMSA Counties: 19.2
 0920 Biloxi, Gulfport, MS
 MS - Hancock, Harrison, Stone
 Non-SMSA Counties 27.7
 MS - Forrest, Lamar, Marion, Pearl River,
 Perry, Pike, Walthall

5. MISSISSIPPI COUNTIES LOCATED IN BATON ROUGE, LA AREA:
 114 Baton Rouge, LA 26.1
 Non-SMSA Counties
 MS - Adams, Amite, Wilkinson

40 CFR PART 8, EQUAL OPPORTUNITY REQUIREMENTS

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The 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, or national origin. 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this equal opportunity (federally assisted construction) clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order No. 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 his 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.
- (6) In the event of the Contractor's non-compliance with the equal opportunity (federally assisted construction) clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as provided by law.

- (7) The Contractor will include this equal opportunity (federally assisted construction) clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The 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 a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor, as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentally or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the Agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Agency and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Agency in the discharge of its primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to the Order with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Order and will carry out such sanctions and penalties for violation of the equal opportunity clause, as may be imposed upon contractors and subcontractors by the Agency or the Secretary of Labor pursuant to Part II, Subpart D of the Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the Agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

SPECIAL NOTICE #1
EEO DOCUMENTATION REQUIRED BY
FEDERAL EXECUTIVE ORDER 11246 AS AMENDED

Federal Executive Order 11246 requires an EEO commitment of the prime contractor and all subcontractors (in excess of \$10,000). EEO Affirmative Action is mandated throughout the duration of the contract.

Failure to submit the required EEO documentation may subject the Contractor to sanctions under Executive Order 11246.

THE LOW, RESPONSIVE, RESPONSIBLE BIDDER MUST FORWARD THE FOLLOWING ITEMS, IN DUPLICATE TO THE OWNER NO LATER THAN 10 DAYS AFTER BID OPENING. THE OWNER SHALL TRANSMIT 1 COPY TO DEQ WITHIN 14 DAYS AFTER BID OPENING.

1. DWSIRLF Project Number. Project Location. Type of Construction.
2. Copy of EEO-1 Report (Employer Information Report, annually submitted to the Equal Employment Opportunity Commission). Required for Firms with 100 employees or more.
3. Copy of the Affirmative Action Plan of the Contractor. Indicate company official responsible for EEO.
4. List of current construction contracts, with dollar amount. List contracting federal agency, if applicable.
5. Statistics concerning company percent workforce, permanent and temporary, by sex, race and trade.
6. List of employment sources for project in question. If union sources are utilized, indicate percentage of minority membership within the union crafts.
7. Anticipated employment needs for this project, by sex, race and trade, with estimate of minority participation in specific trades.
8. List of subcontractors (name, address and telephone) with dollar amount and duration of subcontract. Subcontractors' contracts over \$10,000 must submit items one (1) through eight (8).
9. List of any subcontract work yet to be committed with estimate of dollar amount and duration of contract.
10. Contract Price. Duration of prime contract.

11. Each Contractor shall be required to maintain in their files a CC-257, monthly Employment Utilization Report, for each month of the construction period.

SECTION 4 - UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBEs):

It is the policy of the Drinking Water State Revolving Loan Fund and the Environmental Protection Agency (EPA) to promote a “fair share” of sub-agreement awards to small, minority and women’s businesses for equipment, supplies, construction, and services. Compliance with these contract provisions is required in order for project costs to be eligible for DWSRF Funding. Failure on the part of the apparent successful bidder to submit required information to the loan recipient (Owner) may be considered by the owner in evaluation whether the bidder is responsive to bid requirements. This requirement is contained in Appendix E of the DWSIRLF Program Regulations.

The following procedures are to be followed for procurement under DWSIRLF construction loans:

If the successful bidder plans to enter into sub-agreements for construction, equipment, materials and/or supplies the bidder must submit to the owner within 10 days after bid opening, evidence of the affirmative steps taken to utilize small, minority and women’s businesses, as described under the section entitled “Submittal of MBE/WBE Documentation”. The affirmative steps are:

- (1) Ensure DBEs are made aware of contracting opportunities to the extent practicable, including placing DBEs on solicitation lists and soliciting them whenever there are potential sources;
- (2) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. Assure that DBEs businesses are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of DBEs;
- (4) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually;
- (5) Utilize the services and assistance of the Department of Economic and Community Development’s Rural Minority Business Development Center and the contract procurement centers (See The Department of Environmental Quality’s Minority and Women Business Enterprises Resource Directory for the locations of these centers);

- (6) Require the subcontractor to take the steps listed above, if the subcontractor awards sub-agreements.

For purposes of clarification:

- The term sub-agreement as used in this section refers to a subcontract for construction work or a purchase order for equipment, supplies and/or materials.
- This requirement applies to any DWSIRLF financially assisted procurement agreement or sub-agreement in excess of \$10,000.
- This requirement mandates two responsibilities; separate solicitations must be made of minority business enterprises and women's business enterprises.
- A minority business is a business, at least 51 percent of which is owned and controlled by minority group members (Black; Hispanic; Asian American; American Indian; and any other designations approved by the Office of Management and Budget). Any specific clarification concerning the ownership and/or control issues will be provided by the Department.
- A women's business is a business, at least 51 percent of which is owned and controlled by one or more women.
- The control determination will revolve around the minority or woman owner's involvement in the day-to-day management of the business enterprise.
- Solicitation should allow adequate time for price analysis; the Department requires that contact be made no later than 10 days before bid opening.
- Prime Contractors must include the project's MBE and WBE fair share objectives percentages in their requests for quotes (solicitations) to MBE and WBE firms.
- Efforts taken to comply with this requirement must be documented in detail; maintain records of firms contacted, including any negotiation efforts to reach competitive price levels, and awards to the designated firms.
- The prime contractor must utilize the services of "The Rural Minority Business Development Center" (RMBDC) and the "Contract Procurement Center" closest to the project. The RMBDC is operated by the Mississippi Department of Economic and Community Development, Minority Business Enterprise Division under a grant from the United States Department of Commerce - Minority Business Development Agency. The RMBDC provides technical, financial and contracting assistance to minority business enterprises. The U.S. Small Business Administration and the State of Mississippi jointly fund the Contract Procurement Centers. These centers, upon request, provide a listing of small, minority and

women's businesses. They notify these businesses of contracting and subcontracting opportunities. Use of the services provided by centers does not absolve the prime contractors from pursuing additional efforts to comply with this requirement.

- Bidders may rely on written representation by a subcontractor regarding its status as a minority or women's business. However, the Department will require any DBE that has not previously participated in an EPA or DWSIRLF funded project to submit a DBE certification from the Mississippi Department of Economic and Community Development; U.S. Small Business Administration's 8A Program or Mississippi Department of Transportation. If the firm does not have such DBE certification, or if the Department has reasonable cause to believe that a firm doing business is not a legitimate DBE, the Department will require that firm to submit appropriate data to prove ownership and control.
- Challenges to DBE status will not be accepted under the bid protest procedures. Any individual or firm that files a false statement may be prosecuted under U.S.C. 1001. If allegations are made that a firm misrepresented its status as a MBE/WBE, the matter may be investigated by the Office of the Inspector General, and, if appropriate, turned over to the Department of Justice for criminal and/or civil prosecution.
- Credit for DBE participation shall be granted for DBE firms performing a useful business function according to custom and practice in the industry. A DBE firm may further subcontract a portion of the work provided that such further subcontracting is in accordance with these contract documents and that the majority of work is being performed by the MBE or WBE firm having the contract. MBE/WBE participation will not be counted when the MBE and/or the WBE subcontracts back to the prime contractor.
- DBE firms serving as material and equipment suppliers under DWSIRLF funded projects will be credited toward the projects' DBE fair share objectives in accordance with the following definition and conditions:

A supplier is defined as a business which acts as a distributor of materials or equipment, and which provides a commercially useful function when such activity is traditional in the industry manufacturing the material or equipment supplied.

Commercially useful function normally includes:

- (1) Providing technical assistance to the purchaser prior to the purchase, during installation and after the supplies or equipment are placed in service;
- (2) Manufacturing or being first tier below manufacturer of the supplies or equipment supplied;

- (3) Providing functions other than just accepting and referring request for supplies or equipment to another party for direct shipment to a contractor.

DBE suppliers who provide a commercially useful service such as delivery to site, modification or assembly of purchased items at their place of operation or at the job site will have 100% of procurement value credited to the project's DBE fair share objectives;

DBE suppliers who serve as sales representatives of authorized dealers will have 25% of the procurement value credited to the project's DBE fair share objective. Haulers will receive 100% credit if they provide the material that is hauled. No credit will be granted for MBE/WBE suppliers who serve as passive conduits of funds for the purchase of supplies and/or equipment to some other, non-minority firm.

- Expenditures to DBE firms that act as a broker in a transaction will not be counted toward the DBE fair share objectives. A broker is a firm that does not, itself, perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business. A DBE firm will also be considered a broker if it subcontracts 50 percent or more of the work.
- Any proposed changes from the approved Small/Minority/Woman business participation after EEO/DBE approval shall be reported with the reason for the proposed deviation to and approved by the Department prior to initiation of the action.
- During construction of the project the Department may conduct an DBE Utilization Follow-up Review. Prime contractor(s) may be required to provide verification of reported DBE utilization. This verification may include invoices for supplies and/or equipment, pay requests from MBE and WBE subcontractors, etc.
- Each DWSIRLF loan recipient and its prime contractor shall be required to submit a DWSIRLF34 Form, Semi-annual DBE Utilization Report within seven (7) days after the end of each reporting period (April 7th and October 7th).

SUBMITTAL AND APPROVAL OF DBE DOCUMENTATION

The successful bidder shall submit the following documentation of good faith efforts to achieve the project's DBE fair share objectives:

A. If the fair share objectives were met:

1. Total dollar amount of proposed contract;

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2. Total dollar amount of proposed DBE participation;
3. Percentage of proposed DBE participation;
4. Name, address, telephone number, contact person of each proposed DBE subcontractor and/or supplier, type of proposed subcontract and dollar amount, and identification of each subcontract as a DBE contractor, and;
5. Certification from each DBE firm declaring its status as a DBE firm, if they have not previously participated on a DWSIRLF funded project.

B. If the fair share objectives were not met:

1. Copies of solicitation letters from the successful bidder (delivered by certified mail, return receipt requested) mailed to DBE firms requesting proposals for specific subcontracting opportunities, material or supply needs and encouraging inquiries for further details. Solicitation letters must include the project's MBE and WBE percentages. Solicitation letters should have been sent in a timely manner (post marked no later than 10 days before bids were due). Letters that are general in nature and do not request quotes or proposals for specific subcontracting opportunities, equipment, material and supply needs will not be acceptable as good faith efforts to obtain MBE and WBE participation (See Sample letter from contractor to MBE/WBE firms on page SGC-28).
2. Copies of solicitation letters from the successful bidder to the Mississippi Rural Minority Business Development Center and the Contract Procurement Center closest to the project area requesting their assistance in identifying DBE firms.
3. If the successful bidder, in addition to solicitation letters, chose to use newspaper advertisements to solicit DBE firms (use of newspaper advertisements cannot be substituted for solicitation letters), documentation should include proof of publication of requests for proposals or bids in newspapers in the project's general area.
4. The successful bidder must submit a listing of those DBE firms from whom quotes or proposals were received who were not awarded subcontracts, for construction, equipment, supplies and/or materials. If a DBE did not receive a subcontract, the successful bidder must document that the subcontractor or supplier selected was lower in price than the DBE firm's proposal and that the scope of work or equipment/material purchase was the same as bid on by the DBE and not a reduced portion thereof.
5. If there are any DBE subcontracts (although the fair share objectives were not met) the information specified in Provisions 1-5 of Section A must be provided.

6. Once DBE documentation is submitted, the Department will determine if deficiencies exist in the DBE documentation. If the Department determines that such deficiencies are correctable, the successful bidder will be informed as to what actions must be taken to correct the deficiency. Award of the proposed construction contract will not be approved for loan participation until the corrective action has been taken.

Please be aware that DBE Documentation is a matter of bidder responsibility. Failure on the part of the low bidder to take the required corrective action will cause the loan recipient to determine whether the low bidder satisfied the required responsibility criteria and to reject any bidder that fails to meet the criteria.

**SAMPLE
LETTER FROM CONTRACTOR TO MBE/WBE FIRMS
(CONTRACTOR'S LETTERHEAD)**

Date

(MBE/WBE Name)
(Address)

RE: Project # DWI-L _____

Dear _____:

This company intends to submit a bid on the above referenced project.

We are soliciting a proposal from you for any item or items on this project for which you are qualified to subcontract. You may submit proposals to subcontract items of construction or for project materials and supplies if you are a distributor of materials or equipment. The project's MBE/WBE fair share objectives are _____% MBE and _____% WBE.

A Bid Schedule is attached for your review. You are encouraged to submit proposals on any item(s) for which you are qualified to subcontract. Proposals must be submitted by _____(date) to be considered.

For further details, you are encouraged to call this office at (telephone number) and ask for (person's name) during normal business hours.

Sincerely,

(Name of Contractor)

Enclosure:

SECTION 5 - Davis Bacon and Related Acts Requirements:

Labor Standards Provisions for Federally Assisted Contracts

(a) The Recipient shall insure that the **subrecipient(s)** shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Loan recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.wdol.gov.

(ii)(A) The loan recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the loan recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the loan recipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140)

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the loan recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140)

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The loan recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the

contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the loan recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the loan recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the loan recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting officer or loan recipient.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5

(a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5

(a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and loan recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The loan recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The loan recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any

liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the loan recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the loan recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a). The **subrecipient** shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The **subrecipient** must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The **subrecipient** shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the **subrecipient** must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. **Subrecipients** must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. **Subrecipients** shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c). The **subrecipient** shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The **subrecipient** shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the **subrecipient** must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. **Subrecipients** must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the **subrecipient** shall verify evidence of fringe benefit

plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The **subrecipient** shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) **Subrecipients** must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

SECTION 6 - DWSIRLF Project Document Board:

Due to various notice and posting requirements, a suitable document board must be provided on site for all the required posters and other information. Where necessary, document board must be weatherization to protect all the documents.

At a minimum, project document board must be large enough to accommodate the postings of a description of the project (8½ x 11 Sheet), the required wage determinations and Davis Bacon Posters of the Davis Bacon Act (a provision of the federal capitalization grant requirements) the required EEO posters.

American Iron and Steel Provisions

This contract is funded in whole or in part by funds from the Consolidated Appropriations Act of 2014 (H.R. 3547). Section 436 states:

(a)(1) None of the funds made available by a State drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States. (2) In this section, the term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that –

(1) Applying subsection (a) would be inconsistent with the public interest;

(2) Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality; or

(3) Inclusion of iron and steel products in the United States will increase the cost of the overall project by more than 25 percent.

Attachment 1

DBE Directory

CENTRAL MISSISSIPPI PROCUREMENT CENTER

DBE – LIST OF ELIGIBLES

MINORITY BUSINESS ENTERPRISES

A & E UNDERGROUND LLC
2120 MOSES ROAD
RAYMOND MS 39154
EDDIE FREEMAN
Free5036@bellsouth.net
601-832-8008
UNDERGROUND DIRECTIONAL DRILLING,
UTILITIES, SEWER, WATER

BARNES TRUCKING
2034 MILES STATION ROAD
HERMANVILLE MS 39086

ISAAC BARNES
601-885-6727 601-941-2043 (FAX)
HAULING, CLEARING, GRUBBING,
EXCAVATION

ENVIRONMENTAL RESEARCH &
DEVELOPMENT
1015 MEADOWS STREET
VICKSBURG MS 39180
MILTON BEVERLY
601-529-2317
ENVIR CONTROLS, RESEARCH, MGT
CONSULTING SERVICES

FISH & FISHER TRUCKING INC
405 BRIARWOOD DRIVE SUITE 105B
P O BOX 347
JACKSON MS 39206
601-899-9492 601-899-9972 (FAX)
HAULING, TRANSPORTATION OF
CONSTRUCTION ITEMS. "ICC DOT
AUTHORITY 48 STATES"

FISHER CONSTRUCTION INC.
P.O. BOX 16592
JACKSON, MS 39211
RENNA FISHER
GENERAL FREIGHT TRUCKING (LOCAL)
SITE PREP CONTRACTORS (DEMO)

FORTSON ENTERPRISES
P O BOX 3256
JACKSON MS 39207
ROBERT L WILLIAMS
601-948-2053 1-800-948-2058
601-948-2065 (FAX)
SITE WORK LANDSCAPING, DIRT WORK,
DEMOLITION, DEBRIS REMOVAL,
ELECTRICAL UTILITIES, GENERAL
CONSTRUCTION

TRACKLA SERVICES, INC.
P.O. BOX 821711
VICKSBURG, MS 39180
REXAL HEIDELBURG, PRESIDENT
(601) 619-9300 Fax (601) 619-9301
SITE PREPARATION (clearing and grubbing),
CONCRETE CULVERTS & DRAINAGE
STRUCTURES, LAYING PIPE AND HAULING

L SCOTT CONSTRUCTION COMPANY
84 EAST FRANKLIN STREET
NATCHEZ MS 39120
LEE EDWARD SCOTT
601-446-7535 601-442-3457
CONCRETE, CURB AND GUTTER, EROSION
CONTROL, CONCRETE AND ASPHALT
REMOVAL, EXCAVATION, GRANULAR
MATERIALS, SPREADING AND
COMPACTING

LARRY HARPER dba HARPERS
CONTRUCTION
1917 ROBINSON STREET
JACKSON MS 39209
LARRY D HARPER
lharp@jam.rr.com
601-352-4039 601-353-5963 (FAX)
CONSTRUCTION CLEANUP, SITE CLEANUP,
HAULING, DIRT REMOVAL

MAC CONSTRUCTION COMPANY
2440 BAILEY AVENUE, SUITE D
JACKSON MS 39213
MARCUS WALLACE
Wallgroup2@yahoo.com
601-362-1852
DEMOLITION, HAULING, PAINTING,
FOUNDATION, ETC., SITE PREPARATION

MULTI-CON INC
P O BOX 9325
JACKSON MS 39286
JOE COLLINS
Multiconelec@jam.rr.com
601-922-7777 601-982-1522 (FAX)
ELECTRICAL WORK

SOCRATES GARRETT ENTERPRISES INC
P O BOX 31238
JACKSON MS 39286
SITE PREPARATION & ASPHALT, WATER &
SEWER LINES, CONSTRUCTION SAND AND
GRAVEL MINING

CENTRAL MISSISSIPPI PROCUREMENT CENTER

3-J DIRTWORK COMPANY INC
708 MAIN STREET
UTICA MS 39175
HOMERO G JIMENEZ
jimenezh@bellsouth.net
601-885-8649
EXCAVATION WORK, SITE PREPARATION

U S COATING SPECIALTIES & SUPPLIES
125 WEST MAYES STREET
JACKSON MS 39213
EARL WASHINGTON
601-981-8986 601-981-9583 (FAX)
EPOXY APPLICATION, STRIPING,
WATERPROOFING, CHEMICAL & ALLIED
PRODUCTS, POLYURETHANE COATING

WALTON BULLDOZER SERVICE
295 WALTON LANE
VICKSBURG MS 39180
DONALD WALTON
601-636-0352
EXCAVATION, GRADING & DIRT WORK

WALTON CONSTRUCTION OF MS, LLC
295 WALTON LANE
VICKSBURG, MS 39183
DONALD WALTON, OWNER
601-856-2232 (601) 856-4840 (FAX)
SITE PREPARATION, DEMOLITION, CLEARING
& GRUBBING, MINOR STRUCTURE CONCRETE

WOMEN BUSINESS ENTERPRISES

AMERICAN FIELD SERVICE CORP
110 AMERICAN WAY
MADISON MS 39110
CYNTHIA B WARNER
601-853-1000
CONCRETE WORK

EZ ENTERPRISES INC
4030 COKER ROAD
MADISON MS 39110
KATHRYN R ZIGLAR
zigjxnms@aol.com
601-856-2292 601-856-2238
WATER, SEWAGE, PIPELINE, UNDERGROUND
BORING

FORNEA ROAD BORING CO INC
P O BOX 16141
JACKSON MS 39236
TONIA FORNEA-BALLARD
601-362-0139 601-362-0139 (FAX)
ROAD BORING, UNDERGROUND UTILITIES,
POWER AND CONSTRUCTION LINES,
WATER/SEWER LINES AND RELATED
SERVICES

LAMMONS, INC. 0
BRIDGETT LAMMONS
P.O. BOX 126
CLINTON, MS 39060
lesiarouse@hotmail.com
601-925-1900 601-922-6083 (FAX)
WATER & WASTEWATER EQUIPMENT
SUPPLIER, PUMPS & VALVES

RYAN HYDRICK CONSTRUCTION LLC
201 MAGNOLIA TRAIL
BRANDON MS 39047
NANCY HYDRICK
601-992-7169
CONSTRUCTION, SAND & GRAVEL, ASPHALT

SOUTHERN CONSULTANTS INC
5740 COUNTY CORK ROAD
JACKSON MS 39206
SUSAN H LUNARDINI
601-957-0999 957-9332 (FAX)
ENGINEERING SERVICES

SOUTHERN PINES ELECTRICAL
CONTRACTORS
100 ROCKHAVEN ROAD
BRANDON MS 39042
KATHY SMITH-KING
601-825-7867 601-825-1939 (FAX)
ELECTRICAL WORK

SUN-BELT HEAVY HAULERS INC
P O BOX 726
HAZLEHURST MS 39083
PATRICIA HUNT
601-892-5346 601-892-3998 (FAX)
HEAVY HAULING, TRUCKING

TREMAC RESTEEL INC
P O BOX 1422
MADISON MS 39130
PHYLISS TREVATHAN
601-853-3123 601-853-3559 (FAX)
INSTALLATION AND REINFORCING STEEL

WILLIAMS & SONS, INC.
1215 FAIRMONT AVENUE
JACKSON, MS 39204
SARAH WILLIAMS, PRESIDENT
601-948-2084
HAULING

CONTRACT PROCUREMENT CENTER (GULF COAST)

MINORITY BUSINESS ENTERPRISES

ACE CONSTRUCTION COMPANY
P O BOX 6354
D'IBERVILLE MS 39540
KEVIN F DAVIS
228-396-1007
CURB AND GUTTER, CLEARING AND
GRUBBING, ASPHALT & CONCRETE PAVING

APOLLO MAINTENANCE & CONSTRUCTION
INC
102 NORTH 10TH AVENUE
HATTIESBURG MS 39401
Apollo39401@yahoo.com
601-582-9103
EXCAVATION WORK

G M & R CONSTRUCTION COMPANY
P O BOX 2579
BAY ST LOUIS MS 39521
HENRY MARTINEZ
henry@gmandr.com
228-467-0872 228-466-3945 (FAX)
MUNICIPAL & PUBLIC WORKS
CONSTRUCTION

FELIX LEE ELECTRIC LLC
14005 DUNDEE COVE
GULFPORT MS 39503
FELIX L LEE
Snip1368@aol.com
228-832-6520 228-539-4147 (FAX)
ELECTRICAL WORK

J. T. & SON'S CONSTRUCTION INC
205 PINE STREET
MCCOMB MS 39648
JOHNNY TURNER
601-249-2808
GENERAL CONSTRUCTION

LANDSHAPERS INC
P O BOX 995
GULFPORT MS 39501
ROBERT PARKER
228-863-8996
ASPHALT PAVING, MINOR CONCRETE, DIRT
WORK & LANDSCAPING

WOMEN BUSINESS ENTERPRISES

ABC UTILITY COMPANY INC
P O BOX 17799
HATTIESBURG MS 39401
VIRGINIA CATT

601-544-1225
PUBLIC WORKS CONSTRUCTION
ALL-STATES MASONRY CONSTRUCTION
105 DEANNA STREET
P O BOX 2935
GULFPORT MS 39505
WANDA L BENEFIELD
228-832-3653 228-832-3672 (FAX)
MASONRY WORK

BENVENUTTI ELECTRICAL APPARATUS
17865 16TH STREET SUITE C
GULFPORT MS 39503
MARY ANN BENVENUTTI
228-831-0445 832-8105 (FAX)
ELECTRICAL EQUIPMENT & SUPPLIES, NEC

BROOME LLC
P O BOX 16147
HATTIESBURG MS 39404
BETTIE JANE BROOME
601-583-6551 601-583-6552 (FAX)
DIRT WORK, WATER & SEWER LINE, CURB &
GUTTER, EROSION CONTROL CONTRACTOR,
CONCRETE FOUNDATIONS, STRUCTURE
CONTRACTOR

C B DEVELOPERS INC
672 JERICHO LOOP
MCLAIN MS 39456
SHERRY BRELAND
csmhbreland@cs.com
601-753-9200 601-753-2622 (FAX)
WATER, SEWER, PIPELINE CONSTRUCTION

COASTAL HYDROGRASS INC
12400 LISA DRIVE
GULFPORT MS 39503
LISA MCINTOSH
228-831-0030 228-831-0412 (FAX)
EROSION CONTROL HYDROSEEDING,
SEEDING AND MULCHING

GFH
P. O BOX 130
LONG BEACH MS 39560
DAWN PARKER LOCKHART
228-596-1008 228-868-1060 (FAX)
EROSION CONTROL, CLEARING & GRUBBING,
SUPPLIER OF AGGERATES

J W LEE COMPANY INC
10131 SOUTHPARK DRIVE
GULFPORT MS 39503
JENNY M LEE
jlee796869@aol.com
228-896-5330 228-896-5312 (FAX)
WATER, SEWER, PIPELINE CONSTRUCTION

CONTRACT PROCUREMENT CENTER (GULF COAST)

LANDMARK CONTRACTING INC
P O BOX 2391
GULFPORT MS 39505
SUE B WALLER
228-831-4425 228-831-4467 (FAX)
CONCRETE PAVING, CONCRETE RAILING,
BARRIER WALLS, CURB AND GUTTER, MINOR
CONCRETE STRUCTURES, PIPE, DRAINAGE

MS CONCRETE CUTTING
P O BOX 6697
DIBERVILLE MS 39540
REGINA L MARCUM
Regimarc2@aol.com
228-872-5808
CONCRETE WORK

TITAN CONSTRUCTION
59 PARISH ROAD
PERKINSTON MS 39573
PAM WHITE
601-528-9848 228-860-3996 601-528-9848 (FAX)
CONSTRUCTION: RESIDENTIAL, CONCRETE:
SIDEWALKS, CURB AND GUTTERS, EROSION
CONTROL, SILT FENCING

T & S DEBRIS REMOVAL SERVICE
465 CHRISTIAN UNION ROAD
SUMRALL MS 39482
KEISHA NOBLES
tsdebrisremoval@aol.com
601-736-9908 601-736-5919 (FAX)
SITE PREPARATION CONTRACTORS, DEBRI
REMOVAL

DELTA CONTRACT PROCUREMENT CENTER

MINORITY BUSINESS ENTERPRISES

ACC INCORPORATED
10253 D'IBERVILLE BLVD
D'IBERVILLE, MS 39540
AARON DAVIS
662-834-1479 601-4458-2087 228-392-9192(FAX)
LANDSCAPING, REMOVAL, SOD, GRASS,
CONCRETE, SITE PREPARATION,
CONSTRUCTION OF WALKWAYS, RETAINING
WALLS, DECKS, FENCES, AND PONDS

BLACKHAWK CONSTRUCTION & TRANSPORT
ROUTE 1 BOX 358A
COILA MS 38923
JOHN S JORDAN
Blackhawkconstruction@hotmail.com
662-237-4365
TRUCKING, HAULING, CONCRETE, DREDGING

DOUGLAS BROTHERS CONSTRUCTION
P O BOX 631
MOOREHEAD MS 38761
662-246-5341
PIPE, INLETS, SITE PREP. CONTRACTORS,
WATER/SEWER LINES, BOX CULVERTS,
MINOR CONCRETE WORK AND PLACING RIP-
RAP

GREGORY BELL CONSTRUCTION COMPANY
P O BOX 148
ANGUILLA MS 38721
GREGORY BELL
GBCon01@bellsouth.net
662-873-6624
SITE PREPARATION CONTRACTORS

HOOVER'S ELECTRIC, PLUMBING, HEAT & A/C,
INC.
623 MAIN STREET
GREENWOOD, MS 38930
JOHN HOOVER
662-453-0999 662-453-6237 (FAX)

J & L TRUCKING
1781 RANCH ROAD
HERNANDO MS 38632
JERRY L BELL
662-429-0904
HAULING ASPHALT, GRAVEL, SAND

JEHOVAH TRUCKING
20462 HWY 330 WEST
TILLATOBA MS 38961
KIP PROFIT
Kip94@bellsouth.net
662-675-2540

TRUCKING, HAULING ASPHALT, GRAVEL

NELSON PLUMBING INC
3889 ROBERTSON ROAD
NESBIT MS 38651
HATTIE NELSON
wnelson@nelson-inc.net
901-332-5670 901-332-5680 (FAX)
WATER, SEWER, PIPELINE CONSTRUCTION

ROBY CONSTRUCTION COMPANY INC
703 TALLAHATCHIE STREET
GREENWOOD MS 38930
JIMMIE L ROBY
662-455-6655 662-453-5122 (FAX)
EXCAVATION AND EMBANKMENT,
SPREADING AND COMPACTING OF
GRANULAR MATERIAL, CLEARING AND
GRUBBING, LAYING OF PIPE

TARRASCO STEEL
1941 HIGHWAY 82 WEST
GREENVILLE MS 38701
JOSE GONZALEZ
662-344-1711 662-344-1742 (FAX)
INSTALLATION OF REINFORCING STEEL

TOWNES CONSTRUCTION COMPANY, INC.
16398 HWY 8 WEST
GRENADA, MS 38901
ARMSTEAD TOWNES, III- PRESIDENT
662-226-4816 662-417-0101
SITE PREPARATION, LOAD & HAULING
CONSTRUCTION MATERIALS, PIPE AND
CONCRETE FOOTING FOR SIGN POST
INCLUDING INSTALLATION OF STEEL
RELATED SUPPLIER, SUPPLIER OF SAND AND
GRAVEL

WOMEN BUSINESS ENTERPRISES

FLOYD CONSTRUCTION & DEVELOPMENT INC
1505 GENIE FAIRWAY
GREENVILLE MS 38701
ELIZABETH FLOYD
662-347-9417 662-332-6783 (FAX)
EQUIPMENT, CONSTRUCTION

MATT JOHNSON ELECTRIC LLC
4328 UNION ROAD
SARDIS MS 38666
MATT JOHNSON
662-487-3188
ELECTRICAL WORK

MEMPHIS ROAD BORING CO INC
P O BOX 1280
OLIVE BRANCH MS 38654
MARGO E DODSON
axidntiam@aol.com

DELTA CONTRACT PROCUREMENT CENTER

662-895-7156 901-526-6582 (FAX)
ROAD BORING

QUINN CONTRACTING INC
24590 HIGHWAY 370 WEST
FAULKNER MS 38629
JANET QUINN
dfq@dixie-net.com
662-837-8778 662-837-8334 (FAX)
GRADING, CONCRETE WORK & DRAINAGE

ROBY CONSTRUCTION COMPANY INC
703 TALLAHATCHIE STREET SUITE 3
GREENWOOD MS 38930
JIMMIE L ROBY
662-455-6655 662-453-5122 (FAX)
EXCAVATION AND EMBANKMENT,
SPREADING AND COMPACTING OF
GRANULAR MATERIAL, CLEARING AND
GRUBBING, LAYING OF PIPE

SPECIALTY SUPPLY COMPANY INC
P O BOX 1121
GREENVILLE MS 38702
TRACY PROVENZA
662-378-2622 ;662-378-2625 (FAX)
ELECTRICAL APPARATUS

S-W ELECTRIC LLC
P O BOX 9087
GREENWOOD MS 38930
SHIRLEY OVERLEY
robertoverley@bellsouth.net
662-455-2060 662-299-8038 (FAX)
ELECTRICAL CONTRACTORS

VAIL CONSTRUCTION INC
ROUTHE 2 BOX 201B
WINONA MS 38967
KAY VAIL
kayhvail@hotmail.com
662-283-5579 662-417-1892 (FAX)
DIRTWORK, HAULING,

EAST CENTRAL REGIONAL PROCUREMENT CENTER

MINORITY BUSINESS ENTERPRISES

BURTON CONSTRUCTION INC
P O BOX 3241
MERIDIAN MS 39303
DERRICK BURTON
601-485-7860 601-485-7817(FAX)
WATER, SEWER, PIPELINE, PLUMBING, AIR
CONDITIONING

BUSCO CONSTRUCTION
609 12TH AVENUE
MERIDIAN MS 39301
ROY L BUSSEY II
buscoconstruction@hotmail.com
601-454-5580 601-622-4037 601-484-5580 (FAX)
GENERAL CONTRACTOR, BUILDING INTERIOR
FINISHING WORK

CHEROKEE ELECTRIC COMPANY INC
1747 SKYLINE ROAD
MERIDIAN MS 39301
NORMA JEAN GIST
601-483-8431
ELECTRICAL WORK

CONSTRUCTION PLUS
P O BOX 4344
MERIDIAN MS 39304
EARL LOGAN SR
earllogan@bellsouth.net
601-938-5769 601-693-2000 (FAX)
SITE PREPARATION CONTRACTOR,
EXCAVATION WORK & DRAINAGE

WOMEN BUSINESS ENTERPRISES

C & O DIRT SERVICE
P O BOX 191
RALEIGH MS 39153
CHRISTY ARENDER
601-782-9015 601-782-9011 (FAX)
HEAVY CONSTRUCTION, EXCAVATION
WORK, HAULING

DAVIDSON HAULING & CONSTRUCTION INC
P O BOX 665
MERIDIAN MS 39342
601-482-1815
DIANE DAVIDSON
HAULING, PIPE, PLACING OF RIP-RAP,
INSTALLATION, REMOVAL AND REPAIR OF
UNDERGROUND STORAGE TANK, SITE
PREPARATION

J & M INC
3219 MINNOW BUCKET ROAD
TOOMSUBA MS 39364
JUDY WARD
601-632-4534 601-632-1904 (FAX)
SMALL BRIDGES, CONCRETE STRUCTURES,
DIRT EXCAVATION, PIPE, CLEARING AND
GRUBBING, UNDER/SIDE DRAIN AND
GEOTEXILE FABRIC FOR SUBSURFACE
DRAINAGE

LANDRUM CONSTRUCTION INC
2001 HIGHWAY 37
RALEIGH MS 39153
JODY LANDRUM
601-782-4958
HEAVY CONSTRUCTION, NEC

RJM MCQUEEN CONTRACTING INC
12 MCQUEEN LANE
COLLINS MS 39428
601-765-6563 601-943-6420 (FAX)
EROSION CONTROL, CURB/GUTTER, MINOR
CONCRETE STRUCTURES, HAULING, LIME,
STABILIZATION, GRANULAR MATERIALS,
SPREADING & COMPACTING, DBST PAVING,
CONCRETE BRIDGE RAILING, ASPHALT
REPAIR, LEAVING, OVERLAY, CONCRETE
ISLAND, INSTALLATION OF REINFORCING
STEEL FOR BRIDGE AND BOX CULVERT

NORTHEAST MISSISSIPPI PROCUREMENT CENTER

MINORITY BUSINESS ENTERPRISES

AGNEW TRUCKING
201 CR 553
RIPLEY MS 38663
662-837-2721
JERRY AGNEW
HAULING, GENERAL FREIGHT TRUCKING

BUDDY AYERS CONSTRUCTION INC
202 AYERS ROAD
CORINTH MS 38834
BUDDY AYERS
662-287-2296 662-287-4668
SITE CLEARING, EXCAVATION, AND STORM
DRAINAGE, HIGHWAYS, STREETS, & BRIDGES

CLOPTON CONTRACTORS INC
20366 EGYPT ROAD
ABERDEEN MS 39730
MICHAEL CLOPTON
Joyce_james_1999@yahoo.com
662-369-9538 662-369-9657 (FAX)
HEAVY CONSTRUCTION, SPECIAL TRADE
CONTRACTORS

COLYER'S BACKHOE & TRUCKING
760 CR 503
RIPLEY MS 38663
JAMES W COLYER
Colyer55@hotmail.com
662-837-4072 662-223-5379 (FAX)
SITE PREPARATION, EXCAVATION, TRUCKING

4-D CONSTRUCTION COMPANY INC
P O BOX 127
LOUISVILLE MS 39339
K R DEMPSEY
662-773-4739 662-773-2095 (FAX)
WATER SUPPLY AND IRRIGATION SYSTEMS,
SEWAGE TREATMENT FACILITIES,
HIGHWAYS, STREET AND BRIDGE
CONSTRUCTION

DAVCO LLC
819 CARVER STREET
WEST POINT MS 39773
JIMMY DAVIDSON
662-275-3834 662-494-2469 (FAX)
BUILDING ALTERATION AND RENOVATION,
CLEARING, GRUBBING, HAULING

ELECTRICAL SERVICES PLUS LLC
871 PALMETTO ROAD
TUPELO MS 38801
ANTHONY SYKES
antdhandman@yahoo.com
662-566-4128
ELECTRICAL WORK

HERNANDEZ, INC.
P. O. BOX 66
AMORY, MS 38821
LARRY HERNANDEZ
662-256-7817 662-256-8361 (FAX)
PLACING OF GRANULAR MATERIALS, RIP-
RAP, PIPE, DIRTWORK AND EXCAVATION,
CLEARING & GRUBBING

MS PAVING & CONSTRUCTION
P O BOX 237
MATHISTON MS 39752
HAROLD GUYTON
662-323-7277 662-323-7145 (FAX)
PAVING, ASPHALT & CONCRETE, STREET &
BRIDGE CONSTRUCTION, SITE PREP.

TUCKER TRUCKING
353 ALLEN CORNER ROAD
LAMAR MS 38642
MARK TUCKER
662-252-9916
TRUCKING HEAVY CONSTRUCTION

WOMEN BUSINESS ENTERPRISES

ATWOOD FENCE COMPANY INC
P O BOX 565
KOSCIUSKO MS 39090
KAY ATWOOD
atwoodfence@aol.com
662-289-6338 662-289-6371 (FAX)
FENCING, SIGNING AND GUARD RAIL,
INSTALLATION OF SIGN STRUCTURE AND
MASK POLE

GATTMAN CONSTRUCTION CO
P O BOX 95
GATTMAN MS 38844
SHEILA RASBURY
662-256-4088
RIP-RAP & CRUSHED STONE SUPPLIER

G & C CONSTRUCTION LLC
538 A ROCK SPRINGS DRIVE
OXFORD MS 38655
KAREN GRONER
gcconstruction@dixie-net.com
662-234-8885
EXCAVATION WORK, DEBRI REMOVAL,
DIRTWORK

GREERS ELECTRIC INC
1190 A CR 628
DUMAS MS 38625
YVONNE GREER
bobbygreer@bellsouth.net
662-837-8510 662-837-0995 (FAX)
ELECTRICAL WORK

NORTHEAST MISSISSIPPI PROCUREMENT CENTER

HALL'S CONSTRUCTION COMPANY
1354 HIGHWAY 30 EAST
NEW ALBANY MS 38652
PATRICIA HALL
662-534-7158
HIGHWAYS, STREETS, AND BRIDGES (NO BDE
ALLOWED FOR CONTRACT HAULING)

HAWK SCADA
P.O. BOX 1865
STARKVILLE, MS 39760
MELANIE H. BOOTH
662-324-2721
WATER, WASTEWATER, SURFACE MINING
NATURAL-GAS, FM/AM BROADCASTING

HELLUMS TRUCKING COMPANY INC
P O BOX 308
DENNIS MS 38838
SHELLIE HELLUMS
662-454-3666
HAULING

INTERSTATE LANDSCAPING OF MS INC
20900 HWY 15 N
FAULKNER MS 38629
CATHY GRIFFIN
662-837-0079
SEEDING, SODDING, EROSION CONTROL,
PAVE DITCH, RIGHT OF WAY MARKERS,
UNDER/SIDE EDGE DRAIN, MINOR CONCRETE
STRUCTURE, BOX CULVERTS/BRIDGES AND
BRIDGE END PAVEMENT

NELL'S ELECTRICAL CONTRACTING
P O BOX 426
COLUMBUS MS 39703
IRNELL JONES
662-574-6320 601-327-6648 (FAX)
RESIDENTIAL, COMMERCIAL AND
INDUSTRIAL ELECTRICAL WORK

O W JACKSON SODDING
2096 CRAIG SPRINGS ROAD
STURGIS MS 39769
SYLVIA JACKSON
662-465-7530
SOIL EROSION CONTROL

PARKER SAND & GRAVEL
501 BARTON FERRY ROAD
COLUMBUS MS 39701
FLORENCE K PARKER
662-434-8555 662-434-8096 (FAX)
SAND & GRAVEL SUPPLIER

REA'S COUNTRY LANE CONSTRUCTION INC
102 RHODES STREET
HOUSTON MS 38851

662-456-9898 662-456-5815
DIRT EXCAVATION, GRADE AND DRAIN, PIPE
CLEARING AND GRUBBING, GRANULAR
MATERIALS, SPREADING, COMPACTING AND
RIP-RAP

TLSL INC
210 CR 770
WALNUT MS 38683
LORAIN NULL
662-223-5376 662-826-5913
EXCAVATION, GRANULAR MATERIALS,
SPREADING AND COMPACTING, PIPE,
CLEARING AND GRUBBING, EROSION
CONTROL

TULA TURF INC
14 COUNTY ROAD 466
OXFORD MS 38655
662-234-0376
LANDSCAPING, EROSION CONTROL

WALTER COMPANY INC
125 B MARTIN STREET
RIPLEY MS 38663
LESLIE WALKER
662-837-0040
TRANSPORTATION/HAULING OF LIQUID
ASPHALT, GENERAL FREIGHT TRUCKING
LOCAL

WMP CONSTRUCTION INC
420 TIBBEE DRIVE
COLUMBUS MS 39701
WENDY PETERSON
662-574-4052 662-327-3672 (FAX)
HEAVY CONSTRUCTION, WATER, SEWER,
PIPELINE CONSTRUCTION

OUT-OF-STATE MBE/WBE CONTRACTORS

MINORITY BUSINESS ENTERPRISES

CHARLES H HILL CONTRACTORS, INC
2183 FREEMONT STREET
MEMPHIS TN 38114
MARCEL HILL
901-744-3483 901-744-3485 (FAX)
HIGHWAY CONSTRUCTION, SITE PREPARATION CONTRACTORS (CLEARING, EXCAVATION),
LANDSCAPING AND UNDERDRAINS, EROSION CONTROL

GULF STATES CONSTRUCTORS LLC
4415 SHORES DRIVE SUITE 204
METAIRIE LA 70006
IGNACIO C VILLANUEVA
504-887-6500
PILE DRIVING, CONCRETE FOUNDATIONS, ROAD BORING, DIRECTIONAL DRILLING

MILLER BUILDING GROUP
2233 OLIVE STREET
ST. LOUIS, MO 63103
JIMMIE MILLER
314-588-9006 314-581-9195
POURED CONCRETE FOUNDATION AND STRUCTURES CONTRACTORS;
FINISH CARPENTRY CONTRACTORS

PICKWICK CONSTRUCTION COMPANY
P O BOX 253
COUNCE TN 38326
CHARLES IRONS
901-689-3353
ASPHALT PAVING, DIRT EXCAVATION, RIP-RAP, HAULING

POTTS DISTRIBUTING COMPANY
P O BOX 179
COLUMBIA LA 71418
MABLE POTTS
318-649-6133
SUPPLIER OF MASONRY UNITS, CONCRETE AND PLASTIC PIPES, METAL PIPES, FENCE AND
GUARDRAIL, TIMBER AND LUMBER, GEOTEXTILE, FABRICS AND GEOCOMPOSITE SYSTEMS, JOINT
MATERIALS, REVETMENT, HAULING, LUMBER, PLYWOOD, MILLWORK, DOORS, WINDOWS AND
WOOD PANEL

WBE BUSINESS ENTERPRISES

AIRFIELD ETC INC
3629 PRESCOTT ROAD
MEMPHIS, TN 38118
STEPHANIE POOLE
901-363-9210 901-795-5519 (FAX)
HIGHWAY, STREET & BRIDGE CONSTRUCTION, HIGH MAST AND TAXIWAY LIGHTING

L I SMITH & ASSOCIATES INC
302 NORTH CALDWELL STREET
PARIS TN 38242
LUCILE D SMITH
731-644-1014
SURVEY & STAKING

North Water Treatment Plant
Filter Media Removal / Replacement & Basin Repair
City of Meridian

SECTION 01025

MEASUREMENT AND PAYMENT

PART 1 - GENERAL

1.01 SUMMARY

- A. The project shall be constructed complete as shown and indicated on the Contract Drawings and as described in the Contract Specifications.
- B. Payment shall include all compensation to be received by the Contractor for furnishing all tools, equipment, supplies, and manufactured articles, and for all labors, operations, and incidentals as necessary to complete the various items of work all in accordance with the requirements of the Contract Documents, including all costs of compliance with the regulations of public agencies having jurisdiction. The Contractor is hereby on notice that no separate payment will be made for any item not specifically called out, but that is required to properly complete the project.

1.02 SECTION INCLUDES

- A. Measurement and payment criteria applicable to portions of the Work performed under a unit price payment method.
- B. Defect assessment and non-payment for rejected work.

1.03 AUTHORITY

- A. Measurement methods delineated in the individual specifications sections complement the criteria of this section. In the event of conflict, the requirements of the individual specification section govern.
- B. CONTRACTOR shall take all measurements and compute quantities. The Owner's Representative will verify measurements and quantities.
- C. CONTRACTOR shall provide necessary equipment, workers, and survey personnel as required by Owner's Representative to verify quantities.

1.04 UNIT QUANTITIES SPECIFIED

- A. Quantities indicated in the Bid Form are for bidding and contract purposes only. Quantities and measurements supplied or placed in the Work and verified by the Owner's Representative determine payment.
- B. If the actual work requires more or fewer quantities than those quantities indicated, provide the required quantities at the unit sum/prices contracted.

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1.05 MEASUREMENT OF QUANTITIES

- A. Measurement by Volume: Measured by cubic dimension using mean length, width and height or thickness.
- B. Measurement by Area: Measured by square dimension using mean length and width or radius.
- C. Linear Measurement: Measured by linear dimension, at the item centerline or mean chord.
- D. Stipulated Sum/Price Measurement: Items measured by weight, volume, area or linear means or combination, as appropriate, as completed item or unit of the Work.

1.06 PAYMENT

- A. Payment Includes: Full compensation for all required labor, products, tools, equipment, plant, transportation, services and incidentals; erection, application or installation of an item of the Work; overhead and profit.
- B. Total compensation for required Unit Price Work shall be included in Unit Price bid in the Bid Schedule. Claims for payment as Unit Price Work, but not specifically covered in the list of unit prices contained in the Bid Schedule, will not be accepted.
- C. Progress payments will be based on the Owner's Representative's observations and evaluations of quantities incorporated in the Work multiplied by the unit price.
- D. Final payment for the Work governed by unit prices will be made on the basis of the actual measurements and quantities accepted by the Owner's Representative multiplied by the unit sum/price for Work which is incorporated in or made necessary by the Work.

1.07 DEFECT ASSESSMENT

- A. Replace the Work, or portions of the Work, not conforming to specified requirements.
- B. If, in the opinion of the OWNER and Owner's Representative, it is not practical to remove and replace the Work, the OWNER and Owner's Representative will direct one of the following remedies:
 - 1. The defective Work may remain, but the unit sum/price will be adjusted to a new sum/price at the discretion of the OWNER and Owner's Representative.
 - 2. The defective Work will be partially repaired to the instructions of the OWNER and Owner's Representative, and the unit sum/price will be adjusted to a new sum/price at the discretion of the OWNER and Owner's Representative.
- C. The individual specification sections may modify these options or may identify a specific formula or percentage sum/price reduction.

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- D. The authority of the OWNER and Owner's Representative to assess the defect and identify payment adjustment is final.

1.08 NON-PAYMENT FOR REJECTED PRODUCTS

- A. Payment will not be made for any of the items listed below.
1. Products wasted or disposed of in a manner that is not acceptable.
 2. Products determined as unacceptable before or after placement.
 3. Products not completely unloaded from the transporting vehicle.
 4. Products placed beyond the lines and levels of the required Work.
 5. Products remaining on hand after completion of the Work.
 6. Loading, hauling and disposing of rejected products.
- B.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

PART 4 - MEASUREMENT AND PAYMENT

4.01 SCOPE

- A. The Total Base Bid Price shall cover all work required by the Contract Documents. All costs in connection with the proper and successful completion of the work, including furnishing all materials, equipment, supplies, and appurtenances; providing all construction equipment, and tools; and performing all necessary labor and supervision to fully complete the work, shall be included in the unit and lump sum prices bid. All work not specifically set forth as a pay items in the Bid Form shall be considered a subsidiary obligation of the Contractor and all costs in connection therewith shall be included in the prices bid.

4.02 ESTIMATED QUANTITIES

- A. All estimated quantities stipulated in the Bid Form or other Contract Documents are approximate and are to be used only (a) as a basis for estimating the probable cost of the work, and (b) for the purpose of comparing the bids submitted for the work. The actual amounts of work done and materials furnished under unit price items may differ from the estimated quantities. The basis of payment for work and materials will be the actual amount of work done and materials furnished. No compensation will be given for any quantities not used.

4.03 BASE BID ITEMS

- A. Item No. 1: MOBILIZATION AND DEMOBILIZATION
1. Measurement: Measurement for payment for "Mobilization and Demobilization" will be on a lump sum basis as specified herein.

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2. Payment: Payment for mobilization and demobilization shall cover all preparatory work, obtaining all permits, insurance and bonds, movement of personnel, equipment, supplies and incidentals to the project site, the establishment of temporary offices, project signs and other construction facilities necessary for work on this project. It shall include removal of all personnel, equipment, supplies, and incidentals from the project site, removal of temporary offices and other construction facilities necessary for work on this project, all as required for the proper performance and completion of the work.

Payment will be made at the contract lump sum price, subject to the following provisions:

Partial payments for mobilization and demobilization will be made in accordance with the following schedule up to a maximum of 5 percent of the total contract amount (including this item), and payment of any remaining amount will be made upon completion of all work under the contract.

<u>Percent of Total Contract Amount Earned</u>	<u>Allowable Percent of the Lump Sum Price for the Item</u>
1 st Partial Estimate	25%
10%	50%
25%	75%
50%	100%

No price adjustments will be made for this item due to changes in the work.

B. Item No. 2: REMOVAL AND DISPOSAL OF FILTER MEDIA

1. Measurement: Measurement for payment for "Removal and Disposal of Filter Media" will be made on a lump sum basis.
2. Payment: Payment for this item will be made at the lump-sum bid and shall include all labor, materials, tools, equipment and incidentals necessary to complete removal and disposal of the existing filter media onsite, in the location designated by the owner. Payment for this bid item shall be made as percent complete of the total filter media removal and disposal.

C. Item No. 3: REPLACE MEDIA RETAINERS

1. Measurement: Measurement for payment for "Replace Media Retainers" will be made on a square foot basis.
2. Payment: Replacement of media retainers will be measured as provided above, will be paid at the unit price bid and shall include all labor, materials, tools, equipment and incidentals necessary to complete the work. Work shall include removal and disposal of the existing media retainers and installation of new media retainers for the existing underdrain system, as shown on the construction plans.

D. Item No. 4: GROUT

1. Measurement: Measurement for payment for "Grout" will be made on a cubic foot basis.

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2. Payment: Grout will be measured as provided above, will be paid at the unit price bid and shall include all labor, materials, tools, equipment and incidentals necessary to complete the work. Work shall include repairs to and / or replacement of grouting around the existing underdrains which has been identified as damaged and / or missing during a post media removal inspection. There will be no additional payment for plywood, plastic sheeting, building paper, etc. used to protect the existing underdrain system during grouting or for special equipment and cleanup work but costs for these items shall be included in the pay item for Grout.

E. Item No. 5: INSTALL FILTER SAND

1. Measurement: Measurement for payment for "Install Filter Sand" will be made on a cubic yard in place (CYIP) basis.
2. Payment: Installation of filter sand as shown on the drawings will be measured as provided above, will be paid at the unit price bid and shall include all labor, materials, tools, equipment and incidentals necessary to complete the work. Work will include all backwashing, leveling, scraping, and removal of fines to provide a uniform thickness of sand as shown on the drawings. There will be no additional payment for backwashing, leveling, scraping, removal of fines, or supports for working in the basin after the media has been placed but costs for these items shall be included in the pay item for Install Filter Sand.

F. Item No. 6: INSTALL FILTER ANTHRACITE

1. Measurement: Measurement for payment for "Install Filter Anthracite" will be made on a cubic yard in place (CYIP) basis.
2. Payment: Installation of filter anthracite as shown on the drawings will be measured as provided above, will be paid at the unit price bid and shall include all labor, materials, tools, equipment and incidentals necessary to complete the work. Work will include all backwashing, leveling, scraping, and removal of fines to provide a uniform thickness of sand as shown on the drawings. There will be no additional payment for backwashing, leveling, scraping, removal of fines, or supports for working in the basin after the media has been placed but costs for these items shall be included in the pay item for Install Filter Anthracite.

G. Item No. 7: EROSION CONTROL MANAGEMENT AND MAINTENANCE

1. Measurement: Measurement for payment for "Erosion Control Management and Maintenance" will be made on a lump sum basis.
2. Payment: Erosion control management and maintenance will be measured as provided above, will be paid at the unit price bid and shall include all labor, materials, tools, equipment and incidentals necessary to complete the work. Work shall include the implementation and maintenance of Best Management Practices (BMPs) for erosion and sediment control throughout the project, as shown on the construction drawings. Work shall also include removal of BMPs once the project has been completed and final stabilization of disturbed soil and / or soil stockpiles has been established. Once implementation of erosion control measures has begun, a portion of the lump sum price directly proportional to percent completion of the project will be available for payment at each pay request. The total amount for "Erosion Control Management and Maintenance" will not be paid until the project is 100% complete. There will be no additional payment for individual BMPs but costs for these items shall be included in the pay item for Erosion Control Management and Maintenance.

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4.04 ALTERNATE BID ITEMS

A. Item No. 100: FILTER BASIN COATING

1. Measurement: Measurement for payment for "Filter Basin Coating" will be made on a square foot basis.
2. Payment: Filter basin coating as shown on the drawings will be measured as provided above will be paid at the unit price bid and shall include all labor, materials, tools, equipment and incidentals necessary to complete the work. Work will include installing a protective coating on the basin walls after the filter media has been removed. There will be no additional payment for cleaning, concrete patching, drying of surfaces to be coated, protection of surfaces not being coated or any other prep work required to install the coating but costs for these items shall be included in the pay item for Filter Basin Coating.

- END OF SECTION -