

# **Request for Proposals**

## **Biosolids Screening, Loading, Transportation, and Disposal City of Jackson, Mississippi City Project No. 15BO50091**

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**December 2015**



**Proposals Due:  
3:30 P.M. Local Time,  
Tuesday, January 12, 2016**

**Mandatory Pre-Proposal Conference:  
10:00 A.M. Local Time,  
Tuesday, December 29, 2015**

**Kishia L. Powell, Director  
Department of Public Works**

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## SECTION 1.0 NOTICE OF REQUEST FOR PROPOSALS

The City of Jackson, Mississippi (“City of Jackson”) is soliciting proposals from qualified companies for the off-site disposal of geotextile-stored biosolids, removed as part of the Storm Cell Rehabilitation Project (City Project No. 11B0500902), at the Savanna Street Wastewater Treatment Plant (WWTP). Proposals will be received by the City of Jackson at the office of the City Clerk, City Hall, 219 South President Street, Jackson, Mississippi 39205, until 3:30 P.M. local time, **Tuesday, January 12, 2016**, for supplying all labor and materials (as specified) necessary for **BIOSOLIDS SCREENING, LOADING, TRANSPORTATION AND DISPOSAL, CITY PROJECT NUMBER 15B0500901**.

The scope of services is to remove approximately **305,000 WET TONS** of dewatered biosolids stored in geotextile tubes at the Savanna Street WWTP, and dispose of the material off-site in an environmentally compliant manner. Beneficial use of the majority of the biosolids is required. The details of the work to be performed are described in more detail within the Request for Proposals (RFP).

On-site preparation operations shall commence within 10 days and biosolids disposal operations shall commence within 60 days from the effective date of the Notice to Proceed.

Proposals (one original and five copies) shall be submitted using the forms provided as part of the Request for Proposals (excluding Section 6.0 - Proposal Forms), sealed in an envelope and plainly marked on the outside of the envelope: **“Proposal for BIOSOLIDS SCREENING, LOADING, TRANSPORTATION, AND DISPOSAL, CITY PROJECT NO. 15B0500901.”**

The original completed and signed Proposal Forms (Section 6.0 except EBO Plan) shall be submitted in a separate sealed envelope labelled **“Original Proposal Forms for CITY PROJECT NO. 15B0500901.”**

One original and five copies of the completed and signed EBO Plan shall be submitted in a separate sealed envelope labelled **“Original EBO Plan for CITY PROJECT NO. 15B0500901.”**

The Proposal, Proposal Forms, and EBO Plan shall be deposited with the City Clerk, City Hall, Jackson, Mississippi prior to the hour and date hereinbefore designated. Each Proposer must describe in his proposal the company’s qualifications to perform the work. The *Statement of Qualifications* shall list past projects of similar size and nature, a list of references with name and telephone number, a list of key personnel who will perform the work, and other information supporting the qualifications as required by the project described herein. The proposal shall include a technical approach in sufficient detail to demonstrate the proposer’s knowledge of the project and the technical strategies for execution of the work. Additional proposal submittal requirements are specified in **Section 2.0** of the RFP.

Proposals will be assessed, rated, and the selection made based on the following criteria: 1) Total Project Cost; 2) Project Technical Approach 3) Qualifications and Experience of Proposer; 4) Compliance with EBO; and 5) Financial Status of Company.

**A MANDATORY Pre-Proposal Meeting** is scheduled for **Tuesday, December 29, 2015 at 10:00 A.M.**, local time, in the Main Conference Room of the Administration Building, Savanna Street Wastewater Treatment Plant, 3810 Interstate 55 South Frontage Road, Jackson MS, 39212. Attendance by Proposers intending to submit on the project is **mandatory**. All potential Subcontractors and other interested parties are invited to attend. As part of the Pre-Proposal meeting, an escorted tour of the biosolids storage area will be conducted by the Project’s Engineering Team. The escorted tour will begin at 2:00 P.M. and will be concluded no later than 4:00 P.M. During this site visit, Contractors may collect samples of project’s solids, and conduct any additional site reconnaissance as is reasonable. This escorted tour will be the only site visit conducted as part of the RFP process. In order to participate in the site visit,

Proposer shall be required to submit an email stating intent to attend to Matthew Horton, P.E. at [hortonmr@cdmsmith.com](mailto:hortonmr@cdmsmith.com). All Proposers who intend to participate in the site visit will be required to wear the necessary safety clothing including hardhats, safety glasses, and steel toed boots.

All proposals must include a **Proposal Bond** in the amount of 5% of the total contract amount and a Consent of Surety, agreeing that, in the event of the award of a Contract, a **Performance Bond** and a **Payment Bond** will be furnished as outlined in the Special Provisions Section.

The successful Proposer will be required to furnish Certificates of Insurance showing coverage limits as outlined within the RFP. The selected Proposer shall procure, maintain, and keep this coverage in force at all times during the term of the Contract at the Proposer's sole expense. Proposer shall submit proof of ability to obtain such insurance in the proposal.

Copies of the Request for Proposals are on file and open to public inspection in the office of the (1) Water/Sewer Utilities, Department of Public Works, Jackson, Mississippi; and (2) City Clerk in Jackson, Mississippi.

An OFFICIAL version of the RFP, as part of the proposal package, may be obtained electronically by contacting:

CDM Smith  
Matthew Horton, PE  
Tel: (601) 966-0359 or Email: [hortonmr@cdmsmith.com](mailto:hortonmr@cdmsmith.com)

A non-refundable \$50.00 payment, in the form of a check payable to CDM Smith, is required for registering and obtaining the proposal package. Only companies who purchase the RFP document and register with CDM Smith at this address will be considered as valid proposers and will receive Addenda (if issued). Failure to register and obtain an official proposal from CDM Smith will result in disqualification.

Additional information and assistance regarding this contracting opportunity may also be obtained through the MS Procurement Technical Assistance Program, of the Mississippi Contract Procurement Center, which can be found at: [www.msipc.com](http://www.msipc.com).

The City has retained CDM Smith as the Engineer for the Biosolids Screening, Loading, Transportation and Disposal project. The CDM Smith office is located at 210 East Capitol Street, Suite 1050, Jackson, MS, 39201. For technical questions, contact Matthew Horton, P.E., by phone at (601) 966-0359 or by email at [hortonmr@cdmsmith.com](mailto:hortonmr@cdmsmith.com).

The City of Jackson is committed to the principle of non-discrimination in public contracting. It is the policy of the City of Jackson to promote full and equal business opportunity for all persons doing business with the City. As a pre-condition to selection, each Proposer shall submit a completed and signed Equal Business Opportunity (EBO) Plan with the proposal submission, in accordance with the provisions of the City of Jackson's Equal Business Opportunity (EBO) Executive Order. Failure to comply with the City's Executive Order shall disqualify a Proposer from being awarded an eligible contract. For more information on the City of Jackson's Equal Business Opportunity Program, please contact the Division of Equal Business Opportunity at 601-960-1856. Copies of the City of Jackson's Executive Order, EBO Plan Applications, and a copy of the program are available at the following location: 200 South President Street, Room 223, Jackson, Mississippi; or can be accessed from the City of Jackson's Equal Business Opportunity webpage.

The City of Jackson hereby notifies all proposers that in compliance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d to 2000d-4, that all proposers will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex, in consideration for an award.

The City of Jackson, Mississippi is committed to cultivating and ensuring the quality of life of its citizens, through various programs, employment, initiatives, and assistance. The City of Jackson encourages all persons, corporations, and/or entities doing business within the City of Jackson, as well as those who seek to contract with the City of Jackson on various projects and/or conduct business in Jackson to assist the City of Jackson in achieving its goal by strongly considering city of Jackson residents for employment opportunities

The City of Jackson reserves the right to reject any and all proposals and to waive any informalities or irregularities therein.

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Kishia L. Powell  
Director of Public Works

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Terry Williamson, Legal Counsel

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Gus McCoy, Chief Administrative Officer

Publishing Dates: December 10 & 17, 2015 in [The Mississippi Link](#)

## SECTION 2.0 INSTRUCTIONS TO PROPOSERS

### 1. PROJECT OVERVIEW

The successful Proposer shall furnish all permits, materials, equipment, and labor necessary for performing all work for loading, transporting, and disposal of geotextile stored biosolids generated as part of the Storm Cell Rehabilitation Project (City Project No. 11B0500902), from the Savanna Street WWTP, and on-site preparation operations shall commence within 10 days and biosolids disposal operations shall commence within 60 days of the effective date in the Notice to Proceed. All biosolids must be disposed of off-site, on or before December 31, 2017, in accordance with the Scope of Services described in **Section 3.0** of the RFP documents.

A comprehensive materials testing and quality controls program shall be implemented by the Proposer as an integral part of the work. This activity shall ensure that the work is completed in full compliance with all Federal, State, and Local regulations and requirements.

During the entirety of the project, care shall be taken by the Proposer to preserve the integrity of the two containment basins. The liner shall be preserved to the maximum extent practicable. In the event that the HDPE liners cannot be preserved, as determined by the Engineer, they shall be removed and disposed of, by the Proposer, at a local landfill at Proposers expense. Alternatively, and subject to the approval of the ENGINEER, the Proposer may dispose of the liner by recycling, reuse and repurposing of the HDPE material. Following the completion of the removal and disposal of the liners, the Proposer shall be required to grade the containment basin bottoms to the original construction elevations as shown in **Appendix D** drawings, so that they slope in the direction of the center drainage trench to allow impounded water to properly drain to the return sump areas.

With regard to vehicular traffic and on-site operations, the Proposer shall note and comply with the *Access Routes and Proposer Operations Area Map* restrictions as defined within this RFP (see **Appendix A**).

### 2. ESTIMATED QUANTITIES

The estimated quantity of biosolids stored within the geotextile tubes is **305,000 WET TONS**; however, actual quantities may vary. The successful Proposer shall remove the total actual quantities contained in the geotextile tubes and dispose of the material in accordance with Federal, State and Local regulations. BENEFICIAL USE through land application is the preferred disposal method and will factor into the ranking system accordingly, as detailed in **Section 5.0** herein. Other approved reuse methodologies may also be permissible as a means for final disposal. No adjustments will be made to the unit price amount based on higher or lower biosolids quantities. Determination of pay quantities will be based on the recorded weight of removed biosolids as determined by a certified on-site scale provided by the Proposer.

### 3. EQUAL BUSINESS OPPORTUNITY REQUIREMENTS

The **Biosolids Screening, Loading, Transportation, and Disposal Project** will provide significant opportunities for local minority contractor participation, specifically, for sludge hauling operations and other transportation-related activities. It is the City of Jackson's preference to have multiple local companies participate in the project. Positive efforts, as required in the City of Jackson's Equal Business Opportunity (EBO) Executive Order, shall be made by Proposers to utilize minority-owned businesses and female-owned businesses as sources of construction, supplies and services, including hauling. The City of Jackson's minimum participation goals are 8.67% African American Business Enterprises, 0.16%

Asian Business Enterprises, and 1.96% Female Business Enterprises. However, due to the particular nature of this project and the large number of certified Local Minority Trucking firms, it is the City of Jackson's desired goal that the minority participation on this project exceed 35%. ALL Proposers must submit an EBO Plan Application as part of their final proposals. A copy of the City's EBO Plan Application is included as part of **Section 6.0**. Failure to submit a completed and signed EBO Plan Application shall cause the Proposal to be rejected by the Owner as non-responsive.

It should be noted, per the Executive Order (dated 4/29/2015) and included as part of **Section 6.0**; a **Joint Venture (JV)** between a prime contractor and MBEs and FBEs is strongly encouraged when certain contract thresholds are exceeded. It is incumbent on each proposer to evaluate their price proposal to determine if a JV is needed, and if so, to comply with all related City of Jackson requirements.

All Proposers must maintain documentation of efforts made to utilize minority and female-owned businesses. Proposers must contact Jonathan Barnett, with the EBO Office, for sources of minority and female-owned firms. Mr. Barnett's contact information is listed below. A copy of the Minority/Female Business Enterprises Directory is available at 200 South President Street, Room 223, Jackson, Mississippi.

Jonathan Barnett,  
Equal Business Opportunity Office  
City of Jackson  
(601) 960-1856  
[jbarnett@city.jackson.ms.us](mailto:jbarnett@city.jackson.ms.us)

One original and two copies of the completed and signed EBO Plan shall be submitted in a separate sealed envelope labelled "**Original EBO Plan for CITY PROJECT NO. 15B0500901.**" All minority and female business enterprises utilized **MUST** be certified with the City of Jackson. A copy of the Minority/Female Business Enterprise Disclosure Affidavit is available in the Office of Economic Development, 200 South President Street, Room 223, Jackson, Mississippi 39201. EBO Plan requirements and the EBO Plan Application are provided in **Section 6.0** herein.

#### 4. PROPOSAL ADMINISTRATION

Any questions regarding the RFP or agreement must be submitted in writing, via email, at least five (5) days prior to the proposal submittal date to CDM Smith for this project. The designated representative is:

Matthew Horton, P.E.  
CDM Smith  
210 East Capitol Street, Suite 1050, Jackson, MS 39201  
Tel: 601-966-0359  
Email: [hortonmr@cdmsmith.com](mailto:hortonmr@cdmsmith.com)

All responses will be issued in the form of formal addendum directed to all prospective Proposers.

#### 5. PRE-PROPOSAL MEETING

**A mandatory pre-proposal meeting and site visit will be held on Tuesday, December 29, 2015 at 10:00 A.M.** at the Savanna Street WWTP. At this time, Proposers should familiarize themselves with any conditions which may affect performance and proposal prices. Submission of a proposal will be prima facie evidence that the Proposer did, in fact, make a site inspection and is aware of all conditions affecting

performance and proposal prices. Proposals will not be accepted from any company that does not have a representative in attendance at this meeting.

## 6. SCHEDULE

The successful Proposer shall complete required site preparation, including mobilization, equipment installation, and road improvements necessary to initiate the biosolids offsite disposal, within 60 days from the effective date of the Notice to Proceed (NTP) from the City. Prior to the initiation of the biosolids hauling operations, the Proposer shall complete the road repair on first 100 linear foot section of the entrance road as detailed in **Appendix E**. Biosolids disposal shall be accomplished over a period, beginning with the NTP and ending on **December 31, 2017**. Accelerated biosolids processing and removal are encouraged. All biosolids disposal must be completed by **December 31, 2017**. Final site restoration and road repair work shall be completed within 60 days after completion of biosolids disposal operations.

The Proposer shall, at all times during the continuance of the Contract, perform the work with such resources as are sufficient to complete the project within the time specified. The Proposers shall provide a schedule that delineates the proposed phasing, milestones, and completion of work.

## 7. ADDENDA

Any Addendum issued prior to the date set forth for proposal submittal, shall be incorporated into the Proposer's RFP and thereby be used in the preparation of his proposal. Additionally, issued addendum shall be acknowledged in the proposal and shall be made a part of the Contract. It is the responsibility of the Proposers to be aware of information issued in the form of addendum. Receipt of any and all addenda issued shall be acknowledged in proposal submittals. Issuance of addenda shall be conducted by CDM Smith. Only those who officially purchased the RFP will be provided with any such addendum. Plan rooms will also be provided with addenda.

## 8. INTERPRETATION OF DOCUMENTS

If any person, contemplating submitting a proposal for the proposed contract, is in doubt as to the true meaning of any part of the Request for Proposal, or finds discrepancies in or omissions from the RFP, that person must submit to CDM Smith, a request for an interpretation or correction thereof. Any interpretation or correction of the documents will be made only by Addendum duly issued and a copy of such Addendum will be provided by CDM Smith to only those who officially purchased the RFP and plan rooms sent the RFP. The City of Jackson and CDM Smith will not be responsible for any other explanations or interpretations of the documents.

## 9. WITHDRAWAL OF PROPOSAL

Any Proposer may withdraw his proposal, either personally, or by written request, at any time prior to the scheduled closing time for Receipt of Proposals. After submittal, the Proposal shall remain valid for a period of 90 days.

## 10. AWARD OR REJECTION OF PROPOSALS

The Contract will be awarded to the best responsive, responsible Proposer complying with these instructions, the Notice of Request for Proposals, and all applicable sections of this RFP. Award of the Contract will be based on the evaluation criteria set forth in **Section 5.0** of this RFP. The City of Jackson,

however, reserves the right to accept or reject any or all proposals, if it deems it best for the public good, and to waive any informality in the proposals received.

#### 11. EXECUTION OF CONTRACT

The successful Proposer shall enter into a written contract that will be binding in all the terms, conditions, and provisions of this RFP defined herein and associated Contract Documents.

#### 12. PRICE ADJUSTMENTS

Because this project includes a significant transportation cost component, a **fuel adjustment clause** is included as part of **Paragraph 2, Section 4.0**, and may be utilized in the subsequent year(s) of the project work, based on US DOE's index for On-Highway Diesel Fuel Prices for the Gulf Coast (PADD3) region. The diesel fuel price adjustment shall be based on the current price per gallon (base price) on January 4, 2016. Future fuel price adjustments will be made at the beginning of each calendar quarter starting in calendar year 2017. If necessitated by the solids removal operations continuing past the December 31, 2017 deadline and into 2018, the fuel adjustment clause may still be utilized in the same manner as is described for 2017. No other price adjustment clause is available under this contract.

#### 13. PAYMENTS

Payment shall be made for the total amount of biosolids disposed of off-site and for any other items as listed in the **Proposal Cost Schedule** in **Section 6.0**. Payment for biosolids disposal will be determined by multiplying the unit contract price by the actual quantity of wet tons of biosolids removed as further described in **Section 3.0** (Special Provisions), **Paragraph 17**. The repair on first 100 linear foot section of the entrance road is separate from the Savanna St. WTP Roadway Repair Budget and shall be on a lump sum basis (Item No. 4 in the **Proposal Cost Schedule** in **Section 6.0**). Payment for Plant Site Roadway repairs will be based on signed work orders at the prescribed unit pricing.

#### 14. LIQUIDATED DAMAGES

The City of Jackson faces stipulated penalties from Mississippi Department of Environmental Quality (MDEQ) if the biosolids disposal project is not completed on time; therefore, liquidated damages will be assessed for each consecutive calendar day biosolids disposal has not been completed after the December 31, 2017 required completion date.

Liquidated damages for failure to complete all biosolids disposal operations will be as shown in the **Schedule of Liquidated Damages** table below. Additionally, liquidated damages in the amount of \$1000 per day will be assessed and for failure to complete site restoration and road repair within 60 days after completion of biosolids disposal operations, in accordance with these documents.

**Schedule of Liquidated Damages**

Date of Solids Removal Operations	Liquated Damages Rate to be Assessed
January 1, 2018 – June 30, 2018	\$500/day
July 1, 2018 and after	\$1000/day

Furthermore, any additional actual costs incurred by the Owner beyond \$1,000 per day shall be added to the daily penalties. These actual costs include, but are not limited to, engineering, inspection, and other project related costs resulting from the Contractor's failure to complete the work on schedule.

## SECTION 3.0 SPECIAL PROVISIONS

### 1. PROPOSER SCOPE OF SERVICES

The scope of work required of the Proposer is to screen, load, transport, and properly dispose of approximately 305,000 WET TONS of biosolids contained in 228 geotextile tubes located within two containment basins at the Savanna St. WWTP. The biosolids disposal must be performed in accordance with all Local, State and Federal requirements, and shall include Proposer implemented monitoring and quality control. Proposer is required to satisfy all regulatory agency reporting required for the work.

The geotextile tubes are to be cut open and the biosolids removed, screened as necessary to remove rags, plastics, and other non-biosolids or soil material, and loaded into transport vehicles for proper disposal. It is the City of Jackson's desire to beneficially use the dewatered biosolids to the fullest extent during disposal. The Proposer **MUST** beneficially use a minimum of **50%** of the biosolids disposed. Higher percentage beneficially used will be rated favorably in the Proposal Evaluation Process. All required sampling and classification of the biosolids prior to removal shall also be the responsibility of the Proposer.

The Proposer shall be responsible for proper disposal of the geotextile tube debris screened from biosolids, as well as the empty geotextile tubes, once the solids have been excavated. Upon the completion of the solids disposal operations, the basins' HDPE liners shall be evaluated by the Engineer to determine their condition and potential for continued use. In the event the liners cannot be saved, they shall be removed and disposed of by the Proposer at a local landfill at Proposer's expense. Following the completed removal and disposal of liners, the Proposer shall be required to grade the containment basin bottoms to the original construction elevations so that they slope in the direction of the center drainage trench to allow impounded water to properly drain to the return sump areas. The final elevations and slopes for the containment basin bottoms are shown in the **Appendix D** drawings. All work described within this scope shall be at Proposer's expense.

Prior to the initiation of the biosolids hauling operations, the Proposer shall complete repair on the first 100 linear foot section of the entrance road as specified in **Appendix E**.

### 2. DEFINITION OF BENEFICIAL USE

*Beneficial use* is defined as disposal of biosolids in a manner that recycles or recovers resources embodied by the biosolids such as nutrient value, soil conditioning properties, energy content, or any other attribute. While landfilling of biosolids will eventually contribute to enhanced methane production from the landfill, and potentially increased energy recovery, landfilling of biosolids is not considered beneficial use under this definition. Acceptable beneficial uses include:

- Agricultural land application
- Silviculture land application
- Land reclamation
- Horticulture and landscaping
- Energy recovery
- Specialized and/or proprietary commercial uses
- Alternative Daily Cover (if accepted by landfill and by Regulatory Authority)

### 3. BIOSOLIDS SOURCE AND QUANTITIES

The biosolids were removed, as part of a previous project, from the site's three adjacent equalization (EQ) basins where, during periods of high influent flows, wastewater would be diverted and temporarily stored. The removal process consisted of hydraulic dredging of accumulated solids from the three EQ basins, blending with polymer, and pumping the solids slurry into geotextile tubes for passive dewatering and temporary storage. The sludge removal operations commenced in late 2012 and were completed in April 2014. At the time of this RFP, the anticipated quantity requiring disposal is 305,000 WET TONS of dewatered biosolids. Through the duration of that removal project, composite samples were taken from all geotextile tubes and analyzed for total solids content. Following the completion of the removal operations, the average total percent solids (%TS) for the nearly 91,160 dry tons of material in all tubes was approximated at 33%.

The successful Proposer will be responsible for removing 100% of the dewatered biosolids. If, at any point, the total quantity of dewatered biosolids is found to be greater or less than the 305,000 WET TON estimation, the successful Proposer shall remove the total actual quantities stored within the containment basins at the Savanna Street WWTP at the Proposer's unit price. The disposal shall be performed in accordance with Federal, State and Local regulations.

### 4. BIOSOLIDS QUALITY

The City of Jackson certifies that none of the material to be disposed of under this contract shall constitute hazardous waste under Federal, State or Local law. The City of Jackson further certifies that it will not combine or mix hazardous waste with the material to be provided under this contract. The biosolids contained within the geotextile tubes are expected to meet Class B criteria for pathogens, as set forth in 40 CFR Part 503. Additionally, on January 21, 2015, the Engineer conducted random sampling of material from a total of 16 tubes, located on the top tiers within both containment basins, (eight geotextile tubes sampled in the West Containment Basin and eight geotextile tubes sampled in the East Containment Basin). The composite samples were then sent to a local laboratory and analyzed for fecal coliform, trace metals concentrations, and nitrogen content. Per the laboratory analysis of the randomized samples, as shown in the summary matrix in **Appendix B**, the quality of the biosolids samples collected meets the requirements for land application via incorporation, based on EPA's 503 parameters for land application of Class B biosolids. Each of the 16 collected samples contained low pathogen counts as well as levels of regulated trace metals below the threshold for Class B solids. For all biosolids that are beneficially used, the Proposer will perform all testing and provide all certifications as required by Federal, State, and Local regulations. A comprehensive testing and quality control plan shall be submitted as part of the proposal.

During the scheduled site visit, Proposers may obtain sludge samples from the geotextile tubes and perform any tests as they may require. Proposers shall note that the limited testing results included as part of this RFP are not warranted to be applicable to the entire volume of biosolids within the two containment basins. The Proposer must implement a more comprehensive testing and quality control program to determine actual biosolids quality at the time of processing for disposal.

### 5. BIOSOLIDS STORAGE

Biosolids are stored in 228 geotextile tubes ranging from 75 to 150 feet in length. The geotextile tubes are arranged in a stacked configuration up to four tiers high. Just over half of the geotextile tubes are stored within the West Containment Basin with the remainder in the East Containment Basin.

## 6. MAINTENANCE OF CONTAINMENT BASIN RETURN PUMP SYSTEMS

Each of the two geotextile tube containment basins include a dewatering pump system, as shown on the *Access Routes and Proposer Operations Area Map* in **Appendix A**. The two pump systems (also referred to as return pumps) are used to transfer stormwater out of the containment basins and into the adjacent EQ basins. Both pump systems were constructed as part of the preceding Savanna Street WWTP Storm Cell Rehabilitation Project (City Project No. 11B0500902). Each system contains two 30 HP submersible pumps controlled by float switches and a local control panel. All four of the pumps were pulled and serviced in September 2014. The Proposer will be responsible for operation and maintenance of both of these pumping systems during the duration of the project. Following the project's completion, prior to the transition of responsibility for the pump systems from the Proposer back to the City, the Proposer will be responsible for the cost and scheduling of the inspection of the pump systems by a certified representative of the pump manufacturer. The Proposer shall monitor the water elevations within both containment basins and report immediately to the Engineer when levels appear higher than normal or rising at an accelerated rate.

During the excavation of material from the tubes, the Proposer shall provide erosion control fencing/screening and/or other effective means, as necessary, to prevent solids from being washed into the basins' center drainage ditches, thus eliminating risk of excess solids discharging into return pump sumps.

## 7. BIOSOLIDS PREPARATION

Photos of the geotextile tubes, taken mid July 2014, are shown in Figure 1-4. The vegetation growing on the geotextile tubes includes grasses, weeds, and small scrub trees. The Proposer will remove vegetation growing on and around the geotextile biosolids storage tubes and properly dispose of the vegetative material off-site. After cleaning the geotextile tubes of vegetation, the tubes will be cut open and the biosolids will be removed by the Proposer and delivered to his processing area for screening and loading, as required prior to disposal.



Figure 1-4. Photographs of the Geotextile Tubes

## 8. BIOSOLIDS SCREENING

The dewatered biosolids contained in the geotextile tubes will require processing to remove inorganic debris (plastics, rags, etc.) prior to beneficial use. The Proposer will devise and implement a suitable screening system arrangement and furnish and install all necessary equipment. Biosolids being beneficially used, such as by land application, shall not contain visible trash, plastics, rags, or other foreign objects or debris that would make the material objectionable to the end user.

## 9. BIOSOLIDS LOADING AND TRANSPORTATION

Proposer is responsible for scheduling, loading, and transporting all biosolids from the geotextile tubes to disposal sites. Proposer will provide all trucks required to transport the biosolids and complete disposal operations within the schedule required. Trucks shall be in full compliance with all MDOT requirements, fully insured, and in safe operating condition. A truck management and control plan shall be submitted in the proposal. This plan must include provisions for ensuring trucks and drivers meet minimum standards. Also, it should include a module for load quantification and truck identification.

Proposer will be responsible for installation of a temporary onsite wheel wash station to prevent trucks/vehicles from tracking mud onto streets and roadways. A contingency plan for spills, accidents, and incidents related to truck hauling shall be provided.

All trucks transporting biosolids must have trailers with sealed tailgates to prevent leakage. Additionally, all trailers must be covered by a tarp prior to exiting Savanna Street WWTP to prevent release of biosolids during transport.

## 10. BIOSOLIDS DISPOSAL

Proposer is responsible for all elements associated with land application disposal, including, but not limited to, selection and permitting of suitable land application sites, land owner approval, scheduling of disposal operations at each permitted site; monitoring land application rates; managing disposal operations including incorporation of the biosolids into the subsoil as required by MDEQ; and recordkeeping on individual land application sites as further described in **Paragraph 21** of this section. All land that the Proposer intends to utilize for disposal through land application must meet the parameters as set forth by MDEQ. Each land application site is required to be permitted through the Solid Waste and Mining Branch of MDEQ's Municipal Sludge Land Application Process. Procurement and retainage of permits for land application sites shall solely be the responsibility of the Proposer.

## 11. INITIAL SITE WORK

Certain initial site improvements will be required at the Savanna Street WWTP to accommodate biosolids screening, loading, weighing, and transportation operations. Mobilization and site preparation shall include but not be limited to the following:

- 11.1 Repair on Frist 100 Linear Foot Section of Entrance Road – Proposer shall implement the repair on first 100 linear foot section of the entrance road, starting at I-55 service road, as shown on the Entrance Road Repair drawing and detailed in the associated specifications (**Appendix E**). This repair shall be completed prior to the start of the biosolids disposal off-site.
- 11.2 Operating Pads – Proposer shall install suitable operating pad(s) as required to accommodate biosolids screening, weighing, loading; field office and parking; material storage; and other required project activities on designated site(s). Additionally, office space must be provided for the

Resident Project Representative (Engineer's representative) with a separate, lockable private office space, electrical power, desk chair and filing cabinet.

- 11.3 Existing Unimproved Plant Roads – Unimproved plant roads, such as existing dike roads, will be improved as deemed necessary by the Proposer to support his proposed biosolids transportation operations.
- 11.4 Additional Site Improvements – Proposer shall include any and all other site improvements deemed necessary by the Proposer to support his proposed method of biosolids screening, loading, and transportation.

All of the preparations and improvements will be performed by the Proposer. The costs for the initial site work shall be included as part of the Proposer's unit price for biosolids disposal.

## 12. MAINTENANCE OF TRAFFIC

Proposers shall include, in their total price, costs for development and implementation of a Maintenance of Traffic Plan consisting of the following:

- 12.1 Use of Existing Unimproved Plant Roads – Existing unimproved plant roads to be used by the Proposer for transporting biosolids shall be upgraded to accommodate planned usage as deemed necessary by Proposer. Any such improvements shall be performed at the Proposer's expense and not invoiced to the City.
- 12.2 Repair on First 100 Linear Foot Section of Entrance Road – As part of the repair of the first 100' segment of the entrance road, the Proposer shall be responsible for traffic control as described in MAINTENANCE OF TRAFFIC specification in **Appendix E**.
- 12.3 Maintenance and Repair of Plant Roads – A budget allocation has been included for continuous maintenance and repair of all common access roads used by the Proposer during the contract period. Use of existing access roads at the Savanna Street WWTP will be shared with the City's contract operator of the plant. Throughout the time period of this Contract, the biosolids disposal Proposer will be responsible for maintaining all access roads used as part of the disposal process, including, but not limited to, Plant's entrance road beginning from the I-55 frontage road through to the ingress point at the Plant's guard station and all allowable routes to and/or around the geotextile tube storage area. The biosolids disposal Proposer will perform road maintenance when needed or when requested by the City. Road maintenance will be performed promptly when indications of road problems are first evident, such as standing water, potholes, surface cracks, or other problems. Roads shall be kept in good serviceable condition and free of potholes or driving hazards at all times. Existing potholes or driving hazards shall be repaired before the Proposer begins mobilizing on-site.

The Proposer shall only utilize the specified routes as shown on the *Access Routes & Proposer Operations Area Map (Appendix A)*. Travel on or along any other roadway of the Plant would require the approval of both the Engineer and Owner. The Owner may employ the help of the Plant's Operator in approving additional routes.

A budget allocation and unit pricing for roadway maintenance has been established (see "Roadway Repair Budget Allocation" table in **Section 6.0**). The Proposer shall draw from this allocation at the established unit prices when invoicing for road repair work. Note that it is the Proposer's responsibility to implement roadway repairs in a timely fashion. Prior to the implementation of a

roadway repair, the Proposer must complete a site specific Work Order Form for approval by the Engineer. Each Work Order Form will identify the location, type of repair, size, and cost of proposed repair. The Work Order Form is included in **Section 7.0**.

- 12.4 Final Restoration – All roadway repair work shall be completed and all temporary improvements, pads, utilities, and other modifications constructed by the Proposer shall be returned to original condition prior to March 1, 2018.
- 12.5 Railroad Crossing – Proposer shall take into account that a major railroad crossing exists at the entrance to Savanna Street WWTP. This fact shall be taken into account in the truck access and hauling plan by the Proposer and shall be addressed in the Proposer’s Safety Plan. It is the Proposer’s responsibility to coordinate with railroad owner to determine frequency and duration of train traffic at the Savanna Street WWTP entrance road crossing and to account for railroad traffic in their operations plan and project schedule.
- 12.6 On-Site Traffic Coordination Plan – On-site traffic coordination shall include a truck identification system whereby biosolids related vehicles are clearly marked, placarded, and/or badged. This vehicle identification system shall be developed in coordination with the plant operator such that entry and exit procedures are effective and efficient. The Proposer shall include his truck and vehicle identification and site coordination plan as part of their proposal.

### 13. CELLS 4 AND 6 SITE RESTORATION

Upon completion of the project, the biosolids disposal Proposer shall leave the geotextile tube storage areas clean, vegetation mown, and the areas free of any debris or plastic material. The Proposer is responsible for satisfactory restoration of site, as approved by both Representatives of the City and the Engineer, prior to the final payment and release of retainage. The Proposer shall strive to protect and preserve the HDPE liner system in both cells. In the event that liners are damaged beyond repair, they are to be removed and disposed off-site at a permanent landfill – all at the Proposer’s expense. If the liner is damaged but repairable, the Proposer shall be responsible for such repairs to the satisfaction of the Engineer – all at the Proposer’s expense. Site restoration and road repair work shall be completed within 60 days after completion of biosolids disposal operations.

### 14. OPERATIONS BY OWNER

The Proposer will not interfere with, impede, or disrupt any ongoing plant operations and/or maintenance activities being performed by plant’s contracted operator, or other contractors performing separate work at the site. Ongoing plant operations work include, but are not limited to, liquid waste haulers transporting loads into the plant throughout the day and must access the unloading station adjacent to the IPS building; hauling operations of the daily solids produced from the plant’s mechanical solids handling system. As illustrated on the *Access Routes and Proposer Operations Area Map* (see **Appendix A**), certain site roadways and segments of roadway are off limits to vehicular traffic associated with this project.

The Proposer shall be aware that they are working at an active WWTP site which includes the presence of certain hazardous materials. The Proposer will be required to comply with all applicable health and safety requirements including the current Operator’s Health and Safety Plan.

### 15. PERMITS AND LICENSES

The Proposer, at his own expense, shall obtain and maintain throughout the entire Contract period, all permits, licenses and approvals required for the Proposer to perform the work and services described

herein or as proposed. This requirement includes, but is not limited to, environmental permits, and any required amendments or supplements to existing permits necessary to complete the work. A listing of all required permits shall be included in the Proposal. This listing shall include permit type, issuing agency, and proposed permit application submittal date.

Proposers are advised that MDEQ is currently experiencing a backlog in processing of new biosolids land application permits, which could affect the Proposer's schedule. Proposers shall take this into account when developing their implementation schedule for the project and adjust production requirements accordingly.

In preparation for the start of work at Savanna Street, the Proposer shall develop and submit a project specific Stormwater Pollution Prevention Plan (SWPPP), for approval by MDEQ, prior to the initiation of on-site project operations. Proposer shall coordinate with MDEQ and the Plant Operator in the development and implementation of this SWPPP.

#### 16. TEMPORARY FIELD OFFICE

The Proposer shall provide and maintain a temporary field office at the Savanna Street WWTP project site that shall be adequately furnished, and maintained in a clean, orderly condition by the Proposer. The Proposer or his/her authorized representative shall be represented in the field office or on-site at all times while work is in progress. Instructions received there from the Engineer shall be considered as delivered to the Proposer. The Proposer will be required to provide and maintain an off-hours emergency contact person that can be contacted via mobile phone.

The Proposer shall provide either a separate trailer or a partitioned-off space of at least 200 square feet of floor space in Proposer's building for the exclusive use by the Engineer's Resident Project Representative (RPR) throughout the period of construction. The temporary office shall be weathertight, have a tight floor at least 8-in off the ground and shall be insulated all around with rigid insulation board and suitably ventilated. The office shall have at least one screened window capable of being opened, a screen door and a solid door provided with cylinder lock and three keys. The RPR's office shall include a desk, chair, adequate power hookups, and be kept clean by the Proposer, and shall have cooling and heating equipment, electrical wiring, outlets and fixtures suitable to light the tables and desk adequately as directed. The office for the RPR shall have a restroom equipped with a toilet and lavatory. A dedicated table must be provided by Proposer in the Field Office where group meetings can be conducted, including the project's monthly progress meetings.

#### 17. MEASUREMENT AND PAYMENT

Payment for mobilization and demobilization shall cover all preparatory work and operating, including obtaining all permits, insurance, and bonds; movement of personnel, equipment, supplies, and incidentals to the project site; audio-video survey; the establishment of temporary offices and other facilities necessary for work on this project; removal of temporary offices from the site; temporary utilities; and clean-up to place temporary site in original condition as required for the proper performance and completion of work. The Proposer shall submit, upon request, a breakdown to the Engineer for approval which shall show the estimated value of each major component of mobilization and demobilization.

Partial payment for Mobilization and Demobilization (Item No.1 in the Proposal Cost Schedule, **Section 6.0**) will be made in accordance with the following schedule. Mobilization and Demobilization shall not exceed five percent of the Total Proposal Cost. No price adjustment will be made for this due to changes and/or extensions of time and any increased mobilization cost incurred by the Proposer due to any additional work occasioned by such changes.

<b>Percent of Total Contract Amount Earned</b>	<b>Allowable Percent Of the Lump Sum Price for the Item</b>
1 <sup>st</sup> Partial Payment	50
2 <sup>nd</sup> Partial Payment	75
3 <sup>rd</sup> Partial	100

If the contract is canceled by the Owner, the Proposer will be paid for the actual cost for mobilization at the time of cancellation. Cost shall not exceed the total amount of this item.

Payment for work performed on this project shall be based upon the actual quantity of biosolids, as measured by the certified on-site scale, to be properly disposed of off-site, on a unit cost basis of dollars per WET TON (\$/WT). The Proposer shall list his quoted unit cost in the Proposal Cost Schedule, included in **Section 6.0**, as Item No.2. This pay item shall include all costs associated with proper disposal of the material.

Payment for disposal of vegetative material removed from around and on top of the geotextile bags (within the containment areas) and the geotextile bags themselves shall be at the same unit price as the biosolids. In addition, any debris or non-compatible material entrained in the biosolids that is screened out shall be disposed at an appropriately permitted landfill at the contract unit cost for biosolids.

Quantities will be determined by the following measurement procedure: Total WET TONS as verified with certified weight tickets. To determine quantities for payment, the Proposer shall weigh each truck on-site when empty and loaded using a certified truck scaling system. The Proposer shall be responsible for furnishing a temporary scaling system, which is to be calibrated by a certified representative of the scale manufacturer, prior to beginning the disposal operations. Additionally, the Proposer shall be responsible for certified monthly calibration of the scales. The Proposer must provide written statements certifying calibrations to the Engineer monthly. The City of Jackson retains the right to verify the calibration at its own expense. Any other means of determining the weight of the sludge may be proposed by the Proposer and requires approval by the Engineer and City of Jackson.

Item No.4, separate from the Savanna St. WWTP Roadway Repair Budget item, is listed in the Proposal Cost Schedule as part of **Section 6.0**. Payment for this repair shall be on a lump sum basis and the work for this item shall include the furnishing of all labor, materials, equipment and incidentals required to repair the first 100 linear foot section of the entrance road, including maintenance of traffic, and not related to any work shown on or specified in the RFP.

Payment will be made within 45 days of receipt of a correct invoice. Any dispute between the Proposer and the City concerning the whole or a part of a particular payment required shall not delay or otherwise affect the City's obligation to pay any undisputed portion of such payment or to make any other payment required hereunder.

## 18. SPILLAGE OF MATERIALS

The Proposer shall develop and implement a contingency plan for leaks, spills, and environmental incidents. This plan shall be submitted as part of the proposal.

If at any time, the materials covered under this Contract or the contents of a transport vehicle are spilled or illegally dumped onto a street or any property, whether publicly or privately owned, the Proposer shall clean up the spilled or illegally dumped material immediately, at no cost to the City of Jackson. The

materials shall be cleaned up sufficiently so as to restore the cleanliness of the property and the safety for public or private use in compliance with Local, State, and Federal regulations. The Proposer shall pay all costs, including those incurred by the City of Jackson for legal services, fees, fines and penalties associated with the spillage or dumping. See **Paragraph 14** of this section for Health and Safety coordination related requirements. The Proposer must submit and implement a complete Health and Safety Plan addressing offsite and onsite operating that takes into account the Plant Operator's Health and Safety Plan.

#### 19. INCLEMENT WEATHER PROTECTION OF EXPOSED BIOSOLIDS

The Proposer shall develop an inclement weather contingency plan to be initiated in the event of inclement weather at the Savanna Street WWTP addressing roadway and access, geotextile tube(s) are open and solids are exposed and other contingencies. The plan should specify the steps, which can be quickly executed, necessary to reduce/limit the opportunity of the exposed biosolids from becoming saturated and washed into the return pumping basins.

#### 20. HOURS OF OPERATION

The Proposer's on-site operations such as excavation, screening activities, and stockpiling of solids can occur 24 hours a day, seven days a week, as approved by the City of Jackson and Plant's Operator. However, all off-site operations including transportation/land application/disposal activities shall only be allowed to occur during daylight hours, beginning 30 minutes before sunrise and ending 30 after sunset. This requirement is in the interest of safety and public relations.

#### 21. RECORD KEEPING

The Proposer shall keep and maintain records that will enable the Engineer, as well as the Proposer, to ascertain and determine clearly and accurately the total volume of all biosolids removed from the project site. The Proposer shall implement a load ticket management and tracking system. At a minimum, this shall include four part Load Tickets with certified load weight, truck identification, driver identification, source, destination, and signature of receipt at disposal site. Alternate means of load tracking may be proposed if the minimum requirements are met. Load tickets and summary reports shall be available on request for inspection by the Engineer. Reports and summaries may be requested and shall be provided in timely manner by the Proposer.

The method of record keeping shall be proposed by the Proposer and subject to Engineer's and Owner's approval. Records shall conform to those required under Federal, State and Local regulations relating to biosolids as well as auditing standards. As a minimum, the Proposer shall prepare and submit to the Engineer, with each monthly billing, a monthly report containing the following:

- 1) An up-to-date log of biosolids removed and transported to disposal sites or facilities that shall include dates, amounts and quality of materials, and names and locations of disposal sites or facilities;
- 2) Incident reports of accidents, spillages, or illegal dumping (if applicable conflicts, etc.).

In addition to, and complementary of, the Load Tracking System, the Proposer shall implement a Truck Information Management System to be used to manage all trucks hauling biosolids. This database system will contain truck specific information including license plate number, type, make, size, photo, company, driver, condition, inspection status, etc. The Engineer may require reasonable reports and data summaries on trucks and related data which shall be provided by the Proposer in a timely manner.

Additionally, the Proposer shall timely prepare the Annual Report required by MDEQ for land application sites used and quantities applied, together with all required supporting documentation (referred to as the "503 Report").

## 22. EXPERIENCE

Proposers shall provide a general history of the Proposer's business organization. Proposers **MUST** have a minimum of 5 years' experience with transportation and beneficial use disposal of biosolids with municipalities that produce 25,000 WET TONS per year or greater. A minimum of three project references shall be provided.

Additionally, because of the viscous nature of the dewatered sludge, the biosolids removal and loading operations, if not executed properly, could result in structural failure of the geotextile tube stack, thus creating the potential for injury or death and additional costs for cleanup. Prior experience in working with stacked geotextile tube configurations containing municipal biosolids will be considered as part of the Proposal Evaluation Process.

## 23. PROPOSAL BOND

All Proposers must present a Proposal Bond with their proposal submittal in the amount of five percent (5%) of the proposed cost for the project; which, for purposes of this bond, will be the Total Proposal Cost provided in **Section 6.0's** Proposal Cost Schedule. This bond shall be in a form acceptable to the City and executed by a Surety duly authorized to do business in the State of Mississippi.

## 24. PERFORMANCE AND PAYMENT BOND

In the event of award of a Contract, the Proposer will be required to furnish a Performance Bond and a Payment Bond, each in the amount equal to 100 percent of the annual contract amount or 50% of the total contract amount, whichever is greater. These bonds shall be renewed annually, and will remain in effect at least until the day when the final payment becomes due, except as otherwise provided by law or regulations or by the Contract documents. The bonds shall be in the form prescribed by law or regulations or by the Contract. The bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 amended by the Audit Staff Bureau of Accounts, U.S. Treasury Department and must be rated A- or better by A.M. Best. All bonds signed by an agent must be accompanied by a certified copy of the authority to act.

If the surety on any bond furnished by the Proposer is declared bankrupt, or becomes insolvent, or its right to do business is terminated in any state where any part of the project is located, or it ceases to meet the requirements of this article, the Proposer shall, within ten (10) days thereafter, substitute another bond and surety, both of which must be acceptable to the City.

## 25. INSURANCE

The successful Proposer will be required to furnish Certificates of Insurance showing coverage limits as outlined in **Provision 3** of the **Supplementary Provisions to General Conditions (Section 8.0)**. The successful Proposer shall procure, maintain, and keep this coverage in force at all times during the term of the Contract and at the Proposer's sole expense.

## SECTION 4.0 PROPOSAL INSTRUCTIONS

### 1. PROPOSAL DOCUMENTS

The emphasis of a proposal for this project should be on providing information sufficient to demonstrate compliance with requirements set forth in this Request for Proposals. The proposal shall be typed on standard 8½" x 11" paper and in a format corresponding to the proposal specifications. Any oversized documents must be folded to standard size and secured in the proposal. The Proposer shall submit **an original plus 5 copies** of the proposal. The proposal shall be signed by an officer, or officers, duly authorized to execute legal documents on behalf of the Proposer.

Proposer shall submit properly executed forms as contained in **Section 6.0** of this Request for Proposals in a separate sealed envelope.

Proposals must be sealed and addressed to:

The City Clerk  
City Hall, 219 S. President Street  
Jackson, Mississippi 39205

The outside of the envelope shall bear the inscription:

**Proposal for:        BIOSOLIDS SCREENING, LOADING, TRANSPORTATION AND DISPOSAL  
                                 CITY PROJECT NO. 15B0500901  
                                 CITY OF JACKSON, MISSISSIPPI**

By: \_\_\_\_\_

The following documents shall also be submitted with the project proposal, as separate proposal components per the instructions detailed hereafter:

- Proposals (one original and five copies) shall be submitted using the forms provided as part of the Request for Proposals (excluding Section 6.0 - Proposal Forms), sealed in an envelope and plainly marked on the outside of the envelope: **“Proposal for BIOSOLIDS SCREENING, LOADING, TRANSPORTATION, AND DISPOSAL, CITY PROJECT NO. 15B0500901.”**
- The original completed and signed Proposal Forms (Section 6.0 except EBO Plan) shall be submitted in a separate sealed envelope labelled **“Original Proposal Forms for CITY PROJECT NO. 15B0500901.”**
- One original and two copies of the completed and signed EBO Plan shall be submitted in a separate sealed envelope labelled **“Original EBO Plan for CITY PROJECT NO. 15B0500901.”**

### 2. PRICE FOR SERVICES

The Proposer shall provide a per unit price for the services proposed. Prices shall include all costs associated with the work and materials required to meet all of the conditions described in the Proposer Scope of Services from **Section 3.0**. The City, in its sole discretion, may negotiate changes to any submitted Proposal, including price, after submitted Proposals have been opened. Because of the inherent fluctuations in fuel prices and the fact that transportation is a significant component of the work, a fuel

adjustment clause is included. The per WET TON unit price may be adjusted upward or downward on a quarterly basis, based on the US DOE index for highway diesel fuel price per gallon for the Gulf Coast Region (PADD3). This adjustment will begin in 2017. No adjustments will be made for the first year (2016). The fuel adjustment clause is further detailed in the “Fuel Adjustment Factor for Quarterly Adjustments” table included in **Section 6.0**.

If necessitated by the solids removal operations continuing past the December 31, 2017 deadline and into 2018, the fuel adjustment clause may still be utilized in the same manner as is described for 2017. No other price adjustment clause is available under this contract.

### 3. FINANCIAL STABILITY

Provide financial statement for the year 2014 or the most recent available. Provide any supporting information sufficient to evaluate the financial stability of the company. If the company, parent company, or predecessor company has filed for bankruptcy or reorganization in the last 5 years, describe the circumstances and the recovery plan implemented.

### 4. COMPANY ETHICS COMPLIANCE

The Proposer shall provide a statement on whether the Proposer, any employee of the Proposer, or persons representing the Proposer or its predecessors have ever been convicted of unethical practices including but not limited to collusion, coercion, or bribery. The Proposer must disclose any record of administrative orders, civil penalties, permit or license suspensions or revocations, or Bond forfeiture actions brought by any jurisdiction for work performed by Proposer or its predecessors which is similar to the work to be performed under this Contract.

### 5. PROPOSAL FORMAT

The proposal shall be submitted in the following format with all the requested information and documentation listed below. **Failure to provide the required information and documentation shall be grounds for rejection.**

#### 1) Executive Summary

The Proposer shall provide an Executive Summary that includes a general description of the technical approach; key team members; a brief introduction describing the experience and size of the Proposer; the contact information for Proposer, and identification of subcontractors.

#### 2) Company Information

The proposal should include a brief introduction describing the experience, size, and services provided by the Proposer along with the following information:

- Name, address, telephone number of main office and any branch office which will be involved in any way with the resulting contract;
- Identification of project team assigned specifically to this project, including information regarding all subcontractors to be used for hauling or other purposes;
- History of the company, including number of years it has been in business, present ownership and key management individuals.

If a Joint Venture or association of companies is proposed, the requested information should be included for each member, along with a summary of entity's business structure.

Resumes of both key management and field staff shall be provided along with an organizational chart of the entity.

### 3) **Beneficial Use Plan**

The Proposer shall submit a Beneficial Use Plan for the project. The plan shall describe the biosolids beneficial use method(s) to be employed to maximize the quantity of biosolids to be recycled. The beneficial use method used as the basis for the cost proposal shall be clearly described. The plan shall include any phasing and sequencing strategies to be employed. This plan shall identify sites intended for land application or other beneficial use and the status of acquiring these sites as stated by the MDEQ permit. Information on truck routes and haul distances shall be provided. For land application sites, the type of agricultural use and acreage data shall be provided.

### 4) **Operations Plan (Technical Approach)**

The Proposer shall submit an Operations Plan for the project. The plan shall describe the Proposer's goals, major tasks, schedule for these tasks, staffing, organization of the project, plan for local subcontractor participation, administrative procedures, regulatory compliance procedures, monitoring, record keeping and reporting procedures, beneficial use methodology, public acceptance, and other appropriate information. The Operations Plan must include a description of the equipment to be used and a discussion of procedures and methodology. The Operations Plan must address mobilization and material screening needs, trucking needs and describe the anticipated number of trucks needed, site requirements, and how they will be acquired.

The Operations Plan shall include a detailed discussion of each component process including, but not limited to, a description of the preparation (excavation, screening, conveying, etc.) and handling operation at the WWTP, loading, tracking, and a disposal plan. A listing of equipment shall be provided as well as discussion on how they will be operated. Locations of various processing, loading, and preparation activities are shown on the *Access Routes and Proposer Operations Area Map (Appendix A)*. Proposals are encouraged to include site plans depicting the locations of key operations and traffic flows.

A process flow chart shall be provided depicting the key processes of the program from source to disposal.

For the temporary on-site truck scale, provide specification on type, model, certification, location, and operation. In addition to providing the truck scale specification information, Proposers must describe system and methodology for scale operation, maintenance and maintenance certification, and contingency if scale system were to malfunction.

A detailed load tracking system shall be provided. This system shall include a truck inventory database and load tracking to ensure security of the loads and load data from source to disposal sites. A listing of suggested reports shall be provided and the system shall provide for customized reports if requested. Electronic access to summary information by the City is required. Proposer shall provide a conceptual schematic for the data management and reporting

system.

For work at the Savanna WWTP, the Biosolids Removal Proposer will be required to utilize only the roadways shown on the *Access Routes and Proposer Operations Area Map (Appendix A)*. Those site roadways depicted on the map as restricted shall not be used for hauling or vehicular traffic. Damage and deterioration of non-restricted site roadway shall be repaired by the Proposer in accordance with the specifications contained herein. A work order will be issued by the Owner which details the type, size, and cost for each repair. Proposer shall implement repairs immediately. Proposer shall invoice the Owner at the rate provided in the Roadway Repair Budget Allocation Clause of the Contract (see **Section 6.0**).

The Proposer, upon award of the Contract, shall be required to submit a Stormwater Pollution Prevention Plan (SWPPP) to MDEQ for approval for the work at Savanna St. WWTP project site.

## 5) Schedules

The Proposer shall provide schedules for start-up of the project including the dates for mobilization, processing and production, transportation and disposal of the solids. The schedule shall include any required construction and disposal site acquisition (with incorporation of the permitting process). If a site will require a new permit, renewal of an existing permit, or cannot be used for any reason pending approval by a regulatory body, provide a detailed explanation and schedule for obtaining the needed approval(s). Additionally, explain what options are available if approval is not obtained.

Because of the multi-year timeframe, the schedule must clearly address any specific phasing components that may be required. In addition, the project schedule shall address the removal rate of biosolids showing volume per growing season. If other disposal options are proposed, the key rates and dates must be provided.

\* Note that Proposer is restricted to hauling during daylight periods.

## 6) Transportation System and Disposal Location

Describe the transportation system to be used and the ultimate disposal sites. Describe the equipment to be utilized for the transportation of the dewatered biosolids. Provide maps highlighting the primary and alternate routes for transporting the biosolids. The equipment and methodology for land application shall be described in detail. If other reuse methodologies are proposed, Proposer shall provide a detailed description of the process, including, at a minimum, disposal procedures, required equipment, and disposal location(s).

Regarding the Savanna St. WWTP project site, Proposer shall depict and or describe loading areas, truck washing areas, scales, entry and exit traffic flow, signage, traffic control, instructions for drivers, wheel washing station(s) and other pertinent elements of the transportation process at the Plant site.

## 7) Regulatory Compliance and Permitting Experience

Provide a summary of the experience of the Proposer, and any sub-consultants included as part of team, working with regulatory agencies on the compliance and permitting of land application sites for biosolids disposal (experience with MDEQ permitting process shall be considered favorable during proposal assessment). If alternate disposal methodologies are proposed,

Proposer shall provide information describing regulatory compliance, approvals, and associated permits.

Summary shall include, but not limited to, experience in meeting permit conditions and other regulatory requirements for biosolids land application.

The Proposer shall also provide a listing of any Notices of Violation (NOVs) or legal actions received from any Federal, State, or Local regulatory agencies against any member of the Proposer's team during the past five years, relating to biosolid operations.

**8) Spill and Emergency Response Plan**

Provide an Emergency Response Plan for spills and other contingencies. Describe the frequency and nature of training exercises and the process of maintaining and updating the program. Provide the communications methods and procedures to maintain contact with both the Engineer and the City of Jackson. Contracts or agreements with response organizations or demonstration that adequate resources exist to respond to emergencies shall be documented.

**9) Other Required Proposal Information**

The following items shall be included in the Proposal as described in the Special Provisions:

- (a) List of proposed subcontractors
- (b) List of required permits
- (c) Company description
- (d) Biosolids disposal qualifications and experience
- (e) Project references
- (f) Evidence of financial stability
- (g) Evidence of ability to obtain bonds and insurance
- (h) Company ethics statement
- (i) Executed Proposal Forms\*
- (j) EBO Plan\*

**\*To be submitted as separate document**

## SECTION 5.0 PROPOSAL EVALUATION CRITERIA

### 1. PROPOSAL EVALUATION PROCEDURE

An evaluation committee consisting of five members will make a recommendation to the Mayor for a Proposer to perform the requested services.

The committee will evaluate each proposal in accordance with the Evaluation Criteria specified in **Paragraph 2** of this section, using the weighting factors listed. Each evaluator will independently assess each proposal according to the evaluation criteria. As further described herein, the evaluators' scores will be tallied for each proposal to determine their final ranking. Proposers may be required to deliver oral presentations to the evaluation committee to assist with the ranking process.

If deemed necessary by the City, Proposers will be given an opportunity to deliver an oral presentation to the City's evaluation committee on a date to be specified following submittal of the proposals. Following the rating of proposals by the evaluation committee, using the cost scoring methodology described in **Paragraph 3**, values for the total project cost will be determined and then assigned to the corresponding proposer score.

### 2. PROPOSAL EVALUATION CRITERIA

Proposals will be evaluated on the following basis:

Criteria No.	Criteria	Maximum Percent Value
1	Total Project Cost (See <b>Paragraph 3</b> for Details on Scoring of Total Project Cost)	35%
2	Project Technical Approach	35%
3	Qualifications and Experience (Including Regulatory Compliance History)	15%
4	Compliance with EBO	10%
5	Financial Status of Company	5%
<b>Total Possible Score</b>		<b>100%</b>

### 3. SCORING METHODOLOGY FOR TOTAL PROJECT COST COMPONENT

Following the entry of each evaluator's scoring of Criteria Nos. 2-5, as listed in the table in **Paragraph 2**, the envelope containing the Proposal Cost Schedule for each proposer will be opened by the evaluation committee. Using the following methodology, each proposer's total project cost will then be converted into a point value:

**The proposal with the lowest total cost receives the maximum points allowed (35). The second lowest proposal cost shall receive 25 points; the third lowest proposal cost shall receive 15 points, the fourth lowest proposal cost shall receive five (5) points; and all subsequent proposals receiving zero (0) points.**

The converted points will be input into the ranking matrix as described in **Paragraph 1**.

### 4. PROPOSAL AWARD

For each proposal, the average total score will be calculated from the points assigned by the evaluation committee. **It is critical that each Proposer understand that the final ranking IS NOT the definitive means for selection of Proposer. Instead, the ranking process ONLY serves to designate the order in which negotiations may be conducted with Proposers. As such, the highest ranked Proposer is not guaranteed to be ultimately selected for recommendation of award of contract.** The City may negotiate contract provisions with the Proposer receiving the most favorable evaluation (highest ranked Proposer) based on the above review. In the event that negotiations with the highest ranked Proposer are not successful, the City may, in its sole discretion, enter negotiations with the next highest ranked Proposer. It is in the best interest of the Proposer to provide detailed proposals that demonstrate the Proposer's technical approach, experience, qualifications, and EBO Compliance Plan.

It is not the policy of the City to award a contract on the basis of price alone. The City reserves the right to award the Contract to the Proposer offering the best value, and not necessarily to the Proposer offering the lowest price. A Proposal may be evaluated and selected based on a combination of: reputation; experience; past performance; skill; financial capacity; product quality and features; delivery schedule; quality installation; and compatibility with existing project site characteristics. The City reserves the right to accept and/or reject any and all submitted Proposals or any part thereof, waive immaterial errors, and award the Contract in the best interest of the City.

A designated representative of the Mayor will conduct contract negotiations with the selected Proposer. Once monetary terms of the Contract have been negotiated with the selected Proposer, the Mayor will present the selected Proposer to the City Council for final approval. After final approval by the City Council of the selected Proposer, the Contract shall be executed. Upon signature of the Contract by both parties, a Notice to Proceed can be issued.

**SECTION 6.0 PROPOSAL FORMS**

**BIOSOLIDS SCREENING, LOADING, TRANSPORTATION, AND DISPOSAL  
City Project No. 15B0500901**

Date: \_\_\_\_\_, 2016

Proposal of \_\_\_\_\_

\_\_\_\_\_

(Name and address of Proposer)

for all labor and materials for execution of Biosolids Screening, Loading, Transportation, and Disposal at the Savanna St. WWTP for the City of Jackson, Mississippi, said work being designated as City Project No. 15B0500901.

The Request for Proposals for said project are on file in the office of the Water and Sewer Division, Department of Public Works, 200 South President, Warren A. Hood Building, Jackson, Mississippi, 39201, and in the office of CDM Smith Inc., 210 East Capitol Street, Suite 1050, Jackson, MS 39201.

The requirements on which this Proposal is based are the terms, conditions, and stipulations included in the official Request for Proposals. All required forms are bound herein and made a part hereof by reference.

To: The City Council  
City of Jackson  
Jackson, Mississippi

Gentlepersons:

The following Proposal is made on behalf of the undersigned Proposer(s) and no others. Evidence of my (our) authority to submit the proposal is hereby furnished. The Proposal is made without collusion on the part of any person, firm, or corporation.

I (We), the undersigned Proposer(s), certify that I (We) have carefully examined all sections the official Request for Proposals, including associated appendices and any and all addenda thereto.

I (We) further certify that I (we) have visited and carefully examined the site of the proposed work and have inspected the location and condition of all public utilities and existing structures or other facilities on the site or adjacent thereto which may affect, or be affected, by the proposed Scope of Services, and fully understand all conditions relative to project constraints, difficulties, hazards, labor, transportation, and all other factors affecting the prosecution of the work covered by this Proposal.

I (We) understand that the quantities mentioned below are approximate only and are subject to either increase or decrease, and hereby propose to perform any increased or decreased quantities of work at the unit prices bid.

In accordance with the requirements of Request for Proposals, I (We) propose to furnish all necessary materials, equipment, labor, supervision, tools, and other means of construction, and will do all work

called for in the Scope of Services within the specified contract time for the following unit prices stated in this proposal.

Unit Prices are to be provided in both words and figures. In case of discrepancy, the amount shown in words shall govern. All erasures, changes, or alterations of any kind must be initialed by the Proposer.

Unit Prices shall include all labor, materials, equipment, supervision, mobilization and demobilization, site preparation, biosolids processing and removal, overhead, profit, insurance, and all other expenses necessary to perform the finished work as specified.

The following is my (our) itemized proposal for execution of **City Project No. 15B0500901**.

**PROPOSAL COST SCHEDULE**

ITEM NO.	ESTIMATED QUANTITY	ITEM DESCRIPTION	UNIT PRICE	ITEM PRICE
1	1 LS	Mobilization and Demobilization Up to 5% of Items 2, 3, & 4		
			\$ _____	\$ _____
2	305,000 WT	Activities required for proper disposal of geotextile tube-contained solids including mobilization, biosolids screening, loading, transportation, disposal site procurement, site restoration, demobilization, and any other ancillary task necessary for successful project execution.  Unit Price: Wet Tons (WT)		
			\$ _____	\$ _____
3	<i>See Roadway Repair Budget Allocation Table</i>	Savanna St. WWTP Roadway Repair Budget  One Hundred Thousand Dollars & Zero Cents	\$ 100,000.00	\$ 100,000.00
4	1 LS	Repair on first 100 linear foot section of entrance road		
			\$ _____	\$ _____
<b>TOTAL PROPOSAL COST</b>			<b>\$ _____</b>	

**Roadway Repair Budget Allocation**

	<i>Type of Roadway Repairs*</i>	<i>Estimated Quantity</i>	<i>Unit Price</i>	<i>Total Price</i>
2a)	Asphalt Roadway Repair	1,040 YD <sup>2</sup>	\$ 75 /YD <sup>2</sup>	\$ 78,000
2b)	Gravel & Dirt Roadway Repair	1,100 YD <sup>2</sup>	\$ 20 /YD <sup>2</sup>	\$ 22,000

\* Up to \$100,000 to be invoiced for roadway repair work as approved by Engineer on a Work Order basis at the unit prices listed in table.

<b>Fuel Adjustment Factor for Quarterly Adjustments (Starting in Year Two of Contract)</b>
Percent of Unit Cost (Biosolids Screening, Loading, Transportation, and Disposal - Item No. 2) that is attributable to on-road fuel cost = _____%** (15% maximum)
Where: Adjustment = Unit Price x Fuel Percentage x <b>Fuel Index Change %</b>

\*\* To be used in calculating the quarterly fuel adjustment during Year Two of the contract

I (We) further propose to execute the Contract Agreement as bound herein within ten (10) working days after receipt of Contract Forms from the City and to complete the **biosolids disposal operations** NO LATER THAN **December 31, 2017**, and **site restoration and road repair work** shall be completed NO LATER THAN 60 days after completion of biosolids disposal operations with the work schedule being as specified in the Request for Proposals. For failure to complete all biosolids disposal operations by December 31, 2017, I (We) agree to pay the following as liquidated damages:

- For any solids disposal operations occurring within the dates of January 1, 2018 through June 30, 2018, the sum of Five Hundred Dollars (\$500.00) per calendar day, plus any additional actual costs above Five Hundred Dollars (\$500.00) per calendar day rate;
- For any solids disposal operations occurring subsequent to June 30, 2018, the sum of One Thousand Dollars (\$1,000.00) per calendar day, plus any additional actual costs above One Thousand Dollar (\$1,000.00) per calendar day rate.

Additionally, for failure to complete site restoration and road repair within 60 calendar days after completion of biosolids disposal operations, I (We) agree to pay, as liquidated damages, One Thousand Dollars (\$1,000.00) per calendar day, as hereinafter provided in the Contract Documents.

Also included as part of this Proposal is a Proposal Bond in the amount of 5% of the total contract amount and a Consent of Surety, agreeing that, in the event of the award of a Contract, a Performance Bond and a Payment Bond will be furnished, each in the amount equal to 100 percent of the annual contract amount OR one half of the total contact amount, whichever is greater, as outlined in the Special Provisions Section. These bonds shall not only serve to guarantee completion of the work on my (our) part, but also to guarantee the excellence of both workmanship and materials until the work is finally accepted.

I (We) enclose a bid bond or certified check for \_\_\_\_\_

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

and hereby agree that in case of my (our) failure to execute the contract and furnish bonds within ten (10) working days after Notice of Award, the amount of this check (bid bond) will be forfeited to the City of Jackson as liquidated damages arising out of my (our) failure to execute the contract as proposed.

It is understood that in case I (we) are not awarded the work, the certified check or bid bond submitted as bid security will be returned as stipulated in the Request for Proposals.  
Proposer acknowledges receipt of the following addendum:

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Respectfully submitted,

\_\_\_\_\_  
Proposer(s)

By:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

**PROPOSER'S CORPORATE DECLARATION**

(To Be Filled In If Proposer Is A Corporation)

Date: \_\_\_\_\_, 2016

Our corporation is chartered under the Laws of the State of \_\_\_\_\_,  
and the names, titles and business addresses of the executives are as follows:

_____ President	_____ Secretary
_____	_____
_____	_____
_____	_____
_____ Treasurer	
_____	
_____	
_____	

CORPORATE SEAL

**PROPOSER'S PARTNERSHIP DECLARATION**

Our Partnership is composed of the following individuals:

_____ (Name)	_____ (Name)
_____	_____
_____	_____
_____ Address	_____ Address
_____ (Name)	_____ (Name)
_____	_____
_____	_____
_____ Address	_____ Address

Date: \_\_\_\_\_, 2016

**PROPOSAL BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_  
\_\_\_\_\_ as Principal,  
and \_\_\_\_\_ as Surety, are hereby  
held and firmly bound unto the CITY OF JACKSON, MISSISSIPPI as Owner, in the penal sum of \_\_\_\_\_  
\_\_\_\_\_

for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our  
heirs, executors, administrators, successors and assigns. Signed this \_\_\_\_ day of \_\_\_\_\_,  
2016.

The condition of the above obligation is such that whereas the Principal has submitted to the  
CITY OF JACKSON, MISSISSIPPI a certain proposal, attached hereto and hereby made a part hereof to  
enter into a contract in writing for the execution of Biosolids Screening, Loading, Transportation, and  
Disposal at the Savanna St. WWTP, City Project No. 15B0500901.

NOW THEREFORE:

(a) If said Proposal shall be rejected, or in the alternate,

(b) If said Proposal shall be accepted and the Principal shall execute and deliver a contract in  
the Form of Contract attached hereto (properly completed in accordance with said Bid) and shall furnish a  
bond for his faithful performance of said contract, and for the payment of all persons performing labor or  
furnishing materials in connection therewith, and shall in all other respects perform the agreement created  
by the acceptance of said Proposal,

THEN this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly  
understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event,  
exceed the penal amount of this obligation as herein stated.

The surety, for value received, hereby stipulates and agrees that the obligations of said Surety and  
its bond shall be in no way impaired or affected by any extension of the time within which the Owner  
may accept such Proposal, and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

\_\_\_\_\_  
Contractor(s)

SEAL

By: \_\_\_\_\_

\_\_\_\_\_  
Surety

SEAL

By: \_\_\_\_\_

Important - Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

**NON COLLUSION AFFIDAVIT OF PROPOSER**  
**City Project No. 15B0500901**

(This affidavit must be executed by the Proposer for the Proposal to be considered.)

STATE OF \_\_\_\_\_

ss.

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and  
(Person)

states that he is \_\_\_\_\_  
(Sole owner, a partner, president, secretary, etc.)

of \_\_\_\_\_ the party  
(Name of Firm)

making the foregoing Proposal or Bid; that such Proposal is genuine and not collusive; that said Proposer is not financially interested in, or otherwise affiliated in a business way with any other proposer on the same contract; that said Proposer has not colluded, conspired, connived, or agreed, directly or indirectly, with any proposer or person, to put in a sham proposal, or that such other person shall refrain from submitting proposal, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price of affiant or any other proposer, or to fix any overhead, profit or cost element of said proposal price, or of that of any other proposer, or to secure any advantage against the City of Jackson, Mississippi, or any person or persons interested in the proposed contract; and that all statements contained in said Proposal or Bid are true; and further, that such Proposer has not, directly or indirectly submitted this Proposal, or the contents thereof, or divulged information or data relative thereto to any association or to any member or agent thereof.

\_\_\_\_\_  
Affiant

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2016.

for \_\_\_\_\_ Notary Public in and  
\_\_\_\_\_ County, Mississippi

(SEAL) My Commission Expires  
\_\_\_\_\_, 2016

**CITY OF JACKSON, MISSISSIPPI**

**Tony Yarber  
Mayor**

**EQUAL BUSINESS OPPORTUNITY (EBO)  
PLAN APPLICATION**

**Department of Planning and Development**

**CITY OF JACKSON, MISSISSIPPI**  
**EQUAL BUSINESS OPPORTUNITY EXECUTIVE**  
**ORDER**

***LEGAL NOTICE***

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The City of Jackson is committed to the principle of non-discrimination in public contracting. It is the policy of the City of Jackson to promote full and equal business opportunity for all persons doing business with the City. As a pre-condition to selection, every contractor, bidder or offeror shall submit a completed and signed Equal Business Opportunity (EBO) Plan Application with the bid submission, in accordance with the provisions of the City of Jackson's Equal Business Opportunity (EBO) Executive Order. Failure to comply with the City's Executive Order shall disqualify a contractor, bidder or offeror from being awarded an eligible contract.

For more information on the City of Jackson's Equal Business Opportunity Program, please contact the Division of Equal Business Opportunity at 960-1856. Copies of the EBO Executive Order EBO Plan Application, EBO Program, the MBE/FBE Directory and the MBE/FBE Certification Affidavit are available at 200 South President Street, Suite 223, Jackson, Mississippi.



(EBO FORM 7-1-2013)

## **EQUAL BUSINESS OPPORTUNITY SPECIAL NOTICE TO BIDDERS**

### **POLICY**

The City of Jackson is committed to the principle of non-discrimination in public contracting. Therefore, the City of Jackson requests that prospective vendors and contractors carefully examine their method of selecting subcontractors and suppliers, to ensure that they are not either actively, or passively, discriminating against MBEs and FBEs. As a bidder seeking to do business with the City of Jackson, you are expected to adhere to a policy of non-discrimination, and to make the maximum practicable effort to ensure that historically underutilized firms are given an opportunity to participate in the performance of contracts financed in whole, or in part, with City funds.

### **DEFINITIONS**

For purposes of this policy, the following definitions will apply:

- (1) **“African American Business Enterprise (AABE)”** shall mean a business that is an independent and continuing enterprise for profit, performing a commercially useful function and is owned and controlled by one or more African Americans, and certified as such by the Division of Business Development.
- (2) **“Asian American Business Enterprise (ABE)”** shall mean a business that is an independent and continuing enterprise for profit, performing a commercially useful function and is owned and controlled by one or more Asian Americans, and certified as such by the Division of Business Development.
- (3) **“Hispanic Business Enterprise (HBE)”** shall mean a business that is an independent and continuing enterprise for profit performing a commercially useful function and is owned and controlled by one or more Hispanics, and certified as such by the Division of Business Development.
- (4) **“Minority Business Enterprise (MBE)”** shall mean a business which is an independent and continuing operation for profit, performing a commercially useful function, and is owned and controlled by one or more minority group members, as defined in Sections 1, 2 and 3, which group has been determined to have suffered discrimination requiring amelioration and is certified as such by the City.
- (5) **“Female Business Enterprise (FBE)”** shall mean a business that is an independent and continuing enterprise for profit, performing a commercially useful function and is owned and controlled by one or more females, and certified as such by the Division of Business Development.

### **OBLIGATION**

*The Contractor and any Subcontractor shall take all necessary and reasonable steps to ensure that MBEs and FBEs have a maximum opportunity to compete for and participate in the performance of any portion of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. If it is determined that there is a significant underutilization of MBEs and FBEs, the Equal Business Opportunity Officer is empowered, pursuant to section 127-8 of the Equal Business Opportunity Executive Order, to conduct an investigation to determine the reasons for the underutilization.*

### **GOALS**

The goals for participation by MBEs and FBEs are established by the Equal Business Opportunity Executive Order of the City of Jackson. The Contractor shall exercise all necessary and reasonable steps to ensure that participation meets or exceeds the contract goals. The goals may be attained by subcontracting to, procuring materials from, and renting equipment from MBEs and FBEs. (See Subcontractor/Supplier Participation guidelines below.)

***The Equal Business Opportunity participation goals are as follows:***

PROCUREMENT CATEGORY	Asian (ABE)	African-American (AABE)	Hispanic (HBE)	Native American (NABE)	Female (FBE)
A/E & Professional Services	0.16	8.67	0.00	0.00	1.96
Construction	0.00	12.41	0.37	0.00	4.89
Goods & Non-Professional Services	0.04	6.78	0.02	0.00	3.03

Those portions of the contract that are proposed for MBEs and FBEs in the response to this bid shall be listed on the attached Equal Business Opportunity Plan Application.

For specific information about the Equal Business Opportunity Plan, please contact the Office of Economic Development at (601) 960-1856.

Contractors may employ AABEs, HBES, ABEs or FBEs to meet the applicable project goals through various methods, as follows:

**A. Subcontractor Participation**

- (i) Where a prime contractor utilizes one or more subcontractors to satisfy its equal business opportunity commitment, the prime contractor may count toward its EBO Plan only expenditures to MBE (AABE, HBE, or ABE) or FBE contractors that perform a commercially useful function in the work of the contract.
- (ii) An MBE or FBE subcontractor is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved. In determining whether an MBE or FBE subcontractor, is performing a commercially useful function, factors, including but not limited to the following, will be considered:
  - (a) the amount of work subcontracted;
  - (b) the type of prime contract;
  - (c) whether the business has the skill and expertise to perform work for which it is being/has been certified;
  - (d) whether the business actually performs, manages and supervises the work for which it is being/has been certified; and
  - (e) whether the business purchases goods and/or services from a non-minority/women\*s business enterprise and simply resells goods to the city, city contractor, or other person doing business with the city for the purpose of allowing those goods to be counted towards fulfillment of minority/women\*s business enterprise utilization goals.
  - (f) standard industry practices.
- (iii) Consistent with standard industry practices, an MBE or FBE subcontractor may enter into second tier subcontracts. If an MBE or FBE subcontractor subcontracts a significantly greater portion of the work of its subcontract to a non-minority, non-female owned firm than would be expected on the basis of standard industry practices, it shall be presumed that the MBE or FBE subcontractor is not performing a commercially useful function.

**B. Suppliers Participation**

Where a prime contractor utilizes one or more suppliers to satisfy its EBO commitment, in whole or in part, the MBE or FBE supplier participation may be credited towards the applicable goal as follows:

- (i) 100 percent of the contract amount for MBE or FBE suppliers who manufacture the goods supplied.
- (ii) 100 percent of the contract amount for MBE and FBE suppliers who are wholesalers warehousing the goods supplied or who are manufacturers\* representatives, provided that only 25 percent of the applicable MBE or FBE goal may be attained by non-manufacturing supplier contracts to MBEs or FBEs.
- (iii) For those contracts where an extraordinarily large proportion of the contract price is for equipment or supplies, a lower project goal may be set than otherwise would be required, or the 25 percent limit for suppliers may be increased, or a combination of these two methods may be utilized.

**C. Joint Ventures and Mentor-Protégé Programs**

- (i) The Division of Equal Business Opportunity shall encourage, where economically feasible, establishment of joint ventures and mentor protégé programs to ensure prime contracting opportunities for African American, Hispanic, Asian American, Native American and Female Business Enterprises on all eligible projects over \$1,000,000.00. Even if the prime itself is a MBE, joint venture between prime contractors and MBEs shall be required on all projects exceeding one million dollars (\$1,000,000.00).
- (ii) Where a contractor engages in a joint venture to satisfy its Equal Business Opportunity Commitment, the Equal Business Opportunity Officer shall review and approve all contractual agreements regarding:
  - (a) The initial capital investment of each venture partner;
  - (b) The proportional allocation of profits and losses to each venture partner;
  - (c) The sharing of the right to control the ownership and management of the joint venture;
  - (d) Actual participation of the venture partners in the performance of the contract;
  - (e) The method of and responsibility for accounting;
  - (f) The methods by which disputes are resolved; and
  - (g) Other pertinent factors of the joint venture.

On the basis of these factors, the Equal Business Opportunity Officer shall determine the degree of AABE, HBE, ABE, or FBE participation resulting from the joint venture that may be credited towards the applicable EBO goals of the project.

The bidder or offeror shall provide the Equal Business Opportunity Officer access to review all records pertaining to joint venture agreements before and after the award of a contract reasonably necessary to assess compliance with this policy.

The Equal Business Opportunity Program also encourages Mentor-Protégé programs to assist African American, Hispanic, Asian American, and Female business enterprises in financing, bonding, construction management and technical assistance. Mentor-Protégé agreements will be reviewed by the Equal Business Opportunity Officer for final approval of the following terms of each agreement:

- (a) type of technical assistance to be provided by mentor;
- (b) rights and responsibilities of each mentor and protégé contracting activity;
- (c) the specific duration of the agreement;
- (d) the amount of participation by the protégé that may be credited toward the applicable EBO goal.

## **EQUAL BUSINESS OPPORTUNITY PLAN**

In accordance with Section IV of the City of Jackson's Equal Opportunity Executive Order No. 2014 – 3, each contractor, bidder or offeror shall submit a completed and signed Equal Business Opportunity Plan with bid submission. Such plan should be titled "Equal Business Opportunity Plan (EBO Plan)" and should include the following:

- A. Names, addresses and contact persons of each African American Business Enterprise, Asian Business Enterprise, Hispanic Business Enterprise, and Female Business Enterprise to be used in the contract.
- B. The type of work or service each African American Business Enterprise, Asian Business Enterprise, Hispanic Business Enterprise, and Female Business Enterprise will perform.
- C. The dollar value of the work or service to be performed by each African American Business Enterprise, Asian Business Enterprise, Hispanic Business Enterprise, and Female Business Enterprise.
- D. Scope of the work to be performed by each African American Business Enterprise, Asian Business Enterprise, Hispanic Business Enterprise, and Female Business Enterprise.

### **Waiver**

If the EBO Plan does not meet the project goals, the bidder or offeror must seek a partial or total waiver of the project goals. The application for waiver of all or part of the project goals must include full documentary evidence of the bidder\*s or offeror\*s good faith efforts (*see EBO Plan Application*) to meet the project goals and why the request for waiver should be granted. The application shall be in writing and submitted as a part of the bid or offer. It should include a narrative, affidavits and/or exhibits which verify the actions taken by the bidder or offeror to meet the goals.

### **Replacement**

If a MBE/FBE Subcontractor cannot perform satisfactorily, the Contractor shall take all necessary reasonable steps to replace the Subcontractor with another MBE/FBE Contractor. All MBE/FBE replacements must be approved by the EBO Review Committee and the Department. (*See EBO Plan Application*)

To demonstrate necessary reasonable efforts to replace any Subcontractor that is unable to perform successfully, the Contractor must document steps taken to subcontract with another MBE/FBE Contractor.

**CITY OF JACKSON, MISSISSIPPI**  
**EQUAL BUSINESS OPPORTUNITY PLAN**  
**APPLICATION**

I. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Telephone: ( \_\_\_\_\_ ) \_\_\_\_\_

E-mail: \_\_\_\_\_

II. Bid Name and Number: \_\_\_\_\_

III. PROPOSED MINORITY AND/OR FEMALE SUBCONTRACTORS: (SEE ATTACHMENTS)

*If a prime contractor utilizes one or more suppliers to satisfy its EBO commitment, all MBE or FBE supplier participation will be credited in accordance to Section VI(C)(I) of the EBO Executive Order No. 2014-3*

IV. Total Bid Amount: \$ \_\_\_\_\_

V. WAIVER REQUESTED ...  *(If you fail to meet either or all of the EBO Participation Goals, check this box and follow the directions below to provide the required \*WAIVER STATEMENT\*. The "Waiver Statement" should be submitted on company letterhead to the EBO Officer.)*

**\* The bidder/offeror shall provide the following as evidence of its good faith efforts and will be evaluated on the same:**

- (a) Copies of written notification to MBEs and FBEs soliciting their participation as a subcontractor.
- (b) Evidence of efforts made to divide the work into economically feasible units in order to increase the likelihood of meeting the EBO participation goals.
- (c) Evidence of efforts made to negotiate with MBEs and/or FBEs, including, at a minimum:
  - 1. The names, addresses, and telephone numbers of the MBE and FBEs who were contacted.
  - 2. A description of the information provided to MBEs and FBEs regarding the plans and specifications for portions of the work to be performed.
  - 3. A statement of reasons why additional agreements with MBEs and FBEs, if needed to meet the stated goals, were not reached.
  - 4. Evidence of efforts made to assist the MBEs and FBEs contacted who need assistance in obtaining bonding and insurance which the bidder or offeror requires.

5. For each MBE and FBE contacted which the bidder or offeror considered to be not qualified, include a written statement of the reasons for the bidder's or offeror's conclusion.
6. Written quotes solicited from all MBEs and FBEs seeking subcontract work with Prime Contractors at the time of the bidding.
7. A statement with supporting documentation and affidavits indicating whether the offeror has used MBEs and/or FBEs as joint venture partners or subcontractors in past or present private sector contracts in Jackson.

*\*If you are unable to locate an MBE/FBE, please contact the Business Development Division at (601) 960-1055.*

**VI. Minority and Female Business Enterprise Actual Participation for this Bid/Offer/Proposal:**

*(\* Please list your MBE and FBE Project Participation percentages (%) in the Table below.)*

PROCUREMENT CATEGORY	Asian (ABE)	African-American (AABE)	Hispanic (HBE)	Native American (NABE)	Female (FBE)
A/E & Professional Services					
Construction					
Goods & Non-Professional Services					

**VII. REPLACEMENT OF MBE/FBE**

**If an MBE or FBE is not performing satisfactorily, it is the responsibility of the Prime Contractor to notify the EBO Office immediately both in writing and by phone. All MBE/FBE replacements must be approved by the Equal Business Opportunity Review Committee (EBORC). If these steps are not taken this will result in penalties as outlined in Section XI of the EBO Executive Order No. 2014-3**

**VIII. CERTIFICATION**

**I certify, under penalties of perjury, that the information contained in this Equal Business Opportunity Plan Application is true and accurate to the best of my knowledge, and that my company fully intends to utilize all MBEs and FBEs listed if awarded the proposed project and/or service and abide by all EBO guidelines.**

\_\_\_\_\_

*Authorized Signature and Title*

\_\_\_\_\_

*Date*

**PRINT "AUTHORIZED" NAME HERE:** \_\_\_\_\_

# EQUAL BUSINESS OPPORTUNITY PLAN APPLICATION -- ATTACHMENT

## Proposed Minority/Female Business Enterprise Firms

Company Name: \_\_\_\_\_ Type Trade/Business: \_\_\_\_\_

Address: \_\_\_\_\_

Type Minority Business (MBE/FBE):

City, State, ZIP: \_\_\_\_\_

- \_\_\_\_\_ Female (FBE)
- \_\_\_\_\_ African-American (AABE)
- \_\_\_\_\_ Asian (ABE)
- \_\_\_\_\_ Hispanic (HBE)
- \_\_\_\_\_ Native American (NABE)

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Type Minority Business (MBE/FBE) Involvement:

\_\_\_\_\_ Subcontractor                      \_\_\_\_\_ Supplier  
\_\_\_\_\_ Joint Venture                      \_\_\_\_\_ Mentor-Protégé

Type Work or Service to be Performed: \_\_\_\_\_

Scope of Work to be Performed: \_\_\_\_\_

Dollar Value of the Work to Be Performed by the Minority Business (MBE and/or FBE): \$ \_\_\_\_\_

Percentage of MBE and/or FBE Participation: \_\_\_\_\_ %

Company Name: \_\_\_\_\_ Type Trade/Business: \_\_\_\_\_

Address: \_\_\_\_\_

Type Minority Business (MBE/FBE):

City, State, ZIP: \_\_\_\_\_

- \_\_\_\_\_ Female (FBE)
- \_\_\_\_\_ African-American (AABE)
- \_\_\_\_\_ Asian (ABE)
- \_\_\_\_\_ Hispanic (HBE)
- \_\_\_\_\_ Native American (NABE)

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Type Minority Business (MBE/FBE) Involvement:

\_\_\_\_\_ Subcontractor                      \_\_\_\_\_ Supplier  
\_\_\_\_\_ Joint Venture                      \_\_\_\_\_ Mentor-Protégé

Type Work or Service to be Performed: \_\_\_\_\_

Scope of Work to be Performed: \_\_\_\_\_

Dollar Value of the Work to Be Performed by the Minority Business (MBE and/or FBE): \$ \_\_\_\_\_

Percentage of MBE and/or FBE Participation: \_\_\_\_\_ %

Company Name: \_\_\_\_\_ Type Trade/Business: \_\_\_\_\_

Address: \_\_\_\_\_

Type Minority Business (MBE/FBE):

City, State, ZIP: \_\_\_\_\_

- \_\_\_\_\_ Female (FBE)
- \_\_\_\_\_ African-American (AABE)
- \_\_\_\_\_ Asian (ABE)
- \_\_\_\_\_ Hispanic (HBE)
- \_\_\_\_\_ Native American (NABE)

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Type Minority Business (MBE/FBE) Involvement:

\_\_\_\_\_ Subcontractor                      \_\_\_\_\_ Supplier  
\_\_\_\_\_ Joint Venture                      \_\_\_\_\_ Mentor-Protégé

Type Work or Service to be Performed: \_\_\_\_\_

Scope of Work to be Performed: \_\_\_\_\_

Dollar Value of the Work to Be Performed by the Minority Business (MBE and/or FBE): \$ \_\_\_\_\_

Percentage of MBE and/or FBE Participation: \_\_\_\_\_ %

Company Name: \_\_\_\_\_ Type Trade/Business: \_\_\_\_\_

Address: \_\_\_\_\_

Type Minority Business (MBE/FBE):

City, State, ZIP: \_\_\_\_\_

- \_\_\_\_\_ Female (FBE)
- \_\_\_\_\_ African-American (AABE)
- \_\_\_\_\_ Asian (ABE)
- \_\_\_\_\_ Hispanic (HBE)
- \_\_\_\_\_ Native American (NABE)

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Type Minority Business (MBE/FBE) Involvement:

\_\_\_\_\_ Subcontractor                      \_\_\_\_\_ Supplier  
\_\_\_\_\_ Joint Venture                      \_\_\_\_\_ Mentor-Protégé

Type Work or Service to be Performed: \_\_\_\_\_

Scope of Work to be Performed: \_\_\_\_\_

Dollar Value of the Work to Be Performed by the Minority Business (MBE and/or FBE): \$ \_\_\_\_\_

Percentage of MBE and/or FBE Participation: \_\_\_\_\_ %

**EXECUTIVE ORDER NO. 2015 - \_\_\_\_\_**

**WHEREAS**, the Mayor of the City of Jackson is concerned with encouraging the participation of minority and women business enterprises in the public procurement process and addressing past discriminatory practices which presented barriers to public procurement within the City of Jackson by minority and women business enterprises; and

**WHEREAS**, the discriminatory practices and barriers to public procurement within the City of Jackson by minority and women business enterprises were documented in a report provided by Griffin and Strong, PC in the late 1990's and resulted in the Jackson City Council passing an Equal Business Opportunity Ordinance which sunset in April 2006; and

**WHEREAS**, the following barriers were documented in the first Griffin and Strong report:

- (1) Historical, systemic and institutionalized discrimination against minority and women owned businesses exists in the Jackson business sector, which has restricted their access to private and public contracting markets and which has emerged as the major factor responsible for their marginal economic position in the Jackson business population.
- (2) The specific industries that showed discrimination against women and other minorities include construction, commodity sales, and professional services.
- (3) The contracting and procurement practices of the City of Jackson, prior to the inception of a minority and female business enterprise program, were dominated by an historical, institutional and systematic network from which women and minorities were excluded.
- (4) Market place discrimination against minorities and women business owners occurred in the Jackson marketplace across a wide range of businesses, including evidence of double standards in work appraisals, denials of opportunities to bid, discrimination in bonding, financing and in payments, lack of access to contracts, unnecessarily restrictive specifications, the existence of and the exclusion from the historical, systematic, and institutional network, subcontracting, bid shopping, and bid manipulation.
- (5) The statistical comparison suggested by the U.S. Supreme Court in *Crosby*, between the number of available qualified minority businesses, and the total contract dollar awards going to minority businesses, referred to as the Utilization Percentage Ratio (UPR), yields significant statistical disparities in all industries between majority and minority businesses who contract with the City of Jackson. Moreover, this comparison suggested by the court, although showing a significant degree of disparity, results in a deficient measure of discrimination, failing to take into account those minority or female individuals or firms who were discouraged, deterred and/or disadvantaged by the discriminating practice in the marketplace.
- (6) Race and gender neutral policies, including those suggested by the U.S. Supreme Court in *Crosby*, although helpful in improving minority and women owned business development, are found to be inadequate standing alone to eliminate discriminatory practices which

continue to deny women and minority business owners access to public and private contracts in the Jackson marketplace.

- (7) Women and minorities have been discriminated against in public and private markets for contractual services. There is a presence of discrimination in Jackson in various industry classifications and by employer status which has persisted over time. Moreover, there is strong anecdotal and statistical evidence that African American businesses continue to suffer the effects of past and present discrimination in the Jackson business markets both public and private.
- (8) Female, African American, and other minority owned businesses continue to suffer discrimination in the local business market when competing for construction contracts. Given the strikingly low participation of minority enterprise in private construction markets, the City of Jackson should leverage behavior in the private market to assure the effective development of minority and female business enterprises and to eradicate discriminatory practices.
- (9) The City of Jackson was a passive participant in discriminatory practices in both public and the private commercial markets.
- (10) Past and present discrimination in public and private markets for contractual services and the inability of race and gender-conscious programs standing alone, make race and gender-conscious programs necessary in order to remedy economic disparities between minority, female and majority contractors.
- (11) Utilization goals, attainable by good faith efforts, not quotas, for African-American, Female, Hispanic, and Asian American owned businesses are necessary to mitigate the competitive disadvantages which are caused by discrimination and are justified by evidence in the record.

and;

WHEREAS, the City of Jackson retained Griffin and Strong to conduct a subsequent study concerning minority and female participation in public contracting which covered the period July 1, 2002 through June 30, 2007 hereinafter referred to as *GS Study # 2*; and

WHEREAS, *GS Study # 2* was submitted in August 2012 and included the following findings regarding the statistical evidence and data collected regarding the City's use of Minority and White Female Business Enterprises (MWFBE):

- (a) There was evidence suggestive of continued discrimination and the continuing effect of past discrimination against minority and woman-owned businesses in Jackson, Mississippi;
- (b) Disparity measures revealed that MWBE eligible firms were underutilized in categories under consideration;

- (c) MWFBEs were significantly underutilized as prime *construction* contractors in all racial, gender, and ethnic categories except African American owned businesses were overutilized in 2004 and 2005;
- (d) MWFBEs were underutilized in construction subcontracts for professional services during the study period with the exception of African-American males who were overutilized;
- (e) MWFBEs were underutilized during the study period for architecture and engineering services except for 2004 and 2005, and non-minority females were underutilized except in 2006;
- (f) During the study period, the City spent in excess of \$20 million with MWBE across all procurement categories at the prime level. Non-minority males represented more than \$202 million during the same period;
- (g) Procurement activities of the City flow through every sector of municipal government using a requisition process which does not include a requirement that MWBE firms be included in recommendations.

WHEREAS, the GS Study #2 contained several recommendations for remedial action and indicated that there was sufficient factual predicate for the continuation of program established by the City's previous Equal Business Opportunity Ordinance; and

WHEREAS, implementation of the remedial measures recommended in the GS Study # 2 has been delayed for a number of reasons, including but not limited to multiple elections and transitions in the Office of Mayor within the last year; and

WHEREAS, the continuation of the program established by the City's prior Equal Business Opportunity Ordinance is necessary to remedy the effects of discrimination in the City of Jackson's awarding of contracts in certain segments, including but not limited to, prime contracting for construction and professional service contracts;

WHEREAS, this Executive Order is being entered for the purpose of insuring that remedial measures and acts are implemented by municipal departments participating in procurement;

NOW therefore, I, Tony Yarber, Mayor of the City of Jackson hereby order that the following equal business opportunity provisions and policies be followed and the policies set forth in this Executive Order supersede any prior policies and Executive Orders related to Equal Business Opportunity:

#### **I. Definitions.**

For the purposes of this Executive Order, the following terms shall have the following meanings:

*African American* shall mean "black".

*African American Business Enterprise (AABE)* shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, as defined in subsection 127-4(7), and is owned and controlled by one or more African Americans and certified as such by the division of business development.

*Asian American Business Enterprise (ABE)* shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function as defined in this Executive Order and is owned and controlled by one or more Asian Americans and certified as such by the division of business development.

*Bid* shall mean and include a quotation, proposal, or offer by a bidder or contractor to perform, or provide labor, materials, supplies or services to the City of Jackson for a price.

*Bidder* shall mean any person, partnership, corporation or other business that submits a quotation, bid, offer or proposal to provide labor, materials, supplies or services for a price in response to a procurement solicitation of the City of Jackson.

*Certified Business Enterprise* shall mean an AABE, HBE, ABE, MBE or FBE which meets the requirements of this Executive Order and has been approved by the City of Jackson's Division of Business Development.

*Commercially useful function* shall mean the performance of real and actual services in the discharge of any contractual endeavor. The contractor must perform a distinct element of work in which the business has the skill and expertise as well as the responsibility of actually performing, managing and supervising.

*Controlled* for purposes of determining whether a business is a minority business enterprise or female business enterprise, shall mean the minority or the female owner(s) shall: (a) possess and exercise the legal authority and power to manage business assets, good will and daily operations of the business; and (b) actively and continuously exercise such managerial authority and power in determining the policies and directing the operations of the business. If the owners who are not minorities or females are disproportionately responsible for the operation of the business, then the business is not controlled by minorities or females.

*Eligible project* shall mean any of the following:

- (a) Any city construction contract over \$15,000.00, except sole source procurements.
- (b) Any city non-construction contract or procurement, except sole source procurements.

*Female business enterprise (FBE)* shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, as defined in this Executive Order

and is owned and controlled by one or more females regardless of any race and certified as such by the City of Jackson's Division of Business Development.

*Hispanic business enterprise* (HBE) shall mean a business which is an independent and continuing enterprise for profit performing a commercially useful function, as defined in this Executive Order, and is owned and controlled by one or more Hispanics and certified as such by the City of Jackson's Division of Business Development.

*Joint venture* shall mean an association of two or more persons, partnerships, corporations or any combination of them, established to carry on a single business activity which is limited in scope and duration. The degree to which a joint venture may satisfy relevant equal business opportunity (EBO) goals cannot exceed the proportionate interest of the MBE or FBE held as a member of the joint venture in the work to be performed. The agreement establishing the joint venture, partnership or other multi-entity relationship shall be in writing. Further, MBE or FBE participation in a joint venture shall be based on the sharing of real economic interest in the venture and shall include proportionate control over management, interest in capital acquired by the joint venture, and interest in earnings.

*Minority business enterprise* (MBE) shall mean a business which is an independent and continuing operation for profit, performing a commercially useful function, as defined in this Executive Order and is owned and controlled by one or more non White persons regardless of gender.

*Owned*, for purposes of determining whether a business is a minority business enterprise or female business enterprise, shall mean that:

- (a) The minority or female owner(s) as the context requires, shall possess an ownership interest of at least 51 percent of the business;
- (b) The ownership is real and continuing and goes beyond the mere indicia of ownership which may be shown in ownership documents; and
- (c) The minority or female owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance, rather than the form of ownership arrangements.

*Small business enterprise* (SBE) shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, as defined in subsection 127-4(7), and is owned and controlled by one or more persons, not limited to members of minority groups, who have been historically deprived of the opportunity to develop and maintain a competitive position in the economy because of social and economic disadvantages and certified as such by the division of business development in accordance with current federal regulations.

*Supplier* shall mean a person engaged in the warehousing or manufacture of materials, supplies or equipment which contracts directly with a bidder to provide such materials, supplies or equipment on a project which involves a trade or service within the procurement category or categories of professional services, construction, or commodities (goods and non-professional services).

## **II. Policy**

It is the policy of the City of Jackson to promote full and equal business opportunity for all persons doing business with the City of Jackson. A previous study conducted by Griffin and Strong indicated that female, African American, Hispanic, and Asian American owned businesses have suffered the effects of racial and gender discrimination in both public and private markets, resulting in a disproportionate award of contract dollars to non-minority or non-female businesses. The City of Jackson has been addressing the effects of the discrimination by implementation of an Equal Business Opportunity Program. The Equal Business Opportunity Program shall continue to be implemented so that participation in public contracting by minority and women owned businesses continues.

**III. Application.** The provisions of this Executive Order shall apply to all eligible projects as defined previously.

## **IV. Divisions created within the Office of Economic Development**

In addition to any existing divisions within the City of Jackson Office of Economic Development, there shall be created two divisions which shall be known as (1) The Division of Equal Business Opportunity; and (2) The Division of Business Development. The two divisions are created to implement, enforce, and monitor compliance with this Executive Order and shall perform other duties which may be required by the Deputy Director of the Office of Economic Development.

### **A. Duties of the Equal Business Opportunity Officer**

The Equal Business Opportunity Officer within the Division of Equal Business Opportunity shall have the following authority and duties:

- (1) Implement the provisions of this Executive Order and enforce same;
- (2) Establish written procedures, guidelines and forms as may be necessary to implement this Executive Order subject to the approval of the Equal Business Opportunity Review Committee (EBORC).
- (3) Prepare written determinations, with reasons therefore, of whether potential contractors are in compliance with this Executive Order in accordance with the procedures recommended by the EBORC.
- (4) Attend pre-bid, pre-proposal, pre-contract, pre-construction conferences and project close-out meetings with potential contractors and subcontractors, for the purpose of ensuring that the Division of Equal Business Opportunity has all available information with which to make a determination of compliance;

(5) Investigate alleged violations of this Executive Order and issue written findings concerning the investigations and recommending appropriate action and measures to be taken consistent with the provisions of this Executive Order;

(6) Provide all forms, applications, documents and papers necessary to comply with this Executive Order to business entities of all types;

(7) Determine whether any penalties are appropriate to be imposed for failure to meet or comply with the Equal Business Opportunity participation goals and standards;

(8) Provide notice by certified mail to affected parties of appeal and other rights arising out of the compliance or non-compliance with this Executive Order;

(9) Submit recommendations to the EBORC on measures and acts designed to promote and encourage participation by minorities and females in contracting and procurement in the City of Jackson;

(10) Provide notice to the EBORC of any determination of noncompliance with the requirements of this Executive Order and any appeals received by persons aggrieved by decisions or determinations related to this Executive Order and the enforcement of its provisions;

(11) Submit quarterly written reports to the EBORC on activities related to the implementation, monitoring, and enforcement of this Executive Order;

(12) Provide support and assist the EBORC in its functioning;

(13) Review bids, proposals, and other documents responding to the City's procurement solicitations for compliance with this Executive Order.

(14) Review, compile, and submit a monthly report to the Mayor or his designee on the participation of minorities and female business enterprises in the City's contracts and procurements so that an assessment can be made on the effects of this Executive Order.

#### **B. Duties of the Manager of the Division of Business Development.**

The Manager of the Division of Business Development for the Office of Economic Development shall have the following authority and duties:

(1) Develop a database of certified MBEs and FBEs to be maintained as a public record.

(2) Maintain annual statistical data on availability and utilization of certified MBEs (AABEs, HBES, or ABES) and FBEs including but not limited to:

(a) The level of EBO participation achieved in the contracts subject to this chapter; and

(b) The current estimated availability of AABEs, HBES, ABES and FBEs to perform services; and

- (c) An assessment of the continuing need for EBO goals for specific projects; and
- (3) Implement and coordinate a business assistance program which will provide counseling and technical assistance to MBEs and FBEs and provide referral information on various service providers which may be of assistance to MBEs and FBEs;
  - (4) Coordinate, manage or form a partnership alliance with a small business development center.
  - (5) Review cases where contractors fail to implement previously made MBE or FBE commitments to determine whether there should be further efforts or alternative approaches, including but not limited to, contact with industry, or any pertinent federal agency, for information concerning the availability of qualified MBEs and FBEs;
  - (6) Certify contractors, bidders or offerors as bona fide MBEs (AABEs, HBEs, or ABEs) or FBEs, in accordance with the standards set forth in this Executive Order;
  - (7) Provide notice to an affected party by certified mail that it has the right to appeal a denial of certification as an MBE (AABE, HBE, or ABE) or FBE to the Deputy Director of the Office of Economic Development within seven (7) days of receipt of the notice of non-certification.
  - (8) Notify the EBORC of any determination of non-certification with the requirements of this Executive Order or of any appeal from such determination of non-certification.

**C. Equal Business Opportunity Review Committee (EBORC).**

(a) The Equal Business Opportunity Review Committee consists of the following: (1) the Mayor's Coordinator of Economic Development and another designee of the Mayor's office; (2) the City Attorney or his designee; (3) the Chief Administrative Officer or his designee; (4) a Deputy Chief Administrative Officer; (5) the Director of the Department of Public Works or his designee; (6) the Director of the Department of Planning and Development or his designee; (7) the Business Development Manager or his designee; and (8) the Purchasing Manager or his designee. The Mayor's Coordinator of Economic Development shall serve as the chairperson of the EBORC.

(b) The Equal Business Opportunity Review Committee shall have the following authority and duties:

- (1) Review the quarterly reports of the Equal Business Opportunity Officer and submit recommendations to the Mayor on actions required and essential for the effective implementation of this Executive Order;
- (2) Review periodically Equal Business Opportunity participation goals and submit recommendations to the Mayor on revisions needed;
- (3) Review and consider appeals by persons aggrieved by the denial of certifications as

an MBE or FBE and persons aggrieved by determinations of the Equal Business Opportunity Officer concerning compliance with this Executive Order.

4. Review and hear requests for substitution and replacement of MBE and FBEs.
5. Perform other functions identified in this Executive Order and necessary to achieve the goals and ends of this Executive Order.

**V. Equal business opportunity participation goals.**

Consistent with the policy stated in this Executive Order, the following Equal Business Opportunity (EBO) participation goals are established and shall remain in effect until this Executive Order is amended or the Jackson City Council passes an ordinance containing participation goals to the contrary:

Procurement Category	Asian (ABE)	African American (AABE)	Hispanic (HBE)	Native American (NABE)	Female (FBE)
Architecture/Engineering & Professional Services	0.16	8.67	0.00	0.00	1.96
Construction	0.00	12.41	0.37	0.00	4.89
Goods (Commodities)& Non-Professional Services	0.04	6.78	0.02	0.00	3.03

**Alternative project participation goals.**

The applicability of the EBO participation goals established within this Executive Order on any project shall be reviewed evaluated by the Equal Business Opportunity Officer. If the goal is not appropriate for a specific project, the Equal Business Opportunity Officer shall set an appropriate alternative project goal for the project. In setting alternative goals on a particular project, the Equal Business Opportunity Officer shall consider: (1) the availability of AABEs, FBES, HBEs, and ABEs in various industry classifications and professions which are ready, willing and able to provide goods and services on the particular contract, as identified in the City's certification database; (2) the level of participation by such firms in past contracts awarded by the City of Jackson; (3) the contract specifications (4) whether the vendor is located in the City limits of Jackson; (5) the number of Jackson residents employed by the vendor; and (6) any other relevant factors not specifically enumerated. To set a project goal, there must be at least one available AABE, FBE, HBE, or ABE for each specific goal. The vendor must provide documentation to the EBO Officer which establishes the vendor's efforts to secure participation by minority and female business enterprises

The alternative project goal established by the Equal Business Opportunity Officer shall be reviewed and approved by the Equal Business Opportunity Review Committee (EBORC). In

reviewing the alternative participation goals established for a project, the EBORC shall consider the availability and utilization data by which the Equal Business Opportunity Officer established the alternative participation goal.

**VI. Contractor's requirements regarding submission of an Equal Business Opportunity Plan.**

- A. Each bidder responding to a solicitation for goods and/or services shall complete and sign an Equal Business Opportunity Plan on forms provided by the City or its Equal Business Opportunity Officer for all eligible projects as defined by this Executive Order. The Equal Business Opportunity Plan shall be included in all solicitation materials for eligible projects.
- B. Notwithstanding its compliance with any other requirement of City ordinances or solicitation requirements established by the City, no bidder shall be awarded a contract on an eligible project unless an Equal Business Opportunity Plan is submitted with the bid response and the Equal Business Opportunity Officer has approved the plan or approved the waiving of the participation goals. The EBO plan shall be designed to meet the applicable participation goals set for the project and shall be incorporated into the contract.

The Equal Business Opportunity Plan shall include the following:

- (a) name, address, telephone number, electronic mail address and contact person of each subcontractor or supplier to be used in the contract;
  - (b) a description of the type and scope of work or service each business will perform;
  - (c) the dollar value of the work to be performed;
  - (d) the ownership of each business by race and/or gender, and, if applicable, the AABE, HBE, ABE, NABE or FBE certification number of each business that has been contacted by such bidder, and has agreed to be used in the contract.
  - (e) If a bidder include names of MBEs (AABE, HBE, ABE, NABE) or FBES on their EBO Plan, and it is established that these entities were not contacted concerning the response or have been included as a participating entity without consent, then the submission will be considered fraudulent and may result in the disqualification of the response bid or proposal from further consideration in the procurement process and/or the rejection of the bid or proposal.
- C. Contractors may employ AABEs, HBES, ABES, or FBES to meet the applicable project goals through a variety of methods, as follows:

**Subcontractor participation:**

1. If a prime contractor utilizes one or more subcontractors to satisfy its equal business opportunity commitment, the prime contractor may count toward its EBO plan only expenditures to MBE (AABE, HBE, or ABE) or FBE contractors that perform a commercially useful function in the work of the contract.
2. An MBE or FBE subcontractor is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved. In determining whether an MBE or FBE subcontractor, is performing a commercially useful function, factors, including but not limited to the following, will be considered:
  - i. The amount of work subcontracted;
  - ii. The type of prime contract;
  - iii. The business's skill, expertise, and capability to perform the work described based on its certification;
  - iv. The authority which will be exercised by the business in performing, managing, and supervising the work described and proposed in the Plan and whether the same is consistent with its certification;
  - v. If the business engages in the purchase of goods and services from minority or women business enterprises and then sells to the City, a City contractor, or other person doing business with the City for the purpose of allowing the goods to counted in the minority or women owned business enterprise participation goals;
  - vi. Standard industry practices.
3. Consistent with standard industry practices, an MBE or FBE subcontractor may enter into second tier subcontracts. In the event an MBE or FBE subcontractor subcontracts a significantly greater portion of the work of its subcontract to a non-minority, non-female owned firm than would be expected on the basis of standard industry practices, the MBE or FBE subcontractor shall be presumed not to be performing a commercially useful function.
  - a. **Supplier participation.**

If a prime contractor utilizes one or more suppliers to satisfy its EBO commitment, in whole or in part, the MBE or FBE supplier participation may be credited towards the applicable goal as follows:

- (1) For the purposes of calculating the percentage of total contract dollars awarded or paid to MBE or FBE suppliers, only amounts paid to MBE and FBE suppliers who manufacture the goods supplies, who are wholesalers warehousing the goods supplied, or who are manufacturer's representatives (distributors) of goods customarily and ordinarily used based upon standard

industry trade practices shall be counted. MBE and FBE suppliers as defined in this Executive Order must be certified to provide contracted supplies with both the Business Development Division and the Purchasing Division of the City of Jackson.

(2) For contracts in which an extraordinarily large proportion of the contract price is for equipment or supplies, the EBO officer with the approval of the EBORC may set a lower project goal than otherwise would be required.

**b. Joint ventures.**

1. The Division of Equal Business Opportunity shall review and determine on an individual project or contract basis whether it is feasible to establish a joint venture so as to insure prime contracting opportunities for African American, Hispanic, Asian American, Native American and female business enterprises on all eligible projects exceeding \$15,000.00.

In order to increase the likelihood that MBE's and FBE's will participate as prime contractors, a joint venture between a prime contractor and MBEs and FBEs is strongly encouraged on all projects exceeding \$3,000,000.00 even if the prime itself is an MBE or FBE, except where a significantly large portion of the contract is for the purchase of equipment or supplies. For projects that exceed \$1,000,000.00, the joint venture agreement must be submitted at the time of bid.

2. If a contractor engages in a joint venture to satisfy its equal business opportunity commitment, the Equal Business Opportunity Officer, shall review and approve all contractual agreements regarding the following prior to the award of the contract:
  - i. The initial capital investment of each venture partner;
  - ii. The proportional allocation of profits and losses to each venture partner;
  - iii. The sharing of the right to control the ownership and management of the joint venture;
  - iv. The actual participation of the venture partners in the performance of the contract;
  - v. The method of and responsibility for accounting;
  - vi. The methods by which disputes are resolved; and
  - vii. Any additional information required by the EBO officer.
3. The Equal Business Opportunity Officer shall review and determine the degree of AABE, HBE, ABE, and FBE participation resulting from the joint venture which may be credited toward the equal business opportunity participation goals using the factors and criteria set forth in this Executive Order.
4. The bidder shall provide the Equal Business Opportunity Officer access to review all records pertaining to joint venture agreements before and after the award of a contract in order to evaluate and assess compliance with this Executive Order.

**c. Mentor protege programs.**

1. The Division of Equal Business Opportunity shall encourage mentor protege agreements to assist African American, Hispanic, Asian American, and female business enterprises in financing,

bonding, construction management and technical assistance. Mentor-protege agreements will be reviewed by the Equal Business Opportunity Officer and approved using the following criteria:

- i. Type of technical assistance to be provided by mentor;
- ii. Rights and responsibilities of each mentor and protege contracting activity;
- iii. The specific duration of the agreement;
- iv. Continuation of the agreement if any, beyond the project;

Other factors not enumerated.

2. During the term of the contract the mentor and protege businesses must each provide to the EBO officer a quarterly summary of the mentor skills provided to the protege, which shall include:

- (a) The time spent between mentor and protege businesses in furtherance of the mentor protege relationship;
- (b) The nature and extent of managerial, technical, financial and/or bonding assistance provided;
- (c) A summary and explanation of any projects bid on or undertaken by the mentor-protégé team in the private sector or for a governmental entity other than the City of Jackson; and
- (d) Any additional or further information required by the EBO officer as set forth in bid documents or otherwise.

3. **Mediation of disputes between joint venture or mentor-protege team members.**

a. After a contract is awarded, if a member of a joint venture or a party to a mentor-protégé agreement believes that the terms and conditions of the agreement approved by the EBO officer have not been complied with, then the member may submit a written request to the EBORC to review and mediate the dispute.

Within 20 calendar days of receipt of a request for review, if the dispute has not already been resolved informally among the parties, the EBORC shall set a date for the mediation. The EBO officer shall provide written notice of the mediation date to each member of the joint venture or mentor-protege team.

b. The EBORC shall make recommendations for the resolution of the dispute to the Mayor within fifteen (15) and upon approval of the recommendation shall provide written notice of the decision to the interested parties of the joint venture or mentor protégé agreement within five (5) days of the Mayor's approval.

The parties to the joint venture or mentor protégé agreement shall provide notice of the City within seven (7) days of its willingness to adhere the recommendations. If the parties indicate an unwillingness to adhere to any recommendation, then the dispute shall be referred to a mediator mutually agreed upon by the parties, and the cost of the mediation shall be born equally by the parties. The decision of the mediator shall not be binding absent the parties agreeing in writing prior to the mediation that the decision shall be binding.

**d. Waiver Concerning Project Goals.**

1. *Inability to meet project goal.* If a bidder is unable to meet project goals for a specified minority or female business, he should request a partial or total waiver of the project goal for the minority or female business. The request for waiver of all or part of the project goals shall include full documentary evidence of the bidder's good faith outreach efforts to meet the project goals and an explanation as to why the request for waiver should be granted. The request for a waiver shall be in writing and submitted at the time of bid as a part of the bidder's EBO plan. It should include a signed narrative, and written documentation demonstrating the bidder's good faith outreach efforts to identify, contact, contract with or utilize certified MBEs and FBEs as subcontractors or suppliers, or in a joint venture or mentor-protége relationship which verify the good faith outreach efforts taken by the bidder to meet the goals.
2. *Good faith outreach efforts.* No bidder shall be granted a waiver on an eligible project unless the EBO officer determines that the bidder has satisfied the good faith outreach efforts requirements of this paragraph on such eligible project. The bidder shall provide documentation of all of the following as evidence of its good faith outreach efforts. The following documents shall be included as part of the EBO plan at the time of bid, and each bidder will be evaluated on the same:
  - (a) Bidder contacted the business development division to identify certified MBEs and FBEs available to work on the project.
  - (b) Copies of written notification to MBEs and FBEs that their interest in the subcontract is solicited. Such notices and invitations shall include a full disclosure of the criteria upon which bids, proposals or quotes will be evaluated, and also include contact information for inquiries, submissions, or requests to review any necessary bid documents.
  - (c) Bidder shall provide documentation verifying receipt of the solicitation notice by the MBEs and/or FBEs.
  - (d) Bidder placed notices of opportunities for qualified businesses to perform subcontracting work on the eligible project in newspapers, trade journals, and other relevant publications, including but not limited to publications specifically targeting MBE and FBEs in order to increase the likelihood of achieving the stated goals.

( e ) Evidence that bidder made an effort to divide the work into economically feasible segments in order to provide opportunities for MBE and FBE participation which would increase the likelihood of achieving the stated goals.

( f ) Evidence of the bidder's effort to secure participation of MBE and FBE's which shall include (1) names, addresses, telephone numbers of those contacted (2) the date contact was made with the MBE and FBE and the method by which the contact was made (3) a copy of the plans, specifications or document containing the solicitation (4) the response of the MBE and FBE to the solicitation (5) an explanation as to why the MBE or FBE was not considered or accepted.

( g ) Evidence that the bidder promptly responded to inquiries concerning subcontracting opportunities and provided required access to an MBE and FBE to review bid and proposal documents in a manner timely enough to facilitate the MBE and FBE's preparation of a response and submission of bid or quote on the subcontract work.

( h ) Evidence of efforts made to assist the MBEs and FBEs contacted in securing bonding and insurance required by the bidder.

( i ) A written statement of the reason the bidder considered an MBE and FBE contacted to be unqualified to perform the work.

( j ) A statement with supporting documents and affidavits on whether the bidder used the mentor-protégé relationship in prior contracts with the City of Jackson.

( k ) Evidence of the bidder's efforts to recruit MBE and FBEs to perform subcontract work for it, including but not limited to contact with MBE and FBE organizations and organizations providing assistance to MBE and FBE organizations.

( l ) Evidence that the number of aggregate purchase items was increased in order to eliminate the need for advance purchases of materials by many MBE and FBE subcontractors.

**e. Replacement and substitution.**

The replacement or substitution of an MBE/FBE may be made if the subcontractor is believed to be unable to perform or complete the work. The EBORC must approve all replacements and substitutions. All requests for replacement or substitution of an MBE or FBE shall be submitted by the prime contractor in writing.

The MBE/FBE shall be provided with notice and opportunity to respond at a hearing conducted by the EBORC before replacement or substitution is authorized.

**VII. Review of bid or offer submission.**

A. The Equal Business Opportunity Officer shall review each bid or offer on a contract to determine if the bidder included in its submission a completed and signed EBO plan, which meets the EBO goals for said contract, and approve or reject said plan. No bidder shall be awarded an eligible project unless an EBO plan is submitted with its bid submission. No contract on eligible project shall be executed unless the recommended bidder has submitted an EBO plan for such eligible project.

B. If a partial or total request for waiver of a project goal is made, the Equal Business Opportunity Officer shall determine whether a bidder has met the good faith outreach efforts requirement stated above in order to meet the project goals and whether a total or partial waiver of a project goal should be granted. In reviewing the EBO plan submitted by a Bidder to determine whether the bidder has satisfied the good faith outreach efforts requirements of this Executive Order, the EBO officer will consider the factors cited in the *Good Faith Outreach* section of this Executive Order and also the following:

1. the total project dollars subcontracted to or expended for services performed by other businesses including certified MBEs and FBES;
2. the availability of MBEs and FBES to perform commercially useful functions for the contract based upon standard industry trade practices;
3. if the amounts paid to supplier businesses are for goods customarily and ordinarily used based upon standard industry trade practices, and the availability of certified MBEs and FBES for the eligible project.

C. Any partial waiver granted by the equal business opportunity officer shall specify the amount to which the applicable goal has been reduced on the contract.

In cases where a waiver is requested because of the alleged unavailability of MBEs or FBES to deliver the specified goods and services, the equal business opportunity officer shall certify that AABEs, HBES, ABES, or FBES are not in fact available to provide the needed goods or services at competitive prices.

D. The Equal Business Opportunity Officer may declare a bid or offer non-responsive if it is determined that a bidder: (1) failed to provide a completed and signed EBO plan; (2) failed to identify the AABEs, HBES, ABES, or FBES by name, scope of work and dollar value of work in their bids or proposals sufficient to meet the applicable EBO goals for that project; (3) failed to achieve the dollar value of creditable participation by certified MBEs or FBES necessary to meet the EBO project goals as evaluated by the equal business opportunity officer; or (4) fails to meet the requirements for a total or partial waiver of the EBO goals.

E. If the Equal Business Opportunity Officer determines that the EBO plan submitted by a bidder is false or fraudulent, he shall recommend to the EBORC that the bid or offer be rejected. The EBORC shall determine whether the bid or offer should be rejected. If a contract has been awarded prior to finding that the EBO plan was false or fraudulent

submitted, then a recommendation may be submitted to the Mayor and governing authorities to cancel the contract.

- F. The EBORC shall review all projects for compliance with this Executive Order and the EBO participation goals on projects exceeding \$1,000,000.00.

**VIII. Gradual exemption from participation goals.**

- A. Certified AABEs, HBEs, ABES, or FBEs shall be gradually exempted from use to fulfill EBO participation goals if federal or state income tax returns reveal that any AABE, HBE, ABE, or FBE has maintained gross receipts for two consecutive years that are in excess of the average gross receipts or other indicia of income of those non-minority firms with the largest market shares which represent 50 percent of the industry sales among the firms in the same industry classification.
- B. Firms which have achieved the average gross receipts in their industry specified above will be presumed to have reached a competitive status in overcoming the effects of discrimination.
- C. Certified AABEs, HBEs, ABES, or FBEs shall be required to provide a copy of federal and state income tax returns to the Equal Business Opportunity Officer whenever a prime contractor proposes to use the firm to meet EBO participation goals.

**IX. Incorporating the equal business opportunity clause in contracts for eligible projects.**

All contracts for eligible projects entered into by the City shall include the EBO clause contained within this Executive Order. The requirement shall be considered to have been complied with when the stated EBO clause is set forth as an Exhibit attached to the contract and there is appropriate language incorporating the Exhibit as being a part of the contract as if fully reprinted.

**Equal business opportunity clause.**

The equal business opportunity clause shall read as follows:

The contractor agrees to exercise good faith in making available opportunities available opportunities for minority business enterprises (MBEs) which includes, but is not limited African American Business Enterprises, Female Business Enterprises, Hispanic Business Enterprises, and Asian Business Enterprises to perform commercially useful work described in Exhibit A to this agreement which is incorporated into this agreement as if fully reprinted in accordance with the provisions of this Executive Order and shall take the following actions as part of its good faith outreach efforts to comply with the terms of the agreement and the Executive Order implemented by Mayor Tony Yarber of the City of Jackson on July 29, 2014:

- (1) Notification to MBEs and FBES that the contractor has subcontracting opportunities available and maintenance of records of the MBEs and FBES responses.
- (2) Maintenance by the contractor of a file of the names and addresses of each MBE and FBE contacted and action taken with respect to each such contact.
- (3) Dissemination of the contractor's EBO policy externally by informing and discussing it with all management and technical assistance sources; by advertising in news and electronic media and by notifying and discussing it with all subcontractors and suppliers.
- (4) Specific and continuing personal (both written and oral) recruitment efforts directed at MBE and FBE contractor organizations and/or MBE and FBE assistance organizations.
- (5) Subdivision of the contract into economically feasible segments as practice to allow the greatest opportunity for participation by MBEs and FBES.
- (6) Increasing where possible the number of aggregate purchase items so as to eliminate the requirement of front-end purchases of material for as many MBE and FBE subcontractors as possible.
- (7) Adoption of the equal business opportunity plan submitted with its response to the invitation for bids or request for proposals obligations under this agreement, as approved by the equal business opportunity officer.
- (8) Submission of monthly reports on the forms and to the extent required by the equal business opportunity officer which shall be due on the 10th day of each month following the award of the work set forth in the agreement.

**X. Maintenance of records and reports by contractors.**

Contractors awarded eligible projects incorporating EBO requirements must submit monthly participation reports on a form provided by the Equal Business Opportunity Officer. The report shall be submitted to the Equal Business Opportunity Officer on the 10th day of each month following the award of the eligible project. Each report shall include the following:

- (a) the name, address, telephone number and contact person of each subcontractor or other business used until the present date;
- (b) the type of work or service each business has performed;
- (c) a summary of the dollar amounts contracted or committed to each business during the term of the contract;
- (d) the dollar amounts actually paid to each business during the current month;

- (e) the total dollar amounts actually paid each business by race or gender (denoted as either AABE, HBE, ABE, NABE or FBE).
- (f) Other information requested by the EBO Officer.

Bidders awarded contracts on eligible projects shall maintain participation reports for a period of two (2) years after the completion of the applicable contract or project. All bidders shall create and maintain for a minimum of two years following the project's completion all records and documents reasonably necessary to demonstrate and verify the bidder's compliance with the requirements of this Executive Order. Upon request by the EBO officer, a bidder shall either submit documents and records related to its compliance to the Division of Equal Business Opportunity or permit inspection of the documents for the purpose of assessing and verifying compliance.

#### **XI. Failure to meet equal business opportunity participation goals.**

A determination by the Equal Business Opportunity Officer that the contractor has failed to comply with any portion of this Executive Order shall subject the offending party to any or all of the following penalties:

- (1) Withholding from the violating contractor ten percent (10%) of all future payments for the current eligible project until it is determined that the contractor is in compliance;
- (2) Withholding from the violating contractor all future payments for the current eligible project until it is determined that the contractor is in compliance;
- (3) Rejection of all future bids or offers for any eligible project with the City of Jackson or any of its departments or divisions until such time as the contractor demonstrates that there has been established and there shall be carried out all of the provisions of this Executive Order;
- (4) The submission of a recommendation to the governing authorities that the contractor's agreement with the City be terminated.

#### **XII. Equal business opportunity certification.**

*A. Standards:* The Division of Business Development shall determine the eligibility of AABEs, HBEs, ABEs, and FBEs for participation in City eligible projects according to the following standards:

- (1) Bona fide minority (African American, Hispanic, or Asian American) group memberships shall be established on the basis of the individual's claim that he or she is a minority (African American, Hispanic, or Asian American) and is so regarded by that particular minority community.
- (2) An eligible MBE (AABE, HBE, or ABE) and FBE under this program shall be a viable, independent and continually operating for profit entity performing a commercially useful

function which is owned and controlled by one or more minority persons or females respectively. The ownership and control by minorities or females shall be real and substantial, and shall be indicated by customary incidents of ownership, as demonstrated by an examination of the substance rather than the form of ownership and operating arrangements.

(3) The minority or female owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day decisions, as well as any decisions on matters of management, policy and operations on a full time basis. The business shall not be subject to any formal or informal restrictions which limit the customary discretion of the minority or female owners. There shall be no restrictions by partnership agreements, charter requirements or other arrangements which prevent the minority and female owners from making a business decision without the cooperation or vote of any owner who is not minority or female.

(4) In an instance where the actual management of an MBE or FBE is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can be considered as controlling the business for the purpose of this Executive Order.

(5) All securities which constitute ownership or control of an entity for purposes of establishing it as an MBE or FBE must be held directly by minority or female individuals. No securities held in trust or by any guardian for a minor shall be considered held by minorities or females in determining the ownership or control of a corporation.

(6) Ownership and control shall be measured as though not subject to the community property interest of a spouse if both spouses certify that: (i) only one spouse participates in the management of the business; (ii) community property interest in the subject business.

*B. Certification investigation.* The Division of Business Development shall investigate MBE (AABE, HBE, or ABE) and FBE ownership arrangements beyond formal documents submitted by such entities if:

- (1) The business is applying for certification with the City for the first time;
- (2) The business is newly formed or the firm has minority and/or female ownership of less than 100 percent;
- (3) There is a previous or continuing employer-employee relationship between or among present owners;
- (4) A business which is not an MBE and FBE has an interest in such entity;
- (5) The ownership of the business has changed since documents have been submitted to the Division of Business Development;

(6) A review of the documents submitted with the application raises serious concerns regarding either ownership or control of the business; and/or

(7) The manager of the business development division deems it appropriate.

C. *Period.* The Division of Business Development shall grant certification to an approved MBE (AABE, HBE, or ABE) or FBE for a period of one (1) year.

D. *Denial.* If an MBE or FBE is denied certification on the basis of information submitted, the company shall not be eligible to apply for certification for a period of six (6) months from the date of the notice denying certification. A company denied certification as MBE or FBE may appeal the denial to the EBORC. If the EBORC reverses the denial of the certification, the business shall be certified. If the EBORC does not reverse the denial of the certification, then the chair of the EBORC shall provide written notice of the denial to the company via certified mail. The reasons for the denial of the certification shall be set forth in the notice to the company.

E. *Application for certification.* AABEs, HBEs, ABEs NABEs or FBEs who wish to be certified as such by the division of the business development must submit a written certification application on a form approved and provided by the Division of Business Development. The manager of the Division of Business Development may deny certification to applicants who fail to promptly submit necessary documentation or fail to complete the application process within a reasonable period.

F. *Re-certification.* To remain certified, all MBEs and FBEs appearing in the certification database will be required to submit a new affidavit with required documentation annually.

1. The MBE or FBE will submit the completed disclosure affidavit with the required documentation to the division of business development.
2. The disclosure affidavit and related documents will be evaluated for completeness and accuracy to determine whether changes that have occurred affect the status of the business as a bona fide MBE or FBE. An investigation may be conducted to evaluate an applicant as deemed appropriate.
3. All certified MBEs or FBEs are subject to monitoring by the division of business development to assure that the appropriate ownership and control will continue.

G. *Decertification.* The Division of Business Development may decertify a business if it determines that it is no longer a bona fide MBE (AABE, HBE, or ABE) or FBE. Any of the following reasons, which are not intended to be all-inclusive, are sufficient grounds for decertification:

1. The entity has changed and no longer satisfies the requirements of ownership and/or control;

2. The MBE or FBE fails to submit within a reasonable time period information requested by the Equal Business Opportunity Officer or the Division of Business Development.

Businesses decertified for reasons other than by voluntary request may not apply for recertification for a period of six (6) months. A business that is decertified may appeal the decertification to the EBORC which shall review and hear the matter in the same manner as it hears other appeals under this Executive Order.

H. *Continuing duty.* Certified MBEs and FBEs shall be under a continuing duty to inform the Division of Business Development in writing of any changes in the MBEs' or FBEs' business if, as a result of the changes, the MBE or FBE no longer satisfies the criteria for classification as a minority business enterprise or female business enterprise.

### XIII. Appeals.

- A. *Determination of noncompliance and denial of certification.* When certification as an MBE or FBE is denied or when a determination is made that a contractor has failed to comply with the provisions of this Executive Order, the chairperson of the EBORC shall mail written notice of same to the affected party by certified or registered mail setting forth the reasons for the determination of noncompliance or denial of certification.
- B. *Time for filing notice of appeal.* Any bidder who has been denied certification as an MBE or FBE by the division of business development or against whom a determination of noncompliance with the requirements of this Executive Order has been made may appeal the determination of noncompliance or denial of certification by filing a notice of appeal with the Deputy Director of the Office of Economic Development by submitting a request for a review within seven (7) working days of receipt of the notice of the determination of noncompliance or denial of certification.

The Deputy Director of the Office of Economic Development shall review the denial or determination of noncompliance and either confirm, modify, or reverse same within three (3) working days of receipt of the written request for review.

If the affected party is aggrieved by the decision of the Deputy Director of Economic Development, then the affected party may request a hearing before the EBORC. The request for the hearing must be made in writing and contain a description or summary of the basis for the aggrieved party's request for the hearing. The request must be submitted to the Equal Business Opportunity Officer within three (3) working days of receipt of the decision by the Deputy Director of Economic Development.

- C. *Notices and appeals before EBORC.* The Equal Business Opportunity Officer shall provide copies of requests for hearings received from parties aggrieved by the Deputy Director of Economic Development's decision at the next regularly scheduled meeting following receipt of the notice. At the meeting, the EBORC shall schedule hearings and

direct that the Equal Business Opportunity Office provide written notice to the aggrieved party five (5) days prior to the scheduled hearing. A contract which touches and concerns the matter being appealed to the EBORC shall not be awarded pending the outcome of the hearing before the EBORC.

D. *The appellate duties of the Equal Business Opportunity Review Committee (EBORC)* shall be as follows:

(1) The EBORC shall set a hearing date within fourteen (14) days of the meeting in which the notice requesting the hearing is presented by the Equal Business Opportunity Officer. The EBORC shall cause notice of the hearing to be served upon all parties by certified or registered mail. The notice shall set forth with particularity the charges filed by the aggrieved business and shall include the hearing date, time and place.

(2) All parties shall be provided a fair and impartial hearing and shall be allowed to produce any and all evidence in either party's possession concerning the determination of noncompliance with the requirements of the Executive Order or the denial of certification as an MBE (AABE, HBE, or ABE) or FBE.

E. *Decision.* The EBORC shall issue a written decision on the outcome of the appeal within seven (7) working days following the conclusion of the hearing. Official holidays shall not be included in the seven (7) working day period. The written decision shall summarize the evidence presented, conclusions reached by the EBORC, and the basis of its decision. The EBORC's decision shall either affirm, modify or reverse the determination of noncompliance or the denial of certification. The EBORC shall decide whether the determination of non-compliance being appealed was in accordance with the law and the terms and conditions of the solicitation before the contract is awarded or penalties are imposed. If the EBORC finds for the aggrieved party, the business shall be certified as an MBE or FBE and added to the certification database maintained by the City or the business shall be found in compliance with the EBO requirements of this Order and its respective bid or proposal may be considered for an award in response to the City's solicitation. The decision of the EBORC shall be binding on all parties save for any rights of appeal which are afforded by law.

F. *Notice of decision.* The Equal Business Opportunity Officer shall provide notice of the EBORC's decision to all parties by registered or certified mail.

#### **XIV. Race neutral assistance program.**

The City of Jackson recognizes that race-neutral alternatives such as bonding assistance, technical and financial aid are instrumental in helping African American, Hispanic, Asian American and female businesses overcome the effects of past public and private discrimination in procurements within the City of Jackson. Past discrimination has affected the capacity and ability of minority and female businesses to compete for municipal procurements with non-minority, non-female owned businesses which have greater access to bonding and financial assistance. The City further recognizes that small businesses, limited in size and capital suffered similar difficulties in

competing for contract dollars in public and private markets. It is in the City's best interest to promote opportunities in purchasing and contracting for small business enterprises, minority business enterprises and female business enterprises. In order to facilitate the aforementioned, the following race neutral assistance measures are to be implemented and followed:

- A. *Bonding assistance.* The Division of Equal Business Opportunity shall develop a program or enter into an agreement with agencies or organizations that have programs to assist small business enterprises (SBEs) in obtaining information and resources in the availability of bonding for public sector contracts. This division, alone or in partnership with other agencies or organizations, shall provide (i) individualized counseling; (ii) conduct seminars relating to bonding; (iii) explore methods of creating a bonding program for small businesses with public and private sector resources; and (iv) monitor the bonding practices in the local market and to document any instances of discrimination in the bonding industry; and (v) provide advice and information to the construction management division or the appropriate user department as to the level of bonding generally available to subcontractors, so that such information may be considered in the process of reducing such projects to a size that small business enterprise might successfully bid.
- B. *Financial assistance.* The division of equal business opportunity will assist small business enterprises in locating available financial resources in the Jackson business sector. This division, alone or in partnership with other agencies/or organizations, shall act as a: (i) clearinghouse for information on financial assistance programs for SBEs; (ii) assist in packaging loan requests for SBEs; (iii) conduct seminars related to financing; (iv) monitor and document any instances of discrimination against SBEs, MBEs and FBEs; and (v) explore public and private resources to provide financial services to small business enterprises.
- C. *Construction management and technical assistance.* The Division of Equal Business Opportunity, alone or in partnership with other agencies or organizations, will offer services to assist small business enterprises in construction management and technical services. This will be facilitated by: (i) assisting SBEs with bidding and estimating on construction contracts; (ii) conducting seminars on construction management; (iii) assisting the equal business opportunity officer in identifying and solving technical problems on construction projects; (iv) providing information on construction assistance programs; and (v) documenting any identified discrimination against SBEs, MBEs or FBEs on construction projects.
- D. *Prohibition against discrimination in awarding subcontracts due to bonding.*
  1. The prime contractor shall be prohibited from denying a subcontract solely on the basis of that subcontractor's inability to obtain any payment and performance bond required by the contractor. The EBORC, in consultation with the Equal Business Opportunity Officer, shall adopt rules and regulations to implement the following:
    - a. The encouragement of prime contractors to accept increment bonding for subcontractors;

b. The encouragement of the prime contractor to accept the maximum bond that the subcontractor can provide for the job, in circumstances where the subcontractor cannot provide a bond to cover the total amount of the subcontract;

c. The encouragement of the prime contractor to waive bonding requirements when feasible for subcontractors.

2. The prime contractor shall be required to submit a bonding assistance program for small, minority and female businesses on all wrap-up insurance contracts on eligible projects which exceed \$5,000,000.00.

*E. Subcontractor payment certification.* Every contract by the City for the performance of work shall contain a provision requiring the prime contractor to certify in writing that all subcontractors and suppliers have been paid for work and materials from previous progress payments received (less any retainage) by the prime contractor prior to receipt of any further progress payments. If a contractor is unable to pay subcontractors or suppliers until it has received a progress payment from the City, the prime contractor shall pay all subcontractors or suppliers funds due from said progress payments within 48 hours of receipt of payment from the City. During the contract and upon completion of the contract, the City may request that the contractor provide documentation to confirm its payment to subcontractors or suppliers.

The City reserves the right to issue joint checks payable to both the contractor and the subcontractor to insure proper payments. This provision in no way creates any contractual relationship between any subcontractor and the City or any liability on the City for the contractor's failure to make timely payment to the subcontractor.

## **XV. Procurement and Purchases by Departments**

In addition to the compelling interest of remedying the effects of past discrimination in public sector procurements against minority and female business enterprises, the City of Jackson has a governmental interest in insuring that businesses located within its municipal boundaries remain viable; therefore, all municipal departments shall adhere to the provisions of the public purchasing laws and the following with respect purchasing goods and services:

### **A. Purchases less than \$5,000.00**

In accordance with Section 31-7-13(a) of the Mississippi Code, purchases may be made without advertising or requesting competitive bids where the purchase does not involve an expenditure of *more than* \$5,000.00 exclusive of freight and shipping charges. Therefore, all municipal departments shall purchase goods and services in this category from businesses located within the City of Jackson when available. In addition, municipal departments shall review the availability of goods and services in this category from the list of certified MBE and FBE businesses maintained by the Division of Business Development and shall rotate the purchase of goods and services between MBE, FBE, and non-MBE and FBE entities.

**B. Purchases exceeding \$5,000.00 but less than \$50,000.00**

In accordance with Section 31-7-13(h) of the Mississippi Code, purchases exceeding \$5,000.00 but not more than \$50,000.00 exclusive of freight and shipping charges may be made from the lowest and best bidder without publishing or posting advertisement for bids by obtaining two (2) competitive written bids. Therefore, all municipal departments shall purchase goods and services in this category from businesses located within the City of Jackson when available. In addition, all municipal departments shall review the availability of goods and services in this category from the list of certified MBE and FBE businesses maintained by the Division of Business Development and shall when feasible request that the MBE and FBE provide a bid on the good or service. Purchases of goods and services in this category must include one (1) competitive written bid from a certified MBE and FBE unless there is no certified MBE and FBE available.

**C. Purchases exceeding \$50,0000**

Purchases exceeding \$50,000.00 shall be made in accordance with the laws of the State of Mississippi but shall be subject to applicable provisions of this Executive Order.

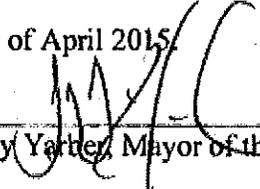
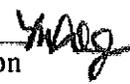
**D. Enforcement.** The Purchasing Division Manager shall not approve the purchase of goods and services by municipal departments for failure to adhere to the provisions of this Executive Order regarding the purchases not exceeding \$5,000.00 and purchases exceeding \$5,000.00 but not more than \$50,000.00.

**E. Exemption from Compliance.** Municipal departments may request that the Chief Administrative Officer exempt a particular purchase from meeting the requirements of this Executive Order concerning the purchases described in Section 15 A and 15 B above for cause. The exemption shall be in writing and set forth the basis for the request and must be approved in writing by the Chief Administrative Officer prior to purchase.

**XVI. Disciplinary Action.**

The failure to adhere to the provisions of this Executive Order may subject responsible personnel to disciplinary action including but not limited to termination of employment.

SO ORDERED this the 29<sup>th</sup> day of April 2015.

  
\_\_\_\_\_  
Tony Yartey, Mayor of the City of Jackson 

**SECTION 7.0**  
**CONTRACT FORMS**

This Contract, made this the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF JACKSON, MISSISSIPPI, a municipal corporation, hereinafter called "OWNER" and \_\_\_\_\_ doing business as a \_\_\_\_\_ located in \_\_\_\_\_, hereinafter called the "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. THE CONTRACTOR will commence and complete the BIOSOLIDS SCREENING, LOADING, TRANSPORTATION, AND DISPOSAL, said project being designated City PROJECT NO. 15B0500901, and being more completely described in the Contract Documents and Contract Drawings.
2. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within ten (10) calendar days after the date of the NOTICE TO PROCEED and will complete the biosolids disposal operations NO LATER THAN December 31, 2017, with the site restoration and road repair work shall being completed NO LATER THAN 60 days after completion of biosolids disposal operations, with the work schedule being as stipulated in the CONTRACT DOCUMENTS unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS. The CONTRACTOR further agrees to pay, as liquidated damages, the sum of One Thousand Dollars (\$1,000.00) plus any additional actual costs above One Thousand Dollars (\$1,000.00) for each consecutive calendar day thereafter for failure to complete all biosolids disposal operations by December 31, 2017, and for failure to complete site restoration and road repair within 60 days after completion of biosolids disposal operations, as hereinafter provided in the Contract Documents.
3. The term "CONTRACT DOCUMENTS" means and includes Request for Proposals, CONTRACTOR'S Proposal including the CONTRACTOR'S EBO Plan, Bid Bond, Contract, Payment Bond, Performance Bond, Notice of Award, Notice to Proceed, Addenda (if any), and all subsequent Change Orders, Supplemental Agreements and/or other modifications to the Contract.
4. The CONTRACTOR agrees to furnish all materials in place and to faithfully complete all of said work contemplated by this Contract in good and workmanlike manner, strictly in accordance with said Contract Documents, Request for Proposals, and other requirements of the OWNER, under the direct observation of and to the complete satisfaction of the Director, or his authorized representatives, and in accordance with the Laws of the State of Mississippi and the Ordinances of the City of Jackson, for which the OWNER hereby agrees to pay and the CONTRACTOR agrees to accept a sum of money in current funds equal to the total value of the work complete in place, computed by multiplying the final quantities of each item of work by the Contract unit prices therefor as stated in the Proposal, attached hereto and made a part hereof, plus the amount of any supplemental agreements and force accounts for extra work authorized and performed; which is estimated as being the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), in full compensation for furnishing all materials, the doing of all work contemplated under the Contract, as well as all loss or damage, if any, arising out of the nature of the work, or the action of the weather, and any and all other unforeseen obstructions or difficulties that may be encountered in the prosecution of the same, the CONTRACTOR assuming all risks of every kind and description in the performance of this Contract.

5. The CONTRACTOR agrees and binds himself (itself) to indemnify and save harmless and to defend any claims or suits against OWNER, its employees and its agents by reason of any claims for damages arising from the performance of this Contract as a result of negligence on the part of the CONTRACTOR, or from any suit or claim brought against OWNER by reason of alleged damages or the taking of property under Section 17 of the Mississippi Constitution of 1890, and particularly from the use of the streets being constructed or improved under this Contract.
6. The CONTRACTOR shall provide proof of general liability insurance meeting the requirements set forth in Section 8.0, Provision 3 (Supplementary Provisions to General Conditions) of the Contract Documents.
7. Any covenant, promise and/or agreement contained elsewhere to indemnify or hold harmless another person from that person's own negligence is void and wholly unenforceable. This does not apply to construction bonds or insurance contracts or agreements.
8. Attached hereto and made a part of this Contract is a Performance Bond, executed by a Surety Company doing business in the State of Mississippi in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
9. Attached hereto and made a part of this Contract is a Payment Bond, executed by a Surety Company doing business in the State of Mississippi in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
10. Upon execution of the Performance and Payment Bonds and before commencing work contained in the Contract Documents, the CONTRACTOR shall be required to make payment of all taxes, licenses, assessments, contributions, damages, penalties, and interest thereon, when and as the same as may lawfully be due this state, or any county, municipality, board, department, commission or political subdivision thereof, by reason of and directly connected with the performance of this Agreement. In the event of default of the prompt payment of all such taxes, licenses, assessments, contributions, damages, penalties and interest thereon as may be due by the CONTRACTOR, a direct proceeding on the bonds may be brought in any court of competent jurisdiction by the proper officer or agency having lawful authority to do so to enforce such payment, the right to do so is cumulative and in addition to other remedies as may be provided by law.
11. The CONTRACTOR agrees to allow the OWNER, or any of their duly authorized representatives, access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to the project which is the subject of this Contract, for the purpose of making audits, examinations, excerpts and transcriptions, and CONTRACTOR agrees to insert an identical clause in any and all subcontracts.
12. The OWNER will pay CONTRACTOR according to the Contract Documents, particularly Section 8.0, Provision 7 (Supplementary Provisions to General Conditions).
13. This Contract shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
14. The CONTRACTOR shall only use materials grown, produced, prepared, made and/or manufactured within the State of Mississippi, unless when such materials made outside of the State of Mississippi are of like quality and can be secured at a lower cost or any materials of a better quality can be acquired at a reasonable cost.

15. CONTRACTOR shall employ only workmen and laborers who have actually resided in the State of Mississippi for two (2) years preceding employment. In the case that laborers or workmen cannot be found that meet such qualifications; the CONTRACTOR shall notify the OWNER in writing. Unless the OWNER supplies the CONTRACTOR with satisfactory workmen or laborers needed, the CONTRACTOR will be authorized to employ workmen or laborers not meeting these qualifications.
  
16. The CONTRACTOR agrees to make good faith efforts to meet the goals of this agreement by making available opportunities for MBEs (AABEs, HBEs, and ABEs) and FBEs for utilization in the work set forth within this agreement, and shall take the following actions as part of its good faith efforts:
  - a. Notification to MBEs and FBEs that the CONTRACTOR has subcontracting opportunities available and maintenance of records of the MBEs and FBEs responses.
  - b. Maintenance by the CONTRACTOR of a file of the names and addresses of each MBE and FBE contracted and action taken with respect to each such contract.
  - c. Dissemination of the CONTRACTOR'S EBO policy externally by informing and discussing it with all management and technical assistance sources; by advertising in news media and by notifying and discussing it with all subcontractors and suppliers.
  - d. Specific and continuing personal (both written and oral) recruitment efforts directed at MBE and FBE CONTRACTOR organizations, MBE and FBE assistance organizations.
  - e. Sub-division of the contract into economically feasible segments as practice to allow the greatest opportunity for participation by MBEs and FBEs.
  - f. Increasing where possible the number of aggregate purchase items so as to eliminate the requirement of front-end purchases of material for as many MBE and FBE subcontractors as possible.
  - g. Adoption of the Equal Business Opportunity Plan submitted with its response to the Invitation for Bids or Request for Proposals obligations under this agreement, as approved by the Equal Business Opportunity Officer.
  - h. Submission of monthly reports on the forms and to the extent required by the Equal Business Opportunity Officer, to be due on the last day of each month following the award of the work set forth in this agreement.
  
17. The CONTRACTOR further agrees that its breach of the EBO provisions contained herein shall subject it to any or all of the following penalties:
  - a. Withholding of ten percent (10%) of all future payments under the involved eligible project until it is determined that the CONTRACTOR is in compliance;
  - b. Withholding of all future payments under the involved project until it is determined that the CONTRACTOR is in compliance.
  - c. Refusal of all future bids or offers for any eligible project with the City of Jackson or any of its departments or divisions until such time as the CONTRACTOR demonstrates that

there has been established and there shall be carried out of all the EBO provisions contained herein;

d. Cancellation of the eligible project.

18. The CONTRACTOR agrees to guarantee the work for a period of one (1) year from the date of the final inspection and acceptance. CONTRACTOR further agrees to furnish any additional bonds as deemed necessary by the OWNER.

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Contract in six (6) counterparts, each of which shall be deemed an original on the date first above written.

CITY OF JACKSON, MISSISSIPPI

\_\_\_\_\_  
CONTRACTOR

BY \_\_\_\_\_  
Mayor

By: \_\_\_\_\_

ATTEST \_\_\_\_\_  
City Clerk

ATTEST \_\_\_\_\_

(Seal)

(Seal)

**CORPORATE CERTIFICATE**

I, \_\_\_\_\_ certify that I am the Secretary of the Corporation named as CONTRACTOR in the foregoing Contract; that \_\_\_\_\_, who signed said Contract on behalf of the CONTRACTOR was then \_\_\_\_\_ of said Corporation; that said Contract was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

\_\_\_\_\_  
Secretary

Corporate Seal

**PARTNERSHIP CERTIFICATE**

STATE OF \_\_\_\_\_  
ss.  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me personally appeared \_\_\_\_\_, known to me and known by me to be the person who executed the above instrument, who being by me first duly sworn, did depose and say that he is a general partner in the firm of \_\_\_\_\_; that said firm consist of himself and \_\_\_\_\_; and that he executed the foregoing instrument on behalf of said firm for the uses and purposes stated herein.

\_\_\_\_\_  
Notary Public in the County of \_\_\_\_\_

Notary Seal

State of \_\_\_\_\_

My Commission Expires:

## **GENERAL INSTRUCTIONS FOR BONDS**

1. The surety on each Bond must be a responsible surety company, which is qualified to do business in Mississippi and satisfactory to the City of Jackson, Mississippi.
2. The name, including full Christian name, and residence of each individual party to the Bond shall be inserted in the body thereof, and each such party shall sign the Bond with his usual signature on the line opposite the seal and if signed in Maine, Massachusetts or New Hampshire an adhesive seal shall be affixed opposite the signature. The bond must be either signed or countersigned by a Mississippi Resident Agent of the Surety company.
3. If the principals are partners, their individual names will appear in the body of the Bond with the recital that they are partners composing a firm, naming it; and all the members of the firm shall execute the Bond as individuals.
4. The signature of a witness shall appear in the appropriate place, attesting to the signature of each individual party to the Bond.
5. If the principal or surety is a corporation, the name of the State in which incorporated shall be inserted in the appropriate place in the body of the Bond, and said instrument shall be executed and attested under the corporate seal as indicated in the form. If the corporation has no corporate seal the fact shall be stated, in which case, a scroll or adhesive seal shall appear following the corporate name.
6. The official character and authority of the person or persons executing the Bond for the principal, if a corporation, shall be certified by the secretary or assistant secretary, according to the form attached hereto. In lieu of such certificate there may be attached to the Bond copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.
7. The date of the Bonds must not be prior to the date of the Contract in connection with which it is given.
8. Surety Companies executing Bonds must appear on the Treasury Department's most current list (circular 570 amended) and be authorized to transact business in the State where the project is located.

**PERFORMANCE BOND**  
**STATE OF MISSISSIPPI**  
**COUNTY OF HINDS**  
**BIOSOLIDS SCREENING, LOADING, TRANSPORTATION, AND DISPOSAL**  
**City Project No. 15B0500901**

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of CONTRACTOR)

\_\_\_\_\_  
(Address of CONTRACTOR)

a \_\_\_\_\_, hereinafter called Principal, and  
(Corporation, Partnership, or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called SURETY, are held and firmly bound unto

**CITY OF JACKSON**

**219 South President Street, P.O. Box 17, Jackson, Mississippi 39205**

hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the execution of:

**City Project No. 15B0500901**

**BIOSOLIDS SCREENING, LOADING, TRANSPORTATION, AND DISPOSAL**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the SURETY and during the ONE (1) year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the REQUEST FOR PROPOSALS accompanying the same shall in any wise affect its obligation on the BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the REQUEST FOR PROPOSALS.

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

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

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(SEAL)

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
Address

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

(SEAL)

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
CONTRACTOR

BY: \_\_\_\_\_(s)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Surety

BY: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Address

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

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the PROJECT is located.

**PAYMENT BOND**  
**STATE OF MISSISSIPPI**  
**COUNTY OF HINDS**  
**BIOSOLIDS SCREENING, LOADING, TRANSPORTATION, AND DISPOSAL**  
**City Project No. 15B0500901**

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of CONTRACTOR)

\_\_\_\_\_  
(Address of CONTRACTOR)

a \_\_\_\_\_, hereinafter called Principal, and  
(Corporation, Partnership, or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called SURETY, are held and firmly bound unto

**CITY OF JACKSON**

**219 South President Street, P.O. Box 17, Jackson, Mississippi**

hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, a copy of which is hereto attached and made a part hereof for the execution of:

**City Project No. 15B0500901**

**BIOSOLIDS SCREENING, LOADING, TRANSPORTATION, AND DISPOSAL**

NOW, THEREFORE, if the Principal shall promptly make payments to all persons, firms, SUBCONTRACTORS and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise, to remain in full force and effect.

PROVIDED FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the REQUEST FOR PROPOSALS accompanying the same shall in any wise affect its obligation on the BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the REQUEST FOR PROPOSALS.

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

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

ATTEST:

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
(Principal) Secretary

BY: \_\_\_\_\_(s)

(SEAL)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
Address

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

\_\_\_\_\_  
Surety

(SEAL)

BY: \_\_\_\_\_

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

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

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the PROJECT is located.

**NOTICE OF AWARD**

Date: \_\_\_\_\_

TO: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

RE: BIOSOLIDS SCREENING, LOADING, TRANSPORTATION, AND DISPOSAL  
City PROJECT NO. 15B0500901

**NOTICE OF AWARD**

Gentlemen:

The City of Jackson has considered the Proposal submitted by you for the above referenced Work in response to its Request for Proposals and Instructions to Proposers.

You are hereby notified that your Proposal has been accepted in the amount of \$\_\_\_\_\_.

You are required by the Instruction to Proposers to execute the Contract and furnish to the City of Jackson the required Contractor's insurance policy endorsements, waiver of subrogation, and certificates of insurance within 10 calendar days from the date of delivery of this Notice to you. We have enclosed five copies of the necessary contract forms and bond forms. Please return all five copies of these documents to the office of CDM Smith, 210 East Capitol Street, Suite 1050, Jackson, MS 39201, Attention: Matthew Horton, P.E.

If you fail to execute said Contract within 10 days from the date of delivery of this Notice, the OWNER will be entitled to consider all your rights arising out of the OWNER's acceptance of your proposal as abandoned and as a forfeiture of your Bid Bond. The OWNER will be entitled to such other rights as may be granted by Law.

You are required by the General Conditions and Supplementary Provisions to General Conditions to submit to CDM Smith an estimated progress schedule and a preliminary schedule of values of the Work within 10 days after the effective date of this Contract, all in accordance with Article 2.05 of the General Conditions and Provision 2 of the Supplementary Provisions to General Conditions.

You are required to return an acknowledged copy of this Notice of Award directly to the City of Jackson, Attention: Terry Williamson, Department of Public Works, and to CDM Smith, Attention: Matthew Horton, PE

Sincerely,

\_\_\_\_\_  
Matthew Horton, P.E.  
Project Manager  
CDM Smith

Cc: Terry Williamson  
Consent Decree Manager  
Department of Public Works  
City of Jackson

**ACCEPTANCE OF NOTICE**

Receipt of the above Notice of Award is hereby acknowledged by \_\_\_\_\_  
\_\_\_\_\_, this the \_\_\_\_\_ day of  
\_\_\_\_\_, 2016.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**NOTICE TO PROCEED**

Date: \_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

RE: BIOSOLIDS SCREENING, LOADING, TRANSPORTATION, AND DISPOSAL  
City PROJECT NO. 15B0500901  
City of JACKSON, MISSISSIPPI

Dear

You are hereby notified to commence Work in accordance with the Contract dated \_\_\_\_\_, 2016, on or before \_\_\_\_\_, 2016. You are to complete the Work within the timeline as described in the Contract. Liquidated damages as stipulated in the Contract will be assessed for each consecutive calendar day after December 31, 2017 in which the biosolids disposal operations have not been completed, and 60 days after the completion of the biosolids disposal operations for failure to complete site restoration and road repair, unless the contract time is otherwise adjusted for due cause by change orders to the Contract.

The engineering firm of CDM Smith will act as the ENGINEER on behalf of the City of Jackson for the work to be performed under the contract. Matthew Horton, PE, of CDM Smith will be the designated representative of the ENGINEER.

Please return a copy of this NOTICE TO PROCEED to the undersigned and to CDM Smith, Attention: Matthew Horton, indicating your receipt of this document in the space provided below.

Sincerely,

Kishia Powell, PE  
Director of Public Works

**ACCEPTANCE OF NOTICE**

Receipt of the above **NOTICE TO PROCEED** is hereby acknowledged by \_\_\_\_\_

\_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CHANGE ORDER**

No. \_\_\_\_\_

DATE OF ISSUANCE \_\_\_\_\_

EFFECTIVE DATE \_\_\_\_\_

OWNER \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

Contract: \_\_\_\_\_

Project: \_\_\_\_\_

OWNER's Contract No. \_\_\_\_\_ ENGINEER's Contract No. \_\_\_\_\_

ENGINEER \_\_\_\_\_

You are directed to make the following changes in the Contract Documents:

Description:

Reason for Change Order:

Attachments: (List documents supporting change)

CHANGE IN CONTRACT PRICE:
Original Contract Price \$ _____
Net Increase (Decrease) from previous Change Orders No. ___ to ___: \$ _____
Contract Price prior to this Change Order: \$ _____
Net increase (decrease) of this Change Order: \$ _____
Contract Price with all approved Change Orders: \$ _____

CHANGE IN CONTRACT TIMES:
Original Contract Times: Substantial Completion: _____ Ready for final payment: _____ (days or dates)
Net change from previous Change Orders No. ___ to No. ___: Substantial Completion: _____ Ready for final payment: _____ (days)
Contract Times prior to this Change Order: Substantial Completion: _____ Ready for final payment: _____ (days or dates)
Net increase (decrease) this Change Order: Substantial Completion: _____ Ready for final payment: _____ (days)
Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for final payment: _____ (days or dates)

RECOMMENDED:

APPROVED:

ACCEPTED:

By: \_\_\_\_\_  
ENGINEER (Authorized Signature)

By: \_\_\_\_\_  
OWNER (Authorized Signature)

By: \_\_\_\_\_  
CONTRACTOR (Authorized Signature)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**TEMPORARY PAVEMENT REPAIR  
WORK ORDER FORM**

<b>PROJECT NAME:</b>	Savanna Street Wastewater Treatment Plant	<b>WORK ORDER NO.</b>			
<b>ENGINEER:</b>					
<b>CONTRACTOR:</b>					
<b>DATE:</b>					
<b>EXPLANATION:</b>					
<b>LOCATION:</b>					
<b>SIZE/DEPTH:</b>					
<b>DESCRIPTION</b>		<b>QUANTITY</b>	<b>UNIT</b>	<b>UNIT PRICE</b>	<b>TOTAL</b>
Asphalt Semi-Permanent Repair			SY	\$ 75.00	\$ -
Gravel and Dirt Repair			SY	\$ 20.00	\$ -
			<b>TOTAL</b>	<b>\$</b>	<b>-</b>
<b>APPROVED BY:</b>	_____		_____		
	CONTRACTOR		DATE		
<b>APPROVED BY:</b>	_____		_____		
	ENGINEER		DATE		

**SECTION 8.0**  
**GENERAL CONDITIONS & SUPPLEMENTARY PROVISIONS TO GENERAL  
CONDITIONS**

Section 8 of this document includes both the **Standard General Conditions of the Construction Contract (C-700)** as prepared by the Engineers Joint Contract Documents Committee and **Supplementary Provisions to General Conditions**.

As the **Biosolids Screening, Loading, Transportation and Disposal** project does not involve construction as that term is defined under Mississippi purchasing law, substitute the term “work” for the term “construction” throughout the **General Conditions** and these **Supplementary Provisions to General Conditions**. Likewise, those provisions of the General Conditions that are applicable to construction do not apply to this Project.

**SECTION 8.0**  
**GENERAL CONDITIONS & SUPPLEMENTARY PROVISIONS TO GENERAL**  
**CONDITIONS**

Section 8 of this document includes both the **Standard General Conditions of the Construction Contract (C-700)** as prepared by the Engineers Joint Contract Documents Committee and **Supplementary Provisions to General Conditions**.

As the **Biosolids Screening, Loading, Transportation and Disposal** project does not involve construction as that term is defined under Mississippi purchasing law, substitute the term “work” for the term “construction” throughout the **General Conditions** and these **Supplementary Provisions to General Conditions**. Likewise, those provisions of the General Conditions that are applicable to construction do not apply to this Project.

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

**STANDARD GENERAL CONDITIONS  
OF THE CONSTRUCTION CONTRACT**

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

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CONSTRUCTION SPECIFICATIONS INSTITUTE

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

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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 and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
  3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
  7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
  9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
  10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
  11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
  12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
  13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
  14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
  15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
  16. *Cost of the Work*—See Paragraph 11.01 for definition.
  17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be

- performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
  19. *Engineer*—The individual or entity named as such in the Agreement.
  20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
  21. *General Requirements*—Sections of Division 1 of the Specifications.
  22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
  23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
  24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
  25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
  26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
  27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
  28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
  29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
  30. *PCBs*—Polychlorinated biphenyls.
  31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
  32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
  33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
  34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
  35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
  36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
  37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work

- and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
  39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
  40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
  41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
  42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
  43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
  44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
  45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
  46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
  47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
  48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
  49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
  50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
  51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its

effect, if any, on the Contract Price or Contract Times.

test, or approval referred to in the Contract Documents; or

1.02 *Terminology*

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

c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

B. *Intent of Certain Terms or Adjectives:*

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

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

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

C. *Day:*

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

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.

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,

**ARTICLE 2 – PRELIMINARY MATTERS**

2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional

insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  2. a preliminary Schedule of Submittals; and
  3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient

detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a

workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

**ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

3.01 *Intent*

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

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
  1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or

employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

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

B. *Resolving Discrepancies:*

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

extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

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

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
  1. A Field Order;
  2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
  3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
  1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
  2. reuse any such Drawings, Specifications, other documents, or copies thereof on

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

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to

use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

#### 4.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
  2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of

the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

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

#### 4.03 *Differing Subsurface or Physical Conditions*

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

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

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

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
  - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
  - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or

arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

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

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

B. *Not Shown or Indicated:*

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

extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

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

#### 4.05 *Reference Points*

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

#### 4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

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

- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action,

if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by

Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 – BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by

an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

#### 5.02 *Licensed Sureties and Insurers*

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

#### 5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

#### 5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
  1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
  3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
    - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
    - b. by any other person for any other reason;
  5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
  6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
  - a. Such insurance shall remain in effect for two years after final payment.
  - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a

certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
  2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
  3. include expenses incurred in the repair or replacement of any insured property

(including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
  5. allow for partial utilization of the Work by Owner;
  6. include testing and startup; and
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible

amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

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

#### 5.07 *Waiver of Rights*

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

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

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

exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

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

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

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

## ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

### 6.01 *Supervision and Superintendence*

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

### 6.02 *Labor; Working Hours*

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

### 6.03 *Services, Materials, and Equipment*

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

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

### 6.04 *Progress Schedule*

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

### 6.05 *Substitutes and “Or-Equals”*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be

submitted to Engineer for review under the circumstances described below.

1. *“Or-Equal” Items:* If in Engineer’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

- 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
- 3) it has a proven record of performance and availability of responsive service.

b. Contractor certifies that, if approved and incorporated into the Work:

- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
- 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

a. If in Engineer’s sole discretion an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

- a) perform adequately the functions and achieve the results called for by the general design,
- b) be similar in substance to that specified, and
- c) be suited to the same use as that specified;

2) will state:

- a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor’s achievement of Substantial Completion on time,
- b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
- 3) will identify:
  - a) all variations of the proposed substitute item from that specified, and
  - b) available engineering, sales, maintenance, repair, and replacement services; and
- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

**B. *Substitute Construction Methods or Procedures:***

If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

**C. *Engineer's Evaluation:*** Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

**D. *Special Guarantee:*** Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

**E. *Engineer's Cost Reimbursement:*** Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

**F. *Contractor's Expense:*** Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

**6.06 *Concerning Subcontractors, Suppliers, and Others***

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

**B.** If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement,

shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and

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

#### 6.07 *Patent Fees and Royalties*

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

and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

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

6.09 *Laws and Regulations*

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

Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

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

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

#### 6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or

#### 6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

entity directly or indirectly employed by any of them).

- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

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

1. *Shop Drawings:*

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

2. *Samples:*

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

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

C. *Submittal Procedures:*

- 1. Before submitting each Shop Drawing or Sample, Contractor shall have:
  - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  - c. determined and verified the suitability of all materials offered with respect to the

indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate

approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

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

6.18 *Continuing the Work*

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

6.19 *Contractor's General Warranty and Guarantee*

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

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other

individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
  6. any inspection, test, or approval by others; or
  7. any correction of defective Work by Owner.

#### 6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the

Work or anyone for whose acts any of them may be liable .

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

#### 6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or

certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## ARTICLE 7 – OTHER WORK AT THE SITE

### 7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
  - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
  - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

### 7.02 *Coordination*

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

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

Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

**ARTICLE 8 – OWNER'S RESPONSIBILITIES**

8.09 *Limitations on Owner's Responsibilities*

8.01 *Communications to Contractor*

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

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

8.02 *Replacement of Engineer*

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

8.10 *Undisclosed Hazardous Environmental Condition*

8.03 *Furnish Data*

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

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

8.04 *Pay When Due*

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

8.11 *Evidence of Financial Arrangements*

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

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to

8.12 *Compliance with Safety Program*

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

**ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION**

9.01 *Owner’s Representative*

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

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer’s efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer’s visits and observations are subject to all the limitations on Engineer’s authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer’s visits or observations of Contractor’s Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of

any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer’s consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer’s authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer’s authority, and limitations thereof, as to design calculations and design drawings submitted in response to a

delegation of professional design services, if any, see Paragraph 6.21.

- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

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

partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

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

**ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

10.01 *Authorized Changes in the Work*

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

10.02 *Unauthorized Changes in the Work*

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

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

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

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional

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

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

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

### **11.01 Cost of the Work**

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and

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

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from

subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
  5. Supplemental costs including the following:
    - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
    - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
    - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
    - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
    - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
    - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
    - g. The cost of utilities, fuel, and sanitary facilities at the Site.
    - h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
    - i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.
- B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for

general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

#### 11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by

such persons or entities as may be acceptable to Owner and Engineer.

#### B. *Cash Allowances:*

1. Contractor agrees that:
  - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

#### C. *Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - 2. there is no corresponding adjustment with respect to any other item of Work; and
  - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.
- 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
  - 1. a mutually acceptable fixed fee; or
  - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
    - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
    - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

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

12.01 *Change of Contract Price*

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

- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

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

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the

control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
  - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
  - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
  - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and

Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop

the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 13.06 *Correction or Removal of Defective Work*

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

#### 13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. repair such defective land or areas; or
  - 2. correct such defective Work; or
  - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

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

#### 13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to

Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

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

and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

**ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**

14.01 *Schedule of Values*

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

14.02 *Progress Payments*

A. *Applications for Payments:*

- 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to

protect Owner's interest therein, all of which must be satisfactory to Owner.

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

**B. Review of Applications:**

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the

representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

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

enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

C. *Payment Becomes Due:*

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

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

14.04 *Substantial Completion*

D. *Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or
  - d. Owner has actual knowledge of the occurrence of any of the events

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

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

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

#### 14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and

substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment:*

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

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

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

C. *Payment Becomes Due:*

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

14.08 *Final Completion Delayed*

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

accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

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

**ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

15.01 *Owner May Suspend Work*

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

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established

under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's repeated disregard of the authority of Engineer; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
  2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
  3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

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

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

**ARTICLE 16 – DISPUTE RESOLUTION**

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
  2. agrees with the other party to submit the Claim to another dispute resolution process; or
  3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

**ARTICLE 17 – MISCELLANEOUS**

17.01 *Giving Notice*

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

17.06 *Headings*

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

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies

## SECTION 8.0

### SUPPLEMENTARY PROVISIONS TO GENERAL CONDITIONS

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## **SUPPLEMENTARY PROVISIONS TO GENERAL CONDITIONS**

As the **Biosolids Screening, Loading, Transportation and Disposal** project does not involve construction as that term is defined under Mississippi purchasing law, substitute the term “work” for the term “construction” throughout the General Conditions and these Supplementary Provisions to General Conditions. Likewise, those provisions of the General Conditions that are applicable to construction do not apply to this Project.

### **1. Definitions**

The definition of “Technical Specifications” shall be the same as the definition for Specifications stated in Article 1, Paragraph 1.01 under item number 42 of the General Conditions.

The definition of “Contract Documents” included in Article 1, Paragraph 1.01 under item number 12 of the General Conditions shall be expanded to include the Request for Proposals, Notice of Award, Notice to Proceed, and Supplemental General Conditions.

### **2. Before Starting Construction**

In addition to the requirements of Paragraph 2.05 A of the General Conditions, “CONTRACTOR shall submit to ENGINEER for review and acceptance, an estimated work payment schedule in dollars versus contract time. The payment schedule shall be submitted together with the progress schedule and schedule of Shop Drawings within 10 days after the Effective date of the Agreement.”

In addition to the requirements of Article 2 of the General Conditions, “CONTRACTOR shall deliver to the OWNER, with his signed Contract, all bonds and insurance, which he is required to purchase and maintain. A copy shall also be submitted to the ENGINEER.

### **3. Insurance Requirements**

In addition to the requirements of Article 5 of the General Conditions, insurance coverage specified herein constitutes the minimum requirements and said requirements shall in no way lessen or limit the liability of the CONTRACTOR under the terms of the Contract. The CONTRACTOR shall procure and maintain at his own expense any additional kinds and amounts of insurance that, in his own judgment, may be necessary for his proper protection in the prosecution of the Work.

The CONTRACTOR shall carry insurance as prescribed herein and all policies shall be with companies satisfactory to the OWNER.

If a part of this Contract is sublet, the CONTRACTOR shall require each Subcontractor to carry insurance of the same kinds and in like amounts as carried by the CONTRACTOR, including all additional insureds and waivers of subrogation.

Certificates of insurance shall state that 30 days written notice will be given to the OWNER before the policy is canceled or changed. No CONTRACTOR or Subcontractor will be allowed to start any construction work on this Contract until certificates of all insurance required herein and all coverage requirements specified in contract documents are filed with and approved by the OWNER. The certificates shall show the type, amount, class of operations covered, effective dates and the dates of expiration of policies.

The CONTRACTOR shall secure and maintain in effect for the period of the Contract and pay all premiums for the following kinds and amounts of insurance.

a. Worker's Compensation and Employer's Liability Insurance

This insurance shall protect the CONTRACTOR against all claims under applicable State Worker's Compensation Laws. The CONTRACTOR shall also be protected and shall cause each Subcontractor to be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a Worker's Compensation Law. The liability limits shall not be less than the required statutory limits for Worker's Compensation and Employer's Liability limits in the amount of ONE MILLION DOLLARS (\$ 1,000,000.00). CONTRACTOR and subcontractors shall supply OWNER endorsements from their carriers evidencing waiver of subrogation in favor of the city.

b. CONTRACTOR's and Subcontractor's Comprehensive General Liability Insurance, including bodily injury, property damage, contractual and other standard coverages contained in Comprehensive General Liability Insurance, in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and aggregate. OWNER shall be provided an endorsement naming the City as an insured from the insurer for the work contracted.

The Comprehensive General Liability policies carried by both the CONTRACTOR and the Subcontractors shall contain an endorsement to include the coverage of the following hazards:

- i. Explosion, collapse, and underground property damage to include any damage or destruction of property below the surface of the ground, such as wires, conduits, pipes, mains, sewers, etc., caused by the CONTRACTOR's operations.
- ii. The collapse of and structural injury to any building, structure or property on or adjacent to the OWNER's premises or right-of-way caused by the CONTRACTOR's operations in the removal of other buildings, structures, or supports, or by excavation below the surface of the ground.
- iii. Contractual Liability Coverage for the Hold Harmless segments of the Contract Documents.

c. CONTRACTOR's Contingent or Protective Liability and Property Damage:

In case part of this Contract is sublet, the CONTRACTOR shall secure contingent or protective liability and property damage insurance to protect the CONTRACTOR from any and all claims arising from the operation of Subcontractors in the execution of Work included in the Contract. In no case shall the amount of such protection be less than the limits of \$500,000/\$1,000,000 for Public Liability Insurance and \$500,000/\$1,000,000 for Property Damage Insurance. The coverage in each case shall be acceptable to the OWNER.

d. Auto Liability

The CONTRACTOR shall maintain Auto Liability Insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) Combined Single Limit to protect him from any and all claims arising from the use of the following:

- i. CONTRACTOR's own automobiles and trucks
- ii. Hired and non-owned automobiles and trucks
- iii. Automobiles and trucks owned by Subcontractors

The aforementioned is to cover use of automobiles and trucks on and off the site of the Project.

The OWNER shall be provided an endorsement from the insurer naming the City as an insured for the work contracted.

- e. Umbrella Liability

The CONTRACTOR shall provide OWNER a certificate of insurance evidencing Umbrella Liability Insurance in the amount of not less than FIVE MILLION DOLLARS (\$5,000,000).

- f. Property Insurance

No property insurance is required for this project.

- g. Pollution Legal Liability

The CONTRACTOR shall provide OWNER a certificate of insurance evidencing Pollution Legal Liability Insurance in the amount of not less than FIVE MILLION DOLLARS (\$5,000,000).

#### **4. Record Documents**

In addition to the requirements of Paragraph 6.12 of the General Conditions, CONTRACTOR shall provide accurate "mark-ups" acceptable to the ENGINEER on or before the date of Substantial Completion of the Project for use by the ENGINEER in the preparation of 'record' drawings. Final payment will not be made to the CONTRACTOR prior to the ENGINEER receiving these markups from the CONTRACTOR.

#### **5. Limitations on ENGINEER'S Responsibilities**

In addition to the requirements of Paragraph 9.09, when it comes to his attention, the ENGINEER will immediately notify the OWNER in the event that the CONTRACTOR is not complying with the Contract Documents or is conducting the Work in such a manner that could be considered grounds for termination of the Contract. The CONTRACTOR shall retain responsibility for performing all Work in compliance with the Contract Documents.

#### **6. Change of the Contract Time**

In addition to the requirements of Paragraph 12.02 of the General Conditions, rainstorms which are encountered in the project area on a regular and seasonal basis do not constitute an abnormal weather condition.

#### **7. Payments to CONTRACTOR**

Paragraph 14.02 A, Application for Progress Payment, is deleted in its entirety and the following substituted therefore:

MONTHLY ESTIMATES AND PARTIAL PAYMENTS:

The CONTRACTOR's partial payment period shall end the 25th of each month. The CONTRACTOR shall submit acceptable Partial Payment Requests to the ENGINEER by the 30th of each month provided that the amount due on completed work is at least FIVE HUNDRED DOLLARS (\$500.00). The ENGINEER shall forward the Partial Payment Request with his recommendation to the City within five (5) working days after receipt from the CONTRACTOR.

The OWNER will pay to the CONTRACTOR in the manner and at such times and amounts as set forth in the Contract Documents. The OWNER shall be entitled to retain five percent (5%) of the amount of each payment until satisfactory completion and acceptance by the OWNER of all work covered by the Contract Documents and any amendments to the Contract Documents. If the total amount of this contract is Two Hundred Fifty Thousand Dollars (\$250,000.00) or greater, or the CONTRACTOR subcontracts any of the contract, regardless of amount, OWNER shall be entitled to retain five percent (5%) of the amount of each payment until the work is at least 50% complete, on schedule and satisfactory in the engineer's opinion, at which time the OWNER will pay 50% of the retainage held to date to the CONTRACTOR for distribution to the appropriate subcontractors and suppliers. Thereafter, the OWNER shall be entitled to retain 2½% of the amount of each payment until satisfactory completion and acceptance by the OWNER of all work covered by the Contract Documents and any amendments to the Contract Documents. The monthly estimates will be approximate only and subject to correction in any subsequent estimate rendered following discovery of the error. At the discretion of the City Council, the ENGINEER may be authorized to include in any monthly estimate advances covering approximately ninety-five percent (95%) of the value of unused materials delivered and stored on the site of the work.

Subsequent to discovery of any defective or questionable work, an amount equal to the estimated value of such work will be deducted from the next current estimate. This sum will not be included in a subsequent estimate until the defects have been remedied to the ENGINEER's satisfaction.

The City reserves the right to withhold payment of any monthly estimate that becomes due if, in the opinion of the City, such action is warranted because of any breach of the Contract Provisions or malfeasance on the part of the CONTRACTOR or because the progress or the quality of the work is unsatisfactory and does not comply with the Plans and Specifications.

The CONTRACTOR may, with the written consent of his or its surety, from time to time, withdraw the whole or any portion of the amount retained from payments due the CONTRACTOR pursuant to the terms of the contract by depositing with the Treasurer of the City of Jackson the following security, or any combination thereof in an amount equal to or in excess of the amount so withdrawn, said securities to be accepted at the time of deposit at market value but not in excess of par value, to wit:

- a. U.S. Treasury Bonds, U.S. Treasury Notes, U.S. Treasury Certificates of Indebtedness, or U.S. Treasury Bills, or
- b. Bonds or notes of the State of Mississippi, or
- c. Bonds of any political subdivision of the State of Mississippi, or
- d. Certificates of Deposit issued by commercial banks located in the State of Mississippi, provided that such certificate is negotiable or is accompanied by a power of attorney

executed by the owner of the certificate in favor of the Treasurer of the City of Jackson, or

- e. Certificates of deposit issued by savings and loan associations located in the State of Mississippi, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, or whose accounts are insured by a company approved by the State Board of Savings and Loan Associations, provided that such certificate is made payable with accrued interest on demand and is accompanied by a power of attorney executed by the owner of the certificate in favor of the Treasurer of the City of Jackson, and provided that any such certificate from any of the savings and loan associations referred to in this subparagraph shall not be for an amount in excess of the maximum dollar amount of coverage of the Federal Savings and Loan Insurance Corporation.

Paragraph 14.07 C of the General Conditions, DELETE the word “thirty” and REPLACE with “forty-five”.

**8. Subsurface Investigation Reports**

If applicable, boring logs are shown on the Contract Drawings. These are for information only. The CONTRACTOR is responsible to verify the subsurface conditions at the work site to his satisfaction.

**9. Commencement of Contract Time: Notice to Proceed**

Paragraph 2.03 A, Commencement of Contract Time; Notice To Proceed, is deleted in its entirety and the following substituted therefore:

- a. A Notice To Proceed will be issued indicating the date the contract time will commence. This date will be within sixty (60) days of the Effective Date of the Agreement, unless both parties agree to a longer period. Refer to Paragraph 11 of Section 2.0, Instructions to Proposers, regarding execution of the Contract.

**10. Liquidated Damages**

The CONTRACTOR will be subject to liquidated damages as shown in the Contract plus any additional actual costs incurred by the OWNER for each consecutive calendar day after the time stipulated for Final Completion of the work. These actual costs include, but are not limited to engineering, inspection, and other construction related costs resulting from the CONTRACTOR’s failure to complete the work on schedule.

The liquidated damages provided for herein were not calculated in contemplation or anticipation that the CONTRACTOR would default or otherwise abandon the project. In the event the CONTRACTOR does default or otherwise abandon the project, the OWNER reserves the right to collect from the CONTRACTOR or its surety, in addition to the liquidated damages, the actual damages including, but not limited to, additional engineering costs, incurred by the OWNER as a result of the default or abandonment.

**11. Authorized Variation In Work**

Section 9.04 Paragraph A of the General Conditions is amended to include the following:

The quantities of unit pay items listed in the proposal forms are to be considered approximate only. The ENGINEER reserves the right to make such alterations in the plans or in the extent of

the work as he may consider desirable or necessary during the progress of the work to satisfactorily complete the proposed construction.

The ENGINEER may, under this reservation, increase or decrease any or all of the quantities of pay items as set out in the proposal, or delete certain items of work from the contract, provided, however, that the total value of such decrease, whether applying to one or more than one item, does not decrease by more than twenty-five percent (25%) of the total amount of the contract as determined from the sum of the preliminary values in the proposal.

The ENGINEER may, under this reservation, increase one or more than one of the pay items as set out in the proposal by up to twenty-five percent (25%), provided however that the total value of such increase shall not exceed one percent (1%) of the total amount of the contract as determined from the sum of the preliminary values in the proposal. If the proposed increase exceeds one percent (1%) of the total value of the project, a formal Supplemental Agreement shall be executed by and between the City and the CONTRACTOR, subject to the approval of his surety and the City Council, before the work is done.

It is understood that variations in quantities, within the above limitations, shall not be considered as a waiver of any condition of the contract, nor invalidate the CONTRACTOR's proposal and the CONTRACTOR shall perform the work as increased or decreased for the contract unit prices bid.

In the event that the value of the original contract price would be diminished by twenty-five percent (25%) or more, or in special cases where the ENGINEER considers it necessary to alter or revise the plans and/or specifications, thereby increasing the CONTRACTOR's cost of labor, materials and equipment, the CONTRACTOR shall submit a request for an adjustment of the contract unit price or prices for the affected items. Any such claim shall be presented in writing before the work is performed and shall be thoroughly and completely supported by a detailed breakdown, showing the comparative cost of the materials, labor, supplies, equipment, overhead and profit of both the original and the revised items of work. The ENGINEER will thereupon promptly investigate the CONTRACTOR's claim, and if found to be justifiable, an equitable adjustment in the contract unit price will be negotiated for the item or items affected and the contract modified by a formal Supplemental Agreement to be executed by and between the City and the CONTRACTOR, subject to the approval of his surety and the City Council.

## **12. Contingency Allowances**

The following shall be added to the General Conditions for this project:

When the bid proposal includes a contingency allowance, it is for the sole purpose and use of the OWNER to cover unanticipated costs. Prior to final payment, an appropriate change order will be issued as recommended by the ENGINEER to reflect any actual amounts due the CONTRACTOR on account of any work covered by such allowances, and the contract price shall be adjusted accordingly.