

**SEWERAGE AND WATER BOARD
OF NEW ORLEANS**



**CONTRACT NO. 1420
SOLICITATION NO. 2023-SWB-97**

**WEST POWER COMPLEX (WPC) PHASE 1 EQUIPMENT
INSTALLATION AND COMMISSIONING**

**PROPOSALS DUE ON
January 15, 2024 AT 11:00 A.M., CENTRAL TIME**

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SEWERAGE & WATER BOARD OF NEW ORLEANS

ADVERTISEMENT FOR BIDS

WEST POWER COMPLEX (WPC) PHASE 1 EQUIPMENT
INSTALLATION AND COMMISSIONING
CONTRACT NO. 1420
SOLICITATION NO. 2023-SWB-97

The Sewerage and Water Board of New Orleans is requesting bids for installation and commissioning of equipment associated with phase 1 of the West Power Complex (WPC). The West Power Complex combines several functional elements to achieve an interconnected highly reliable mega-watt scale power supply and distribution system between the 60-Hz Utility source and the 60-Hz and 25-Hz loads on the SWBNO managed electrical network. The intent of the WPC is to improve the resiliency and reliability of critical SWBNO managed electrical network infrastructure.

Bid Documents and proposal forms are available for download on **November 27, 2023**, at the following websites:

SWBNO: https://www2.swbno.org/business_bidspecifications.asp

LAPAC: <https://wwwcfprd.doa.louisiana.gov/OSP/LaPAC/dspBid.cfm?search=department&term=181>

A **MANDATORY** pre-bid conference will be held on **December 8, 2023**, at **9:30 a.m.** Central Time at the Sewerage and Water Board of New Orleans, Board Room 240, located at 625 St. Joseph Street, New Orleans, Louisiana. If you are unable to attend this in-person meeting, you can also join via teleconference call:

Microsoft Teams meeting

Meeting ID: 268 813 446 447

Passcode: HEY8tH

Or call in (audio only)

[+1 504-224-8698](tel:+15042248698), [596430588#](tel:+15042248698) United States, New Orleans

Phone Conference ID: 596 430 588#

Bidder's failure to attend the mandatory pre-bid conference will be disqualified from presenting a bid submission.

All inquiries shall be directed to Connor Metcalf, Procurement Analyst, at cmetcalf@swbno.org. The deadline for inquiries is on **December 15, 2023**, at **5:00 p.m.** Central Time.

Bids are due on **January 15, 2024**, at **11:00 a.m.** Any Bids received after the specified time will be rejected.

Bids will then be publicly opened and read on **January 15, 2024**, at **11:30 a.m.** at Sewerage and Water Board of New Orleans, 625 St. Joseph Street, Purchasing Conference Room 131, New Orleans, Louisiana.

Microsoft Teams meeting

Meeting ID: 239 887 616 167

Passcode: HmP2cq

Or call in (audio only)

[+1 504-224-8698](tel:+15042248698), [572596158#](tel:+15042248698) United States, New Orleans

Phone Conference ID: 572 596 158#

LATE BIDS WILL NOT BE ACCEPTED.

INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS

1.1. Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:

1.1.1. *Issuing Office*—The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered:
Purchasing Agent, Room 133, 625 St. Joseph Street, New Orleans, Louisiana 70165.

2. COPIES OF BIDDING DOCUMENTS

2.1. Complete sets of the Bidding Documents are available in electronic form on the Sewerage & Water Board of New Orleans website: www.swbno.org (Click on Bids and Business, then Bid Ads and Spec) and may be downloaded for use by interested bidders. Reproduction costs for any of the downloaded electronic Bidding Documents shall be borne by the Contractor.

2.2. Complete sets of Bidding Documents shall be used in preparing Bids. Neither Owner nor Engineer assumes responsibility for errors or misinterpretations resulting from use of incomplete sets of Bidding Documents.

2.3. Drawings included in the Bidding Documents are electronic .pdf files generated from electronic drawing files. Any reduction from actual size is indicated by a note or scale bar on Drawing.

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

3. QUALIFICATIONS OF BIDDERS

3.1. In order to perform public work, Bidder and its Subcontractors, prior to award of Contract or as otherwise required by the jurisdiction, shall hold or obtain such licenses as required by State Statutes, and federal and local Laws and Regulations.

3.2. Bidder is advised to carefully review those portions of the Bid Form requiring representations and certifications.

4. EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.1. Subsurface and Physical Conditions:

4.1.1. The Supplementary Conditions identify:

4.1.1.1. Those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site.

4.1.1.2. Those drawings known to Owner of physical conditions relating to existing surface and subsurface structures at the Site.

4.1.2. Copies of reports and drawings referenced will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions has been identified and established in Paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings. Costs associated with making available copies of reports and drawings shall be borne by Bidder.

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

4.3. Hazardous Environmental Condition:

4.3.1. The Supplementary Conditions identify reports and drawings known to Owner relating to a Hazardous Environmental Condition identified at the Site.

4.3.2. Copies of reports and drawings referenced will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.06 of the General Conditions has been identified and established in Paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings. Costs associated with making available copies of reports and drawings shall be borne by Bidder.

4.4. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 4.02 through 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental

Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 4.06 of the General Conditions.

4.5. On request, Owner will provide each Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Owner deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.

4.6. Related Work at Site: Reference is made to the General Requirements for identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request Owner will provide to each Bidder for examination, access to Contract Documents (other than portions thereof related to price) for such other work.

4.7. Safety: Paragraph 6.13.C of the General Conditions indicates that if an Owner safety program exists, it will be noted in the Supplementary Conditions.

4.8. It is responsibility of each Bidder before submitting a Bid to:

4.8.1. Examine and carefully study the Bidding Documents, other related data identified in the Bidding Documents, and any Addenda.

4.8.2. Visit the Site to become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

4.8.3. Become familiar with to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

4.8.4. Carefully study all information provided and referenced in plans and specifications.

4.8.5. Consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents.

4.8.6. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) Bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

4.8.7. Become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.

4.8.8. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in Bidding Documents and confirm that written resolution thereof by Engineer is acceptable to Bidder.

4.8.9. Determine Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of the Work.

4.9. Submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this article; that without exception the Bid is premised upon performing and furnishing the Work required by Bidding Documents and applying specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by Bidding Documents; that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder; and that Bidding Documents are generally sufficient to indicate and convey understanding of terms and conditions for performing and furnishing the Work.

5. SPECIAL PRODUCT REQUIREMENTS

5.1. Bidder's attention is directed to the Supplementary Conditions, Paragraph 6.03.

6. PREBID CONFERENCE

6.1. A **MANDATORY** prebid conference will be held at **09:30 a.m.** local time on **Friday, December 8, 2023** at the Sewerage and Water Board of New Orleans' Carrollton Water Purification Plant Engineering Building, 2nd Floor Auditorium, located at 8800 S. Claiborne Ave., New Orleans, Louisiana, 70118. A voluntary walkthrough of the equipment will follow at **01:00pm**. Location of walkthrough will be **Point Eight Power, 1510 Engineers Rd. Belle Chasse, LA 70037**. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are required to attend and participate in the conference. Bids will not be accepted from Bidders that do not have a representative at the prebid conference.

Engineer will transmit to prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

7. SITE AND OTHER AREAS

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

7.2. [E: SITE DESCRIPTION IF NECESSARY] |

8. INTERPRETATIONS AND ADDENDA

8.1. All questions about the meaning or intent of the Bidding Documents are to be submitted to the Sewerage & Water Board Purchasing Department. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by the office issuing documents as having received the Bidding Documents. Questions received less than 7 business days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

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

8.3. Addenda issued in response to questions will be issued no later than 72 hours prior to bid opening.

9. BID SECURITY

9.1. Bid shall be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price and in the form of a certified check, bank money order, or a Bid bond (on the attached form), issued by a surety meeting the requirements of Paragraph 5.01 and Paragraph 5.02 of the General Conditions.

9.2. Upon Notice of Award of the Contract, the Bid security of all bidders, other than the lowest two (2) formal bidders will be returned. The return of the Bid security to whom the Contract is awarded is conditioned upon the successful bidder furnishing the insurance required in the specifications and appearance before the Notary for the Sewerage and Water Board of New Orleans within ten (10) consecutive calendar days after notice by the Executive Director or designee of the award of the contract and executing the contract and furnishing bond for the faithful fulfillment thereof according to the attached specifications. The Bid security of the next lowest bidder will be returned as soon as the successful bidder has executed the Contract and furnished bond. If all bid proposals are rejected, all Bid security will be returned immediately.

9.3. Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within 7 days after Bid opening.

10. CONTRACT TIMES

10.1. The number of days within which, or the dates by which, Milestones are to be achieved and the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

11. LIQUIDATED DAMAGES

11.1. Provisions for liquidated damages, if any, are set forth in the Agreement.

12. SUBSTITUTE AND “OR-EQUAL” ITEMS

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

13. WAGE RATES

13.1. The Work under these Bidding Documents is to be paid for by public funds; therefore, minimum prevailing wage rates published by the Secretary of the U.S. Department of Labor (see appended rate tables). Refer to Attachment #5 of the Supplementary Conditions for more information.

13.2. The successful bidder is to make available to the Board, complete records in connection with payment of employees during the term of the job in order to permit the Internal Audit Division to check as to adherence to the wage scale presently in effect in accordance with U.S. Government standards.

14. PREPARATION OF BID

14.1. With each electronic copy of the Bidding Documents, Bidder will be furnished one separate Bid Form, and, if applicable, the Bid Bond Form. Contractor is to print and complete all pertinent documents included as the Original Form of Proposal.

14.2. All blanks on the Bid Form shall be completed by typing or printing with ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each Bid item, unit price item, and alternate listed therein.

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

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

14.5. A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.

14.6. A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.

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

14.8. The Bid shall contain an acknowledgement of receipt of all Addenda; the numbers of which shall be filled in on the Bid Form.

14.9. Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

14.10. The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number and class, if applicable, shall also be shown on the Bid Form.

15. BASIS OF BID; COMPARISON OF BIDS

15.1. Lump Sum:

15.1.1. Bidders shall submit a Bid on a lump sum basis as set forth in the Bid Form.

15.1.2. Bidders shall submit a Bid on a lump sum basis for the base Bid and include a separate price for each alternate described in the Bidding Documents as provided for in the Bid Form. The price for each alternate will be the amount added to or deleted from the base Bid if Owner selects the alternate. In the comparison of Bids, alternates will be applied in the same order as listed in the Bid Form.

15.2. Unit Price:

15.2.1. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Unit Price Bid Table.

15.2.2. The total of all prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.

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

15.3. Alternates:

15.3.1. Alternates requiring pricing in the Bid Form are described in Section 01 11 00, Summary of Work, and in the Bid Form.

15.3.2. Indicate in Bid Form the amount to be added or subtracted from the base Bid for alternates described.

15.3.3. Include cost of all related work, including modifying surrounding work to integrate the Work of each alternate.

15.3.4. Alternates listed on Bid Form will be reviewed and accepted or rejected at Owner's option. Accepted alternates will be identified in the Agreement.

16. SUBMISSION OF BID

16.1. The Bid Form, Section 00 41 13 Louisiana Uniform Public Work Bid Form is to be completed and submitted with the Bid Security. The two (2) lowest bidders will have three (3) days following the bid opening to submit the following:

16.1.1. Louisiana uniform Public Work Bid Form, Additional Requirements, Bidder Declaration, Guarantees, and Emergency Procedures.

16.1.2. Louisiana Uniform Public Work Bid Form, Affidavit

16.1.3. Voluntary Extensions of the Award of Contract

16.1.4. Affidavit of Noncollusion

16.1.5. Conflict of Interest Disclosure Affidavit

16.1.6. Convicted Felon Affidavit

16.1.7. Non-Solicitation Affidavit

16.1.8. Economically Disadvantaged Business Participation Summary Sheet

16.1.9. HUD Section 3 Project Plan

16.2. A Bid shall be submitted no later than the date and time prescribed, and at the place indicated in the Invitation to Bid. Enclose Bid in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), name and address of Bidder, and accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED."

16.3. In accordance with LRS 37:2163, Bidders are required to certify they hold an active Contractor's license and indicate license number on Bid envelope. Bid envelopes received with no Contractor license number will not be opened and will automatically be rejected and considered nonresponsive.

16.4. Bidders are required to submit, in addition to the original Form of Proposal contained herein, three additional copies of the complete proposal including any and all inserts, drawings, brochures, or qualification data of any kind. Failure to submit the copies shall be considered as an informality and should not invalidate the bid, provided that within 24 hours after the bid opening or after the request has been made in writing by the Purchasing Agent for the Sewerage and Water Board of New Orleans, the bidder has furnished same to the Purchasing Department.

17. OPENING OF BIDS

Bids will be opened at the time and place indicated in the Invitation to Bid and unless obviously nonresponsive, read aloud publicly. The amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

18. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

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

19. EVALUATION OF BIDS AND AWARD OF CONTRACT

19.1. Pursuant to Louisiana Statute 38:2225, a resident Bidder shall be allowed a preference over a nonresident Bidder from a state which gives or requires a preference to Bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident Bidder.

19.2. Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.

19.3. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.

19.4. Staff recommended awards based on bid results will be posted on a bulletin board located outside the office of the Sewerage and Water Board Purchasing Department within 72 hours (excluding Saturdays, Sundays, and Holidays) after the Bid opening. Bidders may also telephone the Purchasing Department to determine the bid results. Objection by a bidder to any recommended award must be made in writing to the Purchasing Agent or Assistant Purchasing Agent within 72 hours (excluding Saturdays, Sundays, and Holidays) after the recommended bid award has been posted.

20. NOTARIAL FEE.

20.1. The Contract and Bond shall be signed in the City of New Orleans, before the Notary for the Sewerage and Water Board of New Orleans, by the Contractor in person or by a duly authorized representative. The notarial fee for the execution of the contract shall be paid by the Contractor in accordance with the Notarial Fee Schedule below. The Fee Schedule is subject to change, and Contractor is responsible for any deviations from this Fee Schedule. Contractor shall also be responsible for payment of all recordation costs and photocopying at the rate of \$0.50 per page. All affidavits of acceptance or substantial completion are \$70.00 plus actual recordation costs.

NOTARIAL FEE SCHEDULE

Notarial work for all Sewerage and Water Board of New Orleans construction contracts, requiring to be notarized:

<u>Contract Value</u>	<u>Fee</u>
Under \$1,000.00	\$186.00
\$1,000.00 to \$49,999.99	\$347.00
\$50,000.00 to \$499,999.99	\$881.00
\$500,000.00 to \$999,999.99	\$1,888.00
\$1,000,000.00 or over	\$3,778.00

21. CONTRACT SECURITY AND INSURANCE

21.1. Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner’s requirements as to bonds and insurance. When Successful Bidder delivers executed Agreement to Owner, it shall be accompanied by such bonds.

22. SIGNING OF AGREEMENT

23.1 The proposal submitted by the staff-recommended bidder will be tentatively selected by the appropriate Sewerage and Water Board Committee meeting The final award of the contract will be made at the subsequent Board meeting. All prices bid must be held firm for 120 days or until final award of contract by the Board.

23.2 After submittal of required Insurance and Bonds, in form acceptable to the Sewerage and Water Board, the selected Bidder will be authorized by the Executive Director of the Board to appear before the City Notary to sign the contract within ten (10) consecutive calendar days from the date of the notice.

23. SALES AND USE TAXES

24.1 Applicable state and local sales and use taxes for purchase of materials and supplies furnished under this contract shall be paid by the Contractor. Such taxes shall be included in the lump sum bid for the work of this contract. The board shall be relieved of any obligation to pay these taxes.

24.2 ACT 318 OF 1958

24.2.1 Under the terms of Act 318 of 1958, of the Regular Session of the Legislature of the State of Louisiana, all things being equal, preference must be given to either (1) firms doing business in the State of Louisiana or (2) to products produced (or) grown (or) manufactured in the state.

24.2.2 Before any bill for supplies used shall be paid to any non-resident firm, a statement in writing shall be submitted by the seller to the effect that his firm has paid all taxes duly assessed by the State of Louisiana and its political subdivisions, including franchise taxes, to the state and its political subdivisions.

24. RETAINAGE

24.1. Provisions concerning retainage and Contractor's rights to deposit securities in lieu of retainage, if applicable, are set forth in the Agreement.

25. BID PROTESTS

25.1. Any formal protest which is to be made by an aggrieved Proposer must be submitted in writing to the Procurement Director, Cashanna K. Moses at cmoses@swbno.org according to Sewerage and Water Board of New Orleans Policy 83(R): Procedural Rules for Bid Appeals.

END OF SECTION

LOUISIANA UNIFORM PUBLIC WORK BID FORM

TO: Sewerage and Water Board of New Orleans
Purchasing Department, Room 133
625 St. Joseph St
New Orleans, LA 70165

CONTRACT 1420: WPC PHASE 1
INSTALLATION AND
COMMISSIONING

(Owner to provide name and address of owner)

(Owner to provide name of project and other identifying information)

The undersigned bidder hereby declares and represents that she/he; a) has carefully examined and understands the Bidding Documents, b) has not received, relied on, or based his bid on any verbal instructions contrary to the Bidding Documents or any addenda, c) has personally inspected and is familiar with the project site, and hereby proposes to provide all labor, materials, tools, appliances and facilities as required to perform, in a workmanlike manner, all work and services for the construction and completion of the referenced project, all in strict accordance with the Bidding Documents prepared by: Jacobs Engineering Group, and dated: November 2023

Bidders must acknowledge all addenda. The Bidder acknowledges receipt of the following ADDENDA: (Enter the number the Designer has assigned to each of the addenda that the Bidder is acknowledging)

TOTAL BASE BID: For all work required by the Bidding Documents (including any and all unit prices designated "Base Bid" * but not alternates) the sum of:

Dollars (\$)

ALTERNATES: For any and all work required by the Bidding Documents for Alternates including any and all unit prices designated as alternates in the unit price description.

Alternate No. 1 (Owner to provide description of alternate and state whether add or deduct) for the lump sum of:

Dollars (\$)

Alternate No. 2 (Owner to provide description of alternate and state whether add or deduct) for the lump sum of:

Dollars (\$)

Alternate No. 3 (Owner to provide description of alternate and state whether add or deduct) for the lump sum of:

Dollars (\$)

Alternate No. 4 (Owner to provide description of alternate and state whether add or deduct) for the lump sum of:

Dollars (\$)

NOTE TO BIDDERS: (Insert Applicable Notes if Alternates are required)

NAME OF BIDDER:

ADDRESS OF BIDDER:

LOUISIANA CONTRACTOR'S LICENSE NUMBER:

NAME OF AUTHORIZED SIGNATORY OF BIDDER:

TITLE OF AUTHORIZED SIGNATORY OF BIDDER:

SIGNATURE OF AUTHORIZED SIGNATORY OF BIDDER **:

DATE:

THE FOLLOWING ITEMS ARE TO BE INCLUDED WITH THE SUBMISSION OF THIS LOUISIANA UNIFORM PUBLIC WORK BID FORM:

* The Unit Price Form shall be used if the contract includes unit prices. Otherwise it is not required and need not be included with the form. The number of unit prices that may be included is not limited and additional sheets may be included if needed.

** **A CORPORATE RESOLUTION OR WRITTEN EVIDENCE** of the authority of the person signing the bid for the public work as prescribed by LA R.S. 38:2212(B)(5).

BID SECURITY in the form of a bid bond, certified check or cashier's check as prescribed by LA R.S. 38:2218(A) attached to and made a part of this bid.

v1

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LOUISIANA UNIFORM PUBLIC WORK BID FORM

UNIT PRICE FORM

TO: Sewerage and Water Board of New Orleans
625 St. Joseph Street, New Orleans LA 70165

BID FOR: CONTRACT 1420:
WPC PHASE 1 INSTALLATION AND COMMISSIONING

(Owner to provide name and address of owner)

(Owner to provide name of project and other identifying information)

UNIT PRICES: This form shall be used for any and all work required by the Bidding Documents and described as unit prices. Amounts shall be stated in figures and only in figures.

DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Offload SFC-1 Equipment: Receive, offload, assemble and install all SFC-1 equipment and enclosures provided by C1417 OEM and/or Contractor including but not limited to SFC Power Electronics enclosure, 60Hz Transformer, 25Hz Transformer, and all associated electrical and mechanical equipment shipped inside and outside the enclosure. Set and install enclosure to permanent weatherproofed condition. Complete installation and interconnection of power and control wiring between all SFC-1 equipment through electrical raceways provided by other Contracts and this Contract. The enclosure's HVAC system shall be started, calibrated, operated and maintained via Contractor supplied temporary power system.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>
1	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Interconnect SFC-1 Equipment: Installation, interconnection, and testing of electrical and control cable from SFC-1 to 24kV termination points at WPCAUx PDC-2, 6.6kV termination points at SSCC, and 480V termination points at WPCAUx PDC-1. Cable and wire installation will be through electrical raceways provided by other Contracts and through raceways provided and installed by this Contract, which are included in this bid item. Includes but is not limited to coordination with the C1435 Supplier regarding readiness of electrical and control cable required for this bid item.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>
2	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Offload SFC-2 Equipment: Receive, offload, assemble and install all SFC-2 equipment and enclosures provided by C1417 OEM and/or Contractor including but not limited to SFC Power Electronics enclosure, 60Hz Transformer, 25Hz Transformer, and all associated electrical and mechanical equipment shipped inside and outside the enclosure. Set and install enclosure to permanent weatherproofed condition. Complete installation and interconnection of power and control wiring between all SFC-2 equipment through electrical raceways provided by other Contracts and this Contract. The enclosure's HVAC system shall be started, calibrated, operated and maintained via Contractor supplied temporary power system.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>
3	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Interconnect SFC-2 Equipment: Installation, interconnection, and testing of electrical and control cable from SFC-2 to 24kV termination points at WPCAUx PDC-2, 6.6kV termination points at SSCC, and 480V termination points at WPCAUx PDC-1. Cable and wire installation will be through electrical raceways provided by other Contracts and through raceways provided and installed by this Contract, which are included in this bid item. Includes but is not limited to coordination with the C1435 Supplier regarding readiness of electrical and control cable required for this bid item.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>
4	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Offload WPCAUx PDC-1 Equipment: Receive, offload, assemble and install all equipment and enclosures associated with PDC-1 provided by the C1427 OEM and/or Contractor including but not limited to PDC-1 enclosure and all associated electrical and mechanical equipment shipped inside and outside the enclosure. Set and install enclosure to permanent weatherproofed condition. Complete installation and interconnection of power and control wiring between all PDC-1 equipment through electrical raceways provided by other Contracts and through raceways provided and installed by this Contract, which are included in this bid item. Enclosure's HVAC system shall be started, calibrated, operated and maintained via Contractor supplied temporary power system.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>
5	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Interconnect WPCAUx PDC-1 Equipment: Installation, interconnection, and testing of electrical and control cable from PDC-1 to 4.16kV			

	termination points at WPCCTG.7 EER, low voltage termination points at WPCAU XFMR 301A, low voltage termination points at WPCAU XFMR 401A. Cable and wire installation will be through electrical raceways provided by other Contracts and through raceways provided and installed by this Contract, which are included in this bid item. Includes but is not limited to coordination with the C1435 Supplier regarding readiness of electrical and control cable required for this bid item.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>
6	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ Offload WPCAU PDC-2 Equipment: Receive, offload, assemble and install all equipment and enclosures associated with PDC-2 provided by the C1427 OEM and/or Contractor including but not limited to PDC-2 enclosure and all associated electrical and mechanical equipment shipped inside and outside the enclosure. Set and install enclosure to permanent weatherproofed condition. Complete installation and interconnection of power and control wiring between all PDC-2 equipment through electrical raceways provided by other Contracts and through raceways provided and installed by this Contract, which are included in this bid item. Enclosure's HVAC system shall be started, calibrated, operated and maintained via Contractor supplied temporary power system.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>
7	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ Interconnect WPCAU PDC-2 Equipment: Installation, interconnection, and testing of electrical and control cable from PDC-2 to 24kV termination points at SSWPC, 24kV termination points at WPCCTG.7 GSU, 24kV termination points at CWPYRD, 4.16kV termination points at WPCAU XFMR 301A. Cable and wire installation will be through electrical raceways provided by other Contracts and through raceways provided and installed by this Contract, which are included in this bid item. Includes but is not limited to coordination with the C1435 Supplier regarding readiness of electrical and control cable required for this bid item.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>
8	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ Offload and Install CTG-7 Equipment: Receive, offload assemble and install CTG-7, EER, Fuel Gas Compressor, Lube oil fans, auxiliary transformer, support structures and all associated electrical, mechanical, and structural components provided by C1438 OEM and/or Contractor. Provide materials and qualified personnel to complete mechanical installation of all C1438 equipment and components. Complete installation and interconnection of power and control wiring between all CTG-7 equipment through electrical raceways provided by other Contracts and through raceways provided and installed by this Contract, which are included in this bid item. EER's HVAC system shall be started, calibrated, operated and maintained via Contractor supplied temporary power system.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>
9	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ CTG 6 GSU Transformer: Receive, offload, assemble and set CTG 6 GSU Transformer provided by C1440 OEM. Connect, operate and maintain temporary heaters. Complete installation and interconnection of power and control wiring between GSU equipment through electrical raceways provided by other Contracts and this Contract. Installation, interconnection, and testing of electrical and control cable from CTG 6 GSU to 24kV termination points, 13.8kV termination points, and 480V termination points. Cable and wire installation will be through electrical raceways provided by other Contracts and through raceways provided and installed by this Contract, which are included in this bid item. Includes but is not limited to coordination with the C1435 Supplier regarding readiness of electrical and control cable required for this bid item. Includes but is not limited to decommissioning, removal, salvage and reconfiguration of existing T6 transformer, feeders, control wiring, and associated switchgear cubicles.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>
10	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ CTG 7 GSU Transformer: Receive, offload, assemble and set CTG 7 GSU Transformer provided by C1440 OEM. Connect, operate and maintain temporary heaters. Complete installation and interconnection of power and control wiring between GSU equipment through electrical raceways provided by other Contracts and this Contract. Installation, interconnection, and testing of electrical and control cable from CTG 7 GSU to 24kV termination points, 13.8kV termination points, and 480V termination points. Cable and wire installation will be through electrical raceways provided by other Contracts and through raceways provided and installed by this Contract, which are included in this bid item. Includes but is not limited to coordination with the C1435 Supplier regarding readiness of electrical and control cable required for this bid item.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>
11	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ Balance of Plant (WPC Area): Provide Contractor supplied Balance of Plant Mechanical, Electrical, Controls and Instrumentation equipment and components, piping, wire and cable. Install all BOP equipment, piping, wire and cable including Owner supplied components in the WPC area. Includes, but is not limited to WPCAU transformers, fuel oil piping, air compressors, fuel oil day tank and pumps, and all associated grouting, platforms, supports.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
12	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Fuel Oil System (outside WPC Area): Provide Contractor supplied Fuel Oil system Mechanical, Electrical, Controls and Instrumentation equipment and components, piping, wire and cable and install all Fuel Oil equipment, piping, wire and cable including Owner supplied components outside the WPC area. Includes, but is not limited to Electrical components, Fuel Oil Forwarding Pump Skid, all associated grouting, platforms, supports, as well as tie-in to existing facility and/or WPC. Supply and Installation of Fuel Oil Single and Double Wall Containment Piping, Supports, and Tie-ins, Including Supply and Installation of Leak Detection System.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
13	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Natural Gas Piping: Provide and install Contractor supplied gas pipe to interconnect natural gas piping at Utility meter to the existing natural gas pipe at the east end of the Utility Rack, and to interconnect the existing natural gas pipe at the west end of the Utility Rack to the WPC CTG7 Fuel Gas Compressor. Includes, but is not limited to, piping, underground routing, tie-in, and testing.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
14	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Electrical/Controls Raceway (WPCUR Interface): Provide Contractor delegated designed and supplied raceway to interconnect WPCUR raceway to SSCC, including but not limited to East Transition Structure Non-Segregated bus duct interface. Provide Contractor delegated designed and supplied raceway interface at the Eastern end of the WPCUR including but not limited to interface with ground level raceway infrastructure.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
15	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Electrical/Controls Raceway (Utility Connection): Provide Contractor supplied raceway to interconnect WPC infrastructure to the Utility Substation. Includes, but is not limited to, above ground raceway through the SFC area from PDC-2 to the Utility tie-in point, and coordination with the Utility.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
16	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Relay Settings and Configuration: Supply and implement protective relays as outlined in the Contract Documents. Includes but is not limited to Contractor determined relay settings and configuration, and power quality protection validation.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
17	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Load Bank Relocation: Relocation and configuration of existing Load Bank to the WPCAUX systems. Includes but is not limited to coordination with the Load Bank OEM to confirm adequacy-for-purpose.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
18	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Platforms - SFC Area: Fabricate and install elevated steel platforms, handrails, and ancillary items in the SFC work area. Shop drawings and fabrication shall be based on Contractor-verified dimensions of Owner-provided structures equipment and enclosures. Includes but is not limited to testing and inspection services.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
19	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Platforms – CTG-7 Area: Fabricate and install elevated steel platforms, handrails, and ancillary items in the CTG-7 work area. Shop drawings and fabrication shall be based on Contractor-verified dimensions of Owner-provided structures equipment and enclosures. Includes but is not limited to testing and inspection services.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
20	1	LS		
DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Platforms – BOP/Aux Area: Fabricate and install elevated steel platforms, handrails, and ancillary items in the BOP/AUX work area. Shop drawings and fabrication shall be based on Contractor-verified dimensions of Owner-provided structures equipment and enclosures. Includes but is not limited to testing and inspection services.			

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
21	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ PDCS: Supply of and integration of components into the Power Distribution Control System (PDCS). Including but not limited to integrating new nodes and upgrading existing nodes with network configuration updates, HMI updates, historian updates, safety light modifications, cardkey configuration, making ready for GCS implementation, adding pre-programmed sequences, developing shift reports, adding/modifying/updating OTI-PI interfaces, and adding all associate cable and raceway necessary cable and raceway for EWS and printer network connection to the PDCS. PDCS scope is included in the following Functional Areas: CWGCC, CWPCTG.6, CWPENG, CWPELS, CWPSHP, CWPL4G3, CWPPH, CWPYRD, SSCC, SSCLA, SSHAM, SSPFC, SSSYC, SSWPC, SSYRD, WPCAUX, WPCCTG.7, WPCSFC1, WPCSFC2. Specific requirements for each PDCS node are defined in the Contract Documents.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
22	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ 25Hz Outside Switchgear: Install new switchgear. Provide and install new manhole and ductbanks. Reroute and terminate feeders associated with the 25Hz SSYRD. Repurpose spare SSYRD switchgear breaker. Includes but is not limited to testing and commissioning cables and switchgear.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
23	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ 60Hz Outside Switchgear Area (CWPYRD): Install new ductbank to connect existing west manhole to existing south manhole. Reconfigure XFMR B primary tap from 13.8kV to 24kV. Supply, install, configure, and commission SEL 787 transformer protection relay. Relocate PH MCC 5 from PFC to CWPYRD. Includes but is not limited to testing and commissioning cables and switchgear.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
24	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ Security and Fire Protection Systems: Provide, install, and commission all components required for the Security and Fire Protection Systems, including but not limited to cardkey configuration, CCTV configuration, and addressable fire alarm system with partial emergency communication. Coordinate and install fiber, power, and control cables supplied under C1435. Complete all interconnection, testing and commissioning.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
25	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ Cathodic Protection: Provide, install and commission Cathodic Protection Systems. Interconnect and commission Utility Rack cathodic protection components supplied and installed by others under C1418. Supply, install, interconnect and commission all other cathodic protection components as indicated in the Contract Documents. Includes installation of power and control cable supplied under C1435 and/or Contractor.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
26	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ Equipment Grounding: Interconnect and commission grounding system. Includes but not limited to connecting grounding grid installed under C1415 to all equipment installed by Contractor.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
27	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ Lighting: Interconnect and commission Utility Rack Lighting components supplied and installed by others under C1418. Supply, install, interconnect and commission all other equipment lighting as indicated in the Contract Documents. Includes installation of power and control cable supplied under C1435 and/or Contractor.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
28	1	LS		

DESCRIPTION: Base Bid or Alt.# ___ Cable Management: Shipping, management and coordination of Owner supplied power and control cables provided under C1435, located at a storage facility not to exceed 400 miles from the project site. Includes direct communication with C1435 supplier regarding management and coordination of the C1420 construction schedule and C1435 material supply.

REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)

29	1	LS		
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DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Commissioning Agent Services: Includes but is not limited to facilitating all items related to Construction Completions, Equipment Commissioning and Functional Testing, Facility Startup and Performance Testing, and Integrated Facility Testing. Provide and maintain a Completions Management System. Prepare Inspection and Test Plans. Prepare Operation Test Procedures. Develop Use Cases. Lead facility startup meetings. Develop and maintain a schedule. Prepare documentation, record results and report findings. Commissioning Agent Services will be coordinated with personnel associated with the Owner, Contractor, and OEM/Suppliers.			
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REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
30	1	LS		

DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Equipment Startup/Commissioning (SFCs and PDCs): Startup and Commissioning of SFC-1, SFC-2, PDC-1, PDC-2 including all associated equipment and components provided by C1417 OEM and C1427 OEM and/or Contractor. Startup and Commissioning efforts will be facilitated by the Commissioning Agent and coordinated with personnel associated with the Owner, Contractor, and OEM/Supplier.			
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REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
31	1	LS		

DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Equipment Startup/Commissioning (CTG-7): Commissioning of CTG-7 including all associated equipment and components provided by C1438 OEM and/or Contractor. Startup and Commissioning efforts will be facilitated by the Commissioning Agent and coordinated with personnel associated with the Owner, Contractor, and OEM/Supplier.			
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REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
32	1	LS		

DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Equipment Startup/Commissioning (GSUs): Commissioning of CTG6-GSU and CTG7-GSU including all associated equipment and components provided by C1440 OEM and/or Contractor. Startup and Commissioning efforts will be facilitated by the Commissioning Agent and coordinated with personnel associated with the Owner, Contractor, and OEM/Supplier.			
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REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
33	1	LS		

DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Equipment Startup/Commissioning (Contractor Supplied WPC Area): Commissioning of all other components in the WPC including but not limited to BOP area components provided by Contractor. Startup and Commissioning efforts will be facilitated by the Commissioning Agent and coordinated with personnel associated with the Owner, Contractor, and OEM/Supplier.			
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REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
34	1	LS		

DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Equipment Startup/Commissioning (Contractor Supplied outside WPC Area): Commissioning of all other components outside the WPC including the Fuel Oil System provided by Contractor. Startup and Commissioning efforts will be facilitated by the Commissioning Agent and coordinated with personnel associated with the Owner, Contractor, and OEM/Supplier			
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REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
35	1	LS		

DESCRIPTION:	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___ Integrated Commissioning: Services associated with Integrated Commissioning and implementation of all Use Cases developed by the Commissioning Agent. Integrated Commissioning efforts will be facilitated by the Commissioning Agent and coordinated with personnel associated with the Owner, Contractor, OEM/Suppliers, and Utility.			
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REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
36	1	LS		

DESCRIPTION:	<input type="checkbox"/> Base Bid or <input checked="" type="checkbox"/> Alt.# <u>1</u> Offload SFC-3 Equipment: Receive, offload, assemble and install all SFC-3 equipment and enclosures provided by C1417 OEM and/or Contractor including but not limited to SFC Power Electronics enclosure, 60Hz Transformer, 25Hz Transformer, and all associated electrical and mechanical equipment shipped inside and outside the enclosure. Set and install enclosure to permanent weatherproofed condition. Complete installation and interconnection of power and control wiring between all SFC-3 equipment through electrical raceways provided by other Contracts and this Contract. The enclosure's HVAC system shall be started, calibrated, operated and maintained via Contractor supplied temporary power system.			
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REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
37	1	LS		
DESCRIPTION:	<input type="checkbox"/> Base Bid or <input checked="" type="checkbox"/> Alt.# <u>2</u> Interconnect SFC-3 Equipment: Installation, interconnection, and testing of electrical and control cable from SFC-3 to 24kV termination points at WPCAUX PDC-2, 6.6kV termination points at SSCC, and 480V termination points at WPCAUX PDC-1. Cable and wire installation will be through electrical raceways provided by other Contracts and through raceways provided and installed by this Contract, which are included in this bid item. Includes but is not limited to coordination with the C1435 Supplier regarding readiness of electrical and control cable required for this bid item.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
38	1	LS		
DESCRIPTION:	<input type="checkbox"/> Base Bid or <input checked="" type="checkbox"/> Alt.# <u>3</u> Equipment Startup/Commissioning (SFC-3): Startup and Commissioning of SFC-3 including all associated equipment and components provided by C1417 OEM and/or Contractor. Startup and Commissioning efforts will be facilitated by the Commissioning Agent and coordinated with personnel associated with the Owner, Contractor, and OEM/Supplier.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
39	1	LS		
DESCRIPTION:	<input type="checkbox"/> Base Bid or <input checked="" type="checkbox"/> Alt.# <u>4</u> Integrated Commissioning (SFC-3): Commissioning Agent services associated with Integrated Commissioning and Implementation of Use Cases associated with SFC-3. Integrated Commissioning efforts will be facilitated by the Commissioning Agent and coordinated with personnel associated with the Owner, Contractor, OEM/Suppliers, and Utility.			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION (<i>Quantity times Unit Price</i>)
40	1	LS		

Wording for "DESCRIPTION" is to be provided by the Owner.

All quantities are estimated. The contractor will be paid based upon actual quantities as verified by the Owner.

1-2 ADDITIONAL REQUIREMENTS

All blank spaces in this Proposal section shall be filled. A bid price shall be indicated for each bid item. Bids received without all such items completed will be considered non-responsive. The bid shall contain an acknowledgement of receipt of all Addenda in space provided. The Louisiana Uniform Public Work Bid Form & Unit Price Form (if applicable) and the amount of Deposit or Bid Bond five percent (5%) of the total amount of the proposal is REQUIRED to be submitted in a sealed envelope on bid opening date. The two (2) lowest numerical bidders have three (3) days after the bid opening (exclusive of Saturdays, Sundays and Holidays) to submit any additional information such as (Voluntary Extension Sheet, Affidavit, Economically Disadvantage Business Summary Sheet if applicable) as well as requirements of Sections 1-3 through 1-6 below. Failure to do so will render the bid non-responsive.

1-3 BIDDER DECLARATION

_____ do hereby declare that _____ the only person _____ interested in this proposal and that no other person than the one _____ herein named have any interest herein or in the contract proposed to be taken; that it is made without any connection with any other person or persons making proposal for the same work and that it is in all respects fair and without collusion or fraud; also that no member of the Sewerage and Water Board or of the City Council of the City of New Orleans or any officer or employee of the City of New Orleans or of the several boards thereof, who are by law excluded from participation herein, and directly or indirectly interested herein or in furnishing bond or in any portion of the profits hereof.

_____ do hereby also declare that _____ have LOUISIANA CONTRACTOR'S LICENSE in the field of _____ with NUMBER _____.

And _____ do further declare that _____ have carefully examined the annexed specifications and the drawings furnished, and personally inspected the ground and that _____ will contract to provide the necessary tools, machinery and apparatus and other means of construction, and to furnish all labor and material specified in this contract or called for by the plans, necessary to complete the work in the manner specified and within the time mentioned in the specifications and according to the requirements of the Engineer, as herein set forth.

1-4 In accordance with Louisiana Revised Statute 38:2227 the following affidavit shown on the next page must be submitted with the bid, or no later than 3 days after the bid opening (excluding Saturdays, Sundays, and Holidays). Failure to do so will render the bid non-responsive. **Please note, THE AFFIDAVIT MUST BE NOTARIZED.**

1-5 GUARANTEES

_____ guarantee that the whole of the work under this contract will be substantially completed within [_____] calendar days after the date of the "Commencement of Contract Times."

In case of delay in the completion of the contract beyond the contract time of completion as determined by the Board hereby agree to pay, as liquidated damages, the sum of **Twenty Thousand Dollars (\$20,000.00)** for each calendar day of such delay, which liquidated damages shall become due by the mere elapsing of the delay without the necessity of putting _____ in default.

1-6 EMERGENCY PROCEDURES

Contractor must furnish telephone numbers for routine or emergency telephone calls.

NAME _____ TITLE _____

TELEPHONE NO.:
NORMAL CALLS _____

EMERGENCY

**STATE OF LOUISIANA
PARISH OF ORLEANS**

AFFIDAVIT

BEFORE ME, the undersigned authority, duly commissioned and qualified and sworn in and for the State and Parish aforesaid, personally came and appeared _____ who after being duly sworn, did depose and say as follows:

- 1) He/she is the _____ (title) of _____ (company);
- 2) He/she has not been convicted of, or has entered a plea of guilty or nolo contendere to any of the crimes, or equivalent federal crimes, listed in Louisiana Revised Statute 38:2227, specifically: public bribery, corrupt influencing, extortion, money laundering, theft, identity theft, theft of a business record, false accounting, issuing worthless checks, bank fraud, forgery, contractors misapplication of payments, malfeasance in office.
- 3) The contracting entity, person or corporation whose principal(s), member(s), and /or Officer(s) have, within the preceding 5 years, not been convicted or plead guilty to, a felony under state or federal statutes, for embezzlement, theft of public funds, bribery, falsification or destruction of public records; (City Code Section 2-8)
- 4) The following is a list of individual partners, incorporators, directors, managers, officers, organizers, or members who have a minimum ten percent interest ownership interest in the bidding entity:
 _____ (name) _____ (name)
 _____ (name) _____ (name)
 _____ (name) _____ (name)
- 5) No other persons hold an ownership interest in the bidding entity via a counter letter.
- 6) None of the above named individual partners, incorporators, directors, managers, officers, organizers, or members, who has a minimum ten percent interest ownership in the bidding entity, been convicted of, or has entered a plea of guilty or nolo contendere to any of the crimes, or equivalent federal crimes, listed in Louisiana Revised Statute 38:2227, specifically: public bribery, corrupt influencing, extortion, money laundering, theft, identity theft, theft of a business record, false accounting, issuing worthless checks, bank fraud, forgery, contractors misapplication of payments, malfeasance in office.
- 7) He/she is not delinquent on any taxes owed the City of New Orleans or fees/charges to the Sewerage and Water Board. (City Code Section 2-8)

The following sections apply only to Public Works Contracts:

- 8) In accord with LA Revised Statute 38:2212.10 the entity represented herein is registered and participates in the "Status verification system" of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324(a), known as the "E-Verify" program to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens.
- 9) The entity represented herein shall continue, during the term of the contract, to utilize a status verification system to verify the legal status of all new employees in the state of Louisiana.
- 10) The entity represented herein shall require all subcontractors to submit to the contractor a sworn affidavit verifying compliance with the Status verification system.

WITNESSES:

AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS

_____ DAY OF _____, 20_____.

NOTARY PUBLIC

Notary Id. No. or Bar Roll No.

PLEASE PRINT NAME OF NOTARY

VOLUNTARY EXTENSIONS OF THE AWARD

If this bid is determined to be the lowest responsive and responsible bid, Bidder agrees to bid extension of the award date by up to two (2) thirty (30) day periods in accordance with the provisions of Louisiana Revised Statute, Title 38, Section 2215 (A).

AGREED:

NAME OF BIDDER (TYPE OR PRINT)

SIGNATURE OF BIDDER

COMPANY NAME

*** * * END OF SECTION * * ***

BID BOND

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

BIDDER (Name and Address):

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

OWNER (Name and Address):

BID

Bid Due Date:

Project (Brief Description Including Location):

BOND

Bond Number:

Date (Not later than Bid due date):

Penal sum _____
(Words) (Figures)

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

BIDDER

SURETY

_____(Seal)
Bidder's Name and Corporate Seal

_____(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title

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

Attest: _____
Signature and Title

Attest: _____
Signature and Title

Note: Above addresses are to be used for giving required notice.

NEW ORLEANS MASTER 469936

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

END OF SECTION

ATTACHMENT
CONFLICT OF INTEREST DISCLOSURE AFFIDAVIT

STATE OF _____

PARISH/COUNTY OF _____

Before me, the undersigned authority, came and appeared _____ who, being first duly sworn, deposed and said that:

He/She is the _____ and authorized representative of _____, hereafter called "Proposer."

The Respondent hereby confirms that a conflict(s) of interest **exists /does not exist/may exist (circle one)** in connection with this solicitation which might impair Respondent's ability to perform if awarded the contract, including any familial or business relationships that the Respondent, the proposed subcontractors, and their principals have with the Board officials or employees. *(If a conflict(s) of interest exists and/or may exist, describe in a letter the nature of the conflict, the parties involved and why there is a conflict. Attach said letter to this form).*

Respondent Representative (Signature)

(Print or type name)

(Address)

SWORN TO AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____ 20_____.

NOTARY PUBLIC (Signature)

NOTARY PUBLIC (Print Name)

Notary ID#/Bar Roll # _____

ATTACHMENT
CONVICTED FELON AFFIDAVIT

STATE OF _____

PARISH OF _____

Before me, the undersigned authority, came and appeared _____,
who, being first duly sworn, deposed and said that:

1. He/She is the _____ and authorized representative of _____, hereafter called "Contractor."
2. The Contractor complies with City Code Section 2-8 (c) for the City of New Orleans.
3. No Contractor principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

Contractor Representative (Signature)

(Print or type name)

(Address)

Sworn to and subscribed before me, in (CITY/STATE) _____

this ___ day of (MONTH) _____, 20 ____.

Notary Public

Notary Identification No./Bar Roll No.

CONVICTED FELON AFFIDAVIT

00 45 54 - 3

ATTACHMENT
NON-SOLICITATION AFFIDAVIT

STATE OF _____

PARISH OF _____

Before me, the undersigned authority, came and appeared _____,

who, being first duly sworn, deposed and said that:

1. He/She is the _____ and
authorized representative of _____ hereafter called "Contractor."
2. The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject contract. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject contract.

Contractor Representative (Signature)

(Print or type name)

(Address)

Sworn to and subscribed before me, in _____, Louisiana,

this ___ day of _____, 20_____.

Notary Public

Notary Identification No./Bar Roll No.

NON-SOLICITATION AFFIDAVIT

00 45 54 - 4

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

1. POLICY TO ENHANCE THE USE OF DBE VENDORS

All vendors/contractors are encouraged to identify and use S&WB'S certified DBE Vendors to the fullest extent possible in major as well as minor purchases of heavy equipment, hardware supplies, etc.

Additionally, the originating Department will include within the specifications the most currently available approved DBE vendor listings.

The Sewerage and Water Board believes that developing such a policy would be a positive step to increase the dollar value of contracts awarded to DBE vendors and subcontractors.

2. ACCESS TO APPROVED VENDOR LISTS

The current listings of Vendors approved by the Sewerage and Water Board are available for use by the bidders on the Sewerage and Water Board external Website, WWW.SWBNO.ORG.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

In accordance with the adoption of Resolution R231-97, the Sewerage and Water Board of New Orleans has established a race and gender-neutral Disadvantaged Business Enterprise (DBE) Plan. The prime contractor shall be required to make a demonstrated good faith effort to award (25)% of the amount of the contract to certified disadvantaged business enterprises as **subcontractors or suppliers performing commercial useful functions which are consistent with the work required on this contract**. The percent participation having been determined for this specific contract by recommendation of the **Construction Review Committee (CRC)**, which is a joint effort of representatives from the City of New Orleans, Sewerage and Water Board, and representatives of local contractor organizations. This percentage requirement shall be considered an informality which is subject to modifications and may be waived or adjusted by the Sewerage and Water Board of New Orleans if the prime contractor, after having demonstrated a good faith effort, is unable to comply with the requirement.

DEMONSTRATED GOOD FAITH EFFORTS

Before receiving an award of the contract, the contractor must meet the DBE goals or prove that he/she has made a demonstrated good faith efforts. To determine whether a particular contract bidder has made demonstrated good faith efforts to reach the DBE participation goal, the Board and its staff will consider the following:

- a. whether the contractor attended all pre-bid meetings that may have been scheduled by the Board to inform DBE firms of subcontracting opportunities and/or requested the Board Directory of Certified DBE firms;
- b. whether the contractor advertised in general circulation and trade association publications, concerning the DBE subcontracting opportunities, and allowed the subcontractors reasonable time to respond;
- c. whether the contractor provided written notice to a reasonable number of individually named DBE firms and allowed sufficient time for the DBE firms to participate effectively;

- d. whether the contractor followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in bidding;
- e. whether the contractor selected specific portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including breaking down contracts into smaller units to facilitate DBE participation);
- f. whether the contractor provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
- g. whether the contractor negotiated in “good faith” with interested DBEs and did not reject DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
- h. if the contractor did reject a DBE as unqualified, the contractor must state his or her reason for doing so in writing;
- i. whether the contractor has used the services of available community organizations and small and/or disadvantaged business groups; local, state and federal small or disadvantage business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBE firms;
- j. whether the contractor has made sufficient efforts to negotiate with DBEs for specific sub-bids, including at a minimum:
 - (1) names, addresses, telephone numbers of DBEs that the contractor contacted,
 - (2) a description of information provided to those DBE firms, and
 - (3) a statement of why additional agreements with DBEs were not reached to include but not limited to proof the DBEs’ price exceeded that of non-DBEs.

DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM

1. **Policy:**

It is the policy of the Board that DBE firms, as defined in the Board's Disadvantaged Business Enterprise Plan, shall have the maximum allowable opportunity to compete for the award of the participation in the performance of the Board's publicly bid contracts. Consequently, the CRC and the Board have set the DBE participation goal applicable to this construction contract.

2. **DBE Obligation:**

The Board and its contractors agree to ensure that DBE's, as defined in the Board's Disadvantaged Business Enterprises Plan, shall have the maximum allowable opportunity to compete for the award of the participation in the performance of contracts and subcontracts provided under this agreement. In this regard, contractors shall take all necessary and reasonable steps in accordance with this DBE Plan to ensure that DBE's have the maximum allowable opportunity to compete for such contracts. The Board and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of the Board's publicly bid contracts.

3. **Utilization of DBE Vendor Listings:**

All bidders are required to utilize the most recent Sewerage and Water Board State-Local Disadvantaged Business Enterprise Program Approved Vendor Listings for **Construction, Goods & Services/Professional Services**, in their selection of DBE entities to meet DBE participation goals. **Bidders are required to utilize DBE's as subcontractors or suppliers only in the areas for which they are certified. A description of the areas of work that DBE's can provide is contained in these vendor listings.** In addition, an alphabetical list of vendors/contractors is provided indicating the name of the company, address, name of owner, telephone number, fax number, the date the company became certified, and a description of the work that these entities are certified to perform. **Companies that are already certified as a DBE cannot fulfill the DBE requirements by listing themselves as the subcontractor to meet the DBE goal. The prime contractor shall select another DBE from the Sewerage and Water Board's Approved Vendor Listing.**

DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM

4. **Contacting DBE's and Obtaining a Firm Price**

All prime contractors are required to contact DBE's and obtain a firm price before listing the DBE's on the Participation Summary Sheet. As confirmation of established contact, bidder will include with their Participation Summary Sheet submission a signed correspondence from the SLDBE subcontractor on their own letterhead that reaffirms negotiated terms such as scope of work and monetary compensation.

5. **Failure to Comply with DBE Bid Specifications:**

All bidders for this Board contract are hereby notified that failure to comply with the above DBE specifications may constitute the bid as being non-responsive, and sufficient cause for rejection.

6. **Failure to Carry Out DBE Policy:**

All bidders, potential contractors, or subcontractors for this Board contract are hereby notified that failure to comply with the DBE policy and DBE obligations, set forth above, shall constitute a breach of contract which may result in termination of the contract or such other remedy as deemed appropriate by the Board, to include excluding bidder from bidding on future Board contracts.

7. **Setting Minimum Participation Goals:**

The stated minimum percentage DBE participation goal recommended by CRC and approved by the Board applies to the work of this contract. The two lowest numerical bidders must complete and submit a DBE Participation Summary Sheet no later than three (3) days after the bid opening (excluding Saturdays, Sundays and holidays). The DBE Participation Summary Sheet should be completed properly, showing that at least the percentage goal of the total contract bid price will be subcontracted or otherwise awarded through procurement action to DBE's. Should the bidder fail to comply with this request, the bid shall be considered unresponsive, unless:

- a. An affidavit is furnished by the bidder with its bid showing that the DBE goals cannot be met for the following reasons:

- (1) No DBE firms made offers. Here, it must be shown, documented and demonstrated that good faith efforts (as defined in Part III, D, 2.

of the Board's DBE plan) were made by the bidder to obtain the participation of DBE firms and that they did not respond, or

- (2) The DBE offers made and accepted for subcontract and/or material supplies do not total the stated goal for participation, but total a lesser percentage, and
- (3) The bidder was unable to obtain DBE further participation, despite his or her demonstrated good faith efforts (as defined in Part III, D, 2 of the Board's DBE Plan) to obtain additional participation by DBE firms.

- b. Each of the assertions made by the bidder must be supported by documentary evidence.

8. Other Clauses Unaffected:

Nothing contained herein shall invalidate, change, annul, release, restrict, or affect the liability on the bonds or insurance given by the contractor, or the time required for completion of the contract.

9. Determination of Efforts to Meet Goals:

Initial determination of bidder efforts to meet the DBE participation goal shall be based on the DBE participation representations submitted by the two lowest numerical bidders no later than three (3) days after the bid opening (excluding Saturdays, Sundays and holidays). Bidders shall submit all the forms required herein no later than three (3) days after the bid opening (excluding Saturdays, Sundays and holidays), and the DBE Office will examine the contents thereof. The Board's DBE Officer may, if deemed advisable, request further information, explanation or justification from any bidder.

10. Contract Monitoring:

- a. The Board's DBE Office will monitor contractor during the operation of the contract to insure that the contractor meets all of its DBE obligations as specified in the contract bid. The Board's DBE office shall establish rules and regulations, to be approved by the Board, for the ongoing monitoring of contractor compliance.

- b. Disadvantaged Business Enterprise Program Office personnel or their designated representative shall be allowed to conduct periodic monitoring of contractors' compliance with the agreed to Disadvantaged Business Enterprise Program participation requirements. Contractors shall be required to complete and return to the Disadvantaged Business Enterprise Program Office in the time required all requests for information and data relative to the contractors' activities in meeting the required Disadvantaged Business Enterprise participation goal. Additionally, Disadvantaged Business Enterprise Office personnel or their designated representative shall have access to contractor and subcontractor(s) records pertaining to, but not specifically limited to labor, costs and materials supplied and used on the Board contract, as well as inspection and photocopying of any and all contracts, agreements and correspondence relative to the Disadvantaged Business Enterprise contract participation requirements. Such inspection will be performed during normal business hours, and will be conducted in such a fashion so as to minimize interference with production of the contract. Visits may be made to job sites, as well as to administrative offices of the contractor and subcontractor(s) participants. Such inspection and on-site visits may be scheduled with or without prior notice to the contractor or Disadvantaged Business Enterprise subcontractor participant. Contractors' failure to comply with these monitoring requirements may result in termination of the contract or such other remedy as deemed appropriate by Board.

11. Maintaining Records:

Subsequent to the completion of a contract, contractors are required to maintain for three (3) years such records as are necessary to determine compliance with their DBE obligations. During construction, or performance of the DBE obligations, contractors shall submit reports as requested to enable the DBE Office to monitor this compliance.

12. Umbrella Bonding:

On contracts where subcontracting exists and where practicable (i.e., when a substantial risk or financial hardship would not be incurred by the prime contractor), the contractor may use an umbrella bond to encompass the DBE firm.

DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM

13. Board Action to Seek Compliance:

The contractor consents to such appropriate actions taken to ensure that prime contractors and subcontractors comply with the DBE provisions, to include but not limited to:

- a. desk audits to review all material, and information concerning the contractor's compliance;
- b. on-site reviews that may include interviews, visits to project locations, and inspection of documents and/or information not available at the desk audit that pertains to the contractor's compliance;
- c. any additional investigation that may be called for by a lack of proper record keeping, failure of the prime contractor to cooperate; failure of DBEs to cooperate; visible evidence unsatisfactory performance; other evidence as may warrant further investigation.

14. Non-Compliance Finding:

The Board staff will make compliance determinations regarding its prime contractors. Documentation of noncompliance will include the specific areas in which the contractors failed to comply. In these instances, appropriate legal action consistent with the DBE and other contract provisions will be taken.

15. Contractor's Duties

a. Record Keeping

Successful bidders shall establish and maintain records and submit regular reports to the DBE office as required, which will identify and assess progress in achieving DBE subcontract goals and other DBE participation efforts.

b. Failure To Comply With EDBP Participation Requirements

Failure to comply with any of the EDBP requirements of this contract shall constitute a violation of the terms and conditions of

DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM

this contract and a cause for the termination of the contract at the option of the Board.

Such violations shall include, but not limited to:

Failing to meet the percentage participation requirements as set out in the contract documents.

Failing to use certified EDBP contractors/vendors in performing the scope of work as identified in the contract documents (EDBP participation summary sheet).

Failing to comply with the “monitoring of EDBP requirements” included herein as part of the contract, such as contractors:

Failure to submit quarterly report and any other necessary reports timely and adequately as required by the EDBP Office.

Failure to grant access to contractor/subcontractor records by EDBP Office personnel, and

Failure to allow on-site investigations and visits, etc.

Failing to report the removal or termination of a certified EDBP vendor /subcontractor.

Failing to secure authorization for replacement of certified EDBP subcontractors from the Director of the Economically Disadvantaged Business Program.

In Lieu of termination the Board, through the EDBP Office, may impose the following penalties:

Withhold from the contractor in violation up to 10% of all future payments due to the contractor, until such time as the violations have been corrected.

Withhold from the contractor in violation, all future payments until such time as the violations have been corrected.

c. Subcontract Clause

All bidders and potential contractors must assure the Board that they will include the above clauses in all agreements, which offer further subcontracting opportunities.

d. Contract Award

Bidders are hereby advised that meeting DBE subcontract goals or making a demonstrated good faith efforts to meet such goals are conditions of being awarded and maintaining construction, procurement, or professional services contracts by the Board.

e. Restrictions on DBE Subcontracting

No **DBE** subcontractor or vendor selected to perform work as a **DBE** on a Sewerage and Water Board contract will be allowed to subcontract any portion of its work to a Non-Board certified **DBE**, unless the work to be performed is necessary for the execution of the contract and there are no Board certified **DBE**'s available to perform such work.

This process will require that each **DBE** participant performing work on a Sewerage and Water Board funded contract submit a request to subcontract out any portion of work deemed necessary for execution of the contract to the Board's **EDBP** office. On a form provided by the **EDBP** office, the **DBE** contractor or vendor will indicate the dollar amount of work to be subcontracted, the specific scope or nature of the work, the percentage of the total amount of work to be performed by the **DBE** subcontractor and vendor, and the entity to whom the work will be subcontracted.

Both prime and **DBE** subcontractors are advised that the failure to comply with these requirements may result in the loss of **DBE** certification and non-compliance by the prime contractor in meeting **DBE** contractual obligations.

f. Changes In DBE Participation

The Prime Contractor will not be allowed to make changes in DBE participation without submittal of a written request explaining

reason, a revised Participation Summary Sheet and approval by the Director of the Economically Disadvantaged Business Program. Failure to comply with these requirements may result in non-compliance by the Prime Contractor in meeting DBE contractual obligations.

16. POLICY TO ENHANCE THE USE OF DBE VENDORS

All vendors/contractors are encouraged to identify and use S&WB certified **DBE** vendors to the fullest extent possible in major as well as minor purchases of heavy equipment, hardware supplies, etc.

The Sewerage and Water Board has a long-standing commitment to fairness and equal opportunity in hiring and contracting. As such, the workforce of contractors/vendors is encouraged to be representative of a diverse population. Achievement of the full benefits of diversity will only come when an attitude of inclusion is adopted.

The Sewerage and Water Board believes that developing such a policy would be a positive step to increase the dollar value of contracts awarded to **DBE** vendors and subcontractors.

17. ACCESS TO APPROVED VENDOR LISTS

The current listings of Vendors approved by the Sewerage and Water Board are available for use by the bidders on the Sewerage and Water Board external Website, WWW.SWBNO.ORG.

ECONOMICALLY DISADVANTAGED BUSINESS PARTICIPATION SUMMARY SHEET

Minimum Percentage Goal Participation for this Contract is 25 %

Contract Name and # 1420 - WEST POWER COMPLEX PHASE 1 INSTALLATION AND COMMISSIONING

Name and Address of Disadvantaged Business Enterprise Company	Name of Contact Person	Scope of Work to be Performed	Dollar Amount of work to be performed	Percentage of Dollar Amount to Total Bid Price

THIS FORM MUST BE COMPLETED AND SUBMITTED BY THE TWO LOWEST NUMERICAL BIDDERS, ALONG WITH SIGNED CORRESPONDENCE FROM SLD BE(S) ON THEIR OWN LETTERHEAD REAFFIRMING NEGOTIATED TERMS, NO LATER THAN 3 DAYS AFTER THE BID OPENING (EXCLUSIVE OF SATURDAYS, SUNDAYS AND HOLIDAYS). FAILURE TO DO SO WILL RENDER THE BID NON-RESPONSIVE.
 BY SUBMITTAL OF THIS FORM, PRIME CONTRACTOR ACKNOWLEDGES THAT DBE(S) HAVE BEEN CONTACTED AND A FIRM PRICE HAS BEEN OBTAINED.

NOTE: Signature required even if judged **NOT APPLICABLE** by the **BIDDER**

Prime Representative Name: _____
Print Name

Prime Company's Name: _____

Prime Address: _____

Prime Signature: _____
Signature

Date: _____

E-mail: _____

Telephone Number: _____

AGREEMENT

THIS AGREEMENT is by and between the Sewerage and Water Board of New Orleans

(Owner) and _____
_____ (Contractor).

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

1. WORK

1.1. Contractor shall complete the Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

1.1.1. Contract #1420 – West Power Complex Phase 1 Installation and Commissioning

2. THE PROJECT

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

2.1.1. Contract #1420 – West Power Complex Phase 1 Installation and Commissioning

3. ENGINEER

3.1. The Project has been designed by **[Jacobs Engineering Group (Designer)**, who is to act as the Engineer-of-Record under the oversight and administration of the Owner’s Representative.

4. CONTRACT TIMES

4.1. Time of the Essence: Time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.2. **[A: Days to Achieve Substantial Completion and Final Payment:**

4.2.1. The Work shall be substantially completed within [] calendar days from the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the

General Conditions within [] calendar days after the date when the Contract Times commence to run.]

4.3. Liquidated Damages:

4.3.1. Should the Contractor fail to commence or start the work within the time allotted or fail to complete individual phases of the work within the times allotted for said individual phases, the Contractor shall pay to the Board the sum of \$20,000 liquidated damages for each calendar day beyond the times specified. If unforeseen circumstances are encountered at the work site, the Contractor may request in writing an extension in days for the completion of work. If granted, the extension of time must be approved in writing by the Engineer and submitted with the invoice.

4.4. Night, Weekend, or Holiday Work

4.4.1. Night, weekend or holiday work which requires the presence of an engineer or inspector will not be permitted except in cases of emergency or by permission of the Engineer. Except in cases of emergency, all requests for night, weekend or holiday work shall be submitted in writing at least seven calendar days prior to the work being performed. Any approved night, weekend or holiday work requires prior written authorization from the Engineer

5. CONTRACT PRICE

5.1. Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to the prices stated in Contractor's Bid attached hereto as an exhibit.

6. PAYMENT PROCEDURES

6.1. Submittal and Processing of Payments: Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.2. Progress Payments and Retainage: Owner will make progress payments on account of the Contract Price on the basis of Contractor's Application for Payment on the date of each month as established in the preconstruction conference during performance of the Work as provided herein. All such payments will be measured by the Schedule of Values established as provided in Paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided in the General Requirements.

6.2.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:

6.2.1.1. Ninety-five percent of Work completed for contracts in the amount of \$500,000.00 or greater (with the balance being retainage).
Ninety percent of Work completed for contracts in an amount less than \$500,000.00 (with the balance being retainage).

6.2.2. In accordance with Louisiana Statute 38:2249, Contractor may withdraw up to the entire retained amount if they deposit an equal amount in a Certificate of Deposit issued by a commercial bank or savings and loan located in Louisiana.

6.2.3. In accordance with Louisiana Statute 38:2248.A, retainage will be released within 45 days of Final Acceptance by the SWBNO Board of Directors.

6.2.4. Upon Substantial Completion, Owner will pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer will determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.3. Final Payment:

6.3.1. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner will pay the remainder of the Contract Price as recommended by Engineer as provided in Paragraph 14.07.

7. CONTRACTOR'S REPRESENTATIONS

7.1. Contractor makes the following representations:

7.1.1. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

7.1.2. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

7.1.3. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

7.1.4. Contractor has carefully studied: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) if any, which have been identified in Paragraph 4.02 of the Supplementary Conditions as containing reliable “technical data”, and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site which have been identified in Paragraph 4.06 of the Supplementary Conditions as containing reliable “technical data.”

7.1.5. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on 1) the cost, progress, and performance of the Work; 2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and 3) Contractor’s safety precautions and programs.

7.1.6. Based on the information and observations referred to above, Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

7.1.7. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

7.1.8. Contractor has given Engineer written notice of conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

7.1.9. The Contract Documents are generally sufficient to indicate and convey understanding of terms and conditions for performance and furnishing of the Work.

8. CONTRACT DOCUMENTS

8.1. Contents:

8.1.1. The Contract Documents that are attached to this Agreement (except as expressly noted otherwise) consist of the following:

8.1.1.1. This Agreement.

8.1.1.2. Performance bond .

8.1.1.3. General Conditions

8.1.1.4. Supplementary Conditions

8.1.1.5. Specifications as listed in the table of contents

8.1.1.6. Drawings consisting of [] sheets with each sheet bearing the following general title: [“ ”.]

8.1.1.7. Addenda

8.1.2. Exhibits to this Agreement (enumerated as follows):

8.1.2.1. Contractor’s Bid.

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

8.1.3.1. Notice to Proceed.

8.1.3.2. Work Change Directives.

8.1.3.3. Change Order(s).

8.2. There are no Contract Documents other than those listed above in this Article.

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

9. MISCELLANEOUS

9.1. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

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

9.3. Severability: Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and remaining

provisions shall continue to be valid and binding upon Owner and Contractor, who agree the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.4. Assignment of Contract:

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

9.5. Contractor's Certifications:

9.5.1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this paragraph:

9.5.1.1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in Contract execution;

9.5.1.2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract Price at artificial noncompetitive levels, or (c) to deprive Owner of the benefits of free and open competition;

9.5.1.3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, noncompetitive levels; and

9.5.1.4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____, 20__ (which is the Effective Date of the Agreement).

OWNER: _____

CONTRACTOR: _____

By: _____

By: _____

Title: _____

Title: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents

License No. _____

(Where applicable)

Agent for service or process: _____

authorizing execution of this Agreement.)

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

END OF SECTION

PAYMENT BOND

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

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*):

CONTRACT

Effective Date of Agreement:

Amount:

Description (*Name and Location*):

BOND

Bond Number:

Date (*Not earlier than Effective Date of Agreement*):

Amount:

Modifications to this Bond Form:

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

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title

SURETY

(Seal)

Surety's Name and Corporate Seal

By: _____
Signature and Title

(Attach Power of Attorney)

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

Attest: _____
Signature and Title

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title

SURETY

(Seal)

Surety's Name and Corporate Seal

By: _____
Signature and Title

(Attach Power of Attorney)

Attest: _____
Signature and Title

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
 - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2. Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1. Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the addresses described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2. Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
3. Not having been paid within the above 30 days, have sent a written notice to Surety and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. Reserved.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

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

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

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

15. Definitions:

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

15.2. Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3. Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

FOR INFORMATION ONLY – Name, Address and Telephone
Surety Agency or Broker:
Owner's Representative (engineer or other party):

END OF SECTION

PAYMENT AND PERFORMANCE BOND

Bond No.:

KNOW ALL PERSONS BY THESE PRESENTS, That we, _____, as principal, (hereinafter called the "Principal"), and _____, as surety, (hereinafter called the "Surety"), are held and firmly bound unto _____, as Obligee, in the sum of _____ Dollars (\$) for the payment whereof said Principal and Surety bind themselves, jointly and severally, as provided herein.

WHEREAS, the Principal has entered into a Contract with Obligee dated _____, to perform construction work for _____ ("Contract").

NOW, THEREFORE, the condition of this obligation is such that if Principal shall promptly and faithfully perform the Construction Work to be performed under the Contract, and shall promptly make payment to Claimants, as hereinafter defined, for all labor and material actually used, consumed or incorporated in the performance of the Construction Work under the Contract, then this obligation shall be null and void; otherwise to remain in full force and effect.

Surety's obligations hereunder to Obligee shall not arise unless Principal is in default under the Contract for failing to perform the Construction Work and has been declared by Obligee to be in default under the Contract for failing to perform the Construction Work; and Obligee has performed its obligations under the Contract. In such event, Surety shall have a reasonable period of time to:

1. Upon entering into an acceptable written takeover agreement with Obligee, undertake to perform and complete the Construction Work to be done under the Contract; or

2. Obtain bids or negotiated proposals from qualified contractors for a contract for completion of the Construction Work to be done under the Contract, arrange for a contract to be prepared for execution by Obligee and contractor, to be secured with performance and payment bonds executed by a qualified surety; or

3. Waive its right to perform or complete the Construction Work pursuant to paragraphs 1 and 2 above, and with reasonable promptness under the circumstances: (a) After investigation, determine the amount for which it may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefor to the Obligee; or (b) Deny liability in whole or in part and notify the Obligee citing reasons therefor.

4. The Contract balance, as defined below, shall be credited against the reasonable construction cost of completing the Construction Work to be performed under the Contract. If completed by Obligee pursuant to paragraphs 2 or 3 above, and the reasonable construction cost of completing the Construction Work exceeds the Contract balance, Surety shall pay to Obligee such excess, but in no event shall the aggregate liability of Surety exceed the amount of this bond. If Surety completes the work pursuant to paragraph 1 above, that portion of the Contract balance as may be required to complete the Construction Work to be done under the Contract and to reimburse Surety for its outlays shall be paid to Surety at the times and in the manner as said sums would have been payable to Principal had there been no default under the Contract. To the extent that Surety's outlays exceed the Contract

balance paid to Surety by Obligee, Surety shall be entitled to a dollar for dollar reduction of its liability under this bond, and Surety's aggregate liability shall not exceed the penal sum of this bond. The term "Contract balance" as used herein shall mean the total amount payable by Obligee under the Contract and any amendments thereto, less the amounts properly paid by Obligee to Principal under the Contract. The term "Construction Work" as used herein shall mean the providing of all labor and/or material necessary to complete Principal's scope of work under the Contract. Notwithstanding any language in the Contract to the contrary, the Contract balance shall not be reduced or set off on account of any obligation, contractual or otherwise, except the reasonable construction cost incurred in completing the Construction Work.

5. Any suit by Obligee under this bond must be instituted before the earlier of: (a) the expiration of one year from the date of substantial completion of the Construction Work, or (b) one year after Principal ceased performing the Construction Work, excluding warranty work. If the public works bond statutes in the location where the Construction Work is being performed contains a statute of limitations for suits on the performance bond, then the limitation period set forth herein shall be read out of this bond and the statute of limitation set forth in the public works bond statutes shall be read into this bond. If the limitation set forth in this bond is void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable, and said period of limitation shall be deemed to have accrued and shall commence to run no later than (y) the date of substantial completion of the Construction Work, or (z) the date Principal ceased performing Construction Work, excluding warranty work, whichever occurs first.

6. A Claimant is defined as one other than Obligee having a contract with Principal or with a direct subcontractor of Principal to supply labor and/or materials and said labor and/or material is actually used, consumed or incorporated in the performance of the Construction Work under the Contract.

7. Principal and Surety hereby jointly and severally agree with Obligee that every Claimant as herein defined who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labor was done or performed or materials were furnished by such Claimant, may bring suit on this bond, prosecute the suit to final judgment for the amount due under Claimant's contract for the labor and/or material supplied by Claimant which was actually used, consumed or incorporated in the performance of the Construction Work, and have execution thereon; provided, however, that a Claimant having a direct contractual relationship with a subcontractor of Principal shall have a right of action on this bond only if said Claimant notifies Surety in writing of its claim within ninety (90) days from the date on which said Claimant did or supplied the last labor and/or materials for which the claim is made. Obligee shall not be liable for the payment of any costs or expenses of any such suit.

8. No suit or action shall be commenced hereunder by any Claimant after the expiration of the earlier of: (a) one year after the day on which Claimant last supplied the labor and/or materials for which the claim is made; or (b) the limitation period set forth in the public works bond statutes, if any, in the location where the construction work is being performed. Any limitation contained in this bond which is prohibited by any law controlling in the state where the suit is filed shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by the law of that state, and said period of limitation shall be deemed to have accrued and shall commence to run on the day Claimant last supplied the labor and/or materials for which the claim is made.

9. No suit or action shall be commenced hereunder by Obligee or any Claimant other than in a state court of competent jurisdiction in the county or other political subdivision of the state in which the project,

GENERAL CONDITIONS

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GENERAL CONDITIONS

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.

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41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.

47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. *Unit Price Work*—Work to be paid for on the basis of unit prices.

50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided

under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

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

B. Intent of Certain Terms or Adjectives:

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

C. Day:

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

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ARTICLE 2 – PRELIMINARY MATTERS

D. Defective:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents; or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. Furnish, Install, Perform, Provide:

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

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

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

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

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

2.01 Delivery of Bonds and Evidence of Insurance

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

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

2.02 Copies of Documents

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

2.03 Commencement of Contract Times; Notice to Proceed

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

2.04 Starting the Work

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

2.05 Before Starting Construction

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the

Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

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

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees,

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

- a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not

specifically incorporated by reference in the Contract Documents); or

- b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

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

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3.06 *Electronic Data*

A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as

necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

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

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and

2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

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

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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;

5. 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

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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

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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

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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,

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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.

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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.

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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,

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partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

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

6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with

applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

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

C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

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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

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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;

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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.

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ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner’s employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

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

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

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

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

7.03 *Legal Relationships*

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

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

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

ARTICLE 8 – OWNER’S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

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8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

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

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

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

8.12 *Compliance with Safety Program*

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

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

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

9.02 *Visits to Site*

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

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but

without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

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

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

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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.

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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

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estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

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

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

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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;

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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

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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 Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently

discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

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

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off against the amount recommended; or

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to

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Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

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

14.04 *Substantial Completion*

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

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

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

reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

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

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

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify

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Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

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

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
- b. consent of the surety, if any, to final payment;
- c. a list of all Claims against Owner that Contractor believes are unsettled; and
- d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien

rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

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

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

C. *Payment Becomes Due:*

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

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of

Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

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

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's repeated disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

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

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

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become

final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
2. agrees with the other party to submit the Claim to another dispute resolution process; or
3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

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

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

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

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SUPPLEMENTARY CONDITIONS

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

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof. The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix “SC” added thereto.

SC-1.01. Add the following language at the end of Paragraph 1.01.A.19:

Engineer is the General Superintendent for the Sewerage and Water Board of New Orleans or delegate and has the authority provided in this Contract to approve or disapprove all changes to the Contract documents.

SC-1.01. Add the following language at the end of Paragraph 1.01.A.44:

Substantial Completion is further defined as (i) that degree of completion of the Project’s operating facilities or systems sufficient to provide Owner the full time, uninterrupted, and continuous beneficial operation of the Work; and (ii) required functional, performance and acceptance, or startup testing has been successfully demonstrated for components, devices, equipment, and instrumentation and control to the satisfaction of Engineer in accordance with the requirements of the Specifications.

SC-1.01. Add the following new paragraphs immediately after Paragraph 1.01.A.51:

1.01.A.52. *Specialist*—The term Specialist refers to a person, partnership, firm, or corporation of established reputation (or if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workers skilled in either (as applicable) manufacturing or fabricating items required by the Contract Documents, or otherwise performing Work required by the Contract Documents. Where the Specifications require the installation by a Specialist, that term shall also be deemed to mean either the manufacturer of the item, a person, partnership, firm, or corporation licensed by the manufacturer, or a person, partnership, firm, or corporation who will perform the Work under the manufacturer’s direct supervision.

1.01.A.53. *Construction Coordinator*—The term Construction Coordinator, where and when used, refers to an authorized representative of Owner or Engineer who may be assigned to the Site or any part thereof to monitor and oversee construction activities by Contractor. Synonymous with Resident Project Representative (RPR) and Owner’s Representative.

1.01.A.54 *Owner's Representative*—The term Owner's Representative, where and when used, refers to an authorized representative of Owner who may be assigned to the Site or any part thereof to monitor and oversee construction activities by Contractor. Synonymous with Resident Project Representative (RPR) and Construction Coordinator.

1.01.A.55 *Abnormal Weather Conditions* – Weather that could not have been reasonably anticipated, based on previous weather history over the past 3 years, such as rainfall or lightning at the Site, which, as mutually agreed in writing by the Contractor Representative and Owner Representative, that reasonably prevents a significant majority of the planned Work at the Site from being safely executed, and which therefore requires Contractor to evacuate or stand down fifty percent (50%) (or more) of Contractor's direct craft workforce for a Day.

1.01.A.57 *Liquidated Damages* -The damages the Owner will incur if the Project is not completed within the Contract Time(s) specified.

1.01.A.58 *Material Breach* - Any substantial, unexcused non-performance. The breach is either failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the contract.

1.01.A.59 36. *Request for Information (RFI)* - A written request, from the Contractor to the Engineer that asks for additional information or to clarify some aspect of the project, such as procedures, equipment, materials, specification details or drawing details.

SC-2.01. Delete the wording “and Owner” and “each” in lines 2 and 7 in Paragraph 2.01.B

SC-2.02. Amend first sentence in Paragraph 2.02.A to read as follows:

2.02.A. Upon award of Contract, Owner will furnish Contractor with complete conformed project documents (Drawings and Project Manual) in electronic format.

SC-2.03. Delete the wording “on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given”. Delete the third sentence of Paragraph 2.03.A in its entirety.

SC-2.05. Replace Paragraphs 2.05.A.1 and 2.05.A.2 with the following:

2.05.A.1 an Initial Construction Baseline Schedule and Schedule Narrative Report in accordance with the Contract documents, 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;

2.05.A.2 a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting it in keeping with the General Requirements and a tentative procurement

schedule of equipment and materials

SC-2.07. Delete Paragraph 2.07.A.1 and replace with the following:

2.07.A.1 The Preliminary Progress schedule, Detailed Baseline Schedule, and Detailed Progress Schedule(s) will be acceptable to Engineer if: (a) it is prepared by personnel having substantial experience in the use of the latest version of Oracle Primavera software unless approved otherwise by Owner; (b) it provides a reasonable allocation of the Contract to component parts of the Work; and (c) it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on the Owner or Engineer's responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility.

SC-3.01. Add the following new paragraph immediately after Paragraph 3.01.C:

3.01.D. Sections of Division 01, General Requirements, govern the execution of the Work of all sections of the Specifications.

SC-4.02. Add the following new paragraph(s) immediately after Paragraph 4.02.B:

4.02.C. The following reports, if any, of explorations and tests of subsurface conditions at or contiguous to the Site are known to Owner:

4.02.C.1. [_____] |

4.02.D. The following drawings of physical conditions, if any, relating to existing surface and subsurface structures at the Site (except Underground Facilities) are known to Owner:

4.02.D.1. Record drawings of the Main Water Purification Plant.

4.02.E. Copies of reports and drawings itemized in SC-4.02.C and SC-4.02.D that are not included with Bidding Documents may be examined at Owner's offices during regular business hours. These reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Contractor may rely, as expressly identified and established above, are incorporated in the Contract Documents by reference. Contractor is not entitled to rely upon any other information and data known to or identified by Owner.

SC-4.06. Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following in their place:

4.06.A. No reports or drawings related to Hazardous Environmental Conditions are known to Owner.

SC-5.01. Delete in Paragraph 5.01.A first sentence the wording "and payment"

SC-5.02. Add the following new paragraph immediately after Paragraph 5.02.A:

SC-5.02.B. As an alternative to the requirements in paragraph A above, bonds may also be provided by a Louisiana Domiciled Insurance company with at least an A.M. Best's Financial Strength Rating of A minus (A-) rating, or the bond shall be written by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds. In addition, any surety bond written for a public works project shall be written by a surety or insurance company that is currently licensed to do business in the State of Louisiana. Surety and insurance companies from which the bonds and insurance for this Project are purchased under the provisions of paragraph 5.02.A shall have an A.M. Best's Financial Strength Rating of A minus (A-) or better with a Financial Size Category of no less than VII, in addition to other requirements specified herein.

SC-5.04. Add the following language after Paragraph 5.04.B.1:

Policies will endorse the following parties or entities as additional insured:

5.04.B.1.a. Sewerage and Water Board of New Orleans, 625 St. Joseph Street, New Orleans, Louisiana 70165

5.04.B.1.b. The City of New Orleans, 1300 Perdido Street, New Orleans, Louisiana 70112

5.04.B.1.c. [REDACTED]

5.04.B.1.d. [REDACTED]

5.04.B.1.e. [REDACTED].

SC-5.04. Add the following new paragraph immediately following Paragraph 5.04.B:

5.04.C. Insurance: General Requirements

The Contractor will maintain, at his own cost and expense, and in good standing, such insurance as will protect the Sewerage and Water Board of New Orleans (the Board), the City of New Orleans (the City,) their officers, officials, employees, boards, commissions and volunteers, as well as the Contractor himself and any subcontractors from and against any and all claims for damages to public and private property and personal injury, including death, to employees or to the public, which may arise from any operations under this Contract or any of its subcontracts. The coverage will contain no special limitations on the scope of protection afforded to the Board and the City. Both the Board and the City will appear as "Additional Insured" on all Commercial General Liability and Business Automobile Liability. Any failure to comply with the reporting provisions of a policy will not affect coverage provided to the Board and the City, their officers, officials, employees, boards and commissions and volunteers. The Contractor's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

In general, insurance is to be placed with insurers with an A.M. Best's rating of A-:V, although this requirement may be reviewed and modified by the Risk Manager of the Sewerage and Water Board of New Orleans in the best interest of the Board. The Risk Manager may also consider performing such review upon written request from the Contractor. The Contractor shall furnish the Sewerage and Water of New Orleans with certificates of insurance affecting coverage required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates of insurance are to be received and approved by the Risk Manager of the Sewerage and Water Board of New Orleans, 625 St. Joseph St., Rm. 119, New Orleans, LA 70165, before work commences. The Sewerage and Water Board of New Orleans reserves the right to require complete, certified copies of all insurance policies at any time, as proof that the insurance placed meets the requirements of this Contract.

If the insurance is written subject to a deductible clause, Contractor assumes responsibility for the amount of the deductible. In addition, the Contractor shall be required to furnish to the Risk Manager of the Sewerage and Water Board of New Orleans all copies of investigative reports with regard to any and all claims with the Contractor and his insurance carriers, relative to the contract, with the exception of claims filed with his Workers' Compensation Insurance. Such reports shall include dates, location and description of loss as well as amounts of settlements or judgments in order that annual aggregate limits maybe monitored by the Sewerage and Water Board of New Orleans for the Contactor's compliance with these Specifications.

The furnishing of insurance as provided above shall not relieve the Contractor of his responsibility for losses not covered by insurance. All policies shall be with insurance companies authorized to do business in Louisiana and shall remain in full force and effect until the final completion of the work and acceptance thereof by the authority of the Board.

5.04.C.1 Subrogation

The Contractor, Subcontractor(s), and their insurers shall agree to waive all the rights of subrogation against the Board, the City, and their officers, officials, employees, boards and commissions, and volunteers for losses arising from work performed by the Contractor for the Board and the City.

5.04.C.2. Insurance Cancellations and Stop-Work

Each insurance policy required by this contract shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the Risk Manager, 625 St. Joseph St., Rm. 119, New Orleans, LA 70165, of the Sewerage & Water Board of New Orleans, via certified mail.

The Contractor and/or his insurer shall notify the Risk Manager of the Sewerage and Water Board of New Orleans at least thirty (30) days in advance of any insurance coverage to be canceled or of any insurance

coverage that will expire. The Contractor shall simultaneously furnish the Board evidence of new coverage to be effective the same day and hour of the expired or canceled coverage.

In the event the Contractor and/or his insurer fails to submit this evidence of new coverage five (5) days prior to the cancellation date or expiration date of any policy or policies, the Sewerage and Water Board will have the right to obtain the required coverage to become effective on the date of cancellation or expiration of said policies. The cost of such new policies shall be at the expense of the Contractor and any expenditure incurred by the Board for this coverage will be deducted from any balance due to the Contractor.

Should the Board be unable to secure new coverage to take the place of the expired or cancelled policy or policies, a “stop work” order will issued and all work on the contract shall cease on the same date and hour as the coverage ceases. Should the Contractor fail or refuse to secure coverage within five (5) days after the date of the “stop work” order, the Contractor shall be declared to be in default, and the contract between the parties shall be considered cancelled and of no force or effect between the parties reserving all the rights of the Board against the Contractor and his surety.

5.04.C.3. Insurance Policies, Endorsements, and Limits Required

The following are the types of insurance policies and the minimum limits of insurance coverage which shall be maintained by the Contractor during the entire term of the Contract:

5.04.C.3.a. WORKERS’ COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

WORKERS’ COMPENSATION AND EMPLOYERS LIABILITY INSURANCE, as will protect Contractor from claims under Louisiana Workers’ Compensation Laws. The Workers’ Compensation section of the policy shall afford Statutory Limits and be in accordance with all Louisiana Workers’ Compensation Statutes. The Employers Liability limit shall not be less than \$3,000,000 each accident for bodily injury by accident and \$3,000,000 each employee/policy limit for bodily injury by disease. Whenever any Federal Longshoreman’s and Harbor Workers’ Act, and shall also include protection for injuries and/or death to Master and Members of the crews of vessels with statutory limits in accordance with the Jones Act.

5.04.C.3.b. COMMERCIAL GENERAL LIABILITY INSURANCE

COMMERCIAL GENERAL LIABILITY INSURANCE, with a limit of not less than \$2,000,000 each occurrence and not less than \$4,000,000 general annual aggregate, including Explosion, Collapse, and Underground Property Damage Hazards. The Products-Completed Operations aggregate limit shall not be less than \$2,000,000 each occurrence. The general aggregate limit shall apply separately to this project.

5.04.C.3.c. BUSINESS AUTOMOBILE LIABILITY INSURANCE

BUSINESS AUTOMOBILE LIABILITY INSURANCE, which shall cover liability arising out of accidents involving any auto (including Owned, Hired, and Non-Owned autos). The limit of liability shall not be less than \$1,000,000 each accident for all injuries, property damage, and/or death resulting from any one occurrence.

5.04.C.3.d. OWNER'S AND CONTRACTOR'S PROTECTIVE LIABILITY INSURANCE

OWNER'S AND CONTRACTOR'S PROTECTIVE LIABILITY INSURANCE, as will protect the Contractor, the Sewerage and Water Board of New Orleans, and the City of New Orleans from and against any and all claims and lawsuits involving vicarious liability. The limits of liability shall be the same as specified in Paragraph (b) above, and shall include Explosion, Collapse and Underground Hazards.

5.04.C.3.e. PROFESSIONAL LIABILITY INSURANCE

PROFESSIONAL LIABILITY INSURANCE, as may be applicable to the particular profession or service to be provided, with a limit of not less than \$2,000,000 each Claim, with at least a \$4,000,000 annual aggregate, **without any restrictive "negligent act, negligent error, or negligent omission"** clause, and sufficient to protect the Contractor, the Board, and the City, for a five (5) year period from completion of this contract, against any and all claims which may arise from the Contractor's negligent performance of work described herein.

5.04.C.3.f. PROPERTY INSURANCE

PROPERTY INSURANCE, required on all work except sewer and water drainage pipelines, reinforced concrete canals, work completely underground, and similar work (however Contractor is not relieved of responsibility therefore) as follows:

5.04.C.3.f(1).

ALL RISKS BUILDERS RISK INSURANCE (covering Fire, Extended Coverage, Vandalism and Malicious Mischief) will be carried on a completed value or reporting form, for not less than 100 percent of the value of the work, including foundations.

Coverage will include all machinery and equipment to be installed, whether furnished by the Sewerage & Water Board or by Contractor, for not less than 100 percent of the installed value of the machinery and equipment. This insurance shall be written in the same Insurance Company carrying the Builder's Risk Insurance, shall include testing and startup, shall for partial utilization of the Work by Owner, and shall terminate only when installation has been accepted by the Sewerage and Water Board.

The All Risks Builder's Risk Policy shall include the names of the Sewerage & Water Board of New Orleans, and City of New Orleans, and will cover the interests of all sub-contractors without specifically naming them.

5.04.C.3.g. WORKERS' COMPENSATION AND UNEMPLOYMENT COVERAGE, ADDITIONAL CONDITIONS

5.04.C.3.g(1)

WORKERS' COMPENSATION: The Contractor expressly agrees and acknowledges that it is an "independent contractor" as defined in LSA-R.S.23:1021(6), and that its employees shall not be considered employees of the Board for workers' compensation benefits or coverage.

5.04.C.3.g(2)

EXCLUSIVE OF UNEMPLOYMENT COMPENSATION COVERAGE: Contractor herein expressly agrees and acknowledges that it is an "independent contractor" as defined in LSA-R.S.23:1472(E0), that neither the contractor nor any one employed by the Contractor shall be considered an employee of the Board for the purpose of employment of compensation coverage.

SC-5.06. Delete Paragraph 5.06.A in its entirety.

SC-5.06. Delete Paragraph 5.06.B in its entirety.

SC-5.06. Delete Paragraph 5.06 E in its entirety.

SC-5.07. Delete third sentence of Paragraph 5.07.A in its entirety and insert the following in its place:

Contractor and Contractor's insurers waive all rights against Owner 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.

SC-5.07. Delete the last sentence of Paragraph 5.07.A in its entirety and insert the following in its place:

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 Contractor as trustee or otherwise payable under any policy so issued.

SC-5.07. Delete Paragraph 5.07.B in its entirety.

SC-5.07. Delete Paragraph 5.07.C in its entirety.

SC-5.08. Delete Paragraph 5.08.A in its entirety.

SC-5.08. Delete Paragraph 5.08.B in its entirety.

SC-6.01. Delete Paragraph 6.01 in its entirety and replace with the following:

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. The

resident superintendent shall be a full-time employee of the Contractor. The Owner may, at its sole discretion, require replacement of the superintendent, in which case Contractor shall submit an acceptable replacement at no increase in Contract Price nor extension in Contract Times. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor.

C. Contractor shall ensure that all employees performing or furnishing any of the Work will be prohibited from using firearms, engaging in hunting, fishing, trapping, using illegal drugs or using alcohol either on the work site, on Owner property, or on any land adjoining the work site.

D. Contractor shall ensure that all employees performing or furnishing any of the Work will be prohibited from trespassing on any land adjoining the work site

SC-6.02. Delete Paragraph 6.02.A in its entirety and replace with the following:

6.02.A Contractor shall provide competent, qualified personnel to perform construction as required by the Contract Documents. Contractor shall employ a Professional Land Surveyor with current Louisiana registration to survey and lay out the work (in accordance with any additional provisions included in the General Requirements). Contractor is fully responsible to provide a sufficient number of skilled workers and supervisory personnel to perform the Work and ensure that the Work is completed within the Contract Time. Failure to fully man the Project with supervisory personnel and skilled workers shall be cause for termination of Contractor.

SC-6.02. Add the following new paragraph immediately after Paragraph 6.02.B:

6.02.C. Contractor shall reimburse Owner for Engineer's additional extraordinary costs for onsite personnel overtime work resulting from Contractor's overtime operations. Reimbursement shall be on the cost basis defined in Paragraph 14.02.D.4 of these Supplementary Conditions.

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

6.03.D. Manufacturers' or Suppliers' warranties for all materials products and equipment to be furnished by Contractor and to be incorporated into the completed Work shall be furnished to the Owner through Contractor. Contractor shall obtain from Suppliers of all materials, products and equipment, complete information as to any special condition or restriction to be applied in the use of these items. Should the manner or method of installation, specified performance or test results as set forth in the Specifications be contrary to the Manufacturer's recommendations for use of the product, Contractor shall notify the Engineer in writing of such conflict as soon as reasonably possible, but no later than the time of Shop Drawing submittal including those products. Failure to provide such written notice before

proceeding with the Work affected thereby shall be certification by Contractor that the specification requirements will be met by the materials, products and equipment, and that the cost and time required to perform the Work affected thereby have been included in the Contract Price and in the schedule for the performance of the Work within the Contract Time.

6.03.E. Domestic Manufacture:

6.03.E.1. All equipment to be furnished and components of all items specified herein, except bearings, shall be of domestic produce, manufacture and assembly, i.e., manufactured and assembled within the limits of the United States. Parts must be available from suppliers that manufacture components in the USA. The Board reserves the right to waive this requirement if, in the opinion of the Engineer, it appears to be in the best interests of the Board.

6.03.E.2. Sewerage and Water Board staff will determine the ability of the lowest bidder to design and build the equipment and machinery specified hereon. Along with other factors to be considered by Sewerage and Water Board staff will be the manufacturer's facilities, listings of similar equipment and installations, equipment reliability and longevity. Should the lowest bidder be found "non-responsive", then an informal hearing will be held to provide the lowest bidder the opportunity to refute the reasons for disqualification.

SC-6.04. Add the following language at the end of Paragraph 6.04.A.1:

Contractor further hereby acknowledges that the Contract Times for performance is reasonable and that all costs for schedule compliance are included in the Contract Price.

SC-6.04. Add the following language at the end of Paragraph 6.04.A.2

The Contractor shall not alter the schedule for proposed substitutions, delays, or claims in anticipation of a Change Order, but rather will provide a proposed schedule revision with the Change Order, if requested by the Engineer, which will become effective with approval of the change.

SC-6.05. Add the following language at the end of Paragraph 6.05.E:

Reimbursement rates for Engineer or their officers, directors, members, partners, employees, agents, and other consultants and subcontractors for evaluation of proposed substitutes shall be on the basis established in Paragraph 14.02.D.4 of these Supplementary Conditions.

SC-6.06. Add the following new paragraph immediately after Paragraph 6.06.G:

6.06.H. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor or Supplier.

SC-6.08. Add the following language:

6.08 Permits:

A. Before commencing work, the Contractor shall obtain, at his own expense, any required permits from the City of New Orleans. The Contractor shall also secure, at his own expense, any necessary inspection certificates required after the work is completed.

B. Evidence of compliance shall be furnished to the Board prior to starting work, in the case of permits, or within 10 calendar days after completion of that work requiring inspection certificates.

SC-6.11. Add the following language to the end of Paragraph 6.11.A.1:

Contractor shall not enter upon nor use property not under Owner control until appropriate easements have been executed and a copy is on file at the Site.

SC-6.13. Add the following new paragraphs immediately after 6.13.C:

6.13.C.1. The Owner's Safety Orientation Notice is applicable to the Work and is appended to these Supplementary Conditions.

6.13.C.2. The Owner's Drug-Free Workplace Policy is applicable to the Work and is appended to these Supplementary Conditions.

6.13.C.3. Owner's Safety Clearance Procedure

Definitions:

Operator: The Board employee who is onsite and in responsible charge of the operation of the plant, station, or other facility.

Out of Service: The electrical/mechanical disconnection of equipment which is to remain inoperable.

Power Dispatcher: The shift employee on duty at Central Control at the time safety clearance occurs.

Signee: The person who actually tags-out equipment for safety clearance.

Supervisor/Foreman: The Board employee who is the supervisor/foreman in responsible charge of the repair/maintenance of one or more work locations which requires safety clearance. This person may not necessarily be "onsite" at any particular location.

Tag-out: The physical tagging of equipment by an operator for the purpose of disabling equipment.

Lock-out: The physical locking of equipment by an operator for the purpose of disabling equipment.

General Provisions

1) All equipment repair/maintenance work which is scheduled and requires safety clearance should be presented to Central Control at the beginning of each work day by the supervisor/foreman/electrical engineer in charge of the repair/maintenance. Twenty four (24) hour advance notice of scheduled work for major outages is desirable; however, it is understood that due to the nature of the services provided by the Board this preferred notice may not be possible for every safety clearance.

2) In cases where two or more crafts are working on, or require safety clearance on the same equipment, the supervisor/foreman/electrical engineer for each craft must follow the appropriate safety clearance procedure and the equipment must be tagged out for each craft's signee. No equipment can be tested and/or restored to service until all tags have been removed in accordance with the tag removal procedure.

3) When an operator requests service for equipment at an unmanned facility, i.e. an unmanned sewer station or unmanned underpass station, from either Electrical Maintenance or Mechanical Maintenance, the appropriate maintenance department shall request the responsible operator to tag-out the equipment. When the appropriate maintenance department, in the course of servicing this equipment, requires restoration of power, the appropriate maintenance department shall contact the responsible operator directly (if operator is present) or by radio or telephone (if operator is absent) and request that the responsible operator grant his permission. If the power is to be restored for only a short duration, the appropriate maintenance department shall thereafter contact the operator for permission to either remove power or restore power, as often as needed. The operator shall log each request. If the request to restore power is for a short duration only, and the operator does not received contact from the appropriate maintenance personnel to remove power again, the operator shall make every attempt to contact the appropriate maintenance personnel in order to ensure that no accident has occurred.

4) If equipment must remain "Out of Service" upon completion of the onsite work, the signee must request their tag be replaced with an "Out of Service" tag in the name of their department: e.g. "Out of Service - Electrical Maintenance", in addition it must be physically locked-out by that department. However the "Out of Service" tag does not relinquish the responsibility of following the safety clearance procedure each day that piece of equipment is worked on.

5) Any equipment restored to service after being tagged "Out of Service" must be tested through operational test procedures. The signee must remain, when possible, on-site until testing is complete.

6) Any individual involved in these procedures may halt the procedure at any time if it is felt the safety of the personnel and/or equipment warrants said stoppage, or if conditions within the system change that may require postponement of the work.

7) In the event the responsible person, signee, leaves the job site without releasing the cleared equipment and is unreachable to release their tag-out the following procedure must be enacted before the signees name, tag-out, can be removed from the cleared equipment.

a) Cause must be established by the senior power dispatcher giving reason to remove the tag-out.

b) Senior power dispatcher must receive orders from the Chief of Operations or higher, in his absence, to remove said tag-out.

c) Concurrence given by a senior representative of the following:

- Department or company to which the signee works for.
- Senior representative of the plant, station, facility in which the tag-out occurs.
- If jobsite is in the field then, inspection by Electrical Engineering assuring work has halted for the day.

d) Once all areas have been satisfied then the senior power dispatcher may have the signees tag-out removed.

NOTE: The above and following procedures may be deviated from above at the discretion of the power dispatcher in cases of emergency.

SC-6.11. Add the following language to the end of Paragraph 6.11.D:

6.11.D. *Water and Other Utilities.* It is the responsibility of the Contractor to make all necessary arrangements for the provision of water, electricity, drainage, sanitary sewage disposal, gas, compressed air, and any other utility service required to prosecute the work of this contract. Water used by the Contractor at the job site will be furnished by the Board at no cost to the Contract, if conditions permit. Costs of all other services shall be borne by the Contractor.

6.11.E. *Hydrant Connections.* Connections to fire hydrants shall only be made with meters obtained from the Sewerage and Water Board Customer Service Department, 504-585-2097, which shall record water usage for record purposes and which shall be returned to the Board as a condition of acceptance of the Contract. Application for the meter requires a \$1,500.00 deposit that is refundable upon return of the meter in undamaged and operable condition. The hydrant meter application and instructions are available on the Sewerage and Water Board website: https://www.swbno.org/custserv_information_docs.asp.

SC-6.17. Add the following new paragraphs immediately after Paragraph 6.17.E.1:

6.17.E.2. Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than the number of submittals specified in Paragraph 14.02.D.4 of these Supplementary

Conditions. Engineer will record time for reviewing subsequent submittals of Shop Drawings, Samples, or other items requiring approval and Contractor shall reimburse Owner for Engineer's charges for such time in accordance with Paragraph 14.02.D.4 of these Supplementary Conditions.

6.17.E.3. In the event Contractor requests a substitution for a previously approved item, Contractor shall reimburse Owner for Engineer's charges for such time, unless the need for such substitution is beyond the control of Contractor.

SC-7.02. Delete Paragraphs 7.02.A and 7.02.B in their entirety and insert the following in their place:

7.02.A. Owner intends to contract with others for the performance of other work on the Project at the Site. The authority and responsibility of the Construction Coordinator for the various prime contractors, utility owners, and Owner (if present at the Site) shall be as follows:

7.02.A.1 Owner's Representative: Shall have authority and responsibility for coordination of the various contractors at the Site. Owner's Representative shall be named by the Owner if necessary.

7.02.A.2. Specific matters to be covered by such authority and responsibility: Prioritization of work activity should conflicts occur in work areas between contractors or between contractor and Owner's operations; approval of requests to curtail, interrupt, or otherwise disrupt Owner operation to allow Contractor work to be scheduled and/or occur; cancellation of scheduled Contractor activity in the event Owner requirements supersede prior plans; other issues that require approval or prioritization relative to interference with Owner operations or conflicts with other.

7.02.A.3. Extent of such authority and responsibility: Owner's Representative decision and direction to Contractor shall be final. Planning and discussions to coordinate options relative to operational disruptions requested by Contractor will be scheduled by Owner's Representative. Owner's Representative will review and respond to requests by the Contractor for outage, interconnection, operational disruption, contract activity prioritization, or the like, within 10 business days.

7.02.A.4. Limitations of such authority and responsibility: Owner's Representative may not modify the Contract or its terms and conditions.

7.02.B. Unless expressly assigned to the Construction Coordinator, all other authority and responsibility will remain vested with each prime contractor, utility owner, or Owner (if present at the Site).

SC-7.04. Add the following new paragraph immediately after Paragraph 7.03:

SC-7.04. *Claims Between Contractors*

7.04.A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the Construction Coordinator, if applicable, Contractor shall (without involving Owner, Engineer, or Construction Coordinator) either i) remedy the damage; ii) agree to compensate the other contractor for remedy of the damages; or iii) remedy the damages and attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law.

7.04.B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, the Construction Coordinator (if applicable) and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all Claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against Owner, Engineer, their officers, directors, members, partners, employees, agents, and other consultants and subcontractors, or the Construction Coordinator (if applicable) to the extent said Claim is based on or arises out of Contractor's performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, or the Construction Coordinator (if applicable) or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, or the Construction Coordinator (if applicable) on account of any such damage or Claim.

7.04.C. If Contractor is delayed at any time in performing or furnishing the Work by any act or neglect of another contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, and Construction Coordinator (if applicable) for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or Construction Coordinator (if applicable) for activities that are their respective responsibilities.

SC-8.02. Delete Paragraph 8.02.A in its entirety and replace with the following:

8.02.A. In case of termination of the employment of Engineer, Owner shall appoint an Engineer whose status in the Contract Documents shall be that of the former Engineer.

SC-8.06. Delete Paragraph 8.06.A in its entirety.

SC-8.11. Delete Paragraph 8.11.A in its entirety.

SC-9.03. Add the following new paragraphs immediately after Paragraph 9.03.A:

9.03.B. Resident Project Representative (RPR) will be furnished by Owner. The responsibilities, authority, and limitations of the RPR are limited to those of Engineer in accordance with Paragraph 9.09 and as set forth elsewhere in the Contract Documents and are further limited and described below.

9.03.C. Responsibilities and Authority:

9.03.C.1. Schedules: Review and monitor Progress Schedule, Schedule of Submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.

9.03.C.2. Conferences and Meetings: Conduct or attend meetings with Contractor, such as preconstruction conferences, progress meetings, Work conferences and other Project related meetings.

9.03.C.3. Liaison: (i) Serve as Engineer's liaison with Contractor, working principally through Contractor's authorized representative, and assist in understanding the intent of the Contract Documents; (ii) assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's onsite operations; (iii) assist in obtaining from Owner additional details or information when required for proper execution of the Work.

9.03.C.4. Interpretation of Contract Documents: Inform Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

9.03.C.5. Submittals: Receive submittals that are furnished at the Site by Contractor, and notify Engineer of availability for examination. Advise Engineer and Contractor of the commencement of any Work or arrival of materials and equipment at Site, when recognized, requiring a Shop Drawing or Sample if the submittal has not been approved by Engineer.

9.03.C.6. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and provide recommendations to Engineer; transmit to Contractor, in writing decisions as issued by Engineer.

9.03.C.7. Review of Work and Rejection of Defective Work: (i) Conduct onsite observations of the Work in progress to assist Engineer in determining if the Work is, in general, proceeding in accordance with the Contract Documents; (ii) inform Engineer and Contractor whenever RPR believes that any Work is defective; (iii) advise Engineer whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged or does not meet the

requirements of any inspection test, or approval required to be made; and advise Engineer of that part of the Work in progress that RPR believes should be corrected or rejected or uncovered for observation, or requires special testing, inspection, or approval.

9.03.C.8. Inspections, Tests, and System Startups: (i) Verify tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; (ii) observe, record, and report to Engineer appropriate details relative to the test procedures and system startups; and (iii) accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

9.03.C.9. Records: (i) Maintain records for use in preparing Project documentation; (ii) keep a diary or log book recording pertinent Site conditions, activities, decisions and events; (iii) record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of Contractors, Subcontractors, and major Suppliers of materials and equipment.

9.03.C.10. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

9.03.C.12. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify materials and equipment certificates and operation and maintenance manuals and other data required by Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents been delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

9.03.C.13. Completion: (i) Participate in a Substantial Completion inspection; assist in determination of Substantial Completion and the preparation of lists of items to be completed or corrected; (ii) Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied; and (iii) observe whether items on final list have been completed or corrected, and make recommendations to Engineer concerning acceptance.

9.03.D. Limitations of Authority: Resident Project Representative will not:

9.03.D.1. have authority to authorize a deviation from Contract Documents or substitution of materials or equipment, unless authorized by Engineer; or

9.03.D. 2, exceed the limitations of Engineer's authority as set forth in Contract Documents; or

9.03.D.3. undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's authorized representative; or

9.03.D.4. advise on, issue directions relative to, or assume control over an aspect of the means, methods, techniques, sequences, or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents; or

9.03.D.5 advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor; or

9.03.D.6. participate in specialized field or laboratory tests or inspections conducted offsite by others, except as specifically authorized by Engineer; or

9.03.D.7. accept Shop Drawings or Samples from anyone other than Contractor; or

9.03.D.8. authorize Owner to occupy the Project in whole or in part.

SC-9.09. Add the following new paragraph immediately after Paragraph 9.09.E:

9.09.F. Contractors, Subcontractors, Suppliers, and others on the Project, or their sureties, shall maintain no direct action against Engineer, its officers, employees, affiliated corporations, and subcontractors, for any Claim arising out of, in connection with, or resulting from the engineering services performed. Only the Owner will be the beneficiary of any undertaking by Engineer.

SC-10.03. Add the following new paragraphs immediately after Paragraph 10.03.A.3.

10.03.A.4. An executed Change Order shall be in accord and satisfaction concerning all potential claims related to the Change Order work including inefficiencies or acceleration-based claims.

10.03.A.5. There shall be no Contractor delay claim based upon Contractor's inability to perform Change Order work due to delay caused by Owner's approval process.

SC-10.05. Delete Paragraphs 10.05.C through 10.05.E in their entirety and insert the following in their place and renumber Paragraph 10.05.F to read 10.05.D:

10.05.C. Engineer's Action and Executive Negotiation:

10.05.C.1. Engineer's Action:

10.05.C.1.a. Engineer will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. Engineer's written decision

on such Claim, dispute or other matter will be final and binding upon Owner and Contractor, unless within 10 days after issuance of Engineer's written decision, either party appeals the decision by giving the other party and Engineer written notice of request for executive negotiation.

10.05.C.1.b. In the event Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

10.05.C.2. Executive Negotiation:

10.05.C.2.a. Within 10 days of the delivery of notice of appeal to Engineer's written decision regarding Claim, dispute or other matter, senior representatives of at least Owner and Contractor, having authority to settle the dispute, and Engineer shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

10.05.C.2.b. In the event a mutually acceptable decision cannot be reached through executive negotiation within 20 days of the appealing party's notice, or mutually agreeable longer period, or if the party receiving such notice will not meet within 10 days, Owner or Contractor may make a written declaration, delivered to the other party and Engineer, that the executive negotiation is deemed unsuccessful and may initiate further dispute resolution measures in accordance with Article 16.

10.05.C.2.c. If no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to further appeal Engineer's written decision shall be delivered by Owner or Contractor to the other and to Engineer within 30 days after the date upon which the executive negotiation has been declared unsuccessful, or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by Owner and Contractor), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

SC-11.01. Delete Paragraph 11.01.A.5.c in its entirety and insert the following in its place:

11.01.A.5.c. Construction Equipment and Machinery:

11.01.A.5.c(1) Rentals of construction equipment and machinery, and the parts thereof 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. 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.

11.01.A.5.c(2) Costs for equipment and machinery owned by Contractor will be paid at a rate shown for such equipment in the Rental Rate Blue Book published by Equipment Watch. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs. Costs will include the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of such equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work. Equipment or machinery with a value of less than \$1,000 will be considered small tools.

SC-11.01. Add the following language to the end of Paragraph 11.01.A.5.h:

Express and courier services must be approved prior to use.

SC-11.01. Add the following language to the end of Paragraph 11.01.A.5.i:

Any and all notarial fees for the execution of the contract shall be paid by the Contractor. Contractor shall also be responsible for payment of all recordation costs and photocopying.

SC-11.01. Delete paragraph 11.01.B.1 and insert the following in its place:

11.01.B.1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, project managers, assistant project 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.

SC-11.01. Delete Paragraph 11.01.C in its entirety.

SC-11.01. Add the following language after Paragraph 11.01.5:

6. At the Pre-construction conference, the Contractor shall certify to the Engineer the following:

- a. A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the Contract,
- b. Actual cost of fringe benefits specified in Paragraph 11.01.1 of the General Requirements, and,
- c. Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan.

Such certification must be made by an officer or director of the Contractor with authority to bind the Contractor. Timely certification is a condition precedent to any right of the Contractor to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such costs. Any subsequent changes shall be certified to the Engineer as part of the cost proposal or seven calendar days in advance of performing such extra work.

SC-11.02. Delete Paragraph 11.02 in its entirety.

SC-12.01. Add the following language to the end of Paragraph 12.01.C.2.c:

except, the maximum total allowable cost to Owner shall be the Cost of the Work plus a maximum collective aggregate fee for Contractor and tiered Subcontractors of 20 percent;

SC-12.01. Add the following new paragraph immediately after Paragraph 12.01.C:

12.01.D. *Right to Audit:* The Contractor will submit to any SWBNO audit, inspection, and review and, at the SWBNO's request, will make available all documents relating or pertaining to this Contract maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the SWBNO.

Administrative and financial records shall be made and kept by the contractor in accordance with generally accepted accounting principles and practices. Records shall include, but are not limited to, accounting records, daily reports, change order requests, correspondences and subcontract files (hard copies as well as computer readable data, if it can be made available). Records must be retained and made available upon request for a minimum of five (5) years following completion or formal acceptance of the contracted project.

The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide

the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the Contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

SC-12.02. Add the following sentences immediately after Paragraph 12.02.B: “

12.02.C In order to be entitled to an increase in time for performance of the Work, Contractor must establish that its critical path of construction performance has been adversely impacted. Upon such a showing, Contractor shall be entitled only to such an extension equivalent to such actual adverse impact in the critical path.

SC-12.03 – Add the following language at the end of Paragraph 12.03.C:

If Abnormal Weather Conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that (1) weather conditions were abnormal for the period of time, (2) the abnormal weather could not have been reasonably anticipated, and (3) that weather conditions had an adverse effect on the scheduled construction path and could not be reasonably mitigated.

SC-13.03. Add the following language at the end of Paragraph 13.03:

Inspections, tests, or observations by Engineer, Owner, or its agents may be performed at its discretion, to provide information to the Owner on the progress of the Work. However, such information is not intended to fulfill the Contractor’s obligations in accordance with the Contract Documents.

SC-13.03. Delete Paragraph 13.03.B in its entirety and insert the following in its place:

13.03.B. Contractor shall employ an independent testing laboratory or testing agency and shall be responsible for arranging and shall pay for specified tests, inspections, and approvals required for Owner’s and Engineer’s acceptance of the Work at the Site except:

13.03.B.1. costs incurred in connection with tests or inspections pursuant to Paragraph 13.04 shall be paid for as provided in said paragraph; and

13.03.B.2. as otherwise specifically provided in the Contract Documents.

SC-13.03. Add the following language at the end of Paragraph 13.03.D:

Tests required by Contract Documents to be performed by Contractor that require test certificates be submitted to Owner or Engineer for acceptance shall be made by an independent testing laboratory or agency licensed or certified in accordance with Laws and Regulations and applicable state and local statutes. In the event state license or certification is not required, testing laboratories or agencies shall meet the following applicable requirements:

13.03.D.1. Basic requirements of ASTM E329, “Standard Specification for Agencies Engaged in Construction Inspection, Special Inspection, or Testing Materials used in Construction” as applicable.

13.03.D.2. Calibrate testing equipment at reasonable intervals by devices of accuracy, traceable to the National Institute of Standards and Technology or accepted values of natural physical constants.

SC-13.07. Amend the first sentence of 13.07.A to read as follows:

13.07.A If within no less than one year after the date of Final Acceptance by the Sewerage and Water Board of New Orleans (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by 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...

SC-13.07. Delete Paragraph 13.07.C. in its entirety.

SC-14.02. Delete Paragraph 14.02.C.1 in its entirety and insert the following in its place:

14.02.C.1. Forty-Five days after presentation of the Application for Payment to Owner with Owner’s Representative’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.

SC-14.02. Add the following new paragraph(s) immediately after Paragraph 14.02.D.3:

14.02.D.4. Items entitling Owner to retain set-offs from the amount recommended, including but not limited to:

14.02.D.4.a. Owner compensation to Engineer at an estimated average rate of \$21s0 per each extra personnel hour for labor plus expenses, if applicable, because of the following Contractor-caused events:

14.02.D.4.a.(2). return visits to manufacturing facilities to witness factory testing or retesting;

14.02.D.4.a.(3). Submittal review in excess of two reviews by Engineer for substantially the same submittal, in accordance with Paragraphs 6.17.E.2 and 6.17.E.3 of these Supplementary Conditions;

14.02.D.4.a.(4). evaluation of proposed substitutes and making changes to Contract Documents occasioned thereby, in accordance with Paragraph 6.05.E of these Supplementary Conditions;

14.02.D.4.a.(5). Overtime worked by Contractor necessitating Engineer, and their officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each, Resident Project Representative or Resident Project Representative's Site staff, if any, to work extraordinary overtime in accordance with Paragraph 6.02.C. of these Supplementary Conditions.

14.02.D.4.b. Liability for liquidated damages incurred by Contractor as set forth in the Agreement.

SC-14.06. Add the following new paragraph immediately after Paragraph 14.06.A:

14.06.B. In accordance with Louisiana Statute 38:2248, punch lists will include cost estimate for each item of work identified by Engineer based on mobilization, labor, materials, and equipment costs of correcting each punch list item. Completed punch list items will be paid upon expiration of 45-day lien period.

SC-14.07. Delete Paragraph 14.07.C.1 in its entirety and insert the following in its place:

14.07.C.1. Forty-five days after presentation to Owner of the final 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.

The percentage of the value of the work done, as stated in Paragraph 14.02.A.3 of the General Conditions, will be withheld by the Board for a period of not less than forty-five (45) consecutive calendar days after the contract has been accepted by the Board, and such acceptance has been recorded in the Office of the Recorder of Mortgages for the Parish of Orleans. At the end of the forty-five (45) day period, the percentage withheld by the Board, will be paid to the Contractor, less any sums that may be legally deducted under any provisions of this contract, upon the Contractor or furnishing the Board with a certificate from the Recorder of Mortgages for the Parish of Orleans, certifying that the contract is clear of all liens and privileges.

SC-14.10. Add the following new paragraph immediately Paragraph 14.09.2:

SC-14.10 *Maintenance Period*. The maintenance period under this contract, except as otherwise specifically provided for herein, shall be for a period of forty-five (45) consecutive calendar days beginning from the day after the contract has been accepted by the Board, and such acceptance has been recorded in the Office of the Recorder of Mortgages for the Parish of Orleans. During the maintenance period the Contractor will repair, at his own expense, all defects in the work that may arise, to the satisfaction of the Engineer. The Contractor shall restore all surfaces for which he is responsible under the specifications, whether unimproved, partially improved, or paved surfaces (See Section B of the General Specifications), and maintain them in good condition to the satisfaction of the Engineer. If the

Contractor should fail or refuse to repair, at his own expense, any defects in structures or surfaces developing before the expiration of the aforesaid forty-five (45) days or to adjust satisfactorily any claims for damages to public or private property, the Board shall have the right to continue to hold the retainer and to make the necessary repairs and to satisfy the claims for damages, by such means as the Board shall elect, and to reimburse itself for the cost of these repairs and satisfied claims, out of the said retainer. Any surplus of this retainer will then be paid the Contractor, under the conditions above stated, any deficiency shall be made good by the surety.

SC-15.03.A. Delete the first sentence of Paragraph 15.03.A in its entirety and insert the following in its place:

Upon 7 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 or any portion of the Contract.

SC-15.04. Delete Paragraph 15.04 in its entirety.

SC-16.01. Delete Paragraph 16.01 in its entirety and insert the following in its place:

SC-16.01 *Meet to Confer and Negotiate*

16.01.A. Engineer's action under Paragraph 10.05.C shall become final and binding 30 days after receipt of written notice of Engineer's action or decision unless, within that time period, Owner or Contractor gives to the other party written notice of intent to submit the Claim to a process of bilateral negotiations as set forth below.

16.01.B. Within 30 days of the delivery of such notice, Owner and Contractor shall meet and confer regarding the Claim. A good-faith effort to negotiate resolution shall be made by both parties.

16.01.C. If the negotiations contemplated by Paragraph SC-16.01.B are unsuccessful, management representatives of Owner and Contractor at least one tier above the individuals who met under SC-16.01.B shall meet, confer, and negotiate within 30 days of the closure of the unsuccessful negotiations.

16.01.D. If the Claim is not resolved by negotiation, Engineer's action under Paragraph 10.05.C shall become final and binding 30 days after termination of the negotiations unless, within that time period, Owner or Contractor:

16.01.D.1. gives to the other party written notice of intent to submit the Claim to a court of competent jurisdiction; or

16.01.D.2. agrees with the other party to submit the Claim to another dispute resolution process.

16.01.E. Notwithstanding any applicable statute of limitations, a party giving notice under Paragraph SC-16.01.D.1 shall commence an action on the Claim within 1 year of giving such notice. Failure to do so shall result in the Claim being time-barred and Engineer's action or denial shall become final and binding.

SC-17.05. Delete Paragraph 17.05 and insert the following in its place:

17.05. Controlling Law and Jurisdiction

- A. This Contract is to be governed by the laws of the State of Louisiana
- B. Contractor hereby consents and yields to the jurisdiction of the Civil District Court for the Parish of Orleans and does hereby formally waive any pleas of jurisdiction on account of residence elsewhere.

END OF SECTION

ATTACHMENT TO GENERAL SPECIFICATIONS

STATEMENT OF POLICY

It is the policy of the Sewerage and Water Board of New Orleans that all work places associated with its operation, maintenance, improvements, and expansion be kept drug free. In order to insure this, the Sewerage and Water Board has approved the following drug testing policy to be implemented on this contract.

NOTICE

The contractor shall notify all personnel to be employed on this contract that they must submit to drug testing upon the occurrence of any accident, injury, or unsafe and hazardous incident which involves them. Agreement to submit to such drug testing shall be required for the employment of all personnel under this contract.

PENALTIES

Any employee who refuses to agree to testing under this policy or who refuses to be drug tested after the occurrence of any accident, injury or unsafe and hazardous incident which involves them, or who fails to report any such accident, injury or incident within twenty-four (24) hours of its occurrence, shall be deemed incompetent under Paragraph 47 of the General Specifications. Any employee found to have a positive test result after his conformational testing shall be deemed incompetent under Paragraph 47 of the General Specifications. Any employee deemed incompetent under these provisions shall be removed by the contractor from work under this contract and any other current Board contract.

TESTING PROCEDURE

The contractor shall while performing this contract, require any of its employees who are involved in an accident, injury or unsafe and hazardous incident while in the course and scope of their employment, whether vehicular or non-vehicular in nature, to be tested for blood alcohol or drug levels through a laboratory approved by the National Institute for Drug Abuse. Said employee shall provide a testing sample as soon as possible after such accident, injury or incident, but no longer than twenty-four (24) hours from the time of the occurrence. The contractor shall provide copies of the results of the initial testing on the samples involved to the Risk Manager of the Sewerage and Water Board of New Orleans as soon as such results are known. If the initial testing reveals a positive result, the contractor shall forward the remainder of the original testing sample to a second, conformational testing. The Sewerage and Water Board of New Orleans shall consider any result to be positive if it indicates any level which exceeds the levels set forth as follows:

Drug-Free Workplace Policy
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CUT-OFF LEVELS INDICATING POSITIVE TEST RESULTS

The following initial cut-off levels shall be used when screening specimens to determine whether negative or positive:

	<u>Initial Test Level (ng/ml)</u>
Marijuana metabolites	50
Cocaine metabolites	300
Opiate metabolites	300
Phencyclidine (PCP, etc.)	25
Amphetamines	1000
Alcohol	

.05% by weight based on grams of alcohol per 100cc of blood

LSD	150
Barbiturates	300
Benzodiazepines	300

Quantitative GC/MS confirmation procedures at the following cut-off values shall be used for the following drugs:

	<u>Confirmatory Test Level (ng/ml)</u>
Marijuana metabolites*	10
Cocaine metabolites**	150
Opiates (Morphine, Codeine)	150
Phencyclidine (PCP, etc.)	25
Amphetamines (amphetamine, Methamphetamine)	300
LSD	150
Barbiturates	300
Benzodiazepines	300

* Delta-9-Tetrahydrocannabinol - 9-Carboxylic Acid

** Benzoylcegonine

Drug-Free Workplace Policy
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The contractor shall choose the laboratory to be used for drug testing, and shall identify such laboratory to the Risk Manager of the Sewerage and Water Board prior to receiving approval to start work. All laboratories shall be approved by the National Institute for Drug Abuse.

The contractor shall notify the Board's Risk Manager immediately of the results of any conformational testing.

The Contractor's Senior Project Superintendent working in consultation and conjunction with the Board's Risk Manager and the Board's Engineer, shall determine whether an accident, injury or unsafe or hazardous incident occurred. The Safety Department of the Sewerage and Water Board reserves the right to investigate any such matter and make a complete report to the Executive Director of the Sewerage and Water Board whose decision shall be final.

The Sewerage and Water Board shall not be liable for any cause of action of any employee of the contractor brought against the contractor as a result of this policy. The Sewerage and Water Board shall not be liable for the contractor's failure to stipulate adherence to the terms and conditions of this drug testing policy as a condition of employment of any employee on this contract. The Board shall not release the contractor from his responsibilities under the policy unless failure to adhere to the conditions of this policy shall be a direct result of any action taken by the Board.

These requirements shall be acknowledged by signature of the contractor's authorized representative in the space provided in the "Form of Proposal".

Attachment 2 - Safety Orientation Notice

Welcome

We welcome you to the S&WB and request your assistance in maintaining our Safety Standards. For the safety of yourself and everyone working at the S&WB, you are asked to observe the following safety precautions. When this notice has been read thoroughly, a senior representative of your company is required to distribute this information to all employees who will be affected. You may call the Board's Risk Management Department at (504) 585-2382 if you have any questions.

Basic

1. Smoking will be allowed in designated areas only.
2. Horseplay, practical joking and fighting are positively prohibited.
3. The use or possession of illegal drugs or intoxicating beverages is strictly prohibited on all S&WB property.
4. Housekeeping is a must. We will keep our area safe and free from litter and expect you do to the same.
5. Handrails must always be used when going up and down ladders or stairs.
6. When working in confined spaces, the contractor must be in full compliance with Occupational Safety and Health Administration (OSHA) Standard # 29CFR 1910.146 at all times. Atmospheric conditions such as adequate ventilation, the presence of oxygen and the absence of explosive gases must be assured before working in voids, tanks, or other enclosed spaces.
7. Radios must be turned off.
8. S&WB reserves the right to issue a stand down to Contractor's if necessary to address repeated safety issues or concerns or poor housekeeping. Stand downs may range from a few hours up to a full workday.

Emergency

9. The S&WB Emergency Response Plan is a document, which provides specific notification instructions to be followed in case of hazardous material spills. The Board's Environmental Affairs Office phone number is 942-3855 during normal business hours 7:30 a.m. to 4:00 p.m.
10. The Board's 24-hour emergency lines are (504) 529-2837 and 865-0575 (Central Control Dispatcher, Carrollton Plant.)
11. Since Board contracts are performed under various circumstances at various locations, prior to beginning any work, the contractor should consult with the Board employee who is responsible for monitoring the contract in order to establish the most effective procedures for handling emergencies.

Transportation

12. Warning signals and lights shall be used as follows:
13. Rotating beacons shall be used if your vehicle is so equipped.
14. Tail lights / emergency flashers shall be used.
15. Orange reflector type safety cones shall be placed to give other motorists warning.
16. If vehicle is moving, backing, or parking, proper traffic control shall be exercised.

Protective Clothing and Equipment

17. All personnel who are exposed to eye hazards will wear safety glasses. Hard hats will be worn at all times while an employee is in the immediate vicinity of overhead hazards or while operating heavy equipment without a Rollover Protection Device.
18. Protective clothing and equipment such as rubber aprons and gloves, eye and face protection, approved respirators or dust masks will be worn when handling all harmful chemicals.

Reporting

19. Defective equipment, machinery, hazardous conditions, or unsafe work practices or conditions shall be reported immediately to your Supervisor / Foreman who will then contact proper S&WB personnel for corrections.
20. All injuries will be reported to the Risk Manager, (504) 585-2422, or to the Safety Unit, (504) 585-2522, regardless of how minor an injury may seem.
21. S&WB employees may hold safety meetings to discuss and promote safe working conditions and accident prevention. You may be asked to attend.
22. In case of incident, Contractors shall follow S&WB Incident Reporting Protocols provided in Attachment 2A.

Work Smart

23. Stay alert at all times, know what is going on around you. Know the safe operating procedures concerned with your assigned duties. When your duties may influence the safety of Board employees, notify the employees and their supervisors first.
24. Vendor / Contractors shall at all times demonstrate strict compliance with all Federal, State and Local regulations regarding safety, including but not limited to, all relevant Department of Environmental Quality (DEQ), Department of Transportation (DOT), Environmental Protection Agency (EPA), and Occupational Safety and Health Act (OSHA) regulations.
25. The Vendor / Contractor will at the request of the Risk Manager and/ or Safety Manager

remove any of his employees found to be creating or contributing to unsafe conditions.

26. The following items are not allowed on any S&WB Facility or jobsite:

- Firearms and Ammunition
- Alcohol and illegal drugs

Attachment 2A - SWBNO Incident Response and Reporting Protocols

This document constitutes SWBNO Incident Reporting Protocols as referenced in *Attachment 2 - Safety Orientation Notice* of the Supplementary Conditions. In case of an incident, these protocols shall be followed in addition to those that are part of the Contractor's Safety Program and of which SWBNO has been informed.

SWBNO incident response and reporting protocols may be categorized into three phases: **Phase 1 - Stop Work and Make Safe, Phase 2 - Stand Down, and Phase 3 - Investigation and Reporting**. A flowchart of these protocols is provided in Exhibit 1. Contacts shown thereon shall be identified in coordination with SWBNO and the Owner's Construction Manager (CM) for inclusion in the *Contractor's Safety Plan*. A blank contact list, to be prepared and submitted in Contractor's Safety Plan, is provided in Exhibit 2. An Initial Incident Report template is provided as Exhibit 3.

Phase 1 - Stop Work and Make Safe (Immediate Response)

- Ensure personnel are removed from danger, safe, and accounted for.
- **STOP WORK** and take actions to **MAKE SAFE**.
- In case of injury, immediately call Central Control and they will dispatch 911. Proceed with treatment of injuries that do not require emergency services.
- Provide immediate notifications to the Owner's Construction Manager (CM) and affected SWBNO personnel. See contact list.
- Once the situation is made safe and there is not an imminent threat to personnel, property, or environment, **STAND DOWN**.
- Do not continue work until an initial incident investigation has been conducted by the Owner's CM and SWBNO personnel.
- Conduct Drug Testing as required by SWBNO Policy.
- Conduct additional activities as may be documented in Contractor's Safety Program.

Phase 2 Stand Down (As Soon as Practical)

- Contractor and Owner's CM to immediately begin incident investigation and reporting. Log and record incident in Contract Document Management System (DMS).
- Owner's CM to provide verbal notification to the SWBNO PM who makes immediate notifications throughout SWBNO.
- Any damaged plant equipment shall remain at the site until SWBNO has had the opportunity to view and approves transport offsite.
- Owner's CM to prepare an email summarizing the incident with distribution to the SWBNO PM and the SWBNO Leadership Team no later than the end of the day on which the incident occurred. Include details and photos as appropriate.
- ONLY proceed with Work once the Stand Down has been completed and a collective all clear is provided by Contractor / Subcontractors, the Owner's CM, and SWBNO personnel.

Phase 3 - Investigation and Reporting

- **Within 24 Hours** – Contractor shall prepare *Initial Incident Report* including preliminary damage assessment and submit by email with upload to DMS. Contractor shall utilize form provided as Exhibit 3 or alternate form approved by the SWBNO. Contractor and Construction Inspector shall log and record safety incidents daily. Owner's CM to review and distribute to the SWBNO PM and the SWBNO Leadership Team.
- **Within 7 Calendar Days** – Contractor shall prepare *Final Incident, Damage Assessment, and Remedial Actions Report* and submit via email with upload to DMS. Documentation is to be discussed in a roundtable meeting to include Contractor (Subs as appropriate), Owner's CM, and individuals designated by SWBNO. Lessons Learned disseminated shall be disseminated by the Owner's CM to all within one week of incident. Serious incidents may require longer investigation.

Exhibit 1 – Incident Response and Reporting Flowchart

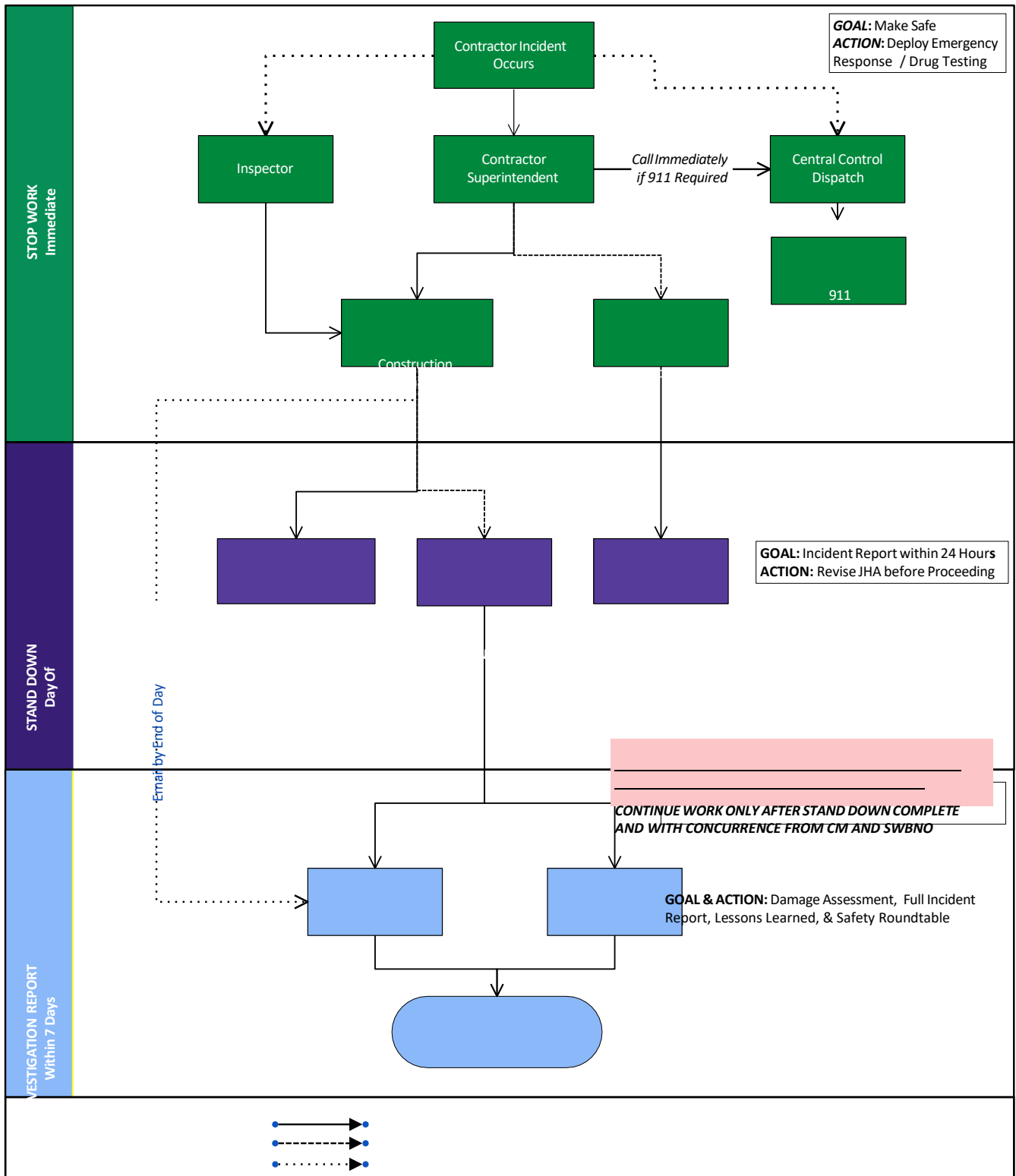


Exhibit 2 – Contact List for Incident Reporting (to be populated and made part of Contractor’s Safety Program)

Entity	Primary Contact	Secondary Contact	Individual with Primary Responsibility for Immediate Contact
Contractor Superintendent			Operator, workers
Central Control (if required)			Contractor Superintendent
Contractor Project Manager			Contractor Superintendent
Owner’s Construction Manager			Contractor Superintendent
Construction Inspector			Operator, worker and/or Construction Superintendents
SWBNO Operations			Owner’s Construction Manager and/or Superintendent
SWBNO Project Manager			Owner’s Construction Manager
SWBNO Leadership Team			Owner’s Construction Manager
SWBNO Risk Management			SWBNO PM
Other _____			_____

Exhibit 3 – Initial Incident Reporting Template

Initial Incident Notification Template

Incident Title			
Incident Date		Incident Time	<input type="checkbox"/> am <input type="checkbox"/> pm
Contract Number		Contract Name	
Prime Contractor		Superintendent	
Subcontractor		Subcontractor Contact	

Incident Details *(A comprehensive incident report with additional details should be submitted within 7 days)*

Incident Impacts *(Check all that apply)*

Injury Near Miss Property Damage Equipment Damage Environmental

Where did the incident occur?

Was anyone injured? YES NO

(If YES, provide name of employee, description of injury, medical attention provided and by whom, and whether 911 was dispatched)

Was any Board equipment or infrastructure damaged? YES NO *(If YES, provide details below including what was damaged, the extent of damage, assessment of impact to ongoing operations, and estimated repair requirements.)*

Describe any other impacts or damages that occurred as a result of the incident. (e.g., environmental, 3rd party)

List all personnel and associated role involved with incident. (Attach witness statements from each individual involved)

Incident Description

What work was being performed at the time of the incident?

Describe what happened in sequence? (Attach additional pages as necessary.)

Based on preliminary assessment, what was the cause of the incident?

Photos / Diagrams of Incident (Attach additional pages as necessary.)

--	--

Witness Statements

--

Stop Work and Standby Down Actions

What immediate actions were taken? (e.g, emergency response or notifications, securing scene, making the area safe etc.)

--

Who was contacted to inform that the incident occurred?

--

Describe how work proceeded following the incident? Was a "Stand Down" conducted? Were any modifications to the JHA or perm its required?

--

Describe further investigations that are in progress and timeline for providing (detailed incident reports, damage assessments, etc.)?

--

Contact Details

Form Prepared By		Signature	
Email		Phone	

Additional Information

Empty text area for providing additional information.

ATTACHMENT 3

Sewerage and Water Board of New Orleans Electrical Safety Clearance Procedure

Definitions:

Operator: The Board employee who is on-site and in responsible charge of the operation of the plant, station, or other facility.

Out of Service: The electrical/mechanical disconnection of equipment which is to remain inoperable.

Power Dispatcher: The shift employee on duty at Central Control at the time safety clearance occurs.

Signee: The person who actually tags-out equipment for safety clearance.

Supervisor/Foreman: The Board employee who is the supervisor/foreman in responsible charge of the repair/maintenance of one or more work locations which requires safety clearance. This person may not necessarily be "on-site" at any particular location.

Tag-out: The physical tagging of equipment by an operator for the purpose of disabling equipment.

Lock-out: The physical locking of equipment by an operator for the purpose of disabling equipment.

General Provisions

- 1) All equipment repair/maintenance work which is scheduled and requires safety clearance should be presented to Central Control at the beginning of each work day by the supervisor/foreman/electrical engineer in charge of the repair/maintenance. Twenty four (24) hour advance notice of scheduled work for major outages is desirable; however, it is understood that due to the nature of the services provided by the Board this preferred notice may not be possible for every safety clearance.
- 2) In cases where two (2) or more crafts are working on, or require safety clearance on the same equipment, the supervisor/foreman/electrical engineer for each craft must follow the appropriate safety clearance procedure and the equipment must be tagged out for each craft's signee. No equipment can be tested and/or restored to service until all tags have been removed in accordance with the tag removal procedure.

- 3) When an operator requests service for equipment at an unmanned facility, i.e. an unmanned sewer station or unmanned underpass station, from either Electrical Maintenance or Mechanical Maintenance, the appropriate maintenance department shall request the responsible operator to tag-out the equipment. When the appropriate maintenance department, in the course of servicing this equipment, requires restoration of power, the appropriate maintenance department shall contact the responsible operator directly (if operator is present) or by radio or telephone (if operator is absent) and request that the responsible operator grant his permission. If the power is to be restored for only a short duration, the appropriate maintenance department shall thereafter contact the operator for permission to either remove power or restore power, as often as needed. The operator shall log each request. If the request to restore power is for a short duration only, and the operator does not received contact from the appropriate maintenance personnel to remove power again, the operator shall make every attempt to contact the appropriate maintenance personnel in order to ensure that no accident has occurred.
- 4) If equipment must remain "Out of Service" upon completion of the on-site work, the signee must request their tag be replaced with an "Out of Service" tag in the name of their department: e.g. "Out of Service - Electrical Maintenance", in addition it must be physically locked-out by that department. However the "Out of Service" tag does not relinquish the responsibility of following the safety clearance procedure each day that piece of equipment is worked on.
- 5) Any equipment restored to service after being tagged "Out of Service" must be tested through operational test procedures. The signee must remain, when possible, on-site until testing is complete.
- 6) Any individual involved in these procedures may halt the procedure at any time if it is felt the safety of the personnel and/or equipment warrants said stoppage, or if conditions within the system change that may require postponement of the work.
- 7) In the event the responsible person, signee, leaves the job site without releasing the cleared equipment and is unreachable to release their tag-out the following procedure must be enacted before the signees name, tag-out, can be removed from the cleared equipment.
 - 1) Cause must be established by the senior power dispatcher giving reason to remove the tag-out.

- 2) Senior power dispatcher must receive orders from the Chief of Operations or higher, in his absence, to remove said tag-out.
- 3) Concurrence given by a senior representative of the following:
 - a) Department or company to which the signee works for.
 - b) Senior representative of the plant, station, facility in which the tag-out occurs.
 - c) If job site is in the field then, inspection by Electrical Engineering assuring work has halted for the day.

Once all areas have been satisfied then the senior power dispatcher may have the signees tag-out removed.

NOTE: The above and following procedures may be deviated from above at the discretion of the power dispatcher in cases of emergency.

**Safety Clearance Procedure
25 Hertz System
"Non-Sewerage and Water Board Personnel"**

- 1) The Company or responsible person representing that company shall first contact Electrical Engineering in regards to their outage request. Electrical Engineering will dispatch personnel to the job site and identify all equipment within close proximity to the work which should be cleared for safety.

NOTE: After normal working hours clearance request will be routed through Central Control who will notify the proper personnel in Electrical Engineering. It will be the responsibility of Electrical Engineering to identify said feeders.

- 2) Electrical Engineering will then contact the power dispatcher informing them of; the company, the person supervising the work, the work to be performed, and supplies the power dispatcher with a clearance list.
- 3) Electrical Engineering will then direct the company's signee to personally appear at any Board facility involved in the clearance prior to the request. Upon arrival at a Board facility the signee will contact the power dispatcher making their clearance request.
- 4) The power dispatcher reviews their one line schematics for any additional equipment they feel is required for safety.
- 5) If the request involved equipment within a station or facility the power dispatcher then notifies the operator of the work to be performed and supplies the operator with a list of the clearance request.
- 6) The operator makes a visual inspection of the work site and adds to the clearance list any additional equipment which they note as being involved in or in close proximity to the work site. A finalized clearance list is then agreed upon by all parties involved.
- 7) The power dispatcher, with assistance from other operating personnel as required and through normal operating procedures, will disconnect from all power sources all equipment on the finalized list.
- 8) After the completion of step seven (7), with the company's signee at a Board facility, the company's signee will be notified of the disconnection of the equipment by the power dispatcher. The company's signee will request the operator at each location to place a tag-out with the company name/signee's name on each piece of equipment on the clearance list.

- 9) After receiving a tag-out report from the operators, the power dispatcher will then verify the tag-out reports against their finalized clearance list. If satisfactory, the power dispatcher will verify with the company's signee what was tagged-out. The company's signee will then be allowed to begin work.
- 10) At this point prior to the beginning of any actual work it is the responsibility of the person or persons performing the work to check the equipment with a voltage tester. If all voltage testing is satisfactory, "no voltage", work may begin.

NOTE: Due to the nature of some work it may be necessary that voltage be present.

- 11) Upon completion of the on-site work, the company's signee must report to a Board facility, involved in the clearance. At this point the company's signee will request the operator at each location to remove their tag-out with the company name/signee name off each piece of equipment. The operator and power dispatcher may restore the equipment to its connected position and test same following standard operating procedures.
- 12) If the equipment is to remain out of service, the company's signee must request their tag be removed and an appropriate "Out of Service" tag in the name of their company be placed on the equipment. The equipment will also be physically locked-out by the operator at each location, which would prevent the reconnection and testing process.
- 13) When "Out of Service" equipment is to be returned back into service, only an employee of the company which originally placed the "Out of Service" tag may request it be removed, returning said equipment into service.

**Safety Clearance Procedure
60 Hertz System
"Non Sewerage and Water Board Personnel"**

- 1) The company or responsible person representing that company shall first contact Electrical Engineering in regards to their outage request. Electrical Engineering will dispatch personnel to the job site and identify all equipment within close proximity to the work which should be cleared for safety.
- 2) Electrical Engineering will then contact the power dispatcher, if the work to be performed is outside of a station. The operator, if the work to be performed is inside the station. They will inform them of; the company, the person supervising the work, the work to be performed, and supplies the power dispatcher or operator with a clearance list.
- 3) The Electrical Engineering will then direct the company's signee to personally appear at any Board facility involved in the clearance prior to the request. Upon arrival at a Board facility the signee will conduct their business with the operator or power dispatcher based on the procedures listed below.
- 4) The power dispatcher reviews their one line schematics or the operator make a visual inspection of the work site and adds to the clearance list any additional equipment which they note as being involved in or in close proximity to the work site. A finalized clearance list is then agreed upon by all parties involved.
- 5) **If handled through the power dispatcher:**
The power dispatcher, with assistance from other operating personnel as required and through normal operating procedures, will disconnect from all power sources all equipment on the finalized clearance list.

If handled through the operator:

The operator will contact the power dispatcher informing them of the work to be performed along with a clearance list request. The power dispatcher reviews their one line schematics for any additional equipment they feel is required for safety. A finalized clearance list is then agreed upon by all parties involved. The operator will then through normal operating procedures disconnect from all power sources all equipment on the finalized clearance list.

6) After the completion of step five (5), with the company's signee at a Board facility, the company's signee will be notified of the disconnection of equipment by the operator or power dispatcher. The company's signee will then request the operator at each location to place a tag-out with the company's name/signee name on each piece of equipment on the clearance list.

7) If handled through the operator:

The operator will then contact the power dispatcher providing them with a tag-out report for logging purposes.

8) At this point prior to the beginning of any actual work it is the responsibility of the person or persons performing the work to check the equipment with a voltage tester. If all voltage testing is satisfactory, "no voltage", work may begin.

NOTE: Due to the nature of some work it may be necessary that voltage be present.

9) Upon completion of the on-site work, the company's signee must report to a Board facility involved in the clearance. At this point the company's signee will request the operator at each location to remove their tag-out with the company's name/signee name off each piece of equipment. The operator and/or power dispatcher may restore the equipment to its connected position and test same following standard operating procedures.

10) If the equipment is to remain out of service the company's signee must request their tag be removed and an appropriate "Out of Service" tag in the name of their company be placed on the equipment. The equipment will also be physically locked-out by the operator at each location, which would prevent the reconnecting and testing process.

11) When "Out of Service" equipment is to be returned back into service, only an employee of the company which originally placed the "Out of Service" tag may request it be removed, returning said equipment into service.

ATTACHMENT 4 - SEWERAGE and WATER BOARD of NEW ORLEANS

Storm Water Pollution Prevention Plan (SWPPP) And Storm Water Best Management Practices (BMP) Requirements

GENERAL

1. The contractor shall prepare and maintain a Storm Water Pollution Prevention Plan (SWPPP), which describes in specific details the Contractor's program to prevent contamination of the storm water collection system for this project. A suggested SWPPP Templates and Sample Inspection Report, as well as other valuable information can be found at EPA's website http://cfpub.epa.gov/npdes/stormwater/swppp_cfm.
2. Contractor shall implement, maintain, inspect and remove all erosion and sediment controls identified in the SWPPP. The program shall address both common construction activities and extraordinary events.
3. Contractor shall include Water Pollution Control Drawings (WPCD) in the SWPPP to illustrate the locations, applications and deployment of Best Management Practices (BMPs) identified in the SWPPP. The WPCDs shall be included as an attachment to the SWPCP.
4. Best Management Practices (BMPs): A Best Management Practice is a technique, process, activity, or structure used to reduce the pollutant content of a storm water or non-storm water discharge. BMPs may include simple, non-structural methods such as good housekeeping, staff training, and preventive maintenance. Additionally, BMPs may include structural modifications such as the installation of berms, canopies or treatment control
5. The Contractor shall comply with laws, rules, and regulations of the State of Louisiana and agencies of the United States Government prohibiting the pollution of lakes, wetlands, streams, or river waters from the dumping of contaminants, refuse, rubbish or debris.
6. The contractor shall submit six (6) copies of the SWPPP, a minimum of 10 working days prior to beginning construction, to the Engineer. **Construction shall not begin until the SWPPP is approved.** Contractor shall update the SWPPP as necessary during the work to prevent contamination of the storm water collection system.
7. Before start of work, Contractor shall train all employees and subcontractors on the approved SWPPP and related WPCD and provide the Sewerage and Water Board with written documentation of said training.
8. Suggested BMPs can be obtained from Ella Barbe, LA DEQ Small Business Assistance Program, 201 Evans Rd. Bldg. 4, Suite 420 Harahan LA. Phone 504-736-7739, e-mail: ella.barbe@la.gov

CONSTRUCTION

The contractor shall keep a copy of the SWPPP on the job site. The contractor shall provide continuously at the jobsite all the tools, equipment, and materials necessary to implement the SWPPP at all times from project initiation through completion, including any punchlist or warranty work on the project. At a minimum the following requirements shall be met as applicable, to the maximum extent practicable, at construction sites:

1. **Storm Drain System Protection:** At the first order of work, the Contractor shall protect the existing storm drain system from entrance of construction debris and pollutants. Such protection shall include implementing the BMPs as outlined in the SWPPP. Protection shall prohibit the discharge of untreated runoff from temporary or permanent street maintenance/landscape maintenance material and waste storage areas from entering the storm drain system. Sediment that is generated on the project site shall be retained using structural drainage controls. In addition, the protection system shall have a minimum of three features: 1) a particulate filter of geosynthetic material securely fastened in place such that it cannot be bypassed without significant physical damage; 2) a prefilter for the particulate filter; and 3) on-hand materials to close off the inlet or opening in the case of a significant pollution spill. Contractor shall monitor and maintain all storm drain inlet protection devices during rain events to prevent flooding.
2. **Material Management & Storage:** No construction-related materials, wastes, spills or residues shall be discharged from the project site to streets, drainage facilities or adjacent properties by wind or runoff. All materials and/or equipment storage areas where liquid construction materials are placed shall be protected by a physical barrier capable of containing the entire volume of stored liquid materials. During active construction activities, portions of the barrier may be removed for access. However, the barrier materials must be readily accessible for replacement by onsite construction personnel. The barrier must be in place at all times during the absence of Contractor personnel at the storage site. Building materials shall be placed on pallets and covered in event of rain. Do not store materials in the street or gutter area.
3. **Equipment & Vehicle Maintenance:** Non-storm water runoff from equipment and vehicle washing and any other activity shall be contained at the project site and shall not be allowed to discharge from the project site to streets, drainage facilities or adjacent properties by wind or runoff. The Contractor shall inspect vehicles and equipment on each day of use. Leaks shall be repaired off-site if possible. If necessary to repair on site, the runoff must be contained or the problem vehicle or equipment shall be removed from the project site until repaired. If necessary, drip pans shall be placed under the vehicles or equipment while not in use to catch and/or contain drips and leaks.
4. **BMP Inspection:** The contractor shall inspect all pollution control BMPs regularly. The Contractor shall also repair/replace any damaged or clogged element on a daily basis. During periods of precipitation where any runoff occurs, the system shall be checked twice a day, seven days a week, whether or not any work has been performed. The daily checks shall be between 6 a.m. and 9 a.m., and 4 p.m. to 8 p.m. The contractor shall keep a monitoring inspection log of each inspection.
5. **Spill Prevention & Cleanup Plan:** Contractor shall have a spill prevention plan and spill cleanup materials readily available and addressed in the SWPPP. Spills shall be cleaned

up immediately using dry methods if possible. Spill cleanup material shall be properly disposed off site. Contractor shall keep a record of any spills in the inspection log. In addition, at the end of the project, the Contractor must certify that all contaminated materials have been properly disposed in accordance with the SWPPP.

6. **Asphalt & Concrete Activities:** Asphalt and concrete activities shall be scheduled for dry weather. Contractor shall prohibit saw cutting during a storm event of 0.25 inches or greater. Store bags of cement away from gutters and storm drains, sealed and covered, protected from rainfall runoff and wind. Place tarp under cement mixer before operating to catch spills. Never dispose of cement washout or concrete dust onto driveways, streets, gutters or storm drains.
7. **Sidewalk Washing:** The following methods should be utilized to prevent discharge of sidewalk cleaning wastewater into the storm drain system:
 - a. Sweep and pick up all areas to be cleaned before using water.
 - b. Manually scrape gum from sidewalks and other surfaces.
 - c. Must use high pressure and low volume of water with no additives and at an average usage of 0.006 gallons per square foot of surface area to be rinsed.
 - d. Use a wet/dry vacuum to collect wash water for disposal. Large volumes of wash water may require the use of a small sump pump to remove wash water from the job site.
 - e. One or more of the following methods are recommended to prevent pollutants from entering the storm drain system:
 - Sandbags can be used to create a barrier around storm drains. *
 - Rubber mats or plugs can be used to seal drain openings. *
 - Temporary berms or containment pads help keep water on site.*
 - Use berms of sandbags to direct wash water to landscaping. *
 - Use large squeegees to accumulate sheet flow for collection.

* Remember to remove plugs, berms, and sandbags or you may be liable for possible flooding.
 - f. Wash water that may contain hazardous waste such as oil saturated absorbents, water with lead or other heavy metals from oxidized paint, and solvent cleaners requires special treatment and must be disposed of through a hazardous waste facility.
8. **Employee BMP Training:** Contractor shall train employees and subcontractors on BMP implementation, general good housekeeping, and proper spill containment and cleanup. Before start of work, Contractor shall provide the Board with written documentation of training and keep all documentation in the SWPCP.
9. **Inspection:** Contractor shall inspect and repair or replace, as needed, all job site BMPs a minimum of:
 - Biweekly
 - Before, during and after a major rain event.Contractor shall document the inspections in the SWPPP.
10. **Dewatering:** Avoid dewatering discharges where possible by using the water for dust control, infiltration, etc..

**ATTACHMENT 5
WAGE RATES**

The contractor shall abide by the Davis-Bacon Act Wage Decision. The Wage Decisions applicable to SWB Construction may be Heavy Industrial (LA20230008 - 9/01/2023).

Please use the applicable wage rates at <http://www.wdol.gov/dba.aspx>

Section 3 Contract Clause

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that the employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low - and very low-income persons in the project area.

The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference; job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.

The contractor will certify that any vacant employment positions, including training positions, that are filled: 1) after the contractor is selected but before the contract is executed; and 2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.

Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.

SECTION 3 HOUSING AND URBAN DEVELOPMENT REQUIREMENTS

The contractor shall abide by the Housing and Urban Development (HUD) requirements in accordance with 24 CFR § 75. For this contract, bidders are required to submit a Section 3 Plan (Attachment 6) as part of their post-bid documents submission. This document contains information about Section 3 requirements, and serves as the bidder's or respondent's commitment and plan to meet the Section 3 benchmarks. Bidders or respondents that fail to submit a Section 3 Plan may be deemed non-responsive and ineligible for contract award.

This contract shall also require the successful bidder to submit periodic and project end reports using the Section 3 Compliance Report form (Attachment 7) as well as supporting documentation of any qualitative efforts and achievements. Unless otherwise provided, reporting must be carried out quarterly to SWBNO in a manner consistent with the reporting requirements for the applicable HUD program [24 CFR 75.25(c)].

This subsection outlines the requirements and procedures to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u)—colloquially “Section 3”—are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to Low- and Very Low-Income Persons—particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

Section 3 is not an entitlement program; therefore, employment and contracts are not guaranteed. Low- and Very-Low-Income Persons and Section 3 Business Concerns must be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete the contract that they are seeking.

This subsection addresses the requirements outlined in 24 CFR Part 75 (the “New Rule”), and grantees or subrecipients seeking any further guidance, clarification, or context regarding any topics covered in this subsection should refer to that specific regulation. Any contracts or agreements executed, or projects for which assistance or funds were committed, prior to the New Rule Effective Date of November 30, 2020 are still required to adhere to all requirements outlined in 24 CFR Part 135 (the “Old Rule”).

1. Applicability of Section 3

A “**Section 3 Project**” is any project that involves housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of **\$200,000**. (The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes Programs.) The “project” is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing; and applicability is determined at the **project level**.

Additional considerations for public housing financial assistance regarding Section 3 applicability are provided in 24 CFR 75.3. Section 3 requirements do not apply to (1) Materials Supply Contracts [24 CFR 75.3(b)]; or (2) Indian and Tribal Preferences [24 CFR 75.3(c)].

2. Overall Requirements

To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients must ensure that, within the metropolitan area (or nonmetropolitan county/parish) in which the project is located: (1) *employment and training opportunities* arising in connection with Section 3 Projects are provided to Section 3 Workers; and (2) *contracts for work* awarded in connection with Section 3 Projects are provided to business concerns that provide economic opportunities to Section 3 Workers.

To help grantees comply with the Section 3 requirements and achieve Section 3 goals, a sample **Section 3 Plan** is included. This plan is intended to be a tool to guide grantees through all of the Section 3 requirements outlined in this section. While 24 CFR Part 75 does not specifically require grantees to have Section 3 plans or policies in place, HUD views having them as a best practice that will aid recipients in complying with Section 3 requirements and achieving Section 3 goals. To this end, grantees are encouraged to utilize the sample plan as a template; and adapt it to fit the resources within their individual communities and to meet the respective needs of their specific programs and activities. Once their respective plan has been fully developed, it is recommended that grantees formally adopt the resulting Section 3 plan and maintain a signed copy within the project files.

2.1 Requirements for Employment and Training

Where feasible, priority for *opportunities and training* should be given in the following order to:

1. Section 3 Workers residing within the Service Area or Neighborhood of the Project; and Employed by a Section 3 Business Concern; and
2. Participants in YouthBuild programs.

2.2 Requirements for Contracting

Where feasible, priority for *contracting opportunities* should be given in the following order to:

1. Section 3 Business Concerns that provide economic opportunities to Section 3 Workers residing within the Service Area or Neighborhood of the Project; and
2. YouthBuild programs.

3. Labor Hours and Worker Categorizations

One of the principal features that was rolled out as part of the Section 3 New Rule was that tracking and reporting would be now focused upon labor hours rather than new hires. This change was designed to prioritize local employment and promote employee retention. As a result, recipients are expected to track and report upon the total number of **labor hours worked** by: (1) Section 3 Workers; (2) Targeted Section 3 Workers; and (3) All workers overall.

A “**Section 3 Worker**” is an individual that currently fits (or when hired in the past five years fits) at least *one* of the following criteria: (1) Low- or Very Low-Income as established by HUD’s income limits; (2) Employed by a Section 3 Business Concern; or (3) a YouthBuild participant. A “**Targeted Section 3 Worker**” is a Section 3 Worker, who meets any of the three aforementioned criteria and *in addition* also meets one of the two following criteria:

1. Employed by a Section 3 Business Concern
2. Currently fits—or when hired fits—at least one of the following categories:
 - a. Living within the Service Area or the Neighborhood of the Project; or
 - b. A YouthBuild participant

To this end, the above definitions provide for the following Venn Diagram:



4. Section 3 Measurement Ratios and Benchmarks

Recipients and subrecipients must attempt to reach the Section 3 benchmarks and targets as established by 24 CFR Part 75.23(b)(3) and Federal Register Notice 2020-19183:

Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 Project are Section 3 Workers:

$$\frac{\text{Section 3 Worker Labor Hours}}{\text{Total Labor Hours}} \geq 25\%$$

Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 Project are Targeted Section 3 Workers, as defined at §75.21(a):

$$\frac{\text{Target Section 3 Worker Labor Hours}}{\text{Total Labor Hours}} \geq 5\%$$

In the absence of evidence to the contrary, subrecipients of covered funding will be considered in compliance with Section 3 Safe Harbor [24 CFR 75.23] if the established benchmarks regarding the above ratios are met. Subrecipients that fail to meet the minimum numerical goals outlined above must also report upon the specific qualitative efforts that they have employed in pursuit of the numerical goals, which are outlined in subsection 5.2 below.

5. Section 3 Reporting

5.1 Reporting of Labor Hours

Per 24 CFR 75.25(a), for Section 3 Projects, contractors and recipients are required to submit periodic and project end reports using the Section 3 Compliance Report form (Attachment 7) as well as supporting documentation of any qualitative efforts and achievements. Such compliance reporting may include:

- i. The total number of labor hours worked;
- ii. The total number of labor hours worked by Section 3 Workers; and
- iii. The total number of labor hours worked by Targeted Section 3 Workers
- iv. Section 3 worker and Targeted Section 3 worker certification forms
- v. Payroll or time-and attendance based records
- vi. Documentation of qualitative efforts

Eligibility of Labor Hours Reported — Section 3 Workers' and Targeted Section 3 Workers' labor hours may be counted for five years from when their status as a Section

3 Worker or Targeted Section 3 Worker is established, pursuant to subsection 6 below.
[24 CFR 75.25(a)(2)]

Inclusion of Hours Reported — The labor hours reported must include the total number

of labor hours worked on a Section 3 Project, including labor hours worked by any subrecipients, contractors, and subcontractors that the recipient is required, or elects pursuant to any considerations for Professional Services (see below). [24 CFR

75.25(a)(3)]

Basis of Hours Reported — Recipients may report their own labor hours or that of a subrecipient, contractor, or subcontractor based on the employer’s good faith assessment of the labor hours of a full-time or part-time employee informed by the employer’s existing salary or time and attendance based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting. [24 CFR 75.25(a)(5)]

Frequency of Reporting — Unless otherwise provided, reporting must be carried out quarterly to SWBNO in a manner consistent with reporting requirements for the applicable HUD program. [24 CFR 75.25(c)]

Professional Services — Professional Services contracts for non-construction services that require an advanced degree or professional licensing are not required to be reported as a part of total Section 3 labor hours.

However, grantees, subrecipients, contractors, and subcontractors may report labor hours from Section 3 Workers and Targeted Section 3 Workers (the numerators in the outcome ratios in subsection 4) from Professional Services without including Professional Services in the Total Labor Hours worked (the denominator in both of the outcome ratios in subsection 7.4). The effect of this reporting structure is to give the recipient a bonus if they are able to report Section 3 hires in the Professional Services context.

It should also be noted that if a contract covers both Professional Services and other work and the subrecipient/contractor/subcontractor chooses not to report labor hours from Professional Services, the labor hours under the contract that are not from Professional Services must still be reported. [24 CFR 75.25(a)(4)]

5.2 Additional Reporting Requirements / Qualitative Efforts

If the grantee or subrecipient’s reporting indicates that that the Section 3 Benchmarks outlined in section 4 above are not met, the subrecipient must report on the qualitative nature of its activities and those that its contractors and subcontractors pursued. Examples of such qualitative efforts include, but are not limited to, the following:

- Applicant Outreach – Engaging in outreach efforts to generate job applicants who are Targeted Section 3 Workers.
- Training and Apprenticeship – Providing training or apprenticeship opportunities.
- Employment Assistance – Providing Technical Assistance (TA) to help Section 3 Workers compete for jobs—e.g., resume assistance, coaching— or providing or connecting Section 3 Workers with assistance in seeking

employment, including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.

- Job Fairs – Holding one or more job fairs, or sponsoring a job informational meeting in the Service Area / Neighborhood of the Project.
- Work Readiness & Retention – Providing or referring Section 3 Workers to services supporting work readiness and retention—such as work readiness activities, interview clothing, test fees, transportation, and child care.
- Educational Assistance – Providing assistance to apply for or attend community college, a four-year educational institution, or vocational/technical training.
- Financial Literacy – Assisting Section 3 Workers to obtain financial literacy training and/or coaching.
- Business Concern Outreach – Engaging in outreach efforts to identify and secure bids from Section 3 Business Concerns.
- Competition Assistance – Providing Technical Assistance to help Section 3 Business Concerns understand and bid on contracts.
- Contract Sizing – Sizing, splitting, or dividing contracts into smaller jobs to facilitate participation by Section 3 Business Concerns, particularly where economies of scale or efficiency of delivery are not factors. [2 CFR 200.321(b)(3)]
- Bidder Viability Support – Providing bonding assistance, guaranties, or other efforts to support viable bids from Section 3 Business Concerns.
- Business Registries – Promoting use of business registries designed to create opportunities for disadvantaged and small businesses.
- One-Stop Outreach – Providing outreach, engagement, or referrals with the state One-Stop System as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act of 2013.

The above listing is not intended to be all inclusive. Grantees and subrecipients are encouraged to develop and tailor their specific qualitative efforts with the end goal of Section 3 benchmark achievement in mind, as outlined in subsection 7.4 above. Clear, affirmative steps to achieve the established numerical goals must be taken, and documentation to adequately corroborate all efforts and attempts must be retained. **To this end, grantees and subrecipients that are unable to meet the minimum numerical goals outlined in subsection 7.4 above must demonstrate why it was not possible to do so, and retain supporting documentation to sufficiently substantiate this determination.** Such justifications should describe

the efforts that were taken, any barriers, roadblocks, or impediments encountered, and any other relevant information that will enable OCD to make the most accurate, informed compliance determination.

6. Recordkeeping to Support Section 3 Worker Categorizations and Certifications

6.1 Recordkeeping for Workers

Recipients must maintain documentation—or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains documentation—to ensure that workers meet the definition of a Section 3 Worker or a Targeted Section 3 Worker, at the time of hire or the first reporting period, as follows:

- **Section 3 Worker** – For a worker to qualify as a Section 3 Worker, one of the following must be maintained:
 - i. Self-Certification of Income – A worker's self-certification that their income is below the income limit from the prior calendar year;
 - ii. Self-Certification of Program Participation – A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
 - iii. Program Management Certification of Program Participation – Certification from a Public Housing Agency, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
 - iv. Employer Certification of Income – An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or
 - v. Employer Certification of Section 3 Business Concern Employment – An employer's certification that the worker is employed by a Section 3 Business Concern.
- **Targeted Section 3 Worker** – For a worker to qualify as a Targeted Section 3 Worker, one of the following must be maintained:
 - i. Employer Confirmation of Worker Residence – An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;

- ii. Employer Certification of Section 3 Business Concern Employment – An employer's certification that the worker is employed by a Section 3 Business Concern.
- iii. Self-Certification of YouthBuild Participation – A worker's self-certification that the worker is a YouthBuild participant.

Recipients and subrecipients may report on Section 3 Workers and Targeted Section 3 Workers for five years from when their certification as a Section 3 Worker or Targeted Section 3 Worker is established.

Grantees, subrecipients, contractors, and subcontractors have the express right to request any necessary evidence that would help substantiate an individual's claim to Section 3 status or certification. Examples of evidence to satisfy the above documentation requirements include but are not limited to: evidence of receipt of Federal housing assistance; evidence of receipt of other Federal subsidies or participation in Federal assistance programs; Federal tax returns; proof of residence in a neighborhood, zip code, census tract, or other area that has officially been identified by HUD. To help grantees certify Section 3 Workers and Targeted Section 3 workers and provide the appropriate documentation to support the workers' Section 3 status claims.

6.2 Recordkeeping for Business Concerns

A Section 3 Business Concern is defined as a business concern that meets at least one of the following criteria, documented within the last six-month period:

- i. It is at least 51% owned and controlled by Low- or Very-Low-Income Persons;
- ii. Over 75% of the labor hours performed for the business over the prior three-month period are performed by Section 3 Workers; or
- iii. It is a business at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-Assisted housing.

Grantees, subrecipients, contractors, and subcontractors have the express right to request any necessary evidence that would help substantiate a business concern's claim to Section 3 status or certification. Examples of evidence to satisfy the above documentation requirements may include: Federal tax returns for workers, owners, or businesses; payroll data; employee statements of self-certification; articles of business organization, ownership, or incorporation; partnership or operating agreements; evidence that owners or employees received housing or other Federal subsidies.

To help grantees certify and track Section 3 Business Concerns seeking a preference in contracting. Additionally, businesses that believe they meet the Section 3 Business Concern requirements can self-register in the HUD Business Registry at

the following website:

<http://www.hud.gov/Sec3Biz>

Section 3 standards are both race and gender neutral. A WBE and/or MBE must provide evidence that it meets at least one criterion of a Section 3 Business Concern as outlined above in order to receive preference under Section 3. More information regarding WBE or MBE programs can be found through HUD's Office of Small and Disadvantaged Business Utilization (OSDBU) at the following website: https://www.hud.gov/program_offices/sdb

The documentation outlined in this subsection must be maintained for the time period required for records retention in accordance with applicable program regulations and 24 CFR 200. For further guidance regarding Section 3 Recordkeeping—including additional considerations specific to Public Housing Agencies—see 24 CFR 75.31.

7. Contracting Requirements

7.1 Contract Provisions

Per 24 CFR 75.27, grantees and subrecipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 Project. Additionally, recipients of Section 3 funding must also require subrecipients, contractors, and subcontractors to meet the overall requirements as outlined in subsection 2 above—regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

7.2 Contracting and Subcontracting Strategies

The following examples are provided to help grantees and subrecipients ensure that the contracting objectives of Section 3 are met, and that the established Section 3 Benchmarks are ultimately achieved. These methods and strategies can be undertaken to assist in reaching Section 3 Workers and Section 3 Business Concerns for contracting opportunities; and when utilized effectively, can supplement some of the qualitative efforts outlined in subsection 5.2 above. This list should not be considered all inclusive. For additional information regarding contracting, see Section 6 – Procurement Methods and Contractual Requirements.

1. Small Purchase Procurement — The use of small purchase procedures (contract may not exceed the Simplified Acquisition Threshold) such as soliciting quotations from a minimum of 3 qualified sources. At the time of solicitation, inform the parties of the Section 3 Covered Contract to be awarded with sufficient specificity; the time within which quotations must be submitted; and the information that must be submitted. A valid attempt to obtain at least 3 quotes from qualified sources must be made and documented.

2. Section 3 Compliance History — In determining the responsibility of potential contractors, consider their past records of Section 3 compliance and their current plans for the pending contract.
3. Contractors Associations and Community Organizations — Utilize minority contractors associations and community organizations to assist in identifying Section 3 businesses who may be potential bidders.
4. Housing Development Publicity — Advertise contracting opportunities by posting notices concerning the work to be contracted in common areas of housing developments.
5. Formalized Notices — Providing written notice to all known Section 3 Business Concerns of the contracting opportunities.
6. Maintain Contact — Follow up with Section 3 Business Concerns that have expressed interest in the contracting opportunities by personal contact to provide additional information.
7. Pre-Bid Meetings — Coordinating pre-bid meetings at which Section 3 Business Concerns could be informed of the upcoming contracting opportunities.
8. Section 3 Workshops — Provide workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 Business Concerns can take advantage of upcoming contracting opportunities.
9. Assisting with Barriers to Entry — Advising Section 3 Business Concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
10. Bidding Facilitation — Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 Business Concerns.
11. Contract Sizing — As noted in subsection 5.2 above, where appropriate, break out contract work items into economically feasible units to facilitate participation of Section 3 Business Concerns.
12. YouthBuild Programs — Contacting agencies administering HUD YouthBuild programs and notifying these agencies of the contracting opportunities.
13. Advertisement / Publication — Advertising the contracting opportunities through trade association papers and local media such as television, newspapers, radio, and websites.

14. Business Concern Listing — Developing and maintaining a list of eligible Section 3 Business Concerns.
15. Advance Goal Setting — Establishing concrete numerical goals (dollar amounts, and number of awards) for contracts to Section 3 Business Concerns.

8. Additional Section 3 Resources

All grantees and subrecipients are highly encouraged to ensure that contractors, residents, and businesses in their community are aware of the available tools and resources that will assist with employment and training opportunities—principally the HUD Section 3 Opportunity Portal and the HUD Section 3 Business Registry.

8.1 HUD Section 3 Opportunity Portal

The HUD Section 3 Opportunity Portal helps match Section 3 Workers to employment and training opportunities, and Business Concerns to contracting opportunities. The portal can be accessed online at the following address: <https://hudapps.hud.gov/OpportunityPortal/>

8.2 HUD Section 3 Business Registry

The HUD Section 3 Business Registry is a listing of firms that have self-certified that they meet one of the regulatory definitions of a Section 3 business and are included in a searchable online database that can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the award of certain HUD-funded contracts. The database can also be used by Section 3 residents to identify businesses that may have HUD-funded employment opportunities. The HUD Section 3 Business Registry can be accessed online at the following web address: <http://www.hud.gov/Sec3Biz>

Attachment 6 Section 3 Project Plan

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u and 24 CFR Part 75) requires that employment and economic opportunities generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who receive government assistance for housing and those residing in the community in which the federal assistance is spent.

This project will be funded using HUD Housing and Community Development Financial Assistance and is therefore subject to Section 3. The selected bidder, respondent or funding applicant will be responsible for ensuring compliance with all applicable Section 3 requirements.

Instructions: For sealed bids, the two lowest bidders must complete and submit this form with your post-bid document submission. RFP/RFQ respondents must submit this form as part of your proposal or qualifications submission. All, contractors on Section 3 projects must submit this form. The entity receiving a contract from SWBNO must submit all required documentation, including subcontractors' Section 3 Plans, prior to contract award.

Project: _____ **Solicitation #:** _____

Business Name:	Address:
Authorized Representative:	Title:
Phone #:	Email:
Trade/Services Provided:	

Section 3 Requirements

Employment and Training

To the greatest extent feasible, employment and training opportunities arising in connection with Section 3 projects shall be provided to Section 3 workers within the New Orleans metropolitan area. Where feasible, priority for employment and training will be given to:

1. Section 3 workers residing within the service area or neighborhood of the project, and
2. Participants in YouthBuild programs.

Contracting

To the greatest extent feasible, contracts for work awarded in connection with Section 3 projects shall be provided to business concerns that provide economic opportunities to Section 3 workers residing within the New Orleans metropolitan area. Where feasible, priority for contracting opportunities will be given to:

1. Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and
2. YouthBuild programs.

Compliance Benchmarks

To demonstrate compliance with Section 3, contractors are required to follow the prioritization of effort outlined above and meet or exceed the following benchmarks:

1. **25 percent** or more of the total number of labor hours worked by all workers on the project shall be performed by **Section 3 workers**, and
2. **5 percent** or more of the total number of labor hours worked by all workers on the project shall be performed by **Targeted Section 3 workers**.

Definitions

- **Section 3 worker:** Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
 - (1) The worker's income for the previous or annualized calendar year is below the income limit established by HUD (*see Income Limits table below*).
 - (2) The worker is employed by a Section 3 business concern.
 - (3) The worker is a YouthBuild participant.
- **Targeted Section 3 worker:** A Section 3 worker who is:
 - (1) A worker employed by a Section 3 business concern; or
 - (2) A worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
 - (i) Living within the service area or the neighborhood of the project; or
 - (ii) A YouthBuild participant.
- **Service area or the neighborhood of the project:** An area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

HUD Income Limits

The table below shows the income limits set by HUD that determine eligibility for certain programs, including Section 3. HUD develops income limits based on Area Median Income (AMI) estimates and Fair Market Rent (FMR) area definitions. For more information, please see the HUD Income Limits Documentation System online at www.huduser.gov/portal/datasets/il.html.

New Orleans-Metairie, LA HUD Metro FMR Area

Fiscal Year	2022	2021	2020	2019	2018	2017
Low-income (80% AMI)	\$43,900	\$39,300	\$39,450	\$37,750	\$36,750	\$35,500

The New Orleans-Metairie, LA HUD Metro FMR Area contains the following parishes: Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany.

1. Does your business qualify as a Section 3 business concern? **YES** **NO**

If you answered YES, complete the Section 3 Business Certification form on p. 6 and submit with this Plan. If you answered NO, you do not need to complete the Section 3 Business Certification.

A **Section 3 business concern** is a business that satisfies **at least one** of the following criteria, as documented within the last six-month period:

- a. The business is at least 51% owned and controlled by low- or very low-income persons;
- b. The business is at least 51% owned and controlled by residents who currently live in public housing or Section 8-assisted housing; or
- c. Over 75% of the labor hours performed for the business over the prior three-month period were performed by Section 3 workers – *i.e.*, workers who currently are, or when hired within the past five years were: i) low-income persons or ii) YouthBuild participants.

4. Do you commit to engage in good faith efforts to meet or exceed the Section 3 Benchmarks?

YES NO

Such qualitative efforts may include, but are not limited to:

- Applicant Outreach –
- Engage in outreach efforts to generate job applicants who are Targeted Section 3 workers, including posting job openings at the job site, HUD Opportunity Portal, social media pages, and other platforms.
 - Clearly indicate Section 3 eligibility on all job postings, notifications, and advertisements with the following statement: *“This is a Section 3 eligible job opportunity. We encourage applications from individuals that are low-income, live in public housing, and/or receive a Section 8 voucher.”*
 - Include the Section 3 Worker Self-Certification form in all job postings.
- One-Stop / YouthBuild Outreach – Engage in outreach or referrals with local YouthBuild programs, Louisiana Workforce Commission, JOB 1, or other community organizations to assist with training and recruiting Section 3 and Targeted Section 3 workers.
- Training and Apprenticeship – Provide training or apprenticeship opportunities.
- Job Fairs – Hold one or more job fairs, or sponsor a job informational meeting in the project area.
- Business Concern Outreach –
 - Engage in outreach efforts to identify and secure bids from Section 3 businesses by advertising notices of contracting opportunities and related information on the HUD Opportunity Portal and local community papers.
 - Provide written notice to all known Section 3 business concerns, with sufficient time for interested businesses to respond to bid invitations.
 - Send notice of contracting opportunities to local community development organizations, business development organizations, or minority contracting associations.
 - State clearly in all notices that the contracting opportunity is Section 3 eligible, and include a copy of the Section 3 Business Concern Certification form.
- Competition Assistance – Provide technical assistance to help Section 3 business concerns understand and bid on contracts.
- Contract Sizing – Size, split, or divide contracts into smaller jobs to facilitate participation by Section 3 business concerns, particularly where economies of scale or efficiency of delivery are not factors. [2 CFR 200.321(b)(3)]
- Bidder Viability Support – Provide bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Business Registries – Promote use of the HUD Opportunity Portal or other business registries designed to create opportunities for disadvantaged and small businesses.
 - Visit <https://hudapps.hud.gov/OpportunityPortal/> to post jobs and contracting opportunities.

Additional activities and efforts aimed at increasing economic opportunities for Section 3 workers and businesses may include, but are not limited to:

- Employment Assistance – Provide technical assistance to help Section 3 workers compete for jobs, or connect them with assistance in seeking employment, including resume assistance, interview preparation, coaching, or job placement services.
- Work Readiness and Retention – Provide or refer Section 3 workers to services supporting work readiness and retention, such as interview clothing, licensing or testing fees, transportation, or childcare.
- Financial Literacy – Help Section 3 workers obtain financial literacy training or coaching.

- Education Assistance – Provide assistance to Section 3 workers to apply for or attend community college, four-year educational institution, or vocational/technical training.

5. Do you commit to prioritize your efforts in hiring, training, and contracting as required by the Section 3 regulations and outlined on page 1 of this Plan?

YES NO

Certification

The business entity identified above commits to comply with Section 3 of the Housing and Urban Development Act of 1968 (24 CFR Part 75). If awarded a contract subject to Section 3, the business agrees to adhere to all such requirements, including meeting the benchmarks set forth by the regulations, maintaining records of Section 3 activity, providing evidence of qualitative efforts, and submitting compliance reports to the Sewerage and Water Board of New Orleans periodically or upon request. The business will submit any additional documentation as necessary, including updates or revisions to this Section 3 Plan, documentation of labor hours, and certification forms for Section 3 workers and business concerns.

Authorized Representative Signature

Date

Attachment 7 - Section 3 Compliance Report

Instructions: All contractors on Section 3 projects must complete and submit this Section 3 Compliance Report. The report summarizes efforts and progress toward achieving the Section 3 benchmarks. If more space is needed, you may attach additional pages, a spreadsheet supplying the required information, or a letter to further state your efforts, achievements, or obstacles encountered. Attach all supporting documentation including Section 3 Worker Certification forms, payroll information, and evidence of qualitative efforts to comply with Section 3 as applicable.

Business Name:	Project:
Authorized Representative:	Title:
Phone #:	Email:
Reporting Period:	

General Guidance

Compliance Benchmarks

To demonstrate compliance with Section 3, contractors are required to follow the prioritization of effort outlined in 24 CFR 75.19 and meet or exceed the following benchmarks:

1. **25 percent** or more of the total number of labor hours worked by all workers on the project shall be performed by **Section 3 workers**, and
2. **5 percent** or more of the total number of labor hours worked by all workers on the project shall be performed by **Targeted Section 3 workers**.



$$\frac{\text{Section 3 Labor Hours}}{\text{Total Labor Hours}} = 25\%$$

AND

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 5\%$$

Definitions

- **Section 3 worker:** Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
 - (1) The worker’s income for the previous or annualized calendar year is below the income limit established by HUD (*see Income Limits table below*).
 - (2) The worker is employed by a Section 3 business concern.
 - (3) The worker is a YouthBuild participant.
- **Targeted Section 3 worker:** A Section 3 worker who is:
 - (1) A worker employed by a Section 3 business concern; or
 - (2) A worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
 - Living within the service area or the neighborhood of the project; or
 - A YouthBuild participant.
- **Section 3 business concern:** A business meeting at least one of the following criteria, documented within the last six-month period:
 - (1) It is at least 51 percent owned and controlled by low- or very low-income persons;
 - (2) Over 75 percent of the labor hours performed for the business over the prior three-month period were performed by Section 3 workers who are currently, or were at the time of hire within the last five years: i) low-income persons or ii) YouthBuild participants; or
 - (3) The business is at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.
- **Service area or the neighborhood of the project:** An area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

HUD Income Limits

HUD develops income limits based on Area Median Income (AMI) estimates and Fair Market Rent (FMR) area definitions. For more information, please see the HUD Income Limits Documentation System online at www.huduser.gov/portal/datasets/il.html.

The income limits for the **New Orleans-Metairie, LA HUD Metro FMR Area** apply to the following parishes: Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany.

Fiscal Year	2022	2021	2020	2019	2018	2017
Low-income (80% AMI)	\$43,900	\$39,300	\$39,450	\$37,750	\$36,750	\$35,500

Part I: Labor Hours

Report the number of labor hours worked on this project during the reporting period by *ALL workers*, *Section 3 workers*, and *Targeted Section 3 workers*.

Note—subrecipients/contractors may count an employee as Section 3 or Targeted Section 3 for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.

1. Section 3 hours

A. Total number of labor hours worked by ALL workers	B. Number of labor hours worked by Section 3 workers	% Section 3 hours (Divide column B by column A)
		%

Part III: Section 3 Business Concerns

Identify all Section 3 businesses that have performed work on this project to date.

Business name	Trade or services provided	Contract amount

Part IV: Qualitative Efforts

Check the boxes below to indicate the efforts you have made to satisfy your Section 3 obligations, or the nature of activities you pursued in the absence of meeting the labor hour benchmarks.

- Posted notice of job openings calling for Section 3 applicants at the job site, on the HUD Opportunity Portal, social media pages, and other platforms.
- Consulted with local YouthBuild programs, Louisiana Workforce Commission, JOB 1, or other community organizations to assist with training and recruiting Section 3 workers and Targeted Section 3 workers.
- Provided training or apprenticeship opportunities.
- Held one or more job fairs.
- Advertised contracting opportunities on the HUD Opportunity Portal.
- Sent written notice of Section 3 contracting opportunities to local business development organizations, minority contracting associations, or other similar organizations.
- Searched the HUD Opportunity Portal or other business registries for Section 3, disadvantaged and small businesses to identify potential Section 3 subcontractors.
- Provided technical assistance to help Section 3 businesses understand and bid on contracts.
- Divided contracts into smaller jobs to facilitate participation by Section 3 businesses.
- Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Provided technical assistance to help Section 3 workers compete for jobs, or connected them with assistance in seeking employment, including resume assistance, interview preparation, coaching, or job placement services.
- Provided or referred Section 3 workers to services supporting work readiness and retention, such as interview clothing, licensing or testing fees, transportation, childcare.
- Helped Section 3 workers to obtain financial literacy training and/or coaching.
- Provided assistance to Section 3 workers to apply for or attend community college, four-year educational institution, or vocational/technical training.
- Other, please describe:

Additional Notes or Comments

Authorized Representative Signature

Date