

# PROJECT SPECIFICATIONS



## WRANGELL SEWER PUMPS REPLACEMENT PROJECT PUMP STATIONS 4 & 6 IMPROVEMENTS

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Unless modified in the project specification manual or project plans, all construction shall be installed as specified in the most current edition of the City and Borough of Juneau specification for civil engineering projects and subdivision improvements, and the special provision.

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## SECTION 00100

### CITY AND BOROUGH OF WRANGELL WRANGELL, ALASKA WRANGELL SEWER PUMPS REPLACEMENT PROJECT PUMP STATION 4 & 6 IMPROVEMENTS

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#### ADVERTISEMENT FOR BIDS

**Description of Work:** The Project consists of purchasing and installing new pumps at two separate lift station locations. Work at each pump station consists of removing the existing pumps and piping, minor concrete demolition, and making electrical improvements, piping modifications, pouring new concrete covers, and installing new access hatches. The work shall also include installing three new pumps and controls.

**Receipt of Bids:** Sealed Bids for the construction of the Wrangell Pump Stations 4 & 6 Improvements project will be received by the City and Borough of Wrangell (CBW), at the Borough Clerk's office, until **2:00 PM** local time on **November 5, 2015**, at which time the Bids received will be publicly opened and read.

Sealed bids will be received for a single prime Contract. Bids shall be on a lump sum and unit price basis, with additive alternate bid items as indicated in the Bid Form.

The Issuing Office for the Bidding Documents is:

City and Borough of Wrangell  
Borough Clerk's Office  
205 Brueger Street  
Wrangell, Alaska 99929  
907-874-2381

For bidding, contract, or technical questions, please contact:

Ruby McMurren, Project Manager  
Phone: 907-874-3494  
Fax: 907-874-2699  
[wrgpm@wrangell.com](mailto:wrgpm@wrangell.com)

**Document Availability:** Complete bidding documents for this project are available in electronic form. Printed copies of the bid documents are not available from the Engineer or the Owner. The Contract Documents may be downloaded free of charge on the CBW website [www.wrangell.com](http://www.wrangell.com) under the Bids and RFP's section. Downloading Contract Documents from the CBW website requires registration with the Borough Clerk to be placed on the Plan Holders List and to ensure receipt of subsequent Addenda. Failure to register may adversely affect your proposal. It is the Offeror's responsibility to insure they have received all Addenda affecting this Solicitation. To register, contact the Borough Clerk at 907-874-2381 or at [clerk@wrangell.com](mailto:clerk@wrangell.com).

A pre-bid conference will be held at **2:00 PM** local time on **Thursday, October 29, 2015** at the **Borough Assembly Chambers, 205 Brueger Street**. Attendance at the pre-bid conference is highly encouraged but is not mandatory. Attendance by teleconference will be available by calling 1-866-866-2244 and entering 9597528.

**Funding Agency Requirements:** This design was produced in part with CDBG funds made available through the Department of Commerce, Community, and Economic Development and the U.S. Department of Housing and Urban Development. Award of the project will be contingent upon receiving funding and award concurrence from the above listed funding agency.

All laborers and mechanics employed by Contractor or Subcontractors in performance of the construction work shall be paid wages in accordance with the Federal Davis Bacon or Alaska Prevailing Wage Rates, whichever is higher. The Contractor must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex or national origin.

**Bid Security:** Bid security shall be furnished in accordance with the Instructions to Bidders.

+ + END OF ADVERTISEMENT FOR BIDS + +

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## **SECTION 00200 - INSTRUCTIONS TO BIDDERS**

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### **ARTICLE 1 - DEFINED TERMS**

- 1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and the Special Conditions. Additional terms used in these Instructions To Bidders have the meanings indicated below which are applicable to both the singular and plural thereof:
- A. "Bidder" --The individual or entity who submits a Bid directly to Owner.
  - B. "Issuing Office"--The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
  - C. "Successful Bidder"--The lowest responsible Bidder submitting a responsive Bid to whom Owner (on the basis of Owner's evaluations as hereinafter provided) makes an award.

### **ARTICLE 2 - COPIES OF BIDDING DOCUMENTS**

- 2.01 Complete bidding documents for this project are available in electronic form. Printed copies of the bid documents are not available from the Engineer or the Owner. The Contract Documents may be downloaded free of charge on the CBW website [www.wrangell.com](http://www.wrangell.com) under the Bids and RFP's section. Downloading Contract Documents from the CBW website requires registration with the Borough Clerk to be placed on the Plan Holders List and to ensure receipt of subsequent Addenda. Failure to register may adversely affect your proposal. It is the Offeror's responsibility to insure they have received all Addenda affecting this Solicitation. To register, contact the Borough Clerk at 907-874-2381 or at [clerk@wrangell.com](mailto:clerk@wrangell.com)
- 2.02 Complete sets of Bidding Documents must be used in preparing Bids. Neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

### **ARTICLE 3 - QUALIFICATION OF BIDDERS**

- 3.01 To demonstrate Bidder's qualifications to perform the Work, within five (5) days of Owner's request, Bidder shall submit (a) written evidence establishing its qualifications such as financial data, previous experience in performing comparable work, present commitments and (b) the following additional information:

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- A. Evidence of Bidder's authority to do business in the state where the project is located.
  - B. Subcontractor and supplier qualification information.
  - C. Other such data as may be called for by the Owner in evaluating bids received.
- 3.02 In determining the lowest responsible bid, the following elements will be considered: whether the Bidder involved (a) maintains a permanent place of business; (b) has adequate labor and equipment to do the work properly and expeditiously; (c) has a suitable financial status to meet obligations incident to the work; and (d) has appropriate technical experience.
- 3.03 Each Bidder may be required to show that former work performed by him has been handled in such a manner that there are no just or proper claims pending against such work. No Bidder will be acceptable if he is engaged on any other work which impairs his ability to finance this contract. The Bidder shall demonstrate his ability by meeting all requirements herein stipulated, if asked for them.
- 3.02 A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.
- 3.03 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.
- 3.04 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

### **ARTICLE 4 - SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE**

#### 4.01 Site and Other Areas

- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

#### 4.02 Existing Site Conditions

- A. Subsurface and Physical Conditions; hazardous Environmental Conditions:
  - 1. The Supplementary Conditions identify:
    - a. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.

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- b. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
  - c. reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
  - d. Technical Data contained in such reports and drawings.
2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in 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. All costs
  3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.
- B. 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. Owner and Engineer do not assume responsibility for the accuracy or completeness thereof unless expressly provided otherwise elsewhere.
- C. Adequacy of Data: 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 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous 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 5.06 of the General Conditions.

### 4.03 Site Visit and Testing by Bidders

- A. Bidder shall conduct Site visits during normal working hours, and shall not disturb any ongoing operations at the Site. The Bidder shall contact the Owner a minimum of 24-hour prior to any Site visits to schedule access to the Site.



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- B. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
- C. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site.
- D. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- E. Bidder shall fill and compact all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

### **4.04 Owner's Safety Program**

- A. Site visits and work at the Site may be governed by an Owner safety program. As the General Conditions indicate, if an Owner safety program exists, it will be noted in the Supplementary Conditions.

### **4.05 Other Work at the Site**

- A. Reference is made to Article 8 of the Supplementary Conditions for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

## **ARTICLE 5 – BIDDER'S REPRESENTATIONS**

### **5.01 It is the responsibility of each Bidder before submitting a Bid to:**

- A. Examine and carefully study the Bidding Documents including any Addenda and the other related data identified in the Bidding Documents;
- B. Visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work; including but not limited to those general and local conditions affecting transportation, disposal, handling and storage

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facilities, availability of labor, water, power, roads, climactic conditions and seasons, physical conditions at the work Sites and project area as a whole, job site topography and ground conditions, equipment and facilities needed preliminary to and during work prosecution,

- C. Become familiar with and satisfy Bidder as to all Federal, State and Local Laws and Regulations that may affect cost, progress, or performance of the Work;
- D. Obtain and carefully study (or assume responsibility of doing so) all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.
- F. Agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. 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.
- H. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder.
- I. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and
- J. Agree that the 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 and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

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### ARTICLE 6 - PRE-BID CONFERENCE

6.01 A Pre-Bid conference will be held at the time and place listed in the Invitation or Advertisement to Bid. Representatives of Owner and Engineer will be available to discuss the project. Bidders are encouraged to attend and participate in the conference. Engineer will transmit to all 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.

### ARTICLE 7 - INTERPRETATIONS AND ADDENDA

7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda posted to [www.wrangell.com](http://www.wrangell.com) website. Questions received less than ten (10) 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

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

### ARTICLE 8 – BID SECURITY

8.01 A Bid must be accompanied by Bid Security made payable to Owner in an amount of five percent (5%) of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of certified check, bank money order, or a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions and authorized to do business in the State where the Project is located.

8.02 The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents and furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within fifteen (15) days after the Notice of Award, the Owner may consider the Bidder to be in default, annul the Notice of Award and the Bid Security of that Bidder will be forfeited. Such forfeiture shall be the Owner's exclusive remedy if the Bidder defaults.

8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven (7) days after the Effective Date of the Contract or sixty-one (61) days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.

8.04 Bid security of other Bidders that the Owner believes do not have a reasonable chance of receiving the award will be released within seven (7) days after the Bid opening.

## **SECTION 00200 - INSTRUCTIONS TO BIDDERS**

### **ARTICLE 9 - CONTRACT TIMES**

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

### **ARTICLE 10 - LIQUIDATED DAMAGES**

- 10.01 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

### **ARTICLE 11 - SUBSTITUTE AND "OR-EQUAL" ITEMS**

- 11.01 The Contract for the Work, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those "or-equal" or substitute materials and equipment subsequently approved by Engineer prior to the submittal of Bids and identified by Addendum. No item of material or equipment will be considered by Engineer as an "or-equal" or substitute unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 days prior to the date for receipt of Bids in the case of a proposed substitute and 5 days prior in the case of a proposed "or-equal." Each such request shall comply with the requirements of Paragraphs 7.04 and 7.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any such proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner. Substitutes and "or-equal" materials and equipment may be proposed by Contractor in accordance with Paragraphs 7.04 and 7.05 of the General Conditions after the Effective Date of the Contract.
- 11.02 All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of "or-equal" or substitution requests are made at Bidder's sole risk.
- 11.03 If an award is made, Contractor shall be allowed to submit proposed substitutes and "or-equals" in accordance with the General Conditions.

### **ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS AND OTHERS**

- 12.01 If required by the bid documents, the apparent Successful Bidder, and any other Bidder so requested, shall within five (5) days following the posting of bids, submit to Owner a list of the Subcontractors or Suppliers proposed for the Work.

## **SECTION 00200 - INSTRUCTIONS TO BIDDERS**

If requested by Owner, such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity. If the Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit a substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.

- 12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, or other individuals or entities. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.
- 12.03 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom the Contractor has a reasonable objection.
- 12.04 The Contractor shall not award work to Subcontractor(s) in excess of the limits stated in SC 7.06.

### **ARTICLE 13 - PREPARATION OF BID**

- 13.01 The Bid Form is included with the Bidding Documents. Any modifications thereof or deviations therefrom may be considered as sufficient cause for rejection. Bids carrying riders or qualifications to the Bid being submitted may be rejected as irregular.
- A. All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alteration shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
- B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words "No Bid" or "Not Applicable."
- 13.02 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown. The corporate seal shall be affixed and attested to by the corporate secretary or an assistant corporate secretary.

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- 13.03 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person 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.
- 13.04 A Bid by an individual shall show the Bidder's name and official address.
- 13.05 A Bid by a partnership shall be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- 13.06 A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.07 All signatures are to be in ink and names shall be typed or printed in ink below the signatures. The title of the person(s) executing the Bid shall be clearly indicated beneath the signature.
- 13.08 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form. Bids in which all issued addenda are not acknowledged will be considered incomplete and will not be read.
- 13.09 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.10 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 Current Alaska Contractor's Registration number must be shown on the Bid Form.

### **ARTICLE 14 - BASIS OF BID**

#### **14.01 Bids**

- A. Bidders shall submit a Bid on each item in a Unit Price Bid Schedule (if applicable), on the Base Bid and Alternatives (if applicable), and separate schedules as shown and described on the Bid Form.
- B. Bidder shall submit a Bid on unit price basis or lump sum basis, as applicable, for each item of Work listed on the Bid form.
- C. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity" for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these Bid Prices; such total will be used by Owner for Bid

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comparison purposes. The final quantities and the Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.

- D. 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.
- E. The price for each alternate (if any) will be the amount added to or deleted from the Base Bid if Owner selects the alternative. In comparison of Bids, alternatives will be applied in the same order of priority as listed in the Bid Form unless identified otherwise on the Bid Form. The Base Bid with alternatives will be used by Owner for Bid comparison purposes.
- F. If the Bid is set up to subdivide Work into separate Bid schedules, Bidders may submit a Bid on any individual schedule or combination of schedules, as set forth on the Bid Form. Submission of a Bid on any schedule signifies Bidder's willingness to enter into a Contract for that schedule alone at the price offered. Owner reserves the right to award individual schedules or combination of schedules to separate Bidders. Bidders offering a Bid on one or more schedules shall be capable of completing the Work covered by the Schedules within the time period stated in the Agreement.

### ARTICLE 15 - SUBMITTAL OF BID

- 15.01 Bidder to execute one complete unbound copy of the Bid form. The Bid form is to be completed and submitted with the Bid Security and the other documents required to be submitted under the terms of Article 7 of the Bid Form.
- 15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope, plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid Security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED". A mailed bid shall be addressed to the address shown in the Advertisement or Invitation to Bid.
- 15.03 Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.
- 15.04 The Bid will not be considered unless accompanied by proper Bid security in accordance with Article 8 of these Instructions to Bidders.
- 15.05 Alternate Bids will not be considered unless called for
- 15.06 Bids by telephone, telegraph, fax, email, or other telecommunication systems will not be considered.

## **SECTION 00200 - INSTRUCTIONS TO BIDDERS**

### **ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BIDS**

- 16.01 A Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 16.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 16.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 16.02 If within twenty-four (24) hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work

### **ARTICLE 17 - OPENING OF BIDS**

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

### **ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

- 18.01 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.

### **ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT**

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner will reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.
- 19.02 If Owner awards the contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive Bid.



## SECTION 00200 - INSTRUCTIONS TO BIDDERS

### 19.03 Evaluation of Bids

- A. 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.
- B. For determination of the apparent low Bidder(s) when unit price bids are submitted, Bids will be compared on the basis of the total sum of the products of the estimated quantity of each item and unit price Bid for that item, together with any lump sum items.
- C. In the comparison of Bids with alternates (if any), the alternates will be applied in the order of priority as stated in the Bid Form. For comparison purposes alternates will be accepted until doing so would cause the budget to be exceeded (additive alternates) or underrun (deductive alternates). After determination of the Successful Bidder based on this comparative process and on the responsiveness, responsibility, and other factors set forth in these Instructions, the award may be made to said Successful Bidder on its base Bid and any combination of alternate Bids for which Owner determines funds will be available at the time of award.
- D. For determination of the apparent low Bidder(s) when sectional bids are submitted, Bids will be compared on the basis of the aggregate of the Bids for separate sections and the Bids for combined sections that result in the lowest total amount for all of the Work.

19.04 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

19.06 If the contract is to be awarded, Owner will award the contract to the responsible Bidder whose Bid conforms to all material terms and conditions of the Bidding Documents, is lowest price, and Bidders is qualified and in the best interest of the project in accordance with 19.04 and 19.05 all factors considered. The Owner reserves the right to accept or reject the Bids, or portions of Bids if denoted in the Bid as separate schedules, and to award different schedules to more than one Bidder if the combination of Bids will be in the best interest of the Owner. The Owner reserves the right to cancel the award of any Contract at any time before the complete execution of said Contract by all parties without any liability against the Owner.

## ARTICLE 20 – BONDS AND INSURANCE

20.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and

## **SECTION 00200 - INSTRUCTIONS TO BIDDERS**

insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation.

### **ARTICLE 21 – SIGNING OF AGREEMENT**

21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within fifteen (15) days thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within fifteen (15) days thereafter, Owner shall deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

### **ARTICLE 22-SALES AND USE TAXES – Not Used**

### **ARTICLE 23 – CONTRACTS TO BE ASSIGNED – Not Used**

### **ARTICLE 24 – CONTRACTS TO BE ASSIGNED – Not Used**

24.01 If the contract price is in excess of \$100,000, provisions of the Contract Work Hours and Safety Standards Act at 29 CFR 5.5(b) apply.

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**END OF SECTION**

**SECTION 00300 – BID FORM**

**BID FORM**

**City and Borough of Wrangell Sewer Pumps Replacement Project**  
**Pump Stations 4 & 6 Improvements**

**SECTION 00300 – BID FORM**

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**SECTION 00300 – BID FORM**

**ARTICLE 1 – BID RECIPIENT**

1.01 This Bid is submitted to:

*Mr. Jeff Jabusch  
City and Borough Manager  
City and Borough Wrangell  
Borough Clerk’s Office  
205 Brueger Street, Wrangell, Alaska 99929*

**USPS MAILING ADDRESS**

*City and Borough of Wrangell  
P.O. Box 531  
Wrangell, Alaska, 99929*

*Mailing/delivery times to Alaska may take longer than other areas of the U.S. Late bids will NOT be accepted and will be returned unopened.*

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

**ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS**

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

**ARTICLE 3 – BIDDER’S REPRESENTATIONS**

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum, Date</u>
_____	_____
_____	_____
_____	_____

## SECTION 00300 – BID FORM

Addendum No.

Addendum, Date

- \_\_\_\_\_
- \_\_\_\_\_
- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Bidder has considered the information known to Bidder itself; 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 any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.
  - E. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
  - F. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
  - G. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
  - H. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
  - I. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

### ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

## **SECTION 00300 – BID FORM**

- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 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;
  - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
  - 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

### **ARTICLE 5 – BASIS OF BID**

- 5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

**SECTION 00300 – BID FORM**

**Bid Form**

**City and Borough of Wrangell Alaska**

**Pump Station 4 & 6 Improvements**

<b>SCHEDULE A NODE 6 LIFT STATION</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>TOTAL</b>	<b>UNITS</b>	<b>UNIT PRICE</b>	<b>TOTAL PRICE</b>
1	MOBILIZATION AND DEMOBILIZATION	1	LS		
2	TAXES, BONDS, AND INSURANCE	1	LS		
3	TRAFFIC MAINTENANCE	1	LS		
4	CONCRETE DEMOLITION	1	LS		
5	ACCESS HATCH / NEW VAULT ROOF	1	LS		
6	NODE 6 PUMPS (3 - 34HP PUMPS & EQUIP)	1	LS		
7	PIPING REPLACEMENT (INCLUDING DEMO)	1	LS		
8	BYPASS PUMPING	1	LS		
9	ABOVE GROUND ENCLOSURE (NEMA 4)	1	LS		
10	ELECTRICAL SERVICE UPGRADES	1	LS		
11	SCADA AND PUMP CONTROLS	1	LS		
12	MISCELLANEOUS SITE IMPROVEMENTS	1	LS		

**Total Bid Price Schedule A**

\$ \_\_\_\_\_

(Figures)

\_\_\_\_\_  
(Words)



**SECTION 00300 – BID FORM**

**City and Borough of Wrangell  
Node 4 Lift Station Upgrade**

<b>SCHEDULE B NODE 4 LIFT STATION</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>TOTAL</b>	<b>UNITS</b>	<b>UNIT PRICE</b>	<b>TOTAL PRICE</b>
1	MOBILIZATION AND DEMOBILIZATION	1	LS		
2	TAXES, BONDS, AND INSURANCE	1	LS		
3	TRAFFIC MAINTENANCE	1	LS		
4	CONCRETE DEMOLITION	1	LS		
5	ACCESS HATCH / NEW VAULT ROOF	1	LS		
6	NODE 4 PUMPS (3 - 11HP PUMPS & EQUIP)	1	LS		
7	PIPING REPLACEMENT (INCLUDING DEMO)	1	LS		
8	BYPASS PUMPING	1	LS		
9	ABOVE GROUND ENCLOSURE (NEMA 4)	1	LS		
10	ELECTRICAL SERVICE UPGRADES	1	LS		
11	SCADA AND PUMP CONTROLS	1	LS		
12	MISCELLANEOUS SITE IMPROVEMENTS	1	LS		

**Total Bid Price Schedule B**

\$ \_\_\_\_\_

(Figures)

---

(Words)

Total Bid Price Sum of Schedules A & B

\$ \_\_\_\_\_

(Figures)

---

Total Bid Price Sum of Schedules A & B ( Words)

## **SECTION 00300 – BID FORM**

### **ARTICLE 6 – TIME OF COMPLETION**

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

### **ARTICLE 7 – ATTACHMENTS TO THIS BID**

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security;
  - B. Contractor's License and Alaska Business License
  - C. If Bid amount exceeds \$10,000, signed Compliance Statement (RD 400-6). Refer to specific equal opportunity requirements set forth in Supplemental General Conditions.
  - D. If Bid amount exceeds \$25,000, signed Certificate Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions (AD-1048).
  - E. If Bid amount exceeds \$100,000, signed RD Instruction 1940-Q, Exhibit A-1, Certification for Contracts, Grants, and Loans.

### **ARTICLE 8 – DEFINED TERMS**

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

**SECTION 00300 – BID FORM**

**ARTICLE 9 – BID SIGNATURE**

BIDDER: *[Indicate correct name of bidding entity]*

By:

*[Signature]* \_\_\_\_\_

*[Printed name]* \_\_\_\_\_

*(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest:

*[Signature]* \_\_\_\_\_

*[Printed name]* \_\_\_\_\_

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

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

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Fax Number: \_\_\_\_\_

Contact Name and E-mail address:

\_\_\_\_\_

Alaska Business License Number: \_\_\_\_\_

CONTRACTOR License No.: \_\_\_\_\_

**END OF SECTION 00300**

**SECTION 00360 - SUBCONTRACTOR REPORT**

**LIST OF SUBCONTRACTORS (AS 36.30.115)**

The apparent low Bidder must submit a list of Subcontractors that the Bidder proposes to use in the performance of this contract *on the fifth business day* following the Posting Notice of Bids. If the fifth day falls on a weekend or holiday, the report is due by close of business on the next business Day following the weekend or holiday. The Subcontractor Report list must include each Subcontractor's name, address, location, evidence of valid Alaska Business License, and valid Alaska Contractor's Registration under AS 08.18. *If no Subcontractors are to be utilized in the performance of the WORK, write in ink or type "NONE" on line (1) below.*

<u>SUBCONTRACTOR</u>	<sup>1</sup> AK Contractor <u>License No.</u>	<sup>1</sup> <u>Contact Name</u>	<u>Type of</u>	<u>Contract</u>	<sup>9</sup> if
<u>ADDRESS</u>	<sup>2</sup> AK Business <u>License No.</u>	<sup>2</sup> <u>Phone No.</u>	<u>Work</u>	<u>Amount</u>	<u>DBE</u>
1. _____ _____ _____	1 _____ 2 _____	_____ _____	_____ _____	\$ _____	<input type="checkbox"/>
2. _____ _____ _____	1 _____ 2 _____	_____ _____	_____ _____	\$ _____	<input type="checkbox"/>
3. _____ _____ _____	1 _____ 2 _____	_____ _____	_____ _____	\$ _____	<input type="checkbox"/>
4. _____ _____ _____	1 _____ 2 _____	_____ _____	_____ _____	\$ _____	<input type="checkbox"/>

I certify that the above listed Alaska Business License(s) and CONTRACTOR Registration(s), if applicable, were valid at the time Bids were opened for this Project.

\_\_\_\_\_  
CONTRACTOR, Authorized Signature

\_\_\_\_\_  
CONTRACTOR, Printed Name

\_\_\_\_\_  
COMPANY

## SECTION 00360 - SUBCONTRACTOR REPORT

- A. A Bidder may replace a listed Subcontractor if the Subcontractor:
1. fails to comply with AS 08.18;
  2. files for bankruptcy or becomes insolvent;
  3. fails to execute a contract with the Bidder involving performance of the WORK for which the Subcontractor was listed and the Bidder acted in good faith;
  4. fails to obtain bonding;
  5. fails to obtain insurance acceptable to the OWNER;
  6. fails to perform the contract with the Bidder involving work for which the Subcontractor was listed;
  7. must be substituted in order for the CONTRACTOR to satisfy required state and federal affirmative action requirements;
  8. refuses to agree or abide with the Bidder's labor agreement; or
  9. is determined by the OWNER not to be responsible.
10. is not in "Good Standing" with the OWNER as required in Article 21.0 in Section 00100 – Instructions to Bidders.
- B. If a Bidder fails to list a Subcontractor or lists more than one Subcontractor for the same portion of WORK, the Bidder shall be considered to have agreed to perform that portion of WORK without the use of a Subcontractor and to have represented the Bidder to be qualified to perform that WORK.
- C. A Bidder who attempts to circumvent the requirements of this section by listing as a Subcontractor another contractor who, in turn, sublets the majority of the WORK required under the contract violates this section.
- D. If a contract is awarded to a Bidder who violates this section, the OWNER may:
1. cancel the contract; or
  2. after notice and a hearing, assess a penalty on the Bidder in an amount that does not exceed 10 percent of the value of the subcontract at issue.
- E. On the Subcontractor Report, the apparent low Bidder must list any Subcontractors anticipated to perform WORK with a value of greater than one-half of one percent of the intended award amount, or \$2,000, whichever is less.
- F. An apparent low Bidder who fails to submit a completed Subcontractor Report within the time specified in this section may be found to be not a responsible Bidder and may be required to forfeit the Bid security. The OWNER will then consider the next lowest Bidder for award of the contract.

**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:

Description *(Project Name— Include Location)*:

**BOND**

Bond Number:

Date:

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

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

**BIDDER**

**SURETY**

\_\_\_\_\_  
 Bidder's Name and Corporate Seal (Seal)

\_\_\_\_\_  
 Surety's Name and Corporate Seal (Seal)

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

By: \_\_\_\_\_  
 Signature (Attach Power of Attorney)

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Title

Attest: \_\_\_\_\_  
 Signature

Attest: \_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Title

*Note: Addresses are to be used for giving any required notice.  
 Provide execution by any additional parties, such as joint venturers, if necessary.*

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

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

**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR FOR  
CONSTRUCTION CONTRACT (STIPULATED PRICE)**

Prepared by



Issued and Published Jointly by





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**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between \_\_\_\_\_ (“Owner”) and  
\_\_\_\_\_  
\_\_\_\_\_ (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

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

The Wrangell Lift Station Upgrade project consists of purchasing and installing new pumps at two separate lift station locations. Work at each pump station consists of removing the existing pumps and piping, minor concrete demolition, installing three new pumps along with new controls and electrical improvements, piping modifications, pouring new concrete covers, and installing new access hatches.

**ARTICLE 2 – THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Wrangell Sewer Pumps Replacement Project Pump Stations 4 & 6 Improvements

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by DOWL.

3.02 The Owner has retained DOWL (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

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

4.02 *Contract Times: Days*

A. The Work will be substantially completed within 135 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 150 calendar days after the date when the Contract Times commence to run.

#### 4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner \$ 1,000.00 for each **calendar** day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
  2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$ 1,000.00 for each **calendar** day that expires after such time until the Work is completed and ready for final payment.
  3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

#### 4.04 *[Deleted]*

---

### ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

### ARTICLE 6 – PAYMENT PROCEDURES

#### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

#### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.
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 Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

- a. 95 percent of Work completed (with the balance being retainage); ~~If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and~~
  - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion **of the entire construction to be provided under the Contract Documents**, Owner shall pay an amount sufficient to increase total payments to Contractor to 90 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E 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 punch list of items to be completed or corrected prior to final payment.

#### 6.03 *Final Payment*

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

### ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of 12% percent per annum.

### ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
  - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; and 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; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no 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.
- G. 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.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 Contents

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to 7, inclusive).
  - 2. Performance bond (pages 1 to 3, inclusive).
  - 3. Payment bond (pages 1 to 3, inclusive).
  - 4. Other bonds.
    - a.      (pages      to     , inclusive).
  - 5. General Conditions (pages 1 to 68, inclusive).
  - 6. Supplementary Conditions (pages 1 to 4, inclusive).
  - 7. Specifications as listed in the table of contents of the Project Manual.
  - 8. Drawings (not attached but incorporated by reference) consisting of 26 sheets with each sheet bearing the following general title: Wrangell Sewer Pumps Replacement Project - Pump Stations 4 & 6 Improvements.
  - 9. Addenda (numbers      to     , inclusive).
  - 10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages      to     , inclusive).
  - 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.

- c. Change Orders.
- d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### 10.01 *Terms*

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

### 10.02 *Assignment of Contract*

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

### 10.03 *Successors and Assigns*

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

### 10.04 *Severability*

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

### 10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - 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 prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

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

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

1. *The Effective Date of the Contract stated above and the dates of any construction performance bond (EJCDC® C-610 or other) and construction payment bond (EJCDC® C-615 or other) should be the same, if possible. In no case should the date of any bonds be earlier than the Effective Date of the Contract.*

OWNER:

CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

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

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

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

*(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 authorizing execution of this Agreement.)*

*NOTE TO USER: Use in those states or other jurisdictions where applicable or required.*



## PERFORMANCE BOND

CONTRACTOR *(name and address):*

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

OWNER *(name and address):*

### CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

### BOND

Bond Number:

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

Amount:

Modifications to this Bond Form:  None  See Paragraph 16

---

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

### CONTRACTOR AS PRINCIPAL

### SURETY

\_\_\_\_\_  
Contractor's Name and Corporate Seal *(seal)*

\_\_\_\_\_  
Surety's Name and Corporate Seal *(seal)*

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

By: \_\_\_\_\_  
Signature *(attach power of attorney)*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 14. Definitions

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

for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

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

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

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

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

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

16. Modifications to this Bond are as follows:

## PAYMENT BOND

CONTRACTOR *(name and address)*:

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

OWNER *(name and address)*:

### CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location)*:

### BOND

Bond Number:

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

Amount:

Modifications to this Bond Form:  None  See Paragraph 18

---

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

### CONTRACTOR AS PRINCIPAL

### SURETY

\_\_\_\_\_  
*(seal)*  
Contractor's Name and Corporate Seal

\_\_\_\_\_  
*(seal)*  
Surety's Name and Corporate Seal

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

By: \_\_\_\_\_  
Signature *(attach power of attorney)*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. **Definitions**
  - 16.1 **Claim:** A written statement by the Claimant including at a minimum:
    1. The name of the Claimant;
    2. The name of the person for whom the labor was done, or materials or equipment furnished;
    3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
    4. A brief description of the labor, materials, or equipment furnished;
    5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
    6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
    7. The total amount of previous payments received by the Claimant; and
  - 16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
  - 16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
  - 16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
  - 16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
18. Modifications to this Bond are as follows:

**DIVISION 00 – BIDDING AND CONTRACTING REQUIRMENTS  
SECTION 00700 – STANDARD GENERAL CONDITIONS OF THE  
CONSTRUCTION CONTRACT**

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

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

has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

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

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

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

## 1.02 Terminology

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



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

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Bonds and Evidence of Insurance***

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

### **2.02 *Copies of Documents***

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

### **2.03 *Before Starting Construction***

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  2. a preliminary Schedule of Submittals; and

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

#### 2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

#### 2.05 *Initial Acceptance of Schedules*

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

#### 2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

### **ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### **3.01 *Intent***

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

#### **3.02 *Reference Standards***

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

#### **3.03 *Reporting and Resolving Discrepancies***

- A. *Reporting Discrepancies:*
  - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

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

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

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

## **ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.01 *Commencement of Contract Times; Notice to Proceed*

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

### 4.02 *Starting the Work*

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

### 4.03 *Reference Points*

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

### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  2. abnormal weather conditions;
  3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
  4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

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

### **5.01 *Availability of Lands***

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

### **5.02 *Use of Site and Other Areas***

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

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

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

### 5.03 *Subsurface and Physical Conditions*

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



#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
  2. is of such a nature as to require a change in the Drawings or Specifications; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

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

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
  1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
  2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
    - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
    - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
  - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
    - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
    - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
    - d. Contractor gave the notice required in Paragraph 5.05.B.
  - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
  - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 6 – BONDS AND INSURANCE

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

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

### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

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

### 6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
  2. claims for damages insured by reasonably available personal injury liability coverage.
  3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Broad form property damage coverage.
  4. Severability of interest.
  5. Underground, explosion, and collapse coverage.
  6. Personal injury coverage.
  7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
  8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result



of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
  - 1. include at least the specific coverages provided in this Article.
  - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
  - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
  - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
  - 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

#### 6.04 *Owner's Liability Insurance*

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

#### 6.05 *Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  - 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
  - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
  - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
  - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
  6. extend to cover damage or loss to insured property while in transit.
  7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
  8. allow for the waiver of the insurer's subrogation rights, as set forth below.
  9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
  10. not include a co-insurance clause.
  11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
  12. include performance/hot testing and start-up.
  13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

## 6.06 *Waiver of Rights*

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

## 6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

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

## **ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES**

### **7.01 *Supervision and Superintendence***

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

### **7.02 *Labor; Working Hours***

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

### **7.03 *Services, Materials, and Equipment***

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and

guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) it has a proven record of performance and availability of responsive service; and
      - 4) it is not objectionable to Owner.
    - b. Contractor certifies that, if approved and incorporated into the Work:
      - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
      - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

#### 7.05 *Substitutes*

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
  - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
    - a. shall certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design,
      - 2) be similar in substance to that specified, and
      - 3) be suited to the same use as that specified.
    - b. will state:
      - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
      - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
      - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
    - c. will identify:
      - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
  - C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
  - D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
  - E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
  - F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

#### 7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.



- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

O. Nothing in the Contract Documents:

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

7.07 *Patent Fees and Royalties*

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

7.08 *Permits*

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

#### 7.09 *Taxes*

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

#### 7.10 *Laws and Regulations*

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

#### 7.11 *Record Documents*

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

#### 7.12 *Safety and Protection*

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

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
  - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
  - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
  - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
  - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
  - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.13 *Safety Representative*

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

#### 7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 7.15 *Emergencies*

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

#### 7.16 *Shop Drawings, Samples, and Other Submittals*

##### A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
  - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

##### 1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
  3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
  5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
  6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
  7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

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

7.17 *Contractor's General Warranty and Guarantee*

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

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop



Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

## **ARTICLE 8 – OTHER WORK AT THE SITE**

### **8.01 *Other Work***

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

## 8.02 *Coordination*

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

## 8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9 – OWNER'S RESPONSIBILITIES**

### *9.01 Communications to Contractor*

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

### *9.02 Replacement of Engineer*

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

### *9.03 Furnish Data*

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

### *9.04 Pay When Due*

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

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

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

### *9.06 Insurance*

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

### *9.07 Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

**ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION**

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

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

10.04 *Rejecting Defective Work*

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

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

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

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

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

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

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

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

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
  - 1. *Change Orders:*
    - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
    - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
  - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.03 *Unauthorized Changes in the Work*

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

#### 11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
  2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
  3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
  2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
    - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
    - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

#### 11.05 *Change of Contract Times*

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

#### 11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under



the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
  2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

#### 11.07 Execution of Change Orders

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

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

#### 11.08 *Notification to Surety*

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

### **ARTICLE 12 – CLAIMS**

#### 12.01 *Claims*

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

submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

### 13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
  1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

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

other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

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

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

## 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

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

### 13.03 *Unit Price Work*

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

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

### 14.01 *Access to Work*

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

### 14.02 *Tests, Inspections, and Approvals*

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

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

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

#### 14.04 *Acceptance of Defective Work*

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

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.



- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

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

#### 14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

### **15.01 Progress Payments**

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

- a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
    - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
    - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
  4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
    - a. to supervise, direct, or control the Work, or
    - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
    - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
    - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
    - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
  5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
  6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
    - a. the Work is defective, requiring correction or replacement;
    - b. the Contract Price has been reduced by Change Orders;
    - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
    - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

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

E. *Reductions in Payment by Owner:*

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

remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

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

#### 15.02 *Contractor's Warranty of Title*

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

#### 15.03 *Substantial Completion*

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

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

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

#### 15.05 *Final Inspection*

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

#### 15.06 *Final Payment*

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

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

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

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

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

**C. *Completion of Work:*** The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

**D. *Payment Becomes Due:*** Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

#### 15.07 *Waiver of Claims*

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

#### 15.08 *Correction Period*

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



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

## **ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

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

### **16.02 *Owner May Terminate for Cause***

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

and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

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

#### 16.03 *Owner May Terminate For Convenience*

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

#### 16.04 *Contractor May Stop Work or Terminate*

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

expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17 – FINAL RESOLUTION OF DISPUTES**

### **17.01 *Methods and Procedures***

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

## **ARTICLE 18 – MISCELLANEOUS**

### **18.01 *Giving Notice***

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

### **18.02 *Computation of Times***

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

### **18.03 *Cumulative Remedies***

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Headings*

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

## DIVISION 00 – BIDDING AND CONTRACTING REQUIREMENTS

### SECTION 00800 – SUPPLEMENTARY CONDITIONS TO THE STANDARD GENERAL CONDITIONS

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These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2013 Edition). 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.

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#### ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

##### SC-1.01 *Defined Terms*

**SC-1.01. Add the following language at the end of the last sentence of Paragraph 1.01.A.8:**

The Change Order form to be used on this Project is EJCDC C-941. Agency approval is required before Change Orders are effective.

**SC-1.01. Add the following language at the end of the last sentence of Paragraph 1.01.A.20:**

The Engineer's Consultant(s) on this project are: Electric Power Systems, Inc.

**SC-1.01. Add the following language at the end of the last sentence of Paragraph 1.01.A.48:**

A Work Change Directive cannot change Contract Price or Contract Times without a subsequent Change Order.

**SC-1.01. Add to the list of definitions in Paragraph 1.01.A by inserting the following as numbered items in their proper alphabetical positions:**

*Abnormal Weather Conditions* – Conditions of extreme or unusual weather for a given region, elevation, or season as determined by the Engineer. Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered Abnormal Weather Conditions.

*Agency* – The Project is financed in whole or in part by USDA Rural Utilities Service pursuant to the Consolidated Farm and Rural Development Act (7 USC Section 1921 et seq.). The Rural Utilities Service programs are administered through the USDA Rural Development offices; therefor, the Agency for these documents is USDA Rural Development.

## ARTICLE 2 – PRELIMINARY MATTERS

### *SC-2.02 Copies of Documents*

#### **SC-2.02.A. Amend the first sentence of Paragraph 2.02.A. to read as follows:**

Owner shall furnish to Contractor five copies of the Contract Documents (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF).

## ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

### *SC-4.01 Commencement of Contract Times; Notice to Proceed*

#### **SC-4.01 Amend the last sentence of Paragraph 4.01.A by striking out the following words:**

In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

### *SC-4.05 Delays in Contractor's Progress*

#### **SC-4.05 Amend Paragraph 4.05.C.2 by striking out the following text: "abnormal weather conditions;" and inserting the following text:**

Abnormal Weather Conditions;

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

### *SC-5.03 Subsurface and Physical Conditions*

#### **SC 5.03 Delete Paragraphs 5.03.A and 5.03.B in their entirety and insert the following:**

A. No reports of explorations or tests of subsurface conditions at or adjacent to the Site, or drawings of physical conditions relating to existing surface or subsurface structures at the Site, are known to Owner.

### *SC-5.06 Hazardous Environmental Conditions*

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

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

B. Not Used.

**ARTICLE 6 – BONDS AND INSURANCE**

*SC-6.03 Contractor’s Liability Insurance*

**SC 6.03 Add the following new paragraph immediately after Paragraph 6.03.J:**

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

- 1. Workers’ Compensation, and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:

State:	<u>Statutory</u>
Federal, if applicable (e.g., Longshoreman’s):	<u>Statutory</u>
Employer’s Liability:	
Bodily injury, each accident	\$ <u>100,000</u>
Bodily injury by disease, each employee	\$ <u>100,000</u>
Bodily injury/disease aggregate	\$ <u>500,000</u>

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

General Aggregate	\$ <u>2,000,000</u>
Products - Completed Operations Aggregate	\$ <u>2,000,000</u>
Personal and Advertising Injury	\$ <u>1,000,000</u>
Each Occurrence (Bodily Injury and Property Damage)	\$ <u>1,000,000</u>

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

Bodily Injury:	
Combined Single Limit of	\$ <u>1,000,000</u>

- 4. Excess or Umbrella Liability:

Per Occurrence	\$ <u>1,000,000</u>
General Aggregate	\$ <u>1,000,000</u>

- 5. Contractor’s Pollution Liability:

Each Occurrence	\$ <u>1,000,000</u>
General Aggregate	\$ <u>1,000,000</u>

- 6. In addition to Owner and Engineer, include as additional insureds the following: Carson Dorn, Inc., and Electric Power Systems, Inc.

## ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

### SC-7.02 Labor; Working Hours

**SC-7.02.B. Amend the first sentence of Paragraph 7.02.B to state “...all Work at the Site shall be performed during regular working hours, 8:00 AM through 5:00 PM.”**

### SC-7.04 “Or Equals”

**SC 7.04.A Amend the third sentence of Paragraph 7.04.A by striking out the following words:**

Unless the specification or description contains or is followed by words reading that no like, equivalent, or ‘or-equal’ item is permitted.

**SC 7.04.A.1 Amend the last sentence of Paragraph a.3 by striking out “and;” and adding a period at the end of Paragraph a.3.**

**SC 7.04.A.1 Delete Paragraph 7.04.A.1.a.4 in its entirety and insert the following in its place:**

[Deleted]

### SC-7.06 Concerning Subcontractors, Suppliers, and Others

**SC 7.06.A Amend Paragraph 7.06.A by adding the following text to the end of the Paragraph:**

The Contractor shall not award work valued at more than fifty percent of the Contract Price to Subcontractor(s), without prior written approval of the Owner.

**SC 7.06.B Delete Paragraph 7.06.B in its entirety and insert the following in its place:**

[Deleted]

**SC 7.06.E Amend the second sentence of Paragraph 7.06.E by striking out “Owner may also require Contractor to retain specific replacements; provide, however, that”.**

The Contractor shall not award work valued at more than fifty percent of the Contract Price to Subcontractor(s), without prior written approval of the Owner.

Unless the specification or description contains or is followed by words reading that no like, equivalent, or ‘or-equal’ item is permitted.

## ARTICLE 8 – OTHER WORK AT THE SITE

### SC-8.02 Coordination

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

A. Owner intends to contract with others for the performance of other work at or adjacent to the Site.

1. Owner shall have authority and responsibility for coordination of the various contractors and work forces at the Site;
2. The following specific matters are to be covered by such authority and responsibility: *Wrangell Light and Power will be installing a new pole-mounted transformer and electrical service to the node 6 lift station;*



3. The extent of such authority and responsibilities is: *From an existing utility pole outside of the project limits to the existing service pole on the node 6 lift station site.*

## ARTICLE 9 – OWNER’S RESPONSIBILITIES

### SC-9.13 Add the following new paragraph immediately after Paragraph 9.12 of the General Conditions:

#### SC-9.13 *Owner’s Site Representative*

- A. Owner will furnish an “Owner’s Site Representative” to represent Owner at the Site and assist Owner in observing the progress and quality of the Work. The Owner’s Site Representative is not Engineer’s consultant, agent, or employee. Owner’s Site Representative will be Amber Al-Haddad. The authority and responsibilities of Owner’s Site Representative follow:
  1. General: OSR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. OSR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor.
  2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
  3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.
  4. Liaison:
    - a. Serve as Owner’s and Engineer’s liaison with Contractor. Working principally through Contractor’s authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
    - b. Assist Engineer in serving as Owner’s liaison with Contractor when Contractor’s operations affect Owner’s on-Site operations.
    - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
  5. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
  6. Shop Drawings and Samples:
    - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
- B. The Owner’s Site Representative (OSR) will be the Owner’s representative at the Site, will act as directed by and under the supervision of Owner, and will confer with Engineer and Owner regarding OSR’s actions.

- b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which OSR believes that the submittal has not been approved by Engineer.
7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with OSR's recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. Review of Work and Rejection of Defective Work:
  - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to Engineer whenever OSR believes that any part of Contractor's work in progress is defective, 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 work in progress that OSR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. Inspections, Tests, and System Start-ups:
  - a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of the Engineer and appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
  - b. If the Engineer is not present the OSR shall observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
10. Records:
  - a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
  - b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
  - c. Maintain records for use in preparing Project documentation.

11. Reports:
    - a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
    - b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
    - c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.
  12. 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.
  13. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents 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 delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
  14. Completion:
    - a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.
    - b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.
    - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.
- C. The OSR shall not:
1. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
  2. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
  3. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Contractor.

4. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
5. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

## **ARTICLE 10 – ENGINEER’S STATUS DURING CONSTRUCTION**

### *SC-10.03 Project Representative*

#### **SC-10.03 Add the following new paragraph immediately after Paragraph 10.03.A:**

- B. On this Project, by agreement with the Owner, Engineer will not furnish a Resident Project Representative to represent Engineer at the Site or assist Engineer in observing the progress and quality of the Work. Owner and Engineer will provide periodic observation and inspection and will be on-site for pump start-up.

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

### *SC-11.07 Execution of Change Orders*

#### **SC-11.07 Add the following new paragraph after Paragraph 11.07.B:**

- C. All Contract Change Orders must be concurred in by Agency before they are effective.

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

### *SC-13.02 Allowances*

#### **SC-13.02 Delete Paragraph 13.02.C in its entirety and insert the following in its place:**

[Deleted]

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

### *SC-15.01 Progress Payments*

#### **SC-15.01.B Amend the second sentence of Paragraph 15.01.B.1 by striking out the following text: “a bill of sale, invoice, or other.”**

#### **SC-15.01.B Add the following language at the end of Paragraph 15.01.B.3:**

No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage, or invest the retainage for the benefit of the Contractor.

#### **SC-15.01.B Add the following new Paragraph after Paragraph 15.01.B.3:**

4. The application for Payment form to be used on this Project is EJCDC C-620. The Agency must approve all Applications for Payment before payment is made.

#### **SC-15.01.D Delete Paragraph 15.01.D.1 in its entirety and insert the following in its place:**

1. The Application for Payment with Engineer’s recommendations will be presented to the Owner and Agency for consideration. If both the Owner and Agency fin the

Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 15.01.E will become due twenty (20) days after the Application for Payment is presented to the Owner, and the Owner will make payment to the Contractor.

*SC-15.02 Contractor's Warranty of Title*

**SC-15.02 Amend Paragraph 15.02.A by striking out the following text: "no later than seven days after the time of payment by Owner" and insert "no later than the time of payment by Owner."**

**ARTICLE 18 – MISCELLANEOUS**

**SC-18.09 Add the following new paragraph after Paragraph 18.08:**

*SC-18.09 Tribal Sovereignty*

- A. No provision of this Agreement will be construed by any of the signatories as abridging or debilitating any sovereign powers of the {insert name of Tribe} Tribe; affecting the trust-beneficiary relationship between Secretary of the Interior, Tribe, and Indian landowner(s); or interfering with the government-to-government relationship between United States and the Tribe.

**SC-19 Add the following Article:**

**ARTICLE 19 – FEDERAL REQUIREMENTS**

*SC-19.01 Agency Not a Party*

- A. This Contract is expected to be funded in part with funds provided by Agency. Neither Agency, nor any of its departments, entities, or employees is a party to this Contract.

*SC-19.02 Contract Approval*

- A. Owner and Contractor will furnish Owner's attorney such evidence as required so that Owner's attorney can complete and execute the following "Certificate of Owner's Attorney" (Attachment GC-A) before Owner submits the executed Contract Documents to Agency for approval.
- B. Concurrence by Agency in the award of the Contract is required before the Contract is effective.

*SC-19.03 Conflict of Interest*

- A. Contractor may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the plans and specifications has a corporate or financial affiliation with the supplier or manufacturer. Owner's officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in Contractor. Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractor or subcontractors.

#### *SC-19.04 Gratuities*

- A. If Owner finds after a notice and hearing that Contractor, or any of Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of Owner or Agency in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, Owner may, by written notice to Contractor, terminate this Contract. Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.
- B. In the event this Contract is terminated as provided in paragraph 19.04.A, Owner may pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, Owner may pursue exemplary damages in an amount (as determined by Owner) which shall not be less than three nor more than ten times the costs Contractor incurs in providing any such gratuities to any such officer or employee.

#### *SC-19.05 Audit and Access to Records*

- A. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

#### *SC-19.06 Small, Minority and Women's Businesses*

- A. If Contractor intends to let any subcontracts for a portion of the work, Contractor shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services. Affirmative steps shall consist of: (1) including qualified small, minority and women's businesses on solicitation lists; (2) assuring that small, minority and women's businesses are solicited whenever they are potential sources; (3) dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses; (4) establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority and women's businesses; (5) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; (6) requiring each party to a subcontract to take the affirmative steps of this section; and (7) Contractor is encouraged to procure goods and services from labor surplus area firms.

#### *SC-19.07 Anti-Kickback*

- A. Contractor shall comply with the Copeland Anti-Kickback Act (18 USC 874 and 40 USC 276c) as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States"). The Act provides that Contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which

they are otherwise entitled. Owner shall report all suspected or reported violations to Agency.

*SC-19.08 Clean Air and Pollution Control Acts*

- A. If this Contract exceeds \$100,000, compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h) and 42 USC 7401et. seq.), section 508 of the Clean Water Act (33 U.S.C. 1368) and Federal Water Pollution Control Act (33 USC 1251 et seq.), Executive Order 11738, and Environmental Protection Agency regulations is required. Contractor will report violations to the Agency and the Regional Office of the EPA.

*SC-19.09 State Energy Policy*

- A. Contractor shall comply with the Energy Policy and Conservation Act (P.L. 94-163). Mandatory standards and policies relating to energy efficiency, contained in any applicable State Energy Conservation Plan, shall be utilized.

*SC-19.10 Equal Opportunity Requirements*

- A. If this Contract exceeds \$10,000, Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- B. Contractor's compliance with Executive Order 11246 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4 and its efforts to meet the goals established for the geographical area where the Contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting Contractor's goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.
- C. Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.

*SC-19.11 Restrictions on Lobbying*

- A. Contractor and each subcontractor shall comply with Restrictions on Lobbying (Public Law 101-121, Section 319) as supplemented by applicable Agency regulations. This Law applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a

Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, Contractor must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Contract. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

*SC-19.12 Environmental Requirements*

- A. When constructing a Project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental conditions:
1. Wetlands –When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.
  2. Floodplains –When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert 100-year floodplain areas (Standard Flood Hazard Area) delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, e.g., alluvial soils on NRCS Soil Survey Maps.
  3. Historic Preservation – Any excavation by Contractor that uncovers an historical or archaeological artifact or human remains shall be immediately reported to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the State Historic Preservation Officer (SHPO).
  4. Endangered Species – Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of Contractor, Contractor will immediately report this evidence to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the U.S. Fish and Wildlife Service.
  5. Mitigation Measures – The following environmental mitigation measures are required on this Project: None.



SECTION 00800  
ATTACHMENT 1 – COMPLIANCE STATEMENT

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**COMPLIANCE STATEMENT**

This statement relates to a proposed contract with \_\_\_\_\_

\_\_\_\_\_  
*(Name of borrower or grantee)*

who expects to finance the contract with assistance from either the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), or the Rural Utilities Service (RUS) or their successor agencies, United States Department of Agriculture (whether by a loan, grant, loan insurance, guarantee, or other form of financial assistance). I am the undersigned bidder or prospective contractor, I represent that:

1.  I have,  have not, participated in a previous contract or subcontract subject to Executive Order 11246 (regarding equal employment opportunity) or a preceding similar Executive Order.
2. If I have participated in such a contract or subcontract,  I have,  have not, filed all compliance reports that have been required to file in connection with the contract or subcontract.

If the proposed contract is for \$50,000 or more and I have 50 or more employees, I also represent that:

3.  I have,  have not previously had contracts subject to the written affirmative action programs requirements of the Secretary of Labor.
4. If I have participated in such a contract or subcontract,  I have,  have not developed and placed on file at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor.

I understand that if I have failed to file any compliance reports that have been required of me, I am not eligible and will not be eligible to have my bid considered or to enter into the proposed contract unless and until I make an arrangement regarding such reports that is satisfactory to either the RHS, RBS or RUS, or to the office where the reports are required to be filed.

I also certify that I do not maintain or provide for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the Equal Opportunity clause in my contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and wash rooms, restaurants and other eating areas time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. I further agree that (except where I have obtained identical certifications for proposed subcontractors for specific time periods) I will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods): (See Reverse).

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*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays the valid OMB control number. The valid OMB control number for this information collection is 0575-0018. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

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**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR  
CERTIFICATIONS OF NON-SEGREGATED FACILITIES**

A certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32F.R. 7439, may 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$ 10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Date \_\_\_\_\_

\_\_\_\_\_  
*(Signature of Bidder or Prospective Contractor)*

\_\_\_\_\_  
*Address (including Zip Code)*

SECTION 00800  
ATTACHMENT 2 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED  
TRANSACTIONS

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**U.S. DEPARTMENT OF AGRICULTURE**

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**Certification Regarding Debarment, Suspension, Ineligibility  
and Voluntary Exclusion - Lower Tier Covered Transactions**

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This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)**

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Organization Name

PR/Award Number or Project Name

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Name(s) and Title(s) of Authorized Representative(s)

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Signature(s)

Date

**Instructions for Certification**

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transaction and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

SECTION 00800  
ATTACHMENT 3 – CERTIFICATE OF OWNER’S ATTORNEY

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**CERTIFICATE OF OWNER’S ATTORNEY AND AGENCY CONCURRENCE**

CERTIFICATE OF OWNER’S ATTORNEY

PROJECT NAME:

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CONTRACTOR NAME:

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I, the undersigned, \_\_\_\_\_, the duly authorized and acting legal representative of \_\_\_\_\_, do hereby certify as follows: I have examined the attached Contract(s) and performance and payment bond(s) and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements is adequate and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with the terms, conditions, and provisions thereof.

---

Name

Date

AGENCY CONCURRENCE

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

---

Agency Representative

Date

---

Name



SECTION 00800  
ATTACHMENT 4 – ENGINEER’S CERTIFICATION OF FINAL PLANS AND  
SPECIFICATIONS

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SECTION 00810 – U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SUPPLEMENTAL GENERAL CONDITIONS

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## **SUPPLEMENTAL GENERAL CONDITIONS**

The following Supplemental General Conditions are hereby made a part of this contract and shall supplement and/or supersede any articles of these specifications in conflict therewith.

Any subsequent and/or addenda issued after these specifications have been prepared shall supplement and/or supersede any articles of these specifications.

1. CDBG Funding Notice
2. Alaska License Requirements
3. Insurance and Bonding Requirements
4. Reports and Information
5. Access to Records
6. Contract Pricing
7. Federal Labor Standards Provisions (HUD Form 4010)
8. Schedule of Minimum Hourly Wage Rates
9. Special Equal Opportunity Provisions
  - a. Equal Employment Opportunity
  - b. Civil Rights Act of 1964
  - c. Section 109 of the Housing and Community Development Act of 1974
  - d. Section 3 of the Housing and Community Development Act of 1968
  - e. Minority/Women Business Enterprise
10. The Architectural Barriers Act
11. The Americans With Disabilities Act
12. Compliance with Clean Air and Clean Water Acts
13. Lead-Based Paint Poisoning Prevention
14. Section 3
15. Conflict of Interest
16. Breach of Contract
17. Termination

## **1. CDBG FUNDING NOTICE**

This project is funded fully or in part by the Community Development Block Grant program. This contract is subject to all laws and regulations governing the use of such funding. The contractor is bound to each and every applicable provision of the Grant Agreement between the owner and the State of Alaska governing the use of such funding. This contract shall not create between the State of Alaska and the contractor or any subcontractor any relationship. The State of Alaska is not liable for damages or claims from damages arising from the contractor's or any subcontractor's performance or activities under the terms of this contract.

## **2. ALASKA LICENSE REQUIREMENTS**

Any Contractor bidding on public work in the State of Alaska is required to have a license from the State of Alaska based upon the nature, extent, and amount of the contract. No Bid will be considered that does not carry the state license number on the cover page of the Contract Documents and on the Bid Form immediately following the signature and address of the Bidder. Furthermore, the Contractor by signing this Contract represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR Part 570 and Alaska Statute 36.30.

## **3. INSURANCE AND BONDING REQUIREMENTS**

The contractor is required to provide and maintain Workers' Compensation Insurance as required by AS 23.30. The contractor must be bonded and insured for at least the amount of the project and, if appropriate, must maintain Professional Liability Insurance.

## **4. REPORTS AND INFORMATION**

The contractor, at such times and in such forms as the owner may require, shall furnish the owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

## **5. ACCESS TO RECORDS**

The owner, the Inspector General of the United States, the U.S. Department of Housing and Urban Development, and the U.S. Department of Labor, the General Accounting Office, and the State of Alaska Department of Commerce, Community and Economic Development shall be permitted by the contractor to have full access to, and right to examine any pertinent books, documents, papers and records of the contractor involving transactions related to this contract, during the period of the project and for three (3) years from the date of final payment or until all findings have been resolved to the satisfaction of the State of Alaska.

**6. CONTRACT PRICING**

The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used.

**7. FEDERAL LABOR STANDARDS PROVISIONS**

(See HUD form 4010 inserted at the end of this section)

**8. SCHEDULE OF MINIMUM HOURLY WAGE RATES**

(See Sample Wage Determination inserted at the end of this section)

**9. SPECIAL EQUAL OPPORTUNITY PROVISIONS**

(a) Equal Employment Opportunity. During the performance of this contract, the Contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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

3. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.

7. The contractor will include the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issues pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that each provision will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the even the contractor becomes involved in or is threatened with, litigation with a subcontractor or vendor as result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

(b) Title VI of the Civil Rights Act of 1964. Provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

(c) Section 109 of the Housing and Community Development Act of 1974. "No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an other wise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity."

(d) Minority Business Enterprise. Under the provisions of Executive Order 11246 and OMB Circular A-102, contractors on federally-funded projects are required to take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the contractor must document all affirmative steps

taken to solicit minority businesses and forward this documentation along with the names of the minority subcontractors and suppliers to the owner upon request.

#### **10. THE ARCHITECTURAL BARRIERS ACT**

All design specifications for the construction of any building shall provide access to the physically handicapped in accordance with the Architectural Barriers Act of 1968.

#### **11. THE AMERICANS WITH DISABILITIES ACT**

(a) The contractor will ensure that no person will be discriminated against in any terms or conditions of employment for qualified individuals with a disability, in accordance with Title I of The Americans With Disabilities Act.

(b) The contractor will ensure that services offered by public entities will be accessible and available to persons with disabilities, in accordance with Title II of The Americans With Disabilities Act.

(c) The contractor will take affirmative steps to remove physical barriers and implement readily achievable modifications to existing public accommodations, and will prohibit discriminatory policies and procedures in providing goods and services to the general public, in accordance with Title III of The Americans With Disabilities Act.

(d) The contractor will not retaliate against or attempt to coerce an individual who seeks to enforce his or her own or another's rights under The Americans With Disabilities Act, in accordance with Title V of The Americans With Disabilities Act.

#### **12. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS**

(Applicable to federally-assisted construction contracts and related subcontracts exceeding \$100,000.)

Compliance with Air and Water Acts. During the performance of this contract, the contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR 15, as amended.

#### **13. LEAD-BASED PAINT POISONING PREVENTION**

The Contractor shall comply with the provisions of Title IV of the Lead-Based Paint Poisoning Prevention Act (42 USC 4831), which prohibits the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance of any kind.



#### 14. SECTION 3

(a) 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 the Section 3 is to ensure that 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, who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, 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 135 regulations.

(c) 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, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. 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 135.

(e) 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 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(g) With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

#### **15. CONFLICT OF INTEREST**

No member, officer, or employee of the owner or its designees or agents shall have any personal or pecuniary gain or interest, direct or indirect, in this contract or any subcontracts assisted by this contract.

#### **16. BREACH OF CONTRACT**

If the Contractor fails to perform any of its obligations under the Contract Documents or fails to comply with applicable state and federal laws governing the use of Community Development Block Grant funding, the Owner may apply such administrative, contractual, or legal remedies including sanctions, penalties, and termination as may be appropriate.

#### **17. TERMINATION**

The Owner may, at any time, terminate the contract for the Owner's convenience and without cause. Upon receipt of written notice from the owner of such termination for the owner's convenience, the contractor shall cease operations as directed by the Owner and the notice.

SECTION 00810 – U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
ATTACHMENT 1 - FEDERAL LABOR STANDARDS PROVISIONS

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## Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

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

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

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

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

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

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

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

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

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

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

#### **4. Apprentices and Trainees.**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

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

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

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

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

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

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

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

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**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

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

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.



SECTION 00810 – U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
ATTACHMENT 2 – PAYROLL TEMPLATE

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# U.S. Department of Labor

Wage and Hour Division

(For Contractor's Optional Use; See Instructions at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm))

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



Rev. Dec. 2008

OMB No.: 1235-0008  
Expires: 02/28/2018

NAME OF CONTRACTOR OR SUBCONTRACTOR

ADDRESS

PAYROLL NO.

FOR WEEK ENDING

PROJECT AND LOCATION

PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS				(9) NET WAGES PAID FOR WEEK			
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(i) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

**Public Burden Statement**

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

Date \_\_\_\_\_

I, \_\_\_\_\_ (Name of Signatory Party) \_\_\_\_\_ (Title)  
do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ on the \_\_\_\_\_

(Contractor or Subcontractor) \_\_\_\_\_; that during the payroll period commencing on the \_\_\_\_\_ (Building or Work)

\_\_\_\_\_ day of \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said \_\_\_\_\_.

\_\_\_\_\_ from the full \_\_\_\_\_ (Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R., Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967, 76 Stat. 357, 40 U.S.C. § 3145), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:  
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

— in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

— Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:	
NAME AND TITLE	SIGNATURE
THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.	

SECTION 00810 – U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
ATTACHMENT 3 – SECTION 3 CLAUSE

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## Section 3 Clause

Contract dated \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ (Grantee)  
and \_\_\_\_\_ (Contractor),(collectively, the Parties).

- A. 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 the Section 3 is to ensure that 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, who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, 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 135 regulations.
- C. 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, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. 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 135.
- E. 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 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

SECTION 00810 – U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
ATTACHMENT 4 – CERTIFICATION FOR CONTRACTS, GRANTS, AND LOANS

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PART 1940 - GENERAL

Subpart Q - Restrictions on Lobbying

§1940.801 Purpose.

This subpart implements section 319 of Public Law 101-121, which prohibits applicants and recipients of Federal contracts, grants and loans from using appropriated funds for lobbying the Federal Government in connection with a specific award. Section 319 also requires that each person who requests or receives a Federal contract, grant, loan, or a Federal commitment to guarantee a loan, must disclose the expenditure of any funds, other than appropriated funds, for lobbying activities. This subpart provides administrative guidance regarding the information contained in U.S. Department of Agriculture's (USDA) 7 CFR part 3018 and Departmental Regulation (DR) 2400-5, which are attached as Exhibits A and B of this subpart. This subpart is inapplicable to Farm Service Agency, Farm Loan Programs. (Revised 01-09-08, PN 417.)

§1940.802 [Reserved] (Revised 07-31-96, PN 264.)

§1940.803 Definitions.

In addition to the following, refer to the definitions in §3018.105 of Exhibit A of this subpart.

Appropriated funds. Federal funds received from any Federal agency for a purpose or purposes authorized by such agency.

Communication. Includes written, oral, electronic or other means of communications.

Receiving office. The State, District, or County Office that is the primary office responsible for processing an application.

§§1940.804 - 1940.809 [Reserved]

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DISTRIBUTION: WSAL

Loan and Grant Making  
General

§1940.810 Certification for contracts, grants and loans.

(a) The Certification for Contracts, Grants and Loans, contained in Exhibit A-1 of this subpart, must be completed at the time an application or bid proposal is submitted by a person requesting a contract or grant exceeding \$100,000, or a loan exceeding \$150,000.

(b) Any person who requests or receives a contract, subcontract or subgrant exceeding \$100,000 at any tier under a covered contract, grant or loan, must complete and submit a certification to the next higher tier.

(c) The certification completed by a person referred to in paragraph (a) of this section will be collected by the receiving office and filed in the case folder.

(d) Recipients of contracts, grants or loans, or their subs, who receive certifications from lower tier applicants or recipients shall file the certifications with documents related to the subaward, and shall make them available for Agency examination upon request.

(e) Refer to §3018.110 of Exhibit A of this subpart for additional information.

§1940.811 Statement for loan guarantees.

(a) The Statement for Loan Guarantees, contained in Exhibit A-2 of this subpart, must be completed by the lender at the time an application is filed for each loan exceeding \$150,000.

(b) The statement will be collected by the receiving office and filed in the case folder.

(c) Refer to §3018.110 of Exhibit A of this subpart for additional information.

§1940.812 Disclosure of lobbying activities.

(a) Standard Form (SF) LLL, "Disclosure of Lobbying Activities," which is part of Exhibit A of this subpart, must be completed by a person requesting or receiving a Agency contract, grant, loan, or a Agency commitment to guarantee a loan, and who meets the following conditions:

- (1) the award amount exceeds the threshold stated in §1940.810(a) or §1940.811(a) of this subpart; and



(2) the person has made or has agreed to make any payment, using funds other than appropriated funds, to influence or attempt to influence a decision in connection with that specific award.

(b) SF-LLL must also be completed by any person who requests or receives a contract, subcontract or subgrant at any tier under a covered contract, grant or loan, and who meets the following conditions:

(1) the award amount exceeds \$100,000; and

(2) the person has made or has agreed to make any payment, using funds other than appropriated funds, to influence or attempt to influence a decision in connection with that specific award.

(c) Each person who meets all conditions of paragraph (a) or (b) of this section will submit a disclosure form at the time of the application or bid proposal, and, at the end of each calendar quarter in which there occurs an event as specified in §3018.110 (c) of Exhibit A of this subpart.

(d) All disclosure forms, including quarterly updates, will be collected in the receiving office. The forms completed by persons under paragraph (a) of this section will be submitted directly to the receiving office. Forms completed by persons under paragraph (b) of this section will be submitted to the next higher tier. They will then be forwarded from tier to tier until they reach the receiving office. The original completed form will be retained in the case folder. One copy will be forwarded to the State Director, and a second copy will be sent immediately to the following address:

USDA, Office of Operations  
Procurement Division  
Policy and Review Team  
14th and Independence Ave., S.W.  
Room 1575-S  
Washington, D.C. 20250

(e) The information provided on this form cannot be used by Rural Development as a basis for denying Federal assistance.

(f) Refer to Exhibit B of this subpart for additional information.

§§1940.813 - 1940.819 [Reserved]

RD Instruction 1940-Q

§1940.820 Exceptions.

(a) The prohibition on the use of appropriated funds and disclosure requirements governing the use of funds, other than appropriated funds, do not apply to certain activities. These activities are described in Subparts B and C of Exhibit A of this subpart.

(b) Section 319 of P.L. 101-121 imposes no restrictions on the use of any funds for general lobbying; i.e., attempts to influence Congress or the Executive Branch with respect to a program, rather than a specific award. Such general lobbying need not be disclosed on SF LLL. However, Section 319 does not authorize lobbying otherwise restricted or prohibited by law.

§1940.821 Examples.

Several examples of activities addressed by this Instruction are contained in Exhibit C of this subpart. They are to be used for guidance purposes only.

§§1940.822 - 1940.839 [Reserved]

§1940.840 Penalties and enforcement.

(a) Failure to comply with the provisions of this subpart may result in civil penalties, as described in §3018.400 of Exhibit A of this subpart.

(b) The Under Secretary, Rural Development, shall take such actions as are necessary to ensure that the provisions in Section 319 of P.L. 101-121 are vigorously implemented and enforced.

§§1940.841 - 1940.850 [Reserved]

Attachments: Exhibits A, A-1, A-2, B, and C

oOo

1940-Q Exhibit A not automated please see manual

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(title)

oOo

STATEMENT FOR LOAN GUARANTEES

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to guarantee a loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_

(name)

\_\_\_\_\_

(organization)

\_\_\_\_\_

(title)

\_\_\_\_\_

(date)

oOo

1940-Q Exhibit B not automated see manual

EXAMPLES OF ACTIVITIES ADDRESSED BY RD INSTRUCTION 1940-Q

1. [A] is an applicant for a \$1,000,000 Rural Development Rural Rental Housing Loan. [B] is an architectural firm retained by [A] for preliminary design studies. [A] has requested [B] to visit the Rural Development State Office to discuss design options for use in developing an application.

*This technical activity is specifically authorized for use of appropriated funds and does not need to be reported by [A] as a lobbying activity. However, if the visit includes any communication with Rural Development officials on application issues that are not architecturally related, the activity is not exempt from the law.*

2. [C] will be submitting a loan application in the amount of \$149,000 for a community facility. [C] has paid, with its own funds, [D], a consultant, to visit the National Office to help expedite the application when it is received.

*[C] will not be required to submit a certification nor a disclosure form because the loan amount is less than \$150,000.*

3. [E] is borrowing \$2,000,000 from Rural Development to construct a hospital. The construction contract with [F] is in the amount of \$1,700,000. [F] has a mechanical subcontract with [G] in the amount of \$150,000.

*[E] must submit a certification to Rural Development at the time of the application. [F] must submit its certificate with the proposed bid to [E]. [G], having a subcontract of more than \$100,000, must submit a certificate to [F]. [E] and [F] will retain the certifications they received from the lower tier awardees.*

4. [H] is a lender who has requested an 80 percent guarantee on a \$175,000 guaranteed loan for applicant [I]. [I] submitted the loan application without a signed statement from [H] because the guaranteed portion of the loan (80% of \$175,000) was less than \$150,000.

*The amount that determines whether or not a statement is required from the lender is the total guaranteed loan (amount obligated = \$175,000); therefore, the application should have included a statement from [H]. [I] is not required to sign a certification.*

5. [J] is a long time Rural Development borrower who submitted a Form SF LLL because she paid [K], a lobbyist, with her own funds, to visit Washington in an attempt to persuade a Member of Congress to increase the Farmer Programs budget for the next fiscal year.

*The disclosure form is not required when the lobbying activity involves a program and not a specific application or award.*

oOo



SECTION 00810  
ATTACHMENT 5 – ADDITIONAL REQUIREMENTS

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## **Copeland "Anti-kickback" Act**

### **TITLE 18, U.S.C.**

#### **Sec. 874. Kickbacks from public works employees**

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both.

[18 U.S.C. 874 (June 25, 1948, ch. 645, Sec. 1, 62 Stat. 740 and 862, eff. Sept. 1, 1948) replaced the former sec. 1 of the Copeland Act of June 13, 1934 (48 Stat. 948). Prior to 1948, Section 1 of the Copeland Act was codified as 40 U.S.C. 276b. P.L 103-322, (Sept. 13, 1994, 108 Stat. 2147), substituted "fined under this title" for "fined not more than \$5,000".]

### **TITLE 40, U.S.C.**

#### **Sec. 3145. Regulations governing contractors and subcontractors**

(a) In General.—The Secretary of Labor shall prescribe reasonable regulations for contractors and subcontractors engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are financed by a loan or grant from the Federal Government. The regulations shall include a provision that each contractor and subcontractor each week must furnish a statement on the wages paid each employee during the prior week.

(b) Application.—Section 1001 of title 18 applies to the statements.

[Section 2 of the original Act of June 13, 1934, as amended prior to 2002, and codified as 40 U.S.C. 276c , was repealed, revised and codified as 40 U.S.C. 3145 by P.L. 107-217 (Aug. 21, 2002, 116 Stat. 1152, 1304,1309, 1313, 1315).]

# The Fair Labor Standards Act Of 1938, As Amended

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U.S. Department of Labor  
Wage and Hour Division

WH Publication 1318  
Revised May 2011

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Internet: [www.wagehour.dol.gov](http://www.wagehour.dol.gov)

# The Fair Labor Standards Act of 1938, as amended

## 29 U.S.C. 201, *et seq.*

To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Act of 1938".

### § 201. Short title

This chapter may be cited as the "Fair Labor Standards Act of 1938".

### § 202. Congressional finding and declaration of policy

**(a)** The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers

**(1)** causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States;

**(2)** burdens commerce and the free flow of goods in commerce;

**(3)** constitutes an unfair method of competition in commerce;

**(4)** leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and

**(5)** interferes with the orderly and fair marketing of goods in commerce. That Congress further finds that the employment of persons in domestic service in households affects commerce.

**(b)** It is declared to be the policy of this chapter, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

## Sec. 203

### § 203. Definitions

As used in this chapter—

**(a)** "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

**(b)** "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

**(c)** "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

**(d)** "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

**(e)**

**(1)** Except as provided in paragraphs (2), (3), and (4), the term "employee" means any individual employed by an employer.

**(2)** In the case of an individual employed by a public agency, such term means—

**(A)** any individual employed by the Government of the United States—

**(i)** as a civilian in the military departments (as defined in section 102 of Title 5),

**(ii)** in any executive agency (as defined in section 105 of such title),

**(iii)** in any unit of the judicial branch of the Government which has positions in the competitive service,

**(iv)** in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

**(v)** in the Library of Congress, or

**(vi)** the Government Printing Office;

**(B)** any individual employed by the United States Postal Service or the Postal Regulatory Commission; and

**(C)** any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

## Sec. 203(e)(2)(C)(i)

**(i)** who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

**(ii)** who—

**(I)** holds a public elective office of that State, political subdivision, or agency,

**(II)** is selected by the holder of such an office to be a member of his personal staff,

**(III)** is appointed by such an officeholder to serve on a policymaking level,

**(IV)** is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or

**(V)** is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

**(3)** For purposes of subsection (u) of this section, such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

**(4)**

**(A)** The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if—

**(i)** the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

**(ii)** such services are not the same type of services which the individual is employed to perform for such public agency.

**(B)** An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

**(5)** The term "employee" does not include individuals who volunteer their services solely for humanitarian purposes to private non-profit food banks and who receive from the food banks groceries.

## Sec. 203(f)

**(f)** "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

**(g)** "Employ" includes to suffer or permit to work.

**(h)** "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

**(i)** "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

**(j)** "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

**(k)** "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

**(l)** "Oppressive child labor" means a condition of employment under which

**(1)** any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or

**(2)** any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and



## Sec. 203(l)(2)

mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

**(m)** "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employer shall be an amount equal to—

**(1)** the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and

**(2)** an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 206(a)(1) of this title.

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

**(n)** "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry.

**(o)** Hours Worked.— In determining for the purposes of sections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

**(p)** "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

**(q)** "Secretary" means the Secretary of Labor.

## Sec. 203(r)

(r)

**(1)** "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement,

**(A)** that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or

**(B)** that it will join with other such establishments in the same industry for the purpose of collective purchasing, or

**(C)** that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

**(2)** For purposes of paragraph (1), the activities performed by any person or persons—

**(A)** in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is operated for profit or not for profit), or

**(B)** in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

**(C)** in connection with the activities of a public agency,

shall be deemed to be activities performed for a business purpose.

## Sec. 203(s)

**(s)**

**(1)** "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that—

**(A)**

**(i)** has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

**(ii)** is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated);

**(B)** is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

**(C)** is an activity of a public agency.

**(2)** Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

**(t)** "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips.

**(u)** "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

**(v)** "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

**(w)** "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

**(x)** "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

**(y)** "Employee in fire protection activities" means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who—

## Sec. 203(y)(1)

**(1)** is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and

**(2)** is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

## § 204. Administration

### **(a) Creation of Wage and Hour Division in Department of Labor; Administrator**

There is created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this chapter referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

### **(b) Appointment, selection, classification, and promotion of employees by Administrator**

The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this chapter and shall fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of Title 5. The Administrator may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Administrator, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

### **(c) Principal office of Administrator; jurisdiction**

The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

### **(d) Biennial report to Congress; studies of exemptions to hour and wage provisions and means to prevent curtailment of employment opportunities**

**(1)** The Secretary shall submit biennially in January a report to the Congress covering his activities for the preceding two years and including such information, data, and recommendations for further legislation in connection with the matters covered by this chapter as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages and overtime coverage established by this chapter, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may

## Sec. 204(d)(1)

have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent. Such report shall also include a summary of the special certificates issued under section 214(b) of this title.

**(2)** The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 213 of this title, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

**(3)** The Secretary shall conduct a continuing study on means to prevent curtailment of employment opportunities for manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). The first report of the results of such study shall be transmitted to the Congress not later than one year after the effective date of the Fair Labor Standards Amendments of 1974. Subsequent reports on such study shall be transmitted to the Congress at two-year intervals after such effective date. Each such report shall include suggestions respecting the Secretary's authority under section 214 of this title.

### **(e) Study of effects of foreign production on unemployment; report to President and Congress**

Whenever the Secretary has reason to believe that in any industry under this chapter the competition of foreign producers in United States markets or in markets abroad, or both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete report of his findings and determinations to the President and to the Congress: *Provided*, That he may also include in such report information on the increased employment resulting from additional exports in any industry under this chapter as he may determine to be pertinent to such report.

### **(f) Employees of Library of Congress; administration of provisions by Office of Personnel Management**

The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to individuals employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this chapter with respect to such individuals. Notwithstanding any other provision of this chapter, or any other law, the Director of the Office of Personnel Management is authorized to administer the provisions of this chapter with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Regulatory Commission, or the Tennessee Valley Authority). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 216(b) of this title.

## Sec. 205

§ 205. Repealed. Pub.L. 110-28, Title VIII, § 8103(c)(1)(A), May 25, 2007, 121 Stat. 189

## § 206. Minimum wage

### **(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees**

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

**(1)** except as otherwise provided in this section, not less than—

**(A)** \$5.85 an hour beginning on the 60th day after May 25, 2007;

**(B)** \$6.55 an hour, beginning 12 months after that 60th day; and

**(C)** \$7.25 an hour, beginning 24 months after that 60th day:

**(2)** if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;

**(3)** if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

## Sec. 206(a)(4)

**(4)** if such employee is employed in agriculture, not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977.

**(5)** Redesignated (4)

### **(b) Additional applicability to employees pursuant to subsequent amendatory provisions**

Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) of this section applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972 [20 U.S.C.A. § 1681 et seq.], or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1) of this section.

**(c) Repealed. Pub.L. 104-188, [Title III], § 2104(c), Aug. 20, 1996, 110 Stat. 1929**

### **(d) Prohibition of sex discrimination**

**(1)** No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to

**(i)** a seniority system;

**(ii)** a merit system;

**(iii)** a system which measures earnings by quantity or quality of production; or

**(iv)** a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

**(2)** No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

**(3)** For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall

## Sec. 206(d)(3)

be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

**(4)** As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

### **(e) Employees of employers providing contract services to United States**

**(1)** Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof), every employer providing any contract services (other than linen supply services) under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by the Service Contract Act of 1965 (41 U.S.C. 351-357) or to whom subsection (a)(1) of this section is not applicable, wages at rates not less than the rates provided for in subsection (b) of this section.

**(2)** Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof) and the provisions of the Service Contract Act of 1965 [41 U.S.C.A. § 351 et seq.] every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b) of this section, except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.

### **(f) Employees in domestic service**

Any employee—

**(1)** who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under subsection (b) of this section unless such employee's compensation for such service would not because of section 209(a)(6) of the Social Security Act [42 U.S.C.A. § 409(a)(6)] constitute wages for the purposes of title II of such Act [42 U.S.C.A. § 401 et seq.], or

**(2)** who in any workweek—

**(A)** is employed in domestic service in one or more households, and

**(B)** is so employed for more than 8 hours in the aggregate,

shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under subsection (b) of this section.



## Sec. 206(g)

### **(g) Newly hired employees who are less than 20 years old**

**(1)** In lieu of the rate prescribed by subsection (a)(1) of this section, any employer may pay any employee of such employer, during the first 90 consecutive calendar days after such employee is initially employed by such employer, a wage which is not less than \$4.25 an hour.

**(2)** No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in paragraph (1).

**(3)** Any employer who violates this subsection shall be considered to have violated section 215(a)(3) of this title.

**(4)** This subsection shall only apply to an employee who has not attained the age of 20 years.

## § 207. Maximum hours

### **(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions**

**(1)** Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

**(2)** No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966—

**(A)** for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

**(B)** for a workweek longer than forty-two hours during the second year from such date, or

**(C)** for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

## Sec. 207(b)

### **(b) Employment pursuant to collective bargaining agreement; employment by independently owned and controlled local enterprise engaged in distribution of petroleum products**

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

**(1)** in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks; or

**(2)** in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty-hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) of this section or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

**(3)** by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—

**(A)** the annual gross volume of sales of such enterprise is less than \$1,000,000 exclusive of excise taxes,

**(B)** more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

**(C)** not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale,

and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 206 of this title,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in

## Sec. 207(b)(3)(C)

any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

**(c), (d) Repealed. Pub.L. 93-259, § 19(e), Apr. 8, 1974, 88 Stat. 66**

### **(e) "Regular rate" defined**

As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

- (1)** sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;
- (2)** payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;
- (3)** sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;
- (4)** contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;
- (5)** extra compensation provided by a premium rate paid for certain hours worked by the employee in any day of workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) of this section or in excess of the employee's normal working hours or regular working hours, as the case may be;
- (6)** extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less

## Sec. 207(e)(6)

than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;

**(7)** extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a) of this section, where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; or

**(8)** any value or income derived from employer-provided grants or rights provided pursuant to a stock option, stock appreciation right, or bona fide employee stock purchase program which is not otherwise excludable under any of paragraphs (1) through (7) if—

**(A)** grants are made pursuant to a program, the terms and conditions of which are communicated to participating employees either at the beginning of the employee's participation in the program or at the time of the grant;

**(B)** in the case of stock options and stock appreciation rights, the grant or right cannot be exercisable for a period of at least 6 months after the time of grant (except that grants or rights may become exercisable because of an employee's death, disability, retirement, or a change in corporate ownership, or other circumstances permitted by regulation), and the exercise price is at least 85 percent of the fair market value of the stock at the time of grant;

**(C)** exercise of any grant or right is voluntary; and

**(D)** any determinations regarding the award of, and the amount of, employer-provided grants or rights that are based on performance are—

**(i)** made based upon meeting previously established performance criteria (which may include hours of work, efficiency, or productivity) of any business unit consisting of at least 10 employees or of a facility, except that, any determinations may be based on length of service or minimum schedule of hours or days of work; or

**(ii)** made based upon the past performance (which may include any criteria) of one or more employees in a given period so long as the determination is in the sole discretion of the employer and not pursuant to any prior contract.

### **(f) Employment necessitating irregular hours of work**

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek

## Sec. 207(f)

applicable to such employee under subsection (a) of this section if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement

**(1)** specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 206 of this title (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and

**(2)** provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

### **(g) Employment at piece rates**

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection—

**(1)** in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

**(2)** in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

**(3)** is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if

**(i)** the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) of this section are not less than the minimum hourly rate required by applicable law, and

**(ii)** extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

## Sec. 207(h)

### **(h) Extra compensation creditable toward overtime compensation**

**(1)** Except as provided in paragraph (2), sums excluded from the regular rate pursuant to subsection (e) of this section shall not be creditable toward wages required under section 6 or overtime compensation required under this section.

**(2)** Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) of this section shall be creditable toward overtime compensation payable pursuant to this section.

### **(i) Employment by retail or service establishment**

No employer shall be deemed to have violated subsection (a) of this section by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if

**(1)** the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 206 of this title, and

**(2)** more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

### **(j) Employment in hospital or establishment engaged in care of sick, aged, or mentally ill**

No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated subsection (a) of this section if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

### **(k) Employment by public agency engaged in fire protection or law enforcement activities**

No public agency shall be deemed to have violated subsection (a) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

**(1)** in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of

## Sec. 207(k)(1)(A)

**(A)** 216 hours, or

**(B)** the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

**(2)** in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

### **(l) Employment in domestic service in one or more households**

No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a) of this section.

### **(m) Employment in tobacco industry**

For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such subsection, if such employee—

**(1)** is employed by such employer—

**(A)** to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

**(B)** in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

**(C)** in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

**(2)** receives for—

**(A)** such employment by such employer which is in excess of ten hours in any workday, and

## Sec. 207(m)(2)(B)

**(B)** such employment by such employer which is in excess of forty-eight hours in any workweek, compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.

### **(n) Employment by street, suburban or interurban electric railway, or local trolley or motorbus carrier**

In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) of this section applies there shall be excluded the hours such employee was employed in charter activities by such employer if

**(1)** the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and

**(2)** if employment in such activities is not part of such employee's regular employment.

### **(o) Compensatory time**

**(1)** Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

**(2)** A public agency may provide compensatory time under paragraph (1) only—

**(A)** pursuant to—

**(i)** applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

**(ii)** in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

**(B)** if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).



## Sec. 207(o)(2)(B)

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

### **(3)**

**(A)** If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

**(B)** If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

**(4)** An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

**(A)** the average regular rate received by such employee during the last 3 years of the employee's employment, or

**(B)** the final regular rate received by such employee,

whichever is higher.

**(5)** An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

**(A)** who has accrued compensatory time off authorized to be provided under paragraph (1), and

**(B)** who has requested the use of such compensatory time,

shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

**(6)** The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) of this section if—

**(A)** such employee is paid at a per-page rate which is not less than—

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- (i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,
- (ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or
- (iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

**(B)** the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee's attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court reporting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.

**(7)** For purposes of this subsection—

**(A)** the term "overtime compensation" means the compensation required by subsection (a), and

**(B)** the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

### **(p) Special detail work for fire protection and law enforcement employees; occasional or sporadic employment; substitution**

**(1)** If an individual who is employed by a State, political subdivision of a State, or an interstate governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual's option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency—

**(A)** requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

**(B)** facilitates the employment of such employees by a separate and independent employer, or

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**(C)** otherwise affects the condition of employment of such employees by a separate and independent employer.

**(2)** If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

**(3)** If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

### **(q) Maximum hour exemption for employees receiving remedial education**

Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is—

**(1)** provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

**(2)** designed to provide reading and other basic skills at an eighth grade level or below; and

**(3)** does not include job specific training.

### **(r)**

**(1)** An employer shall provide—

(A) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

(B) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

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**(2)** An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

**(3)** An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

**(4)** Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

**§ 208. Repealed. Pub.L. 110-28, Title VIII, § 8103(c)(1)(A), May 25, 2007, 121 Stat. 189**

## **§ 209. Attendance of witnesses**

For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Administrator, the Secretary of Labor, and the industry committees.

## **§ 210. Court review of wage orders in Puerto Rico and the Virgin Islands**

**(a)** Any person aggrieved by an order of the Secretary issued under section 208 of this title may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of Title 28. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify (including provision for the payment of an appropriate minimum wage rate), or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such

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evidence in the proceedings before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

**(b)** The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Administrator's order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.

## § 211. Collection of data

### **(a) Investigations and inspections**

The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter. Except as provided in section 212 of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 of this title, the Administrator shall bring all actions under section 217 of this title to restrain violations of this chapter.

### **(b) State and local agencies and employees**

With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and duties under this chapter, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

### **(c) Records**

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and

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shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 207(p)(3) of this title may not be required under this subsection to keep a record of the hours of the substitute work.

### **(d) Homework regulations**

The Administrator is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations or orders of the Administrator relating to industrial homework are continued in full force and effect.

## § 212. Child labor provisions

### **(a) Restrictions on shipment of goods; prosecution; conviction**

No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

### **(b) Investigations and inspections**

The Secretary of Labor or any of his authorized representatives, shall make all investigations and inspections under section 211(a) of this title with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 217 of this title to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this chapter relating to oppressive child labor.

### **(c) Oppressive child labor**

No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.

### **(d) Proof of age**

In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age.

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### § 213. Exemptions

#### **(a) Minimum wage and maximum hour requirements**

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title shall not apply with respect to—

**(1)** any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of Title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

**(2)** Repealed. Pub.L. 101-157, § 3(s)(1), Nov. 17, 1989, 103 Stat. 939

**(3)** any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if

**(A)** it does not operate for more than seven months in any calendar year, or

**(B)** during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year, except that the exemption from sections 206 and 207 of this title provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture; or

**(4)** Repealed. Pub.L. 101-157, § 3(c)(1), Nov. 17, 1989, 103 Stat. 939

**(5)** any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

**(6)** any employee employed in agriculture

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- (A)** if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor,
- (B)** if such employee is the parent, spouse, child, or other member of his employer's immediate family,
- (C)** if such employee
  - (i)** is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment,
  - (ii)** commutes daily from his permanent residence to the farm on which he is so employed, and
  - (iii)** has been employed in agriculture less than thirteen weeks during the preceding calendar year,
- (D)** if such employee (other than an employee described in clause (C) of this subsection)
  - (i)** is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment,
  - (ii)** is employed on the same farm as his parent or person standing in the place of his parent, and
  - (iii)** is paid at the same piece rate as employees over age sixteen are paid on the same farm, or
- (E)** if such employee is principally engaged in the range production of livestock; or
- (7)** any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 214 of this title; or
- (8)** any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or
- (9)** Repealed. Pub.L. 93-259, § 23(a)(1), Apr. 8, 1974, 88 Stat. 69
- (10)** any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or



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**(11)** Repealed Pub.L. 93-259, § 10(a), Apr. 8, 1974, 88 Stat. 63

**(12)** any employee employed as a seaman on a vessel other than an American vessel; or

**(13), (14)** Repealed Pub.L. 93-259, §§ 9(b)(1), 23(b)(1), Apr. 8, 1974, 88 Stat. 63, 69

**(15)** any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary); or

**(16)** a criminal investigator who is paid availability pay under section 5545a of Title 5; or

**(17)** any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is—

**(A)** the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

**(B)** the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

**(C)** the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

**(D)** a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and

who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour.

### **(b) Maximum hour requirements**

The provisions of section 207 of this title shall not apply with respect to—

**(1)** any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of Title 49; or

**(2)** any employee of an employer engaged in the operation of a rail carrier subject to part A of subtitle IV of Title 49; or

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**(3)** any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 U.S.C.A. § 181 et seq.]; or

**(4)** Repealed. Pub.L. 93-259, § 11(c), Apr. 8, 1974, 88 Stat. 64

**(5)** any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

**(6)** any employee employed as a seaman; or

**(7)** Repealed. Pub.L. 93-259, § 21(b)(3), Apr. 8, 1974, 88 Stat. 68

**(8)** Repealed. Pub.L. 95-151, § 14(b), Nov. 1, 1977, 91 Stat. 1252

**(9)** any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located

**(A)** in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Office of Management and Budget, which has a total population in excess of one hundred thousand, or

**(B)** in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

**(10)**

**(A)** any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

**(B)** any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or

**(11)** any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 207(a) of this title; or

**(12)** any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year; or

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**(13)** any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee

**(A)** is primarily employed during his workweek in agriculture by such farmer, and

**(B)** is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 206(a)(1) of this title; or

**(14)** any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations; or

**(15)** any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or

**(16)** any employee engaged

**(A)** in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or

**(B)** in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or

**(17)** any driver employed by an employer engaged in the business of operating taxicabs; or

**(18), (19)** Repealed. Pub.L. 93-259, §§ 15(c), 16(b), Apr. 8, 1974, 88 Stat. 65

**(20)** any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or

**(21)** any employee who is employed in domestic service in a household and who resides in such household; or

**(22)** Repealed. Pub.L. 95-151, § 5, Nov. 1, 1977, 91 Stat. 1249

**(23)** Repealed. Pub.L. 93-259, § 10(b)(3), Apr. 8, 1974, 88 Stat. 64

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**(24)** any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children—

**(A)** who are orphans or one of whose natural parents is deceased, or

**(B)** who are enrolled in such institution and reside in residential facilities of the institution,

while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than \$10,000; or

**(25), (26)** Repealed. Pub.L. 95-151, §§ 6(a), 7(a), Nov. 1, 1977, 91 Stat. 1249, 1250

**(27)** any employee employed by an establishment which is a motion picture theater; or

**(28)** any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

**(29)** any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee

**(A)** is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and

**(B)** receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

**(30)** a criminal investigator who is paid availability pay under section 5545a of Title 5.

### **(c) Child labor requirements**

**(1)** Except as provided in paragraph (2) or (4), the provisions of section 212 of this title relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

**(A)** is less than twelve years of age and

**(i)** is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or

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**(ii)** is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of subsection (a)(6)(A) of this section) required to be paid at the wage rate prescribed by section 206(a)(5) of this title,

**(B)** is twelve years or thirteen years of age and

**(i)** such employment is with the consent of his parent or person standing in the place of his parent, or

**(ii)** his parent or such person is employed on the same farm as such employee, or

**(C)** is fourteen years of age or older.

**(2)** The provisions of section 212 of this title relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

**(3)** The provisions of section 212 of this title relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

**(4)**

**(A)** An employer or group of employers may apply to the Secretary for a waiver of the application of section 212 of this title to the employment for not more than eight weeks in any calendar year of individuals who are less than twelve years of age, but not less than ten years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that—

**(i)** the crop to be harvested is one with a particularly short harvesting season and the application of section 212 of this title would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

**(ii)** the employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

**(iii)** the level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

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**(iv)** individuals age twelve and above are not available for such employment; and

**(v)** the industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age.

**(B)** Any waiver granted by the Secretary under subparagraph (A) shall require that—

**(i)** the individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

**(ii)** such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

**(iii)** such individuals be employed under such waiver

**(I)** for not more than eight weeks between June 1 and October 15 of any calendar year, and

**(II)** in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

**(5)**

**(A)** In the administration and enforcement of the child labor provisions of this chapter, employees who are 16 and 17 years of age shall be permitted to load materials into, but not operate or unload materials from, scrap paper balers and paper box compactors—

**(i)** that are safe for 16- and 17-year-old employees loading the scrap paper balers or paper box compactors; and

**(ii)** that cannot be operated while being loaded.

**(B)** For purposes of subparagraph (A), scrap paper balers and paper box compactors shall be considered safe for 16- or 17-year-old employees to load only if—

**(i)**

**(I)** the scrap paper balers and paper box compactors meet the American National Standards Institute's Standard ANSI Z245.5-1990 for scrap paper balers and Standard ANSI Z245.2-1992 for paper box compactors; or

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**(II)** the scrap paper balers and paper box compactors meet an applicable standard that is adopted by the American National Standards Institute after August 6, 1996, and that is certified by the Secretary to be at least as protective of the safety of minors as the standard described in subclause (I);

**(ii)** the scrap paper balers and paper box compactors include an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older;

**(iii)** the on-off switch of the scrap paper balers and paper box compactors is maintained in an off position when the scrap paper balers and paper box compactors are not in operation; and

**(iv)** the employer of 16- and 17-year-old employees provides notice, and posts a notice, on the scrap paper balers and paper box compactors stating that—

**(I)** the scrap paper balers and paper box compactors meet the applicable standard described in clause (i);

**(II)** 16- and 17-year-old employees may only load the scrap paper balers and paper box compactors; and

**(III)** any employee under the age of 18 may not operate or unload the scrap paper balers and paper box compactors.

The Secretary shall publish in the Federal Register a standard that is adopted by the American National Standards Institute for scrap paper balers or paper box compactors and certified by the Secretary to be protective of the safety of minors under clause (i)(II).

### **(C)**

**(i)** Employers shall prepare and submit to the Secretary reports—

**(I)** on any injury to an employee under the age of 18 that requires medical treatment (other than first aid) resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor; and

**(II)** on any fatality of an employee under the age of 18 resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor.

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**(ii)** The reports described in clause (i) shall be used by the Secretary to determine whether or not the implementation of subparagraph (A) has had any effect on the safety of children.

**(iii)** The reports described in clause (i) shall provide—

**(I)** the name, telephone number, and address of the employer and the address of the place of employment where the incident occurred;

**(II)** the name, telephone number, and address of the employee who suffered an injury or death as a result of the incident;

**(III)** the date of the incident;

**(IV)** a description of the injury and a narrative describing how the incident occurred; and

**(V)** the name of the manufacturer and the model number of the scrap paper baler or paper box compactor involved in the incident.

**(iv)** The reports described in clause (i) shall be submitted to the Secretary promptly, but not later than 10 days after the date on which an incident relating to an injury or death occurred.

**(v)** The Secretary may not rely solely on the reports described in clause (i) as the basis for making a determination that any of the employers described in clause (i) has violated a provision of section 212 of this title relating to oppressive child labor or a regulation or order issued pursuant to section 212 of this title. The Secretary shall, prior to making such a determination, conduct an investigation and inspection in accordance with section 212(b) of this title.

**(vi)** The reporting requirements of this subparagraph shall expire 2 years after August 6, 1996.

**(6)** In the administration and enforcement of the child labor provisions of this chapter, employees who are under 17 years of age may not drive automobiles or trucks on public roadways. Employees who are 17 years of age may drive automobiles or trucks on public roadways only if—

**(A)** such driving is restricted to daylight hours;

**(B)** the employee holds a State license valid for the type of driving involved in the job performed and has no records of any moving violation at the time of hire;



## Sec. 213(c)(6)(C)

**(C)** the employee has successfully completed a State approved driver education course;

**(D)** the automobile or truck is equipped with a seat belt for the driver and any passengers and the employee's employer has instructed the employee that the seat belts must be used when driving the automobile or truck;

**(E)** the automobile or truck does not exceed 6,000 pounds of gross vehicle weight;

**(F)** such driving does not involve—

**(i)** the towing of vehicles;

**(ii)** route deliveries or route sales;

**(iii)** the transportation for hire of property, goods, or passengers;

**(iv)** urgent, time-sensitive deliveries;

**(v)** more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the employee's employer to a customer (other than urgent, time-sensitive deliveries);

**(vi)** more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than employees of the employer);

**(vii)** transporting more than three passengers (including employees of the employer); or

**(viii)** driving beyond a 30 mile radius from the employee's place of employment; and

**(G)** such driving is only occasional and incidental to the employee's employment.

For purposes of subparagraph (G), the term "occasional and incidental" is no more than one-third of an employee's worktime in any workday and no more than 20 percent of an employee's worktime in any workweek.

**(7)**

**(A)**

**(i)** Subject to subparagraph (B), in the administration and enforcement of the child labor provisions of this chapter, it shall not be considered oppressive child labor for a new entrant into the workforce to be employed inside or outside places of business where machinery is used to process wood products.

## Sec. 213(c)(7)(A)(ii)

**(ii)** In this paragraph, the term “new entrant into the workforce” means an individual who

**(I)** is under the age of 18 and at least the age of 14, and

**(II)** by statute or judicial order is exempt from compulsory school attendance beyond the eighth grade.

**(B)** The employment of a new entrant into the workforce under subparagraph (A) shall be permitted

**(i)** if the entrant is supervised by an adult relative of the entrant or is supervised by an adult member of the same religious sect or division as the entrant;

**(ii)** if the entrant does not operate or assist in the operation of power-driven woodworking machines;

**(iii)** if the entrant is protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation; and

**(iv)** if the entrant is required to use personal protective equipment to prevent exposure to excessive levels of noise and saw dust.

### **(d) Delivery of newspapers and wreathmaking**

The provisions of sections 206, 207 and 212 of this title shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homemaker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

### **(e) Maximum hour requirements and minimum wage employees**

The provisions of section 207 of this title shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 206(a)(3) of this title, except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 207 of this title if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 206(a)(3) of this title, that economic conditions warrant such action.

### **(f) Employment in foreign countries and certain United States territories**

The provisions of sections 206, 207, 211, and 212 of this title shall not apply with respect to any employee whose services during the workweek are performed in a

## Sec. 213(f)

workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462) [43 U.S.C.A. § 1331 et seq.]; American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

### **(g) Certain employment in retail or service establishments, agriculture**

The exemption from section 206 of this title provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment

**(1)** which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and

**(2)** whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds \$10,000,000 (exclusive of excise taxes at the retail level which are separately stated).

### **(h) Maximum hour requirement: fourteen workweek limitation**

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

**(1)** is employed by such employer—

**(A)** exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

**(B)** exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

**(C)** exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

**(D)** exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

**(2)** receives for—

## Sec. 213(h)(2)(A)

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 207 of this title.

### (i) Cotton ginning

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

### (j) Processing of sugar beets, sugar beet molasses, or sugar cane

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

## Sec. 214

### § 214. Employment under special certificates

#### **(a) Learners, apprentices, messengers**

The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

#### **(b) Students**

##### **(1)**

**(A)** The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than \$1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

**(B)** Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

**(i)** in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this chapter before the effective date of the Fair Labor Standards Amendments of 1974—

**(I)** the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

**(II)** the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

**(III)** a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

## Sec. 214(b)(1)(B)(i)(III)

whichever is greater;

**(ii)** in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

**(I)** the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments,

**(II)** the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

**(III)** a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater; or

**(iii)** in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in

**(I)** similar establishments of the same employer in the same general metropolitan area in which such establishment is located,

**(II)** similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or

**(III)** other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term "student hours of employment" means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

**(2)** The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(a)(5) of this title

## Sec. 214(b)(2)

or not less than \$1.30 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

**(3)** The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than \$1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

**(4)**

**(A)** A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

**(B)** If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed six, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed six—

**(i)** the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

**(ii)** in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher

## Sec. 214(b)(4)(B)(ii)

education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

**(C)** No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate.

**(D)** To minimize paperwork for, and to encourage, small businesses to employ students under special certificates issued under paragraphs (1) and (2), the Secretary shall, by regulation or order, prescribe a simplified application form to be used by employers in applying for such a certificate for the employment of not more than six full-time students. Such an application shall require only—

**(i)** a listing of the name, address, and business of the applicant employer,

**(ii)** a listing of the date the applicant began business, and

**(iii)** the certification that the employment of such full-time students will not reduce the full-time employment opportunities of persons other than persons employed under special certificates.

### **(c) Handicapped workers**

**(1)** The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are—

**(A)** lower than the minimum wage applicable under section 206 of this title,

**(B)** commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and

**(C)** related to the individual's productivity.

**(2)** The Secretary shall not issue a certificate under paragraph (1) unless the employer provides written assurances to the Secretary that—

**(A)** in the case of individuals paid on an hourly rate basis, wages paid in accordance with paragraph (1) will be reviewed by the employer at periodic intervals at least once every six months, and



## Sec. 214(c)(2)(B)

**(B)** wages paid in accordance with paragraph (1) will be adjusted by the employer at periodic intervals, at least once each year, to reflect changes in the prevailing wage paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.

**(3)** Notwithstanding paragraph (1), no employer shall be permitted to reduce the hourly wage rate prescribed by certificate under this subsection in effect on June 1, 1986, of any handicapped individual for a period of two years from such date without prior authorization of the Secretary.

**(4)** Nothing in this subsection shall be construed to prohibit an employer from maintaining or establishing work activities centers to provide therapeutic activities for handicapped clients.

**(5)**

**(A)** Notwithstanding any other provision of this subsection, any employee receiving a special minimum wage at a rate specified pursuant to this subsection or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. An employee or the employee's parent or guardian may file such a petition for and in behalf of the employee or in behalf of the employee and other employees similarly situated. No employee may be a party to any such action unless the employee or the employee's parent or guardian gives consent in writing to become such a party and such consent is filed with the Secretary.

**(B)** Upon receipt of a petition filed in accordance with subparagraph (A), the Secretary within ten days shall assign the petition to an administrative law judge appointed pursuant to section 3105 of Title 5. The administrative law judge shall conduct a hearing on the record in accordance with section 554 of Title 5 with respect to such petition within thirty days after assignment.

**(C)** In any such proceeding, the employer shall have the burden of demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

**(D)** In determining whether any special minimum wage rate is justified pursuant to subparagraph (C), the administrative law judge shall consider—

**(i)** the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured; and

**(ii)** the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity.

## Sec. 214(c)(5)(E)

**(E)** The administrative law judge shall issue a decision within thirty days after the hearing provided for in subparagraph (B). Such action shall be deemed to be a final agency action unless within thirty days the Secretary grants a request to review the decision of the administrative law judge. Either the petitioner or the employer may request review by the Secretary within fifteen days of the date of issuance of the decision by the administrative law judge.

**(F)** The Secretary, within thirty days after receiving a request for review, shall review the record and either adopt the decision of the administrative law judge or issue exceptions. The decision of the administrative law judge, together with any exceptions, shall be deemed to be a final agency action.

**(G)** A final agency action shall be subject to judicial review pursuant to chapter 7 of Title 5. An action seeking such review shall be brought within thirty days of a final agency action described in subparagraph (F).

### **(d) Employment by schools**

The Secretary may by regulation or order provide that sections 206 and 207 of this title shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws.

## § 215. Prohibited acts; prima facie evidence

**(a)** After the expiration of one hundred and twenty days from June 25, 1938, it shall be unlawful for any person—

**(1)** to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 206 or section 207 of this title, or in violation of any regulation or order of the Secretary issued under section 214 of this title; except that no provision of this chapter shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this chapter shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of this chapter, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;

## Sec. 215(a)(2)

**(2)** to violate any of the provisions of section 206 or section 207 of this title, or any of the provisions of any regulation or order of the Secretary issued under section 214 of this title;

**(3)** to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

**(4)** to violate any of the provisions of section 212 of this title;

**(5)** to violate any of the provisions of section 211(c) of this title, or any regulation or order made or continued in effect under the provisions of section 211(d) of this title, or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

**(b)** For the purposes of subsection (a)(1) of this section proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

## § 216. Penalties

### **(a) Fines and imprisonment**

Any person who willfully violates any of the provisions of section 215 of this title shall upon conviction thereof be subject to a fine of not more than \$10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

### **(b) Damages; right of action; attorney's fees and costs; termination of right of action**

Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become

## Sec. 216(b)

such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which

(1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefore under the provisions of this subsection or

(2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) of this title.

### **(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions**

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207 of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in section 255(a) of this title, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

## Sec. 216(d)

### **(d) Savings provisions**

In any action or proceeding commenced prior to, on, or after August 8, 1956, no employer shall be subject to any liability or punishment under this chapter or the Portal-to-Portal Act of 1947, 29 U.S.C.A. § 251 et seq.] on account of his failure to comply with any provision or provisions of this chapter or such Act

**(1)** with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 213(f) of this title is applicable,

**(2)** with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or

**(3)** with respect to work performed in a possession named in section 206(a)(3) of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

### **(e)**

#### **(1)**

**(A)** Any person who violates the provisions of sections 212 or 213(c) of this title, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed—

**(i)** \$11,000 for each employee who was the subject of such a violation; or

**(ii)** \$50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

**(B)** For purposes of subparagraph (A), the term “serious injury” means—

**(i)** permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

**(ii)** permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

**(iii)** permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

**(2)** Any person who repeatedly or willfully violates section 206 or 207, relating to wages, shall be subject to a civil penalty not to exceed \$1,100 for each such violation.

**(3)** In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be—

## Sec. 216(e)(3)(A)

**(A)** deducted from any sums owing by the United States to the person charged;

**(B)** recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

**(C)** ordered by the court, in an action brought for a violation of section 215(a)(4) of this title or a repeated or willful violation of section 215(a)(2) of this title, to be paid to the Secretary.

**(4)** Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of Title 5, and regulations to be promulgated by the Secretary.

**(5)** Except for civil penalties collected for violations of section 212 of this title, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 9a of this title. Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury.

§ 216a. Repealed. Oct. 26, 1949, c. 736, § 16(f), 63 Stat. 920

§ 216b. Liability for overtime work performed prior to July 20, 1949

No employer shall be subject to any liability or punishment under this chapter (in any action or proceeding commenced prior to or on or after January 24, 1950), on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to July 20, 1949, if the compensation paid prior to July 20, 1949, for such work was at least equal to the compensation which would have been payable for such work had subsections (d)(6), (7), and (g) of section 207 of this title been in effect at the time of such payment.

§ 217. Injunction proceedings

The district courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 215 of this title, including in the case of violations of section 215(a)(2) of this title the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this chapter (except

## Sec. 217

sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 255 of this title).

## § 218. Relation to other laws

**(a)** No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

**(b)** Notwithstanding any other provision of this chapter (other than section 213(f) of this title) or any other law—

**(1)** any Federal employee in the Canal Zone engaged in employment of the kind described in section 5102(c)(7) of Title 5, or

**(2)** any employee employed in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

shall have his basic compensation fixed or adjusted at a wage rate that is not less than the appropriate wage rate provided for in section 206(a)(1) of this title (except that the wage rate provided for in section 206(b) of this title shall apply to any employee who performed services during the workweek in a work place within the Canal Zone), and shall have his overtime compensation set at an hourly rate not less than the overtime rate provided for in section 207(a)(1) of this title.

## § 218a. Automatic enrollment for employees of large employers

In accordance with regulations promulgated by the Secretary, an employer to which this chapter applies that has more than 200 full-time employees and that offers employees enrollment in 1 or more health benefits plans shall automatically enroll new full-time employees in one of the plans offered (subject to any waiting period authorized by law) and to continue the enrollment of current employees in a health benefits plan offered through the employer. Any automatic enrollment program shall include adequate notice and the opportunity for an employee to opt out of any coverage the individual or employee were automatically enrolled in. Nothing in this section shall be construed to supersede any State law which establishes, implements, or continues in effect any standard or requirement relating to employers in connection with payroll except to the extent that such standard or requirement prevents an employer from instituting the automatic enrollment program under this section.

## Sec. 218b

### § 218b. Notice to employees

#### (a) In general

In accordance with regulations promulgated by the Secretary, an employer to which this chapter applies, shall provide to each employee at the time of hiring (or with respect to current employees, not later than March 1, 2013), written notice—

- (1) informing the employee of the existence of an Exchange, including a description of the services provided by such Exchange, and the manner in which the employee may contact the Exchange to request assistance;
- (2) if the employer plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs, that the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986 and a cost sharing reduction under section 18071 of Title 42 if the employee purchases a qualified health plan through the Exchange; and
- (3) if the employee purchases a qualified health plan through the Exchange, and the employer does not offer a free choice voucher, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.

#### (b) Effective date

Subsection (a) shall take effect with respect to employers in a State beginning on March 1, 2013.

### § 218c. Protections for employees

#### (a) Prohibition

No employer shall discharge or in any manner discriminate against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment because the employee (or an individual acting at the request of the employee) has—

- (1) received a credit under section 36B of the Internal Revenue Code of 1986 or a subsidy under section 18071 of Title 42;
- (2) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of this title (or an amendment made by this title);
- (3) testified or is about to testify in a proceeding concerning such violation;
- (4) assisted or participated, or is about to assist or participate, in such a proceeding; or



## Sec. 218c(a)(5)

**(5)** objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this title (or amendment), or any order, rule, regulation, standard, or ban under this title (or amendment).

### **(b)** Complaint procedure

#### **(1)** In general

An employee who believes that he or she has been discharged or otherwise discriminated against by any employer in violation of this section may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of Title 15.

#### **(2)** No limitations on rights

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

## § 219. Separability

If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby

**Pertinent Provisions Affecting the Fair Labor Standards Act from the Portal-To-Portal Act of 1947 (61 Stat. 84)  
[Public Law 49 – 80<sup>th</sup> Congress]  
[Chapter 52 – First Session]  
[H.R. 2157]**

An Act

To relieve employers from certain liabilities and punishments under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act,<sup>1</sup> and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**Part 1 Findings and Policy**

**Section 1**

**(a)** The Congress finds that the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], has been interpreted judicially in disregard of long-established customs, practices, and contract between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers with the results that, if said Act as so interpreted or claims arising under such interpretations were permitted to stand,

**(1)** the payment of such liabilities would bring about financial ruin of many employers and seriously impair the capital resources of many others, thereby resulting in the reduction of industrial operations, halting of expansion and development, curtailing employment, and the earning power of employees;

**(2)** the credit of many employers would be seriously impaired;

**(3)** there would be created both an extended and continuous uncertainty on the part of industry, both employer and employee, as to the financial condition of productive establishments and a gross inequality of competitive conditions between employers and between industries;

**(4)** employees would receive windfall payments, including liquidated damages, of sums for activities performed by them without any expectation of reward beyond that included in their agreed rates of pay;

**(5)** there would occur the promotion of increasing demands for payment to employees for engaging in activities no compensation for which had been contemplated by either the employer or employee at the time they were engaged in;

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<sup>1</sup> The Fair Labor Standards Act of 1938, as amended, contains several references to the “Bacon-Davis Act.” “This Act” was recodified to 40 U.S.C.A. §§ 3141-3144, 3146, and 3147, following its repeal by Pub.L. 107-217, § 6(b), Aug. 21, 2002, 116 Stat. 1308.

**(6)** voluntary collective bargaining would be interfered with and industrial disputes between employees and employers and between employees and employees would be created;

**(7)** the courts of the country would be burdened with excessive and needless litigation and champertous practices would be encouraged;

**(8)** the Public Treasury would be deprived of large sums of revenues and public finances would be seriously deranged by claims against the Public Treasury for refunds of taxes already paid;

**(9)** the cost to the Government of goods and services heretofore and hereafter purchased by its various departments and agencies would be unreasonably increased and the Public Treasury would be seriously affected by consequent increased cost of war contracts; and

**(10)** serious and adverse effects upon the revenues of Federal, State, and local governments would occur.

The Congress further finds that all of the foregoing constitutes a substantial burden on commerce and a substantial obstruction to the free flow of goods in commerce.

The Congress, therefore, further finds and declares that it is in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this chapter be enacted.

The Congress further finds that the varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, have given and will give rise to great difficulties in the sound and orderly conduct of business and industry.

The Congress further finds and declares that all of the results which have arisen or may arise under the Fair Labor Standards Act of 1938, as amended, as aforesaid, may (except as to liability for liquidated damages) arise with respect to the Walsh-Healey [41 U.S.C.A. § 35 et seq.] and Bacon-Davis [40 U.S.C.A. § 276a et seq.] Acts and that it is, therefore, in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this chapter shall apply to the Walsh-Healey Act and the Bacon-Davis Act.

**(b)** It is declared to be the policy of the Congress in order to meet the existing emergency and to correct existing evils

**(1)** to relieve and protect interstate commerce from practices which burden and obstruct it;

**(2)** to protect the right of collective bargaining; and

**(3)** to define and limit the jurisdiction of the courts.

\*\*\*\*\*

### **Part III Future Claims**

#### **Sec. 4 Relief From Liability and Punishment Under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, and the Bacon-Davis Act For Failure to Pay Minimum Wage or overtime compensation**

##### **(a) Activities not compensable**

Except as provided in subsection (b) of this section, no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], the Walsh-Healey Act [41 U.S.C.A. § 35 et seq.], or the Bacon-Davis Act [40 U.S.C.A. § 276a et seq.], on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in on or after May 14, 1947-

- (1)** walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and
- (2)** activities which are preliminary to or postliminary to said principal activity or activities,

which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities. For purposes of this subsection, the use of an employer's vehicle for travel by an employee and activities performed by an employee which are incidental to the use of such vehicle for commuting shall not be considered part of the employee's principal activities if the use of such a vehicle for travel is within the normal commuting area for the employer's business or establishment and the use of the employer's vehicle is subject to an agreement on the part of the employer and the employee or representative of such employee.

##### **(b) Compensability by contract or custom**

Notwithstanding the provisions of subsection (a) of this section which relieve an employer from liability and punishment with respect to an activity, the employer shall not be so relieved if such activity is compensable by either-

- (1)** an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or
- (2)** a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

##### **(c) Restriction on activities compensable under contract or custom**

For the purposes of subsection (b) of this section, an activity shall be considered as compensable under such contract provision or such custom or practice only when it

is engaged in during the portion of the day with respect to which it is so made compensable.

**(d) Determination of time employed with respect to activities**

In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], of the Walsh-Healey Act [41 U.S.C.A. § 35 et seq.], or of the Bacon-Davis Act [40 U.S.C.A. § 276a et seq.], in determining the time for which an employer employs an employee with respect to walking, riding, traveling or other preliminary or post-preliminary activities described in subsection (a) of this section, there shall be counted all that time, but only that time, during which the employee engages in any such activity which is compensable within the meaning of subsections (b) and (c) of this section.

**Part IV Miscellaneous**

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**§ 255. Statute of Limitations**

Any action commenced on or after May 14, 1947, to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], the Walsh-Healey Act [41 U.S.C.A. § 35 et seq.], or the Bacon-Davis Act [40 U.S.C.A. § 276a et seq.]-

**(a)** if the cause of action accrues on or after the date of the enactment of this Act – may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;

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**(d)** with respect to any cause of action brought under section 216(b) of this title against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.

**§ 256. Determination of Commencement of Future Actions**

In determining when an action is commenced for the purposes of section 255 of this title, an action commenced on or after May 14, 1947 under the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], the Walsh-Healey Act [41 U.S.C.A. § 35 et seq.], or the Bacon-Davis Act [40 U.S.C.A. § 276a et seq.], shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective or class action instituted under the Fair Labor Standards Act

of 1938, as amended, or the Bacon-Davis Act, it shall be considered to be commenced in the case of any individual claimant-

(a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or

(b) if such written consent was not so filed or if his name did not so appear – on the subsequent date on which such written consent is filed in the court in which the action was commenced.

\*\*\*\*\*

**§ 259. Reliance in Future on Administrative Rulings, Etc.**

(a) In any action or proceeding based on any act or omission on or after May 14, 1947, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], the Walsh-Healey Act [41 U.S.C.A. § 35 et seq.], or the Bacon-Davis Act [40 U.S.C.A. § 276a et seq.], if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) The agency referred to in subsection (a) shall be –

(1) in the case of the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.] – the Administrator of the Wage and Hour Division of the Department of Labor;

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**§ 260. Liquidated Damages**

In any action commenced prior to or on or after May 14, 1947 to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 216 of such title.

\*\*\*\*\*



**§ 262. Definitions**

**(a)** When the terms “employer”, “employee”, and “wage” are used in this chapter in relation to the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], they shall have the same meaning as when used in such Act of 1938.

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**(e)** As used in section 255 of the term “State” means any State of the United States or the District of Columbia or any Territory or possession of the United States.  
.....

## Clean Air Act

### FEDERAL PROCUREMENT

SEC. 306. (a) No Federal agency may enter into any contract with any person who is convicted of any offense under section

113(c) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be considered to include any substantive violation of this Act associated with the violation of 113(c)(2). The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.

(b) The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).

(c) In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(e) The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section.

[42 U.S.C. 7606]



The Clean Water Act of 1977 is incorporated into this contract.

See <http://www.epw.senate.gov/water.pdf> for the complete act.

SECTION 00820 – ALASKA LABOR STANDARDS, REPORTING & PREVAILING WAGE  
RATE DETERMINATION

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State of Alaska, Department of Labor, Laborers' and Mechanics' Minimum Rates of Pay, Title 36, Public Contracts, AS 36.05 and AS 36.10, Wage and Hour Administration Pamphlet No. 600, Issue 31, effective September 1, 2015, published by the State of Alaska, Department of Labor inclusive, are made a part of this contract by reference.

The CONTRACTOR is responsible for contacting the Alaska Department of Labor to determine compliance with current regulations.

Required Reporting During Contract (to be provided by every CONTRACTOR and Subcontractor):

- A. **Certified Payrolls must be submitted every two weeks. Before the second Friday**, each CONTRACTOR and Subcontractor must file Certified Payrolls with Statements of Compliance for the previous two weeks. If there was no activity for that pay period, indicate "**No Activity.**" Indicate "**Start**" on your first payroll, and "**Final**" on your last payroll for this Project. Send to:

***Wage and Hour Section***  
Labor Law Compliance Division  
Alaska Department of Labor  
P.O. Box 020630  
Juneau, AK 99802-0630  
(907) 465-4842

and

***Ruby McMurren, Project Manager***  
City & Borough of Wrangell  
P.O. Box 531  
Wrangell, AK 99929  
T 907.874.3494 / F 907.874.2699  
Email [wrgpm@wrangell.com](mailto:wrgpm@wrangell.com)

- B. **Within 10 Days of "Notice of Award/Notice to Proceed"** make a list of **all** Subcontractors. Include their name, address, phone, estimated subcontract amount, and estimated start and finish dates. Send to:

***Ruby McMurren, Project Manager***  
City & Borough of Wrangell  
P.O. Box 531  
Wrangell, AK 99929  
T 907.874.3494 / F 907.874.2699  
Email [wrgpm@wrangell.com](mailto:wrgpm@wrangell.com)

and

***Wage and Hour Section***  
Labor Law Compliance Division  
Alaska Department of Labor  
P.O. Box 020630  
Juneau, AK 99802-0630  
(907) 465-4839/4842

- C. Per AS 36.05 the Contractor shall file a Notice of Work and a Notice of Completion. AS 36.05 can be found at the following link: <http://labor.alaska.gov/lss/forms/pamp600-090115.pdf>

- D. As part of the **final payment request package**:

1. Notice of Completion of Public Project from the Alaska Department of Labor (ADOL).
2. Prior to the final payment the CONTRACTOR shall contact the Alaska Department of Labor (ADOL) and provide the OWNER with clearance from the ADOL for the CONTRACTOR and all Subcontractors that have worked on the Project. This clearance shall indicate that all Employment Security Taxes have been paid.

**The following Labor Standards, Reporting & Prevailing Wage Rate Determination is incorporated into this contract:**

General Decision Number: AK150001 10/09/2015 AK1

Superseded General Decision Number: AK20140001

State: Alaska

Construction Types: Building and Heavy

Counties: Alaska Statewide.

BUILDING AND HEAVY CONSTRUCTION PROJECTS (does not include residential construction consisting of single family homes and apartments up to and including 4 stories)

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/02/2015
1	01/09/2015
2	01/23/2015
3	02/06/2015
4	02/20/2015
5	03/27/2015
6	04/03/2015
7	04/10/2015
8	05/29/2015
9	06/12/2015
10	07/10/2015
11	07/24/2015
12	08/07/2015
13	10/09/2015

ASBE0097-001 09/02/2013

	Rates	Fringes
Asbestos Workers/Insulator (includes application of all insulating materials protective coverings, coatings and finishings to all types of mechanical systems).....	\$ 34.88	18.67
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ASBE0097-002 09/02/2013

	Rates	Fringes
HAZARDOUS MATERIAL HANDLER (includes preparation, wetting, stripping, removal scrapping, vacuming, bagging, and disposing of all insulation materials, whether they contain asbestos or not, from mechanical systems).....	\$ 34.88	18.67

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BOIL0502-002 01/01/2013

	Rates	Fringes
BOILERMAKER.....	\$ 42.97	26.60

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BRAK0001-002 07/01/2014

	Rates	Fringes
Bricklayer, Blocklayer, Stonemason, Marble Mason, Tile Setter, Terrazzo Worker.....	\$ 39.03	18.95
Tile & Terrazzo Finisher.....	\$ 33.27	18.95

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CARP1501-001 09/01/2014

	Rates	Fringes
MILLWRIGHT.....	\$ 35.74	21.29

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CARP2520-003 09/01/2014

	Rates	Fringes
Diver		
Stand-by.....	\$ 41.65	23.34
Tender.....	\$ 40.65	23.34
Working.....	\$ 81.45	23.34
Piledriver		
Carpenter.....	\$ 37.34	23.34
Piledriver; Skiff Operator and Rigger.....	\$ 37.34	23.34
Sheet Stabber.....	\$ 36.59	22.59
Welder.....	\$ 42.90	23.34

DEPTH PAY PREMIUM FOR DIVERS BELOW WATER SURFACE:  
50-100 feet                   \$1.00 per foot  
101 feet and deeper         \$2.00 per foot

ENCLOSURE PAY PREMIUM WITH NO VERTICAL ASCENT:  
5-50 FEET                     \$1.00 PER FOOT/DAY  
51-100 FEET                  \$2.00 PER FOOT/DAY  
101 FEET AND ABOVE         \$3.00 PER FOOT/DAY

SATURATION DIVING:  
The standby rate applies until saturation starts. The

saturation diving rate applies when divers are under pressure continuously until work task and decompression are complete. the diver rate shall be paid for all saturation hours.

WORK IN COMBINATION OF CLASSIFICATIONS:

Employees working in any combination of classifications within the diving crew (except dive supervisor) in a shift are paid in the classification with the highest rate for that shift.

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 CARP4059-001 09/01/2014

	Rates	Fringes
CARPENTER		
Carpenter.....	\$ 37.34	23.34
Lather/Drywall Applicator....	\$ 36.59	22.59

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 ELEC1547-004 04/01/2015

	Rates	Fringes
CABLE SPLICER.....	\$ 39.82	3%+24.36
ELECTRICIAN.....	\$ 39.49	3%+24.36

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 ELEC1547-005 04/01/2015

Line Construction

	Rates	Fringes
CABLE SPLICER.....	\$ 52.27	3%+28.48
Linemen (Including Equipment Operators, Technician).....	\$ 50.52	3%+28.48
Powderman.....	\$ 48.52	3%+28.48
TREE TRIMMER.....	\$ 35.34	3%+21.66

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 ELEV0019-002 01/01/2015

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 51.34	28.38+a+b

FOOTNOTE: a. Employer contributes 8% of the basic hourly rate for over 5 year's service and 6% of the basic hourly rate for 6 months to 5 years' of service as vacation paid credit. b. Eight paid holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Veteran's Day; Thanksgiving Day; Friday after Thanksgiving and Christmas Day

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 ENGI0302-002 01/01/2015

	Rates	Fringes
POWER EQUIPMENT OPERATOR GROUP 1.....	\$ 40.03	21.10

GROUP 1A.....	\$ 41.79	21.10
GROUP 2.....	\$ 39.26	21.10
GROUP 3.....	\$ 38.54	21.10
GROUP 4.....	\$ 32.33	21.10
TUNNEL WORK		
GROUP 1.....	\$ 44.03	21.10
GROUP 1A.....	\$ 45.97	21.10
GROUP 2.....	\$ 43.19	21.10
GROUP 3.....	\$ 42.39	21.10
GROUP 4.....	\$ 35.56	21.10

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 1: Asphalt Roller: Breakdown, Intermediate, and Finish; Back Filler; Barrier Machine (Zipper); Beltcrete with power pack and similar conveyors; Bending Machine; Boat Coxwains; Bulldozers; Cableways, Highlines and Cablecars; Cleaning Machine; Coating Machine; Concrete Hydro Blaster; Cranes-45 tons and under or 150 foot boom and under (including jib and attachments): (a) Hydralifts or Transporters, all track or truck type,(b) Derricks; Crushers; Deck Winches-Double Drum; Ditching or Trenching Machine (16 inch or over); Drilling Machines, core, cable, rotary and exploration; Finishing Machine Operator, Concrete Paving, Laser Screed, Sidewalk, Curb and Gutter Machine; Helicopters; Hover Craft, Flex Craft, Loadmaster, Air Cushion, All Terrain Vehicle, Rollagon, Bargecable, Nodwell, and Snow Cat; Hydro Ax: Feller Buncher and similar; Loaders (2 1/2 yards through 5 yards, including all attachments): Forklifts with telescopic boom and swing attachment, Overhead and front end, 2 1/2 yards through 5 yards, Loaders with forks or pipe clamps; Loaders, elevating belt type, Euclid and similar types; Mechanics, Bodyman; Micro Tunneling Machine; Mixers: Mobile type w/hoist combination; Motor Patrol Grader; Mucking Machines: Mole, Tunnel Drill, Horizontal/Directional Drill Operator, and/or Shield; Operator on Dredges; Piledriver Engineers, L. B. Foster, Puller or similar Paving Breaker; Power Plant, Turbine Operator, 200 k.w. and over (power plants or combination of power units over 300 k.w.); Scrapers-through 40 yards; Service Oiler/Service Engineer; Sidebooms-under 45 tons; Shot Blast Machine; Shovels, Backhoes, Excavators with all attachments, and Gradealls (3 yards and under), Spreaders, Blaw Knox, Cedarapids, Barber Greene, Slurry Machine; Sub-grader (Gurries, Reclaimer, and similar types); Tack tractor; Truck mounted Concrete Pumps, Conveyor, Creter; Water Kote Machine; Unlicensed off road hauler

GROUP 1A: Camera/Tool/Video Operator (Slipline), Cranes-over 45 tons or 150 foot (including jib and attachments): (a) Clamshells and Draglines (over 3 yards), (b) Tower cranes; Licensed Water/Waste Water Treatment Operator; Loaders over 5 yds.; Certified Welder, Electrical Mechanic, Camp Maintenance Engineer, Mechanic (over 10,000 hours); Motor Patrol Grader, Dozer, Grade Tractor, Roto-mill/Profiler (finish: when finishing to final grade and/or to hubs, or for asphalt); Power Plants: 1000 k.w. and over; Quad; Screed; Shovels, Backhoes, Excavators with all attachments (over 3 yards), Sidebooms over 45 tons;

Slip Form Paver, C.M.I. and similar types; Scrapers over 40 yards;

GROUP 2: Boiler-fireman; Cement Hog and Concrete Pump Operator; Conveyors (except as listed in group 1); Hoist on steel erection; Towermobiles and Air Tuggers; Horizontal/Directional Drill Locator; Licensed Grade Technician; Loaders, (i.e., Elevating Grader and Material Transfer Vehicle); Locomotives: rod and geared engines; Mixers; Screening, Washing Plant; Sideboom (cradling rock drill regardless of size); Skidder; Trenching Machine under 16 inches; Waste/ Waste Water Treatment Operator.

GROUP 3: "A" Frame Trucks, Deck Winches: single power drum; Bombardier (tack or tow rig); Boring Machine; Brooms-power; Bump Cutter; Compressor; Farm tractor; Forklift, industrial type; Gin Truck or Winch Truck with poles when used for hoisting; Grade Checker and Stake Hopper; Hoist, Air Tuggers, Elevators; Loaders: (a) Elevating-Athey, Barber Green and similar types (b) Forklifts or Lumber Carrier (on construction job site) (c) Forklifts with Tower (d) Overhead and Front-end, under 2 1/2 yds. Locomotives: Dinkey (air, steam, gas and electric) Speeders; Mechanics (light duty); Oil, Blower Distribution; Post Hole Diggers, mechanical; Pot Fireman (power agitated); Power Plant, Turbine Operator, under 200 k.w.; Pumps-water; Roller-other than Plantmix; Saws, concrete; Skid Steer with all attachments; Straightening Machine; Tow Tractor

GROUP 4: Rig Oiler/Crane Assistant Engineer; Parts and Equipment Coordinator; Swamper (on trenching machines or shovel type equipment); Spotter; Steam Cleaner; Drill Helper.

FOOTNOTE: Groups 1-4 receive 10% premium while performing tunnel or underground work. Rig Oiler/Crane Assistant Engineer shall be required on cranes over 85 tons or over 100 feet of boom.

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IRON0751-003 07/01/2015

	Rates	Fringes
Ironworkers:		
BRIDGE, STRUCTURAL, ORNAMENTAL, REINFORCING MACHINERY MOVER, RIGGER, SHEETER, STAGE RIGGER, BENDER OPERATOR.....	\$ 36.25	28.05
FENCE, BARRIER INSTALLER....	\$ 32.75	28.05
GUARDRAIL INSTALLERS.....	\$ 33.75	28.05
GUARDRAIL LAYOUT MAN.....	\$ 33.49	28.05
HELICOPTER, TOWER.....	\$ 37.25	28.05

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LABO0341-005 04/01/2015

	Rates	Fringes
Laborers: South of the 63rd		

Parallel & West of Longitude

138 Degrees

GROUP 1.....	\$ 29.79	24.83
GROUP 2.....	\$ 30.79	24.83
GROUP 3.....	\$ 31.69	24.83
GROUP 3A.....	\$ 34.97	24.83
GROUP 3B.....	\$ 35.80	24.83
GROUP 4.....	\$ 19.36	24.83
TUNNELS, SHAFTS, AND RAISES		
GROUP 1.....	\$ 32.77	24.83
GROUP 2.....	\$ 33.87	24.83
GROUP 3.....	\$ 34.86	24.83
GROUP 3A.....	\$ 38.47	24.83
GROUP 3B.....	\$ 39.38	24.83

LABORERS CLASSIFICATIONS

GROUP 1: Asphalt Workers (shovelman, plant crew); Brush Cutters; Camp Maintenance Laborer; Carpenter Tenders; Choke Setters, Hook Tender, Rigger, Signalman; Concrete Laborer (curb and gutter, chute handler, grouting, curing, screeding); Crusher Plant Laborer; Demolition Laborer; Ditch Diggers; Dump Man; Environmental Laborer (asbestos (limited to nonmechanical systems), hazardous and toxic waste, oil spill); Fence Installer; Fire Watch Laborer; Flagman; Form Strippers; General Laborer; Guardrail Laborer, Bridge Rail Installers; Hydro-Seeder Nozzleman; Laborers (building); Landscape or Planter; Laying of Decorative Block (retaining walls, flowered decorative block 4 feet and below); Material Handlers; Pneumatic or Power Tools; Portable or Chemical Toilet Serviceman; Pump Man or Mixer Man; Railroad Track Laborer; Sandblast, Pot Tender; Saw Tenders; Scaffold Building and Erecting; Slurry Work; Stake Hopper; Steam Point or Water Jet Operator; Steam Cleaner Operator; Tank Cleaning; Utiliwalk, Utilidor Laborer and Conduit Installer; Watchman (construction projects); Window Cleaner

GROUP 2: Burning and Cutting Torch; Cement or Lime Dumper or Handler (sack or bulk); Choker Splicer; Chucktender (wagon, airtrack and hydraulic drills); Concrete Laborers (power buggy, concrete saws, pumpcrete nozzleman, vibratorman); Culvert Pipe Laborer; Cured in place Pipelayer; Environmental Laborer (marine work, oil spill skimmer operator, small boat operator); Foam Gun or Foam Machine Operator; Green Cutter (dam work); Gunnite Operator; Hod Carriers; Jackhammer or Pavement Breakers (more than 45 pounds); Laying of Decorative Block (retaining walls, flowered decorative block above 4 feet); Mason Tender and Mud Mixer (sewer work); Pilot Car; Plasterer, Bricklayer and Cement Finisher Tenders; Power Saw Operator; Railroad Switch Layout Laborer; Sandblaster; Sewer Caulkers; Sewer Plant Maintenance Man; Thermal Plastic Applicator; Timber Faller, chain saw operator, filer; Timberman

GROUP 3: Alarm Installer; Bit Grinder; Guardrail Machine Operator; High Rigger and tree topper; High Scaler; Multiplate; Slurry Seal Squeegee Man

GROUP 3A: Asphalt Raker, Asphalt Belly dump lay down; Drill



Doctor (in the field); Drillers (including, but not limited to, wagon drills, air track drills; hydraulic drills); Powderman; Pioneer Drilling and Drilling Off Tugger (all type drills); Pipelayers

GROUP 3B: Grade checker (setting or transferring of grade marks, line and grade)

GROUP 4: Final Building Cleanup

TUNNELS, SHAFTS, AND RAISES CLASSIFICATIONS

GROUP 1: Brakeman; Muckers; Nippers; Topman and Bull Gang; Tunnel Track Laborer

GROUP 2: Burning and Cutting Torch; Concrete Laborers; Jackhammers; Nozzleman, Pumpcrete or Shotcrete.

GROUP 3: Miner; Retimberman

GROUP 3A: Asphalt Raker, Asphalt Belly dump lay down; Drill Doctor (in the field); Drillers (including, but not limited to, wagon drills, air track drills; hydraulic drills); Powderman; Pioneer Drilling and Drilling Off Tugger (all type drills); Pipelayers.

GROUP 3B: Grade checker (setting or transferring of grade marks, line and grade)

Tunnel shaft and raise rates only apply to workers regularly employed inside a tunnel portal or shaft collar.

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LABO0942-001 04/01/2015

	Rates	Fringes
Laborers: North of the 63rd		
Parallel & East of Longitude		
138 Degrees		
GROUP 1.....	\$ 29.79	24.83
GROUP 2.....	\$ 30.79	24.83
GROUP 3.....	\$ 31.69	24.83
GROUP 3A.....	\$ 34.97	24.83
GROUP 3B.....	\$ 35.80	24.83
GROUP 4.....	\$ 19.36	24.83
TUNNELS, SHAFTS, AND RAISES		
GROUP 1.....	\$ 32.77	24.83
GROUP 2.....	\$ 33.87	24.83
GROUP 3.....	\$ 34.86	24.83
GROUP 3A.....	\$ 38.47	24.83
GROUP 3B.....	\$ 39.38	24.83

LABORERS CLASSIFICATIONS

GROUP 1: Asphalt Workers (shovelman, plant crew); Brush Cutters; Camp Maintenance Laborer; Carpenter Tenders; Choke Setters, Hook Tender, Rigger, Signalman; Concrete Laborer (curb and gutter, chute handler, grouting, curing, screeding); Crusher Plant Laborer; Demolition Laborer;

Ditch Diggers; Dump Man; Environmental Laborer (asbestos (limited to nonmechanical systems), hazardous and toxic waste, oil spill); Fence Installer; Fire Watch Laborer; Flagman; Form Strippers; General Laborer; Guardrail Laborer, Bridge Rail Installers; Hydro-Seeder Nozzlemans; Laborers (building); Landscape or Planter; Laying of Decorative Block (retaining walls, flowered decorative block 4 feet and below); Material Handlers; Pneumatic or Power Tools; Portable or Chemical Toilet Serviceman; Pump Man or Mixer Man; Railroad Track Laborer; Sandblast, Pot Tender; Saw Tenders; Scaffold Building and Erecting; Slurry Work; Stake Hopper; Steam Point or Water Jet Operator; Steam Cleaner Operator; Tank Cleaning; Utiliwalk, Utilidor Laborer and Conduit Installer; Watchman (construction projects); Window Cleaner

GROUP 2: Burning and Cutting Torch; Cement or Lime Dumper or Handler (sack or bulk); Choker Splicer; Chucktender (wagon, airtrack and hydraulic drills); Concrete Laborers (power buggy, concrete saws, pumpcrete nozzlemans, vibratorman); Culvert Pipe Laborer; Cured in place Pipelayer; Environmental Laborer (marine work, oil spill skimmer operator, small boat operator); Foam Gun or Foam Machine Operator; Green Cutter (dam work); Gunnite Operator; Hod Carriers; Jackhammer or Pavement Breakers (more than 45 pounds); Laying of Decorative Block (retaining walls, flowered decorative block above 4 feet); Mason Tender and Mud Mixer (sewer work); Pilot Car; Plasterer, Bricklayer and Cement Finisher Tenders; Power Saw Operator; Railroad Switch Layout Laborer; Sandblaster; Sewer Caulkers; Sewer Plant Maintenance Man; Thermal Plastic Applicator; Timber Faller, chain saw operator, filer; Timberman

GROUP 3: Alarm Installer; Bit Grinder; Guardrail Machine Operator; High Rigger and tree topper; High Scaler; Multiplate; Slurry Seal Squeegee Man

GROUP 3A: Asphalt Raker, Asphalt Belly dump lay down; Drill Doctor (in the field); Drillers (including, but not limited to, wagon drills, air track drills; hydraulic drills); Powderman; Pioneer Drilling and Drilling Off Tugger (all type drills); Pipelayers

GROUP 3B: Grade checker (setting or transferring of grade marks, line and grade)

GROUP 4: Final Building Cleanup

#### TUNNELS, SHAFTS, AND RAISES CLASSIFICATIONS

GROUP 1: Brakeman; Muckers; Nippers; Topman and Bull Gang; Tunnel Track Laborer

GROUP 2: Burning and Cutting Torch; Concrete Laborers; Jackhammers; Nozzlemans, Pumpcrete or Shotcrete.

GROUP 3: Miner; Retimberman

GROUP 3A: Asphalt Raker, Asphalt Belly dump lay down; Drill Doctor (in the field); Drillers (including, but not limited

to, wagon drills, air track drills; hydraulic drills); Powderman; Pioneer Drilling and Drilling Off Tugger (all type drills); Pipelayers.

GROUP 3B: Grade checker (setting or transferring of grade marks, line and grade)

Tunnel shaft and raise rates only apply to workers regularly employed inside a tunnel portal or shaft collar.

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 \* PAIN1959-001 09/01/2015

NORTH OF THE 63RD PARALLEL

	Rates	Fringes
PAINTER		
BRUSH/ROLLER PAINT OR WALL COVERER.....	\$ 32.07	20.01
TAPING, TEXTURING, STRUCTURAL PAINTING, SANDBLASTING, POT TENDER, FINISH METAL, SPRAY, BUFFER OPERATOR, RADON MITIGATION, LEAD BASED PAINT ABATEMENT, HAZARDOUS MATERIAL HANDLER.....	\$ 32.59	20.01

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 PAIN1959-002 07/01/2015

SOUTH OF THE 63RD PARALLEL

	Rates	Fringes
PAINTER		
Brush, Roller, Sign, Paper and Vinyl, Swing Stage, Hand Taper/Drywall, Structural Steel, and Commercial Spray.....	\$ 29.71	19.61
Machine Taper/Drywall.....	\$ 30.96	19.61
Spray-Sand/Blast, Epoxy and Tar Applicator.....	\$ 31.06	19.61

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 PAIN1959-003 07/01/2015

NORTH OF THE 63RD PARALLEL

	Rates	Fringes
GLAZIER.....	\$ 37.88	20.04

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 PAIN1959-004 07/01/2012

	Rates	Fringes
FLOOR LAYER: Carpet.....	\$ 30.09	13.02

-----  
 PAIN1959-006 07/01/2015

SOUTH OF THE 63RD PARALLEL

	Rates	Fringes
GLAZIER.....	\$ 37.88	20.04

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 PLAS0867-001 02/01/2015

	Rates	Fringes
PLASTERER		
North of the 63rd parallel..	\$ 36.94	20.22
South of the 63rd parallel..	\$ 36.69	20.22

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 PLAS0867-004 02/01/2015

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER		
North of the 63rd parallel..	\$ 36.69	20.22
South of the 63rd parallel..	\$ 36.44	20.22

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 PLUM0262-002 07/01/2013

East of the 141st Meridian

	Rates	Fringes
Plumber; Steamfitter.....	\$ 36.02	25.62

-----  
 PLUM0367-002 07/01/2013

South of the 63rd Parallel

	Rates	Fringes
Plumber; Steamfitter.....	\$ 38.46	20.74

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 PLUM0375-002 07/01/2014

North of the 63rd Parallel

	Rates	Fringes
Plumber; Steamfitter.....	\$ 40.96	21.25

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 PLUM0669-002 07/01/2013

	Rates	Fringes
SPRINKLER FITTER.....	\$ 42.05	21.67

-----  
 SHEE0023-003 07/01/2015

South of the 63rd Parallel

	Rates	Fringes
SHEET METAL WORKER.....	\$ 40.79	22.38

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SHEE0023-004 07/01/2015

North of the 63rd Parallel

	Rates	Fringes
SHEET METAL WORKER.....	\$ 45.93	21.44

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TEAM0959-003 09/01/2014

	Rates	Fringes
TRUCK DRIVER		
GROUP 1.....	\$ 39.09	20.02
GROUP 1A.....	\$ 40.36	20.02
GROUP 2.....	\$ 37.83	20.02
GROUP 3.....	\$ 37.01	20.02
GROUP 4.....	\$ 36.43	20.02
GROUP 5.....	\$ 35.67	20.02

GROUP 1: Semi with Double Box Mixer; Dump Trucks (including rockbuggy and trucks with pups) over 40 yards up to and including 60 yards; Deltas, Commanders, Rollogans and similar equipment when pulling sleds, trailers or similar equipment; Boat Coxswain; Lowboys including attached trailers and jeeps, up to and including 12 axles; Ready-mix over 12 yards up to and including 15 yards); Water Wagon (250 Bbls and above); Tireman, Heavy Duty/Fueler

GROUP 1A: Dump Trucks (including Rockbuggy and Trucks with pups) over 60 yards up to and including 100 yards; Jeeps (driver under load)

GROUP 2: Turn-O-Wagon or DW-10 not self-loading; All Deltas, Commanders, Rollogans, and similar equipment; Mechanics; Dump Trucks (including Rockbuggy and Trucks with pups) over 20 yards up to and including 40 yards; Lowboys including attached trailers and jeeps up to and including 8 axles; Super vac truck/cacasco truck/heat stress truck; Ready-mix over 7 yards up to and including 12 yards; Partsman; Stringing Truck

GROUP 3: Dump Trucks (including Rockbuggy and Trucks with pups) over 10 yards up to and including 20 yards; batch trucks 8 yards and up; Oil distributor drivers; Oil Distributor Drivers; Trucks/Jeeps (push or pull); Traffic Control Technician

GROUP 4: Buggymobile; Semi or Truck and trailer; Dumpster; Tireman (light duty); Dump Trucks (including Rockbuggy and Truck with pups) up to and including 10 yards; Track Truck Equipment; Grease Truck; Flat Beds, dual rear axle; Hyster Operators (handling bulk aggregate); Lumber Carrier; Water Wagon, semi; Water Truck, dual axle; Gin Pole Truck, Winch Truck, Wrecker, Truck Mounted "A" Frame manufactured rating over 5 tons; Bull Lifts and Fork Lifts with Power Boom and Swing attachments, over 5 tons; Front End Loader with Forks; Bus Operator over 30 passengers; All Terrain Vehicles; Boom Truck/Knuckle Truck over 5 tons; Foam

Distributor Truck/dual axle; Hydro-seeders, dual axle; Vacuum Trucks, Truck Vacuum Sweepers; Loadmaster (air and water); Air Cushion or similar type vehicle; Fire Truck/Ambulance Driver; Combination Truck-fuel and grease; Compactor (when pulled by rubber tired equipment); Rigger (air/water/oilfield); Ready Mix, up to and including 7 yards;

GROUP 5: Gravel Spreader Box Operator on Truck; Flat Beds, single rear axle; Boom Truck/Knuckle Truck up to and including 5 tons; Pickups (Pilot Cars and all light duty vehicles); Water Wagon (Below 250 Bbls); Gin Pole Truck, Winch Truck, Wrecker, Truck Mounted "A" Frame, manufactured rating 5 tons and under; Bull Lifts and Fork Lifts (fork lifts with power broom and swing attachments up to and including 5 tons); Buffer Truck; Tack Truck; Farm type Rubber Tired Tractor (when material handling or pulling wagons on a construction project); Foam Distributor, single axle; Hydro-Seeders, single axle; Team Drivers (horses, mules and similar equipment); Fuel Handler (station/bulk attendant); Batch Truck, up to and including 7 yards; Gear/Supply Truck; Bus Operator, Up to 30 Passengers; Rigger/Swamper

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number

where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter

\* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION



SECTION 00830  
STANDARD CONSTRUCTION FORMS

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**Contractor's Application for Payment No.**  

	Application Period:	Application Date:
To (Owner):	From (Contractor):	Via (Engineer):
Project:	Contract:	
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.:

**Application For Payment  
Change Order Summary**

Approved Change Orders	1. ORIGINAL CONTRACT PRICE.....	\$ _____
Number	Additions	Deductions
TOTALS		
NET CHANGE BY		
CHANGE ORDERS		

2. Net change by Change Orders..... \$ \_\_\_\_\_

3. Current Contract Price (Line 1 ± 2)..... \$ \_\_\_\_\_

4. TOTAL COMPLETED AND STORED TO DATE  
(Column F total on Progress Estimates)..... \$ \_\_\_\_\_

5. RETAINAGE:

a. X \_\_\_\_\_ Work Completed..... \$ \_\_\_\_\_

b. X \_\_\_\_\_ Stored Material..... \$ \_\_\_\_\_

c. Total Retainage (Line 5.a + Line 5.b)..... \$ \_\_\_\_\_

6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)..... \$ \_\_\_\_\_

7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... \$ \_\_\_\_\_

8. AMOUNT DUE THIS APPLICATION..... \$ \_\_\_\_\_

9. BALANCE TO FINISH, PLUS RETAINAGE  
(Column G total on Progress Estimates + Line 5.c above)..... \$ \_\_\_\_\_

**Contractor's Certification**

The undersigned Contractor certifies, to the best of its knowledge, the following:

(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;

(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and

(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

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**Contractor Signature**

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

Payment of: \$ \_\_\_\_\_  
(Line 8 or other - attach explanation of the other amount)

is recommended by: \_\_\_\_\_ (Engineer) \_\_\_\_\_ (Date)

Payment of: \$ \_\_\_\_\_  
(Line 8 or other - attach explanation of the other amount)

is approved by: \_\_\_\_\_ (Owner) \_\_\_\_\_ (Date)

Approved by: \_\_\_\_\_ (Date)  
Funding or Financing Entity (if applicable)



Date of Issuance:

Effective Date:

Owner:

Owner's Contract No.:

Contractor:

Contractor's Project No.:

Engineer:

Engineer's Project No.:

Project:

Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Description:

Attachments: *[List documents supporting change]*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price:  \$ _____	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___:  \$ _____	[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: Substantial Completion: _____ Ready for Final Payment: _____ days
Contract Price prior to this Change Order:  \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order:  \$ _____	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order:  \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ days or dates

RECOMMENDED:

ACCEPTED:

ACCEPTED:

By: \_\_\_\_\_  
Engineer (if required)

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

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

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

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

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

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

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

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

Approved by Funding Agency (if applicable)

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

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

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

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

Owner:	Owner's Contract No.:
Contractor:	Contractor's Project No.:
Engineer:	Engineer's Project No.:
Project:	Contract Name:

**This [preliminary] [final] Certificate of Substantial Completion applies to:**

All Work  The following specified portions of the Work:

**Date of Substantial Completion**

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work shall be as provided in the Contract, except as amended as follows: *[Note: Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.]*

Amendments to Owner's responsibilities:  None  
 As follows

Amendments to Contractor's responsibilities:  None  
 As follows:

The following documents are attached to and made a part of this Certificate: *[punch list; others]*

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract.

<b>EXECUTED BY ENGINEER:</b>		<b>RECEIVED:</b>		<b>RECEIVED:</b>	
By: _____	By: _____	By: _____	By: _____	By: _____	By: _____
(Authorized signature)	Owner (Authorized Signature)	Owner (Authorized Signature)	Contractor (Authorized Signature)	Contractor (Authorized Signature)	Contractor (Authorized Signature)
Title: _____	Title: _____	Title: _____	Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____	Date: _____	Date: _____	Date: _____

## SECTION 01010 – SUMMARY OF WORK

### **PART 1 - GENERAL**

#### **1.01 WORK COVERED BY CONTRACT DOCUMENTS:**

This project consists of purchasing and installing new pumps at two existing lift stations. The work includes removing the existing pumps and piping at each lift station, minor concrete demolition, installing three new pumps at each station along with new controls and electrical improvements, piping modifications, pouring new concrete covers, and installing new access hatches. The work also includes providing bypass pumping; any valves, fittings, or connections required to connect the bypass pumping, and providing traffic control during construction. The Contractor will be responsible to obtain all State and local permits required to complete the project.

#### **1.02 CONTRACTOR USE OF PREMISES:**

The CONTRACTOR shall confine his operations to the site of the proposed Work.

It shall be understood that the responsibility for protection and safekeeping of equipment and materials on or near the site will be entirely that of the CONTRACTOR and that no claim shall be made against the OWNER by reason of any act of an employee or trespasser. It shall be further understood that should any occasion arise necessitating access by the OWNER to the sites occupied by these stored materials and equipment, the CONTRACTOR owning or responsible for the stored materials or equipment shall immediately remove same. No materials or equipment may be placed upon the property of the OWNER until the OWNER has agreed to the location contemplated by the CONTRACTOR to be used for storage.

The CONTRACTOR shall be solely responsible for obtaining and shall pay all costs in connection with any additional work area, storage sites, access to the site, or temporary right-of-way which may be required for proper completion of the Work.

#### **1.03 PROTECTION OF EXISTING UTILITIES:**

Existing underground installations such as water mains, gas mains, sewers, telephone lines, power lines, and buried structures in the vicinity of the work to be done hereunder are indicated on the drawings only to the extent such information has been made available to or discovered by the ENGINEER in preparing the drawings. There is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy and completeness thereof is expressly disclaimed.

Utilities are generally shown on the Drawings, but the CONTRACTOR shall be solely responsible for locating all existing underground installations, including service connections, in advance of excavating or trenching, by contacting the owners thereof and prospecting. The CONTRACTOR

## **SECTION 01010 – SUMMARY OF WORK**

shall use his own information and shall not rely solely upon information shown on the drawings concerning existing underground installations. The CONTRACTOR shall protect utilities during excavation and repair all damage to existing utilities or property to the satisfaction of the utility owner or property owner at his own expense.

If any existing underground utility or facility not shown on the drawings is located so that it interferes with the work in either alignment or grade and has to be moved or otherwise modified, such work shall be done by the CONTRACTOR, and adjustment in payment will be made according to CHANGES IN WORK in Division 0. Except as stated above any delay, additional work or extra cost to the CONTRACTOR caused by existing underground installation shall not constitute a claim for extra work, additional payment, or damages.

The CONTRACTOR shall be responsible for contacting all utilities companies associated with this project to determine additional costs that may be associated with these utilities. These costs shall be incidental to the bid price.

### **1.04 PROTECTION OF EXISTING STRUCTURES:**

Where excavation will be required adjacent to existing structures, the CONTRACTOR shall be solely responsible to maintain the structural integrity of the existing structures. The CONTRACTOR shall take whatever means necessary to insure that the existing structure is not damaged. The CONTRACTOR shall repair all damage to the existing structures at his own expense. Any delay, additional work, or extra cost to the CONTRACTOR caused by existing underground installations shall not constitute a claim for extra work, additional payment or damages.

Unless otherwise noted on the Construction Drawings, all existing ditches disturbed by construction shall be restored to their original size, line, and grade.

### **1.05 FIELD CHECK OF EXISTING STRUCTURES:**

The dimensions and elevations of existing structures and locations of existing fences, pipelines, conduits, cables, and equipment shown on the drawings were taken for the most part from available records and survey data and are not guaranteed for accuracy.

It shall be the responsibility of the CONTRACTOR to check all dimensions and elevations of existing structures, pipelines, conduits, cables, equipment, or other existing items, both above and below ground, affected by or affecting the Work under this contract, prior to the start of construction or ordering materials and equipment affected thereby.

The CONTRACTOR's attention is directed to the Instructions to Bidders which requires that each bidder visit the site of the Work to familiarize himself with the arrangement and condition of existing construction that is to be connected to or that is to remain in place.

## SECTION 01010 – SUMMARY OF WORK

### 1.06 SURFACE DRAINAGE:

Water from such sources as surface runoff, dewatering and flushing of pipelines lines during construction shall not be allowed to enter into drainage ways or open areas that will cause flooding of existing structures, street intersections, or lawn areas.

### 1.07 WORK SEQUENCE:

The CONTRACTOR shall schedule the work to minimize inconvenience to the OWNER and to adjacent property owners and to minimize interruptions to utility service. This shall include minimizing obstructions to local traffic. Close coordination will be required between the CONTRACTOR, OWNER, ENGINEER, and utility service companies. The OWNER and ENGINEER shall be notified at least 48 hours in advance of any proposed water main or forcemain testing. The utility service companies such as power, gas, telephone, and video shall be contacted at least 48 hours in advance of when locating of services will be required.

**PART 2 - PRODUCTS** NONE

**PART 3 - EXECUTION** NONE

**END OF SECTION**



## SECTION 01025 - MEASUREMENT AND PAYMENT

### PART 1-GENERAL

#### 1.01 SCOPE

The method of measurement and basis of payment is described in article 1.03 of this section.

#### 1.02 GENERAL

The total bid price for each item of the contract shall cover all work shown on the contract drawings and required by the specifications and other Contract Documents. All costs in connection with the Work, including furnishing all materials, equipment, supplies and appurtenances; providing all construction equipment, and tools; and performing all necessary labor and supervision to fully complete the Work, shall be included in the unit and /or lump sum prices bid. No item that is required by the Contract Documents for the proper and successful completion of the Work will be paid for outside of or in addition to the prices submitted in the bid. All work not specifically set forth as a pay item in the Bid Form shall be considered a subsidiary obligation of the CONTRACTOR and all costs in connection therewith shall be included in the prices bid.

All progress payments for lump sum items will be in proportion to the total construction completed, unless noted otherwise in the payment description.

#### 1.03 MEASUREMENT AND PAYMENT ITEMS

The item numbers refer to both bid schedule A and bid schedule B

Item 1 - Mobilization/Demobilization: No separate measurement will be made for this lump sum item. Twenty-five percent of the amount bid for this item shall be paid when 5% of the Contract amount is paid for contract items and for invoiced material in storage, subsequent mobilization payments shall be based on percent of construction completed excluding previous mobilization payments.

Mobilization shall consist of preparatory work, including preparing schedules, obtaining permits, and operations performed by the CONTRACTOR including, but not limited to, those necessary for the movement of his personnel, equipment, supplies, and incidentals to the project site; for the establishment of all offices, buildings, project sign (one for each lift station), and other facilities necessary for all work on the project; and for other work and operations that must be performed or costs incurred before beginning work and throughout the project on the various items on the project site. Mobilization costs for subcontracted work shall be considered to be included.

Item 2 – Taxes, Bonds, and Insurance: One-hundred percent (100%) to be paid on the 1<sup>st</sup> progress estimate only if the bid price for this item is less than or equal to 5% of the total bid for the construction schedule. For that portion of the bonds, and insurance greater than 5% of the

## SECTION 01025 - MEASUREMENT AND PAYMENT

total bid schedule price, payment shall be made in increments on the basis of the percentage of work completed for each bid schedule.

### Item 3– Traffic Maintenance

The lump sum payment is full reimbursement for all costs of furnishing, installing, maintaining, replacing and operating the construction traffic control systems throughout the work period. The construction traffic control system includes but is not limited to, signs, barricades, pavement markings, watering, flag persons and pilot cars.

### Item 4 Concrete Demolition:

This lump sum item includes the demolition of the existing concrete roofs covering the wet wells at both the Node 4 and Node 6 pump stations. Payment shall include all labor, materials, and cost of hauling and disposal.

### Item 5 – Access Hatch/ New Vault Roof:

This lump sum item includes constructing the new concrete slab over the pump wet wells, and purchasing and installing the new aluminum access hatch. Payment includes all labor, material, and supplies necessary to complete the installations.

### Item 6 – Node 6 and Node 4 Pumps:

This lump sum item includes purchasing and WORK and Equipment related to installing new pumps, guide rails, discharge elbows, ball check valves, level control equipment, and pump lifting chains at the Node 4 and Node 6 pump stations.

### Item 7 – Piping Replacement/ Demolition:

This lump sum item includes all WORK and equipment required to dismantle, remove, and dispose of the existing piping, valves, access ladder and platform, as shown on the demolition plan. Payment also includes purchasing and installing all of the discharge piping, pipe supports, fittings, and valves.

Payment shall be made by the following percentages of the lump sum bid for each schedule

- 15% of the lump sum when the demolition is completed
- 50 % of the lump sum after the piping and valving is on-site
- 35 % of the lump sum after substantial completion

Item 8 – Bypass Pumping: All related services required to set up, maintain, restore site existing conditions and to set or remove equipment shall be provided by the Contractor and considered incidental to the price bid for this item.

Payment shall be made by the following percentages of the lump sum bid for each bid schedule.

- 25% of lump sum for pumping system on site
- 25% of lump sum for set up and completion of pressure test required by– Field Quality Control and Maintenance
- 25% of lump sum for completion of bypass pumping and equipment removal
- 25% for bypass pumping site restoration

## SECTION 01025 - MEASUREMENT AND PAYMENT

### Item 9 – Above Ground Enclosure:

Measurement for the fiberglass control shelter work at Nodes 4 and Node 6 shall be based upon the completion of the entire WORK as a Lump Sum Pay Unit for each Node, complete, including: shelter procurement, installation, fan intake and exhaust penetration and weather hoods, shipping to Wrangell, installation and anchoring on concrete pad onsite, equipment required for moving and installation, installation of seals to concrete, any shelter adjustments and finish touchups.

Measurement for payment for Shelter installation work will be based upon the completion of the entire WORK as a Lump Sum Pay Unit, complete, all in accordance with the requirements of the Contract Documents.

### Item 10 – Electrical System Upgrades:

Measurement for the electrical service upgrades work at Node 4 and Node 6 shall be based upon the completion of the entire WORK as a Lump Sum Pay Unit for each Node, complete, including: provision and installation of temporary power equipment as required to maintain power during construction and bypass pumping operations, demolition of all existing electrical equipment, reuse of the existing mini load center, sealing unused wet well conduit penetrations, service support rack, service equipment, manual transfer switch, fan, heater, light, panelboard, conduits, junction boxes, wiring, grounding, concrete encased grounding, testing and operational checks by the Contractor, coordination with utility for new service connections, travel, room and board.

Measurement for payment for Electrical work will be based upon the completion of the entire WORK as a Lump Sum Pay Unit, complete, all in accordance with the requirements of the Contract Documents.

### Item 11 – SCADA and Pump Controls:

Measurement for the SCADA and pump control upgrades work at Node 4 and Node 6 shall be based upon the completion of the entire WORK as a Lump Sum Pay Units for each Node, complete, including: Demolition of existing SCADA and pump control equipment, reuse of existing SCADA panel and antenna, installation of pump control panel in the control shelter, power and control wiring to pumps, rack and explosionproof junction boxes, reinstall SCADA panel and SCADA antenna, install Pump View cellular antenna, control shelter conduits, level transmitter, shelter instruments, underground conduits, trenching, backfill, core drilling, wiring, grounding, testing and operational checks by the Contractor, onsite time, travel, room and board, manufacturers' representatives costs, telephone service installation, install and setup Multismart Pump View Kit, reestablish SCADA radio communications, PLC programming at SCADA panel, PLC programming and HMI control screens update at Water Plant.

Measurement for payment for Electrical work will be based upon the completion of the entire WORK as a Lump Sum Pay Unit, complete, all in accordance with the requirements of the Contract Documents.

### Item 12 – Miscellaneous Site Improvements:

## **SECTION 01025 - MEASUREMENT AND PAYMENT**

This lump sum item includes all labor, materials, and supplies associated with installing the bollards at Node 4, the construction of the concrete slab at Node 6 for the electrical control panel, removing and disposing of the existing vents and yard hydrants, purchasing and installing the new yard hydrants and piping associated with the hydrants, grouting the existing vent penetrations with non-shrink grout, and final site cleanup.

**END OF SECTION**

**PART 1 - GENERAL**

**1.01 GENERAL:**

The CONTRACTOR shall familiarize himself with all items of the Project requiring coordination and plan the Work to ensure orderly progress and completion within the Contract Time. The CONTRACTOR shall coordinate the work of all subcontracts.

**1.02 EXISTING UTILITIES:**

The CONTRACTOR shall coordinate closely his construction activities with the utility service companies. The CONTRACTOR shall give at least 48 hours notice to the utility service companies prior to the time when field location of existing services will be required.

**1.03 NOISE IMPACT:**

To minimize construction noise impacts on the local residents, no construction activities will be allowed between the hours of 8 p.m. and 8 a.m. unless explicitly allowed by the ENGINEER.

The by-pass pumping equipment shall be equipped with silencing equipment or enclosure that limits noise levels to less than 70 dBA at 30 feet.

**PART 2 - PRODUCTS NONE**

**PART 3 - EXECUTION NONE**

END OF SECTION 01040

**PART 1 - GENERAL**

**1.01 DESCRIPTION:**

The following specification includes the procedures for submitting "Shop Drawings" as is required in these specifications. Items that need to be reviewed by the ENGINEER are included in these specifications. The ENGINEER reserves the right to require submittals in addition to those called for in the individual sections.

**1.02 DEFINITIONS:**

**A. Shop Drawings:** The term "shop drawings" includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials requested by the ENGINEER to be furnished by the CONTRACTOR to explain in detail specific portions of the Work required by the Contract.

**B. Sample:** 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.

**C. CONTRACTOR's Review and Approval:** The CONTRACTOR shall coordinate and reference all submittals to the applicable section of the specifications, review them for accuracy, completeness, and compliance with contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Items submitted to ENGINEER without evidence of the CONTRACTOR's approval will be returned for resubmission.

**PART 2 - PRODUCTS**

NONE

**PART 3 - EXECUTION**

**3.01 SUBMITTAL PROCEDURE:**

Shop Drawings and Samples shall be submitted as specified in the General Conditions and as follows.

**A. GENERAL**

The Contractor shall provide all submittals required by the Contract Documents, including but not necessarily limited to:

1. All submittals listed in the General Conditions and Section 01300.

2. Permits obtained by Contractor for the project.
3. List of all subcontractors and suppliers to be used on the project.
4. List of all equipment owned or rented that will be used on the project, including the make, model, year, horsepower, capacity, and rental rate.
5. Traffic control plans.
6. Shop drawings and manufacturer's literature for all materials to be used on the project.
7. Samples, operation and maintenance manuals, warranties, and other items required by individual specification sections.

Shop drawings shall be submitted to the Engineer for all materials incorporated into the work, and as required by the Contract Documents. The Engineer reserves the right to require submittals in addition to those called for in individual specification sections.

**B. PROCESS AND FORMAT**

1. Unless otherwise required in an individual specification section, the Contractor shall make all submittals electronically using Newforma Info Exchange™. Newforma Info Exchange™ is a web-enabled server that enables project team members (both internal and external to the host) to easily and securely exchange project files using a website. It provides email notifications, reminders, a history log, and all other necessary submittal handling features. The Engineer will host the site and provide the Contractor with all necessary access and processing information at the pre-construction conference, or such earlier time as required to transmit initial submittals.
2. Submittals that are related to or affect each other shall be submitted together to facilitate a coordinated review by the Engineer.

**3.02 REQUIRED SUBMITTALS:**

**A. Permits:** Submit to the ENGINEER at the preconstruction conference a copy of all permits required by the governing authorities.

**B. Subcontractors:** At the preconstruction conference, the CONTRACTOR shall supply a list of all suppliers and subcontractors to be used on the project.

**C. Equipment List and Rental Rates:** At the pre-construction conference, the CONTRACTOR shall supply a list of all equipment owned or rented that will be used on this project. The equipment list shall include the make, model, year, horsepower and capacity of each piece of equipment. The list shall also include rental rates and operating rates for each piece of equipment determined per the requirements of these Contract Documents.

**D. Certificates:** For those items called for in individual sections, furnish certificates from manufacturers, suppliers, or others certifying that materials or equipment being furnished under the Contract comply with the requirements of these specifications.

E. Shop Drawings: See the individual specification sections for specific requirements.

F. Operation and Maintenance Instructions: Manufacturer's printed instructions shall be provided for all mechanical and electrical equipment, which shall include installation instructions, operating instructions, maintenance literature, lubrication requirements, and parts lists.

END OF SECTION 01300



DIVISION 1 - GENERAL REQUIREMENTS  
SECTION 01540 – SECURITY

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**PART 1 - GENERAL**

**1.01 CONTRACTOR RESPONSIBILITY:**

CONTRACTOR shall be responsible for the security of all materials, equipment, tools, etc. used on the job. All materials which can be easily removed shall be stored in a locked building provided by the CONTRACTOR.

All material inventoried and in storage which as been paid for on monthly progress payments must be in Owner's possession and stored on-site or at a secure location acceptable to the OWNER and ENGINEER.

**PART 2 - PRODUCTS** NONE

**PART 3 - EXECUTION** NONE

END OF SECTION 01540

## **PART 1 - GENERAL**

### **1.01 DESCRIPTION:**

This section covers the installation, maintenance, and operation of a traffic control system necessary to insure the safety of the general public and project personnel. The CONTRACTOR shall conduct his work so as to interfere as little as possible with public travel, whether vehicular or pedestrian, conflicts at the work site, off-site events, and any other nearby construction projects.

The CONTRACTOR is solely responsible for the construction traffic control system. The CONTRACTOR shall conform to all aspects of the *Alaska Traffic Manual* (ATM) and the *Manual on Uniform Traffic Control Devices* (MUTCD) traffic control requirements.

### **1.02 SUBMITTALS:**

If or when it becomes necessary to interrupt, cross, obstruct, or close roads and walks, the CONTRACTOR shall submit the intended traffic control plan to the ENGINEER at least two weeks prior to the beginning of construction and obtain approval of such actions before beginning such work. The CONTRACTOR shall cooperate with the ENGINEER and the OWNER and shall make adjustments to the traffic control plans as required to fit specific field conditions. Modifications to construction timing shall not constitute a claim for additional payment to the CONTRACTOR.

## **PART 2 - PRODUCTS**

### **2.01 TRAFFIC CONTROL DEVICES:**

**A. General:** CONTRACTOR shall, at his own expense, provide and maintain suitable and safe lighted detours or other temporary expedients for the accommodation of public and private travel in accordance with the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) and the Traffic Control Devices Handbook. Safety provisions must be entirely adequate and meet with City, Borough, State and Federal regulations to protect the public and project personnel on all streets and roads.

**B. Signs and Barricades:** All signs and barricades shall be reflectorized. All traffic control devices in use at night shall be equipped with lighting devices as required in the MUTCD. Where lighting devices are used at night, they shall be flashing or constantly on (steady burn) depending upon their use, as defined in the MUTCD. The standard mounting heights and size of signs will be adhered to on this project. All traffic control devices shall be clean, legible and operable.

## **PART 3 - EXECUTION**

### **3.01 LOCAL ACCESS:**

The CONTRACTOR shall schedule the work to minimize inconvenience to the OWNER and adjacent property owners and to minimize interruptions to utility service. The CONTRACTOR shall maintain vehicular access to local property owners at all times, including off-shift times.

### **3.02 WORK METHODS:**

**A. General:** Providing and maintaining flagmen, safety barricades, signs and other safety measures shall be the responsibility of the CONTRACTOR and shall be included in the Contract Bid prices.

**B. Preparation:** Prior to the start of construction near or across roads or walks, all utility companies shall be notified, and traffic patterns, signing, location of flagmen, barricades and other safety measures arranged. The CONTRACTOR shall position all traffic control devices according to plan prior to positioning personnel or equipment on the traveled way. The sequence of installation will be signs, guideposts, barrels, and barricades.

**C. Inspection and Records:** The CONTRACTOR shall inspect the work area throughout construction activity and keep work records. Any traffic control device not providing its intended function shall immediately be replaced, repaired or cleaned. As a minimum, the inspections shall be made as follows:

1. The CONTRACTOR shall check the applicability of signing before leaving the site at the end of each day.
2. The CONTRACTOR shall inspect and check traffic control and correct all deficiencies at least once daily including weekends, holidays, and all other non-working days.
3. Each CONTRACTOR'S check of in-place signing shall be logged, deficiencies noted, and the corrective actions taken described. The CONTRACTOR shall submit to the ENGINEER copies of the notification and inspection logs at the OWNER or ENGINEER's request.

**D. Removal:** The CONTRACTOR shall remove the traffic control devices in reverse order of installation at the conclusion of the construction. Construction traffic control devices shall be removed from visual contact with the traveling public when they are not being used for the construction activities.

E. Mounting: Mounting of construction signs on existing traffic control installations will not be permitted. Signs shall be either on portable sign supports or post mounted. Luminaire standards may be used as sign supports where the location is suitable. All traffic control devices shall be placed within the public right-of-way.

3.03 WATERING:

The CONTRACTOR shall sprinkle water on the traveled way as necessary to control dust, or as directed by ENGINEER.

3.04 FLAGGING:

Any flagging required under the traffic control plan shall be performed by competent and properly equipped flagpersons.

3.05 NONCOMPLIANCE PENALTY:

Inspection of the traffic control system will be made periodically by the ENGINEER. The CONTRACTOR will be notified of any noncompliance.

If required traffic control devices are not in position, the CONTRACTOR shall not be allowed to commence work on the project, but time will be allowed to start or continue to accumulate against the construction Contract Time.

If the CONTRACTOR fails to correct a deficiency in the traffic control system that the ENGINEER deems an emergency hazard to life and/or property, the OWNER may correct the deficiency and be reimbursed for all costs from the next progress payment to the CONTRACTOR.

END OF SECTION 01570

## **PART 1 - GENERAL**

### **1.01 DESCRIPTION:**

The following specification includes all work involved in final closeout of this project. Included are items such as post-construction inspection, acceptance of the Work, closeout records, cleaning, and project record drawings.

### **1.02 SUBMITTALS:**

All required closeout submittals shall be reviewed by the ENGINEER prior to final payment. Items to be submitted are:

A. Project Record Drawings: See Article 3.02 of this specification section.

B. Operation and Maintenance Manuals: Provide four (4) copies of an Operation and Maintenance Manual for all approved equipment. The O&M Manuals shall be punched and bound in 3-ring binders. The O&M Manuals shall include complete manufacturer's literature, operating instructions, installation instructions, maintenance instructions, parts lists and technical data for all approved equipment.

C. Guarantees and Bonds: Provide guarantees and bonds as required herein and as provided by manufacturers of all products and equipment.

D. Post Construction Maintenance Personnel: CONTRACTOR shall submit his plans for maintenance of the system during the one-year correction period and shall name the individual who will have the power and responsibility to correct warranty items for the CONTRACTOR.

E. Consent of Surety to Final Payment.

F. Lien Releases or Waivers: Furnish CONTRACTOR'S Certificate of Completion certifying completion, construction compliance, and waiving claims not previously made in writing.

## **PART 2 - PRODUCTS**

### **2.01 CLEANING PRODUCTS:**

Use cleaning materials recommended by the manufacturer of the surface to be cleaned. Follow the instructions on the container.

### **2.02 MAINTENANCE MATERIALS AND TOOLS:**

Provide all maintenance materials, tools, spare parts, keys, etc. as required or provided by manufacturers of incorporated products and equipment.

### **PART 3 - EXECUTION**

#### **3.01 CLEANING:**

Clean all interior and exposed surfaces, including all equipment. Sweep paved surfaces and floors and rake other surfaces or grounds. All lawn or grassed areas shall be raked and cleaned to level. Remove all rocks, stones, debris, and all construction equipment from the project site.

#### **3.02 PROJECT RECORD DRAWINGS:**

The CONTRACTOR'S superintendent or his designated representative shall maintain, at the project site, a set of "Record Drawings" showing field changes, as-built elevations, unusual conditions encountered during construction, manufacturer's catalog number of equipment supplied, and other data as required to provide the OWNER with an accurate "as-built" set of Construction Drawings.

CONTRACTOR shall, using red colored ink, make changes on a set of clean prints. Indicate all changes and revisions to the original design which affect the permanent structures and will exist in the completed Work. Reference all underground existing utilities to semipermanent or permanent physical objects. Reference water, sewer, telephone, and electric lines to corners of buildings, if applicable. Reference the elevation of all existing lines on profile sheets or call out elevations in plan if no profile exists.

Keep record drawings current. Certification of accuracy and completeness will be required on submitted payment requisitions. Project record drawings are the property of the OWNER and shall be delivered to the ENGINEER before closeout. An approval by the ENGINEER shall not be given on the final payment request until complete Record Drawings are submitted to the ENGINEER.

#### **3.03 SUBSTANTIAL COMPLETION AND FINAL INSPECTION:**

Submit written certification that the project, or a designated portion of the project, is substantially complete and request, in writing, a final inspection. The ENGINEER will make an inspection within fifteen (15) days of receipt of request.

Should the ENGINEER determine that the Work is substantially complete, he will prepare a punch list of deficiencies that need to be corrected before final acceptance, and issue a Notice of Substantial Completion with the deficiencies noted.

Should the ENGINEER determine that the Work is not substantially complete, he will immediately notify the CONTRACTOR, in writing, stating reasons. After the CONTRACTOR completes the Work, he shall submit certification and request for final inspection.

#### 3.04 ACCEPTANCE OF THE WORK:

After all deficiencies have been corrected, a Letter of Final Acceptance will be issued. If only designated portions of the project have been inspected, a Letter of Partial Acceptance will be issued for that portion corrected.

Acceptance may be given prior to correction of deficiencies which do not preclude operation and use of the facility; however, final payment will be withheld until all deficiencies are corrected. Until receipt of the Letter of Final Acceptance, the CONTRACTOR shall be responsible for the Work of this Contract.

#### 3.05 POST-CONSTRUCTION INSPECTION:

Prior to the expiration of one (1) year from date of Final Acceptance, the ENGINEER will inspect the project to determine whether corrective work is required. The CONTRACTOR will be notified in writing of all deficiencies. Corrective work must start on noted deficiencies within ten (10) days of receipt of notification to CONTRACTOR.

END OF SECTION 01700

## SECTION 02718 – SIGN ASSEMBLY

### PART 2 - PRODUCTS

#### 2.1 GENERAL

*Delete Paragraph G in its entirety and **replace** with the following:*

- G. The template for the Project Sign Assembly Panels is provided at the end of this section. The CONTRACTOR shall construct the Project Sign Assembly Panels in accordance with the requirements of the template and provide all materials necessary for a complete installation.

### PART 3 - EXECUTION

*Delete Paragraph E in its entirety and **replace** with the following:*

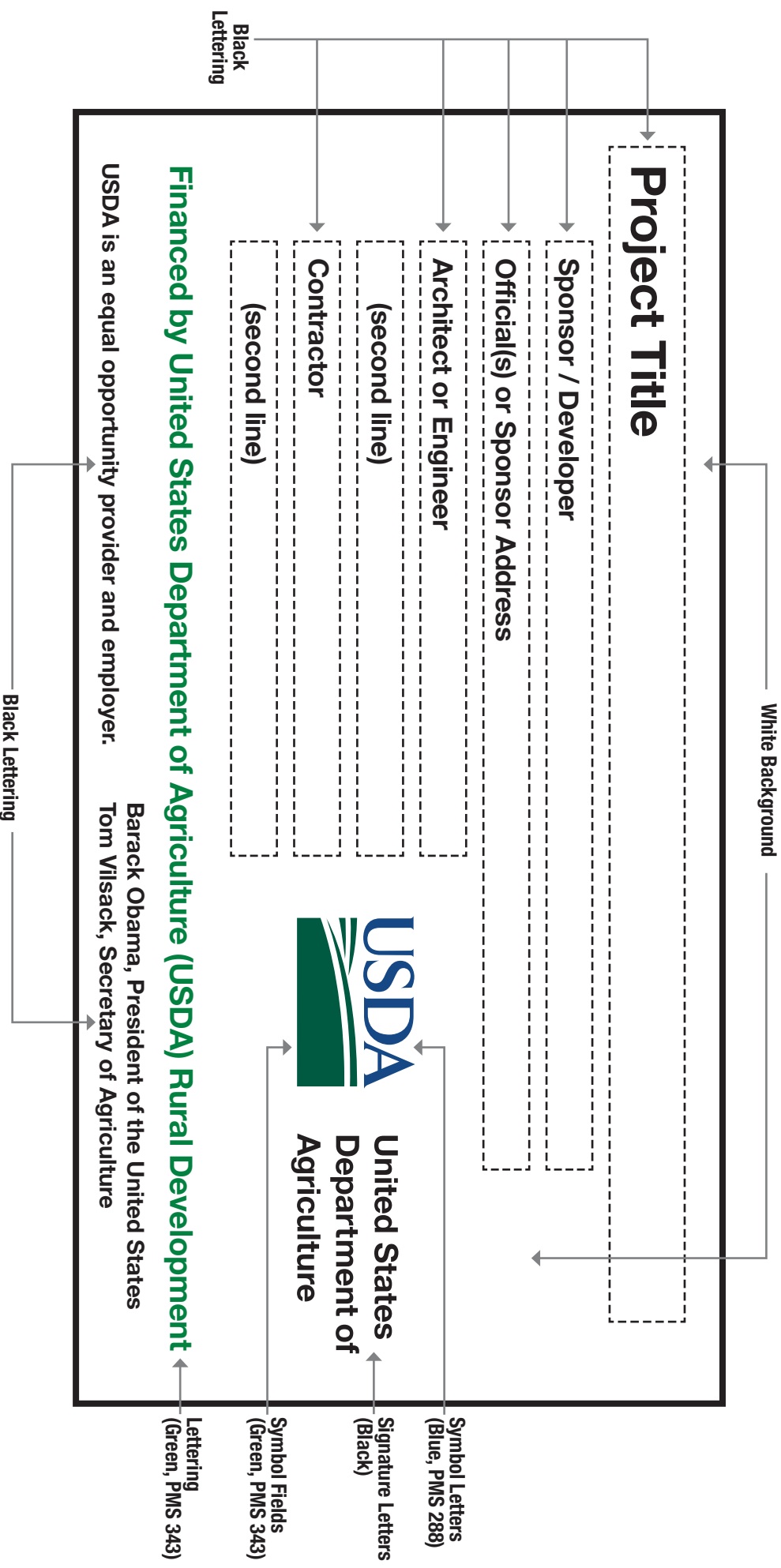
- E. No progress payments will be made to the CONTRACTOR until after the Project Sign Assembly is satisfactorily installed.

*Delete Paragraph G. in its entirety and **replace** with the following:*

- G. The Project Sign Assembly panels shall be removed at a time to be determined by the ENGINEER. The sign panel shall be removed and disposed of.



# TEMPORARY CONSTRUCTION SIGN FOR RURAL DEVELOPMENT PROJECTS



**SIGN DIMENSIONS: 1200 mm x 2400 mm x 19 mm (approx. 4' x 8' x 3/4")**  
**PLYWOOD PANEL (APA RATED A-B GRADE-EXTERIOR)**

## **PART 1 - GENERAL**

### **1.01 WORK INCLUDED:**

The work specified under this section includes furnishing and installing all process piping located in the interior of pump stations.

Submittals shall be as per Section 01300 and shall include but not be limited to materials provided, materials of construction, dimensions, part lists, maintenance requirements, and performance specifications.

## **PART 2 - PRODUCTS**

### **2.01 DUCTILE IRON PIPE:**

**A. General:** Ductile iron pipe shall be used where specified in the piping schedule or as shown on the drawings unless specified otherwise on the drawings. Pipe sizes shall be as indicated on the drawings.

All pipe, fittings, and accessories shall conform to the following American Water Works Association (AWWA) standards as applicable.

AWWA C104 -	Cement-Mortar Lining for Ductile-Iron and Gray Iron Pipe and Fittings for Water
AWWA C110 -	Gray-Iron and Ductile-Iron Fittings, 3 in. Through 48 in., for Water and Other Liquids
AWWA C115 -	Flanged cast-iron and Ductile-Iron Pipe With Threaded Flanges
AWWA C151 -	Ductile-Iron Pipe, Centrifugally Cast in Metal Molds or Sand-Lined Molds, for Water or Other Liquids
AWWA C606 -	Grooved and Shouldered Joints

**B. Pipe:** Pipe interior shall be coated with a cement lining in accordance with AWWA C104. The pipe exterior shall NOT be coated with the standard asphaltic coating. The pipe shall be a minimum of pressure class 350..

### C. Joints:

1. Flange: Flange joints shall be used for connecting to existing piping, pumps, and other miscellaneous equipment and where otherwise indicated. Flanged pipe shall conform to AWWA C115.
2. Flange Gaskets: Gaskets used on water or wastewater lines shall be synthetic rubber and 1/8" thick conforming to AWWA C115.
3. Slip on Couplings: Shall be Dresser coupling style 38 or approved equal. Use only when specifically specified or indicated.
4. Flanged Adapters: For joining plain end pipe to flanged valves, flanged fittings, flanged steel or other condition requiring a flange use a locking type Dresser Style 127 or 128, or Victaulic Style 341, or approved equal.
5. Fittings: Fittings for ductile-iron pipe shall conform to AWWA C110. Fittings shall be cement lined in accordance with AWWA C104 but shall NOT be coated with the standard asphaltic coatings. All elbows shall be standard radius unless otherwise noted.

### 2.02 ECCENTRIC PLUG VALVES:

Eccentric Plug Valves shall be of the tight closing, resilient faced, non-lubricating variety and shall be of eccentric design such that the valves pressure member (plug) rises off the body seat contact area immediately upon shaft rotation during the opening movement. Valves shall be drop-tight at the rated pressure (175 psi through 12", 150 psi 14" and above) and shall be satisfactory for applications involving throttling service as well as frequent or infrequent on-off service. The valve closing member should rotate approximately 90 degrees from the full-open to full-close position and vice-versa.

The valve body shall be constructed of cast iron (semi-steel) conforming to ASTM A126, Class B. Body ends shall be:

- 1) Flanged with dimensions, facing, and drilling in full conformance with A-ANSI B16.1, Class 125.
- 2) Mechanical Joint to meet the requirements of AWWA C111/ANSI A21.11
- 3) Grooved ends to meet the requirements of AWWA C606.

Eccentric Plug Valves shall have a rectangular shaped port. Port areas for 3" - 20" valves shall be a minimum 80% of full pipe area.

Valve seat surface shall be welded-in overlay, cylindrically shaped of not less than 90% pure nickel. Seat area shall be raised, with raised area completely covered with weld to insure proper seat contact. The machined seat area shall be a minimum of .125 thick and .500" wide.

The valve plug shall be constructed of cast iron (semi-steel) conforming to ASTM-A126, Class

B. The plug shall have a cylindrical seating surface that is offset from the center of the plug shafts. The plug shafts shall be integral. The entire plug shall be 100% encapsulated with Buna-N rubber in all valve sizes. The rubber compound shall be approximately 70 (Shore A) durometer hardness. The rubber to metal bond must withstand 75 lbs. pull under test procedure ASTM D-429-73 Method B.

Shaft bearings, upper and lower, shall be sleeve type metal bearings, sintered, oil impregnated, and permanently lubricated type 316 stainless steel conforming to ASTM A Grand C-8M. Thrust bearings shall be Nylatron.

Plug valve shaft seals shall be of the multiple V-ring type (Chevron) and shall be adjustable. All packing shall be replaceable without removing the bonnet or actuator and while the valve is in service. Shaft seals shall be made of Buna N.

Each valve shall be given a test against the seat at the full rated working pressure and a hydrostatic shell test at twice the rated working pressure. Certified copies of individual tests shall be submitted when requested. Certified copies of proof-of-design tests shall be submitted upon request.

Manual valves shall have lever or worm gear type actuators with handwheels, 2" square nuts, or chainwheels attached. Lever actuators shall be furnished on valves 8" and smaller where the maximum unseating pressure is 25 psig or less. Worm gear type actuators shall be furnished on all 4" or larger valves where the maximum unseating pressure is 25 psig or more. Electric actuators shall be furnished where indicated on the plans. Electric operators shall meet the requirements of section 15118.

All eccentric plug valves shall be Milliken series 600, Clow F5412 (Flanged), F5413 (mechanical joint), or F5414 (grooved), DeZurik Series 100, or approved equal.

Unless otherwise necessary for proper operation or permitted by the ENGINEER, all eccentric plug valves shall be installed with the shaft horizontal and the plug in the upper half of the valve body. Valves in sewage or sludge lines shall be installed with the seat on the upstream end.

### 2.03 WALL PENETRATIONS:

New pipe penetrations through existing walls shall be core drilled and sealed using a link seal installation. The seal shall provide a water tight penetration.

## **PART 3 - EXECUTION**

### 3.01 DUCTILE PIPE INSTALLATION:

A. General: Pipe runs shall be installed where indicated if the piping is dimensioned. Where piping is not dimensioned the CONTRACTOR shall install the pipe as close as possible to the locations indicated taking care to maintain a neat appearance.

B. Fabrication: Pipe shall be accurately cut to the required lengths using tools specifically designed for the material involved. All piping shall be reamed to full size after cutting.

C. Assembly:

1. Flanged Joints: Thoroughly clean gasket and all surfaces which will contact gasket and thoroughly brush with soapy water. Tighten bolts alternately to an even, normal torque. Ineffective sealing will require disassembly, inspection for defects and proper reassembly of joints.
2. Threads on pipes shall be carefully cut with proper thread dies and shall be smooth and continuous. Screwed joints shall be made up with Teflon tape or an approved thread lubricant for the service involved applied to male threads only. Joints which are required to be backed off shall be entirely disjointed, the threads of both the pipe and fittings shall be cleaned, new Teflon tape applied, and the connection reassembled.

D. Handling of Pipe: All pipe furnished by the CONTRACTOR shall be delivered and distributed at the site by the CONTRACTOR. Pipe, fittings, and accessories shall be loaded and unloaded by lifting with hoists or by skidding to avoid shock or damage. Under no circumstances shall such material be dropped. Pipe handled on skidways shall not be skidded or rolled against pipe already on the ground.

In distributing the material at the site of the work, each piece shall be unloaded near the place where it is to be installed or in an acceptable storage area.

E. Temporary Pipe: Every precaution shall be taken to prevent foreign material from entering the pipe while it is being placed in the line. Before pipe installed under this contract will be accepted by the OWNER, the CONTRACTOR shall remove all debris, earth, rocks or other foreign material from the pipe. At all times when pipe installation is not actually in progress, the open ends of pipe shall be closed by temporary plugs, caps, or other approved means.

F. Testing: After installation all interior pipe shall be pressure tested by operating the pumps. No visible leakage will be allowed.

G. Installing Pipe: Install pipe on pipe hangars and supports as specified and shown in the drawings. Install pipe without springing, forcing, or stressing the pipe or the adjacent valves and equipment to which the pipe is connected.

END OF SECTION 15400

## SECTION 15412 – SEWAGE PUMP STATION

### **PART 1 - GENERAL**

#### 1.1 DESCRIPTION

- A. The CONTRACTOR shall furnish and install heavy-duty non-clog sewage pumps as manufactured by “*ITT Flygt*” or an approved equal with explosion proof premium efficiency electric motors. The CONTRACTOR will also furnish and install the guide rails, guide rail brackets, discharge elbows, check valves, piping and fittings, access hatches, level sensors, pump control panel, and the Control shelters, and perform the associated site work, and all appurtenant WORK, complete and operable, in accordance with the requirements of the Contract Documents and as shown on the plans.
- B. The CONTRACTOR shall assume full responsibility for furnishing and the functional operation of the complete pump system. The CONTRACTOR shall coordinate the assembly and fabrication of the valves, fittings, piping etc. to ensure the completed assembly meets the requirements of the pump manufacturer. The pump stations arrangements shown on the drawings are based on ITT Flygt submersible pumps.

### **PART 2 - PRODUCTS**

#### 2.1 GENERAL

- A. Wherever it is specified that a single manufacturer shall be responsible for the compatible and successful operation of the various components of any pumping equipment, it shall be understood to mean that the CONTRACTOR shall furnish only such pumping equipment as the designated single manufacturer will certify is suitable for use with its equipment and with the further understanding that this in no way constitutes a waiver of any specified requirements.
- B. All manufactured items provided under this Section shall be new, of current manufacture, and shall be the products of reputable manufacturers specializing in the manufacture of such products; such manufacturers shall have had previous experience in such manufacture and shall, upon request of the ENGINEER, furnish the names of not less than 5 successful installations of its equipment of comparable nature to that offered under this contract.
- C. All combinations of manufactured equipment which are provided under these specifications shall be entirely compatible, and the CONTRACTOR and the designated

## SECTION 15412 – SEWAGE PUMP STATION

single manufacturer shall be responsible for the compatible and successful operation of the various components of the units conforming to specified requirements. Each unit of pumping equipment shall incorporate all basic mechanisms, couplings, electric motors or engine drive and unit mounting. All necessary mountings and appurtenances shall be included.

### 2.2 PUMPS

#### A. General

Furnish and install three (3) submersible non-clog wastewater pumps in each of two lift stations. A total of 6 pumps shall be furnished and installed. Each pump shall be fitted with a lifting chain or stainless steel cable of a length suitable for the installation depth shown on the plans. The working load of the lifting system shall be 50% greater than the pump unit weight.

The pumps shall meet the following design criteria:

	<b>Node 4 Station</b>	<b>Node 6 Station</b>
Number of pumps	3	3
Design Capacity/ pump	663 gpm at 44 feet TDH	1020 gpm at 95.2 feet
Total Design Capacity/Station	1288 gpm at 59 feet	1530 gpm at 126 feet
Shut off head	86 feet	162 feet
Motor HP	11	34
Rated Speed	1800 RPM	1775 RPM
Voltage	460	460
Number of poles	4	4
Impeller material	Gray Iron ASTM A-48, Class 35B	Hard Iron ASTM A-532 25% chrome cast iron
Discharge connection	4 inches	4 inches
Pump Model (or approved equal)	Flygt NP3127.80HT~488 Adaptive Impeller	Flygt NP3171.83HT~453 Impeller.

## SECTION 15412 – SEWAGE PUMP STATION

### B. Explosion-Proof Requirements

The pump, motor, and accessories shall be suitable for use in hazardous locations and be examined, tested, and approved by Factory Mutual Research (FM) as explosion-proof. The motor shall conform to the latest edition of the National Electrical Code (NEC), Articles 500, 501, 502, and 503 requirements as explosion-proof and suitable for use in Class I, Division 1, Groups C and D hazardous locations (gases and vapors). Construction of the explosion-proof pumps, motors, and accessories shall incorporate the following special features:

1. Hydrostatically pressure tested high-strength, cast iron housings designed to withstand an internal explosion and have long tight flame paths to reduce exit temperature of any exploding gases to a value below the ignition temperature of the surrounding environment.
2. Pilot thermal sensors embedded in stator windings to guarantee that the pump surface temperature never exceeds safe limits, avoiding possible environmental ignition.
3. Flexible cords and cables used in hazardous locations must be of the NEC type "extra-hard usage" and be specifically tested and approved for the equipment that they will be used with.

### C. Pump Design

The pumps shall be automatically and firmly connected to the discharge connection, guided by no less than two stainless steel guide pipes extending from the top of the station to the discharge connection. There shall be no need for personnel to enter the wet well. Sealing of the pumping unit to the discharge connection shall be accomplished by a machined metal to metal watertight contact. Sealing of the discharge interface with a diaphragm, O-ring or profile gasket shall not be acceptable. No portion of the pump shall bear directly on the sump floor.

### D. Pump Construction

Major pump components shall be of grey cast iron, ASTM A-48, Class 35B, with smooth surfaces devoid of blow holes or other irregularities. All exposed nuts or bolts shall be AISI Type 304 stainless steel construction. All metal surfaces coming into contact with the pumpage, other than stainless steel or brass, shall be protected by a factory applied spray coating of acrylic dispersion zinc phosphate primer with a polyester resin paint finish on the exterior of the pump.

Sealing design shall incorporate metal-to-metal contact between machined surfaces. Critical mating surfaces where watertight sealing is required shall be machined and fitted with Nitrile or Viton rubber O-rings. Fittings will be the result of controlled compression of rubber O-rings in two planes and O-ring contact of four sides without the requirement of a specific torque limit. Rectangular cross sectioned gaskets requiring specific torque limits to achieve compression shall not be considered as adequate or equal. No secondary sealing compounds, elliptical O-rings, grease or other devices shall be used.



## SECTION 15412 – SEWAGE PUMP STATION

### E. Cable Entry Seal

The cable entry seal design shall preclude specific torque requirements to insure a watertight and submersible seal. The cable entry shall consist of a single cylindrical elastomer grommet, flanked by stainless steel washers, all having a close tolerance fit against the cable outside diameter and the entry inside diameter and compressed by the body containing a strain relief function, separate from the function of sealing the cable. The assembly shall provide ease of changing the cable when necessary using the same entry seal. The cable entry junction chamber and motor shall be separated by a stator lead sealing gland or terminal board, which shall isolate the interior from foreign material gaining access through the pump top. Epoxies, silicones, or other secondary sealing systems shall not be considered acceptable.

### F. Pump Cords and Device Cords

The pump cords and device cords shall be rated for extra heavy-duty applications and direct submergence in hazardous locations. A minimum of twenty (20) feet of excess length for each cord shall be coiled inside the wet well where the cables exit. This is to provide additional length in the event that the sealing fittings need to be removed, and the cable has to be re-terminated in the control panel.

### G. Motor

Except as otherwise may be required for explosion-proof service as defined above, the following motor specifications shall apply.

The pump motor shall be a NEMA B design, induction type with a squirrel cage rotor, shell type design, housed in an air filled, watertight chamber. The stator windings shall be insulated with moisture resistant Class H insulation rated for 180°C (356°F). The stator shall be insulated by the trickle impregnation method using Class H monomer-free polyester resin resulting in a winding fill factor of at least 95%. The motor shall be inverter duty rated in accordance with NEMA MG1, Part 31. The stator shall be heat-shrink fitted into the cast iron stator housing. The use of multiple step dip and bake-type stator insulation process is not acceptable. The use of bolts, pins or other fastening devices requiring penetration of the stator housing is not acceptable.

The motor shall be designed for continuous duty, handling pumped media of 40°C (104°F), and capable of at least 30 evenly spaced starts per hour. The rotor bars and short circuit rings shall be made of aluminum. Thermal switches set to open at 125°C (260°F) shall be embedded in the stator end coils to monitor the temperature of each phase winding. These thermal switches shall be used in conjunction with and supplemental to external motor overload protection and shall be connected to the control panel. The junction chamber shall be sealed off from the stator housing and shall contain a terminal board for connection of power and pilot sensor cables using threaded compression type terminals. The use of wire nuts or crimp type connectors is not acceptable. The motor and the pump shall be produced by the same manufacturer.

The combined service factor (combined effect of voltage, frequency, and specific gravity) shall be a minimum of 1.15. The motor shall have a voltage tolerance of plus or minus 10%. The motor shall be designed for operation up to 40°C (104°F) ambient and with a temperature rise not to exceed 80°C. A performance chart shall be provided upon request

## SECTION 15412 – SEWAGE PUMP STATION

showing curves for torque, current, power factor, input/output kW and efficiency. This chart shall also include data on starting and no-load characteristics.

The power cable shall be sized according to the NEC and ICEA standards and shall be of sufficient length to reach the junction box without the need of any splices. The outer jacket of the cable shall be oil resistant chlorinated polyethylene rubber. The motor and cable shall be capable of continuous submergence underwater without loss of watertight integrity to a depth of 65 feet or greater.

The motor horsepower shall be adequate so that the pump is non-overloading throughout the entire pump performance curve from shut-off through run-out.

In addition to the features specified above, the premium efficiency motor rotor shall have end rings and rotor bars constructed of copper. The premium efficiency motor shall meet the efficiency levels specified in the IEC standard 60034-30 for international efficiency, Class IE3

### H. Motor Cooling System

The motor shall be sufficiently convection-cooled by the surrounding environment or pumped media.

### I. Bearings

The pump shaft shall rotate on two bearings. Motor bearings shall be sealed and permanently grease lubricated. The upper bearing shall be a two row angular contact ball bearing. The lower bearing shall be a two row angular contact bearing to compensate for axial thrust and radial forces. Single row lower bearings are not acceptable. The minimum L10 bearing life shall be 50,000 hours at any usable portion of the pump curve.

### J. Mechanical Seal

Each pump shall be provided with a tandem mechanical shaft seal system consisting of two totally independent seal assemblies. The seals shall operate in a lubricant reservoir that hydro-dynamically lubricates the lapped seal faces at a constant rate. The lower, primary seal unit, located between the pump and the lubricant chamber, shall contain one stationary and one positively driven rotating corrosion resistant, tungsten-carbide ring. The upper, secondary seal unit, located between the lubricant chamber and the motor housing, shall contain one stationary and one positively driven rotating corrosion resistant, tungsten-carbide seal ring. Each seal interface shall be held in contact by its own spring system. The seals shall require neither maintenance nor adjustment nor depend on direction of rotation for sealing. The position of both mechanical seals shall depend on the shaft. Mounting of the lower mechanical seal on the impeller hub will not be acceptable.

The following seal types shall not be considered acceptable nor equal to the dual independent seal specified: shaft seals without positively driven rotating members, or conventional double mechanical seals containing either a common single or double spring acting between the upper and lower seal faces. No system requiring a pressure differential to offset pressure and to effect sealing shall be used.

## SECTION 15412 – SEWAGE PUMP STATION

Each pump shall be provided with a lubricant chamber for the shaft sealing system. The lubricant chamber shall be designed to prevent overfilling and to provide lubricant expansion capacity. The drain and inspection plug, with positive anti-leak seal shall be easily accessible from the outside. The seal system shall not rely upon the pumped media for lubrication. The motor shall be able to operate non-submerged without damage while pumping under load. Seal lubricant shall be non-toxic and FDA Approved.

### K. Pump Shaft

Pump and motor shaft shall be the same unit. The pump shaft is an extension of the motor shaft. Couplings shall not be acceptable. The shaft shall be stainless steel, ASTM A479 S43100-T. The use of stainless steel sleeves will not be considered equal to stainless steel shafts.

### L. Pump Impeller / Volute

The impeller shall be of non-clogging design having a long throughlet without acute turns. The impeller shall be capable of handling solids, fibrous materials, heavy sludge and other matter found in wastewater. The volute shall have a replaceable suction cover insert ring in which are cast spiral-shaped, sharp-edged grooves. The spiral grooves shall provide trash release pathways and sharp edges across which each impeller vane leading edge shall cross during rotation so to remain unobstructed. .

A wear ring system shall be used to provide efficient sealing between the volute and suction inlet of the impeller. Each pump shall be equipped with a brass, or Nitrile rubber coated steel ring insert that is drive fitted to the volute inlet.

Pump volute shall be single-piece grey cast iron, Class 35B, non-concentric design with smooth passages large enough to pass any solids that may enter the impeller. Minimum inlet and discharge size shall be as specified.

### M. Motor Protection

All stators shall incorporate thermal switches in series to monitor the temperature of each phase winding. The thermal switches shall open at 125°C (260°F), stop the motor and activate an alarm.

A leakage sensor shall be provided to detect water in the stator chamber. When activated, the sensor shall stop the motor and send an alarm both local and/or remote. Use of voltage sensitive solid state sensors and trip temperature above 125°C (260°F) shall not be allowed.

The thermal switches and leakage sensors shall be connected to a monitoring unit mounted in the control panel.

## 2.3 ELECTRICAL AND CONTROLS

- A. The CONTRACTOR shall install electrical power and pump control per the requirements of the electrical drawings and specifications.

## SECTION 15412 – SEWAGE PUMP STATION

### 2.4 PIPE, FITTINGS AND OTHER APPURTENANCES

- A. All Couplings and Fittings shall be flanged or shall be restrained joint with MEGALUGS, or equal.
- B. Eccentric Plug Valves in the valve vault shall be Clow F-5412 with lever actuator or approved equal.
- C. Materials for all piping in the dry well and the piping to connect to the existing force main shall meet the requirements of AWWA C 151 class 53 and shall be fully restrained ductile iron pipe.
- D. Fittings shall be flanged, or restrained joint ductile iron or cast iron, in accordance with AWWA. Fittings shall be cement mortar lined in accordance with AWWA C104.
- E. All nuts and bolts for flanged fittings and mechanical couplings in wet wells and valve vaults shall be 300 series stainless steel.

### 2.5 ACCESS HATCHES

- A. New access hatches for the lift stations wet wells shall be aluminum triplex hatches with an integral safety grate. The clear opening shall be a minimum of 84-inches by 48-inches. The hatch shall be pedestrian rated with a minimum live load of 300 pounds per square foot. Each door shall be equipped with a hold open arm. Door shall lock open in the 90 degree position. The hold open arm shall be fastened to the frame with a ½” grade 316 stainless steel bolt. All hardware shall be stainless steel. Each hatch panel shall be equipped with a lift handle and locking mechanism to prevent unauthorized access.

The anchor frame shall be of extruded aluminum, with a continuous 1-1/4-inch anchor flange.

Cover hinges shall be grade 316 stainless steel. Each hinge shall have a grade 316 stainless steel 3/8-inch diameter hinge pin.

## **PART 3 - EXECUTION**

## SECTION 15412 – SEWAGE PUMP STATION

### 3.1 INSTALLATION

- A. The pumps, piping shall be installed in accordance with the manufacturer's instructions and recommendations at the locations shown and as indicated on the plans. Installation shall include furnishing the required oil and grease for initial operation in accordance with the manufacturer's recommendations. Anchor bolts shall be set only after the discharge piping has been properly installed, to ensure exact fit with embedded piping components.
- B. Piping and appurtenances shall be installed consistent with methods and requirements of the Contract Documents as a whole.
- C. Piping to be installed in accordance with accepted industry standards. Run piping parallel to walls of dry well as shown on the plans. Completed installation to present a neat and orderly appearance. Coordinate wall penetrations to ensure placement of piping can be accomplished as shown and specified.
- D. Support piping as shown on the plans. Allow adequate clearance for placement of flange nuts and bolts.
- E. Flange bolts shall be tightened so the gasket is uniformly compressed and sealed. Bolt threads and nut-bearing surfaces shall be lubricated before tightening. Do not distort flanges.
- F. Holes for embedded bolts shall be installed with care so that multiple or oversized holes are not drilled. In the event that holes are not drilled properly in accordance with the manufacturer's recommendation, repairs shall be made with non-shrink grout in a manner that the full integrity of the structure is achieved as intended.

### 3.2 FIELD TESTS OF PUMPS

- A. All pumping units shall be field tested after installation, in accordance with the Contract Documents, to demonstrate satisfactory operation, without causing excessive noise, vibration, cavitation, and overheating of the bearings. The field testing shall be performed in the presence of an experienced field representative of the manufacturer of the pumps, who shall supervise the following tasks and shall certify in writing that the equipment has been properly installed, aligned, lubricated, adjusted, and readied for operation. The manufacturer's representative shall complete a Startup Report documenting the flow and

## SECTION 15412 – SEWAGE PUMP STATION

pressure conditions during the field testing. The experienced field representative shall be provided by the CONTRACTOR.

1. Start-up, check, and operate the equipment under normal operating conditions.
2. Pump performance shall be documented by obtaining concurrent readings, showing motor voltage, amperage, pump suction head, and pump discharge head. Each power lead to the motor shall be checked for proper current balance.
3. Electrical and instrumentation testing shall conform to the requirements of Pump Manufacturer, the Electrical Plans and Electrical Specifications.
4. The field testing shall be witnessed by the OWNER or its representative. In the event any of the pumping equipment fails to meet the above test requirements, it shall be modified and retested in accordance with the requirements of these Specifications. The CONTRACTOR shall then certify in writing that the equipment has been satisfactorily tested, and that all final adjustments thereto have been made. Certification shall include date of final acceptance test, as well as a listing of all persons present during tests, and resulting test data. The costs of all work performed in this Paragraph by factory-trained representatives shall be borne by the CONTRACTOR. The OWNER will pay for costs of power and water. When available, the OWNER'S operating personnel will provide assistance in the field testing.

### 3.3 WARRANTY

The manufacturer shall provide a 5-year warranty from the commissioning of the pumps.

**END OF SECTION**

## SECTION 15413 – SEWER BYPASS PUMPING SYSTEMS

### **PART 1 - GENERAL**

#### 1.1 DESCRIPTION

Under this item the Contractor is required to furnish all materials, labor, equipment, power, maintenance, etc. to implement a temporary pumping system for the purpose of diverting the existing sewer flow around the work areas for the duration of the project. See Project Plan Sheets for bypass pumping locations and discharge points. Note: Project schedules for all bypass pumping shall be submitted to Engineer for review and approval.

The design, installation and operation of the temporary pumping system shall be the Contractor's responsibility. The Contractor shall employ the services of a vendor who can demonstrate to the engineer that he specializes in the design and operation of temporary bypass pumping systems. The vendor shall provide at least five (5) references of projects of a similar size and complexity as this project performed by his firm within the past three years. The bypass system shall meet the requirements of all codes and regulatory agencies having jurisdiction and will be the contractors responsibility at all stages of the project.

#### 1.2 REQUIREMENTS FOR SUBMITTING BIDS

The Contractor shall prepare with the vendor a specific, detailed description of the proposed pumping system and submit it and the vendor's references with his bid proposal. Bid proposals without an acceptable detailed plan for the temporary bypass pumping system shall be rejected.

The Contractor shall submit to the Engineer detailed plans and descriptions outlining all provisions and precautions to be taken by the Contractor regarding the handling of existing wastewater flows. This plan must be specific and complete, including such items as schedules, locations, elevations, capacities of equipment, materials and all other incidental items necessary and/or required to insure proper protection of the facilities, including protection of the access and bypass pumping locations from damage due to the discharge flows, and compliance with the requirements, project plans and permit conditions specified in these Contract Documents. No construction shall begin until all provisions and requirements have been reviewed by the Engineer and Owner.

#### 1.3 REQUIREMENTS FOR SUBMITTING BIDS

Staging areas for pumps;

Sewer plugging method and types of plugs;

Number, size, material, location and method of installation of suction piping;

Number, size, material, method of installation and location of installation of discharge piping;

Bypass pump sizes, capacity, number of each size to be on site and power requirements;

Calculations of static lift, friction losses, and flow velocity (pump curves showing pump operating range shall be submitted;)

All bypass pumping shall be duplex set up for back up protection, show location and site layout;

Downstream discharge plan, including discharge pipe routing and sewer manhole inlet

## SECTION 15413 – SEWER BYPASS PUMPING SYSTEMS

configuration;

Method of protecting discharge manholes or structures from erosion and damage;

Thrust and restraint block sizes and locations;

Sections showing suction and discharge pipe depth, embedment, select fill and special backfill;

Method of noise control for each pump and/or generator ;

Any temporary pipe supports and anchoring required;

Design plans and computation for access to bypass pumping locations indicated on the drawings;

Calculations for selection of bypass pumping pipe size;

Schedule for installation of and maintenance of bypass pumping lines; Plan indicating selection location of bypass pumping line locations.

### PART 2 PRODUCTS

#### 2.1 EQUIPMENT

All pumps used shall be fully automatic self-priming units that do not require the use of foot-valves or vacuum pumps in the priming system. The pumps shall be diesel powered. All pumps used must be constructed to allow dry running for long periods of time to accommodate the cyclical nature of effluent flows.

The Contractor shall provide the necessary stop/start controls for each pump.

The Contractor shall include one stand-by pump of each size to be maintained on site. Back-up pumps shall be on-line, isolated from the primary system by a valve.

Discharge Piping - In order to prevent the accidental spillage of flows all discharge systems shall be temporarily constructed of rigid pipe with positive, restrained joints. Under no circumstances will aluminum "irrigation" type piping or glued PVC pipe be allowed. Discharge hose will only be allowed in short sections and by specific permission from the engineer.

#### 2.2 SYSTEM DESCRIPTION

##### **Design Requirements:**

Bypass pumping systems shall have sufficient capacity to pump a peak flow:

Node 4, Peak Flow= 900 gpm at 40 feet TDH (Head does not included losses from temporary piping installed from the pumps to the connection point)

Node. 6, Peak Flow=900 gpm at 97 feet TDH (Head does not included losses from temporary piping installed from the pumps to the connection point)

The Contractor shall provide all pipeline plugs, pumps of adequate size to handle peak flow, and temporary discharge piping to ensure that the total flow of the main can be safely diverted around the section to be repaired. Bypass pumping system will be required to be operated 24



## SECTION 15413 – SEWER BYPASS PUMPING SYSTEMS

hours per day.

The Contractor shall have adequate standby equipment available and ready for immediate operation and use in the event of an emergency or breakdown. One standby pump for each size pump utilized shall be installed at the mainline flow bypassing locations, ready for use in the event of primary pump failure.

Bypass pumping system shall be capable of bypassing the flow around the work area and of releasing any amount of flow up to full available flow into the work area as necessary for satisfactory performances of work.

The Contractor shall make all arrangements for bypass pumping during the time when the main is shut down for any reason. System must overcome any existing force main pressure on discharge.

It is essential to the operation of the existing sewerage system that there be no interruption in the flow of sewage throughout the duration of the project. To this end, the Contractor shall provide, maintain and operate all temporary facilities such as dams, plugs, pumping equipment (both primary and back-up units as required), conduits, all necessary power, and all other labor and equipment necessary to intercept the sewage flow before it reaches the point where it would interfere with his work, carry it past his work and return it to the existing sewer downstream of his work.

The design, installation and operation of the temporary pumping system shall be the Contractor's responsibility. The bypass system shall meet the requirements of all codes and regulatory agencies having jurisdiction.

The Contractor shall provide all necessary means to safely convey the sewage past the work area. The Contractor will not be permitted to stop or impede the main flows under any circumstances.

The Contractor shall maintain sewer flow around the work area in a manner that will not cause surcharging of sewers, damage to sewers and that will protect public and private property from damage and flooding.

The Contractor shall protect water resources, wetlands and other natural resources.

### 2.3 FIELD QUALITY CONTROL AND MAINTENANCE

#### **Test:**

Contractor shall preform leakage and pressure test of bypass pumping discharge piping using clean water prior to actual operation. The Engineer shall be given 48 hour notice prior to testing.

#### **Inspection:**

## SECTION 15413 – SEWER BYPASS PUMPING SYSTEMS

Contractor shall inspect bypass pumping system every two hours to ensure that the system is working correctly.

### **Maintenance Service:**

The Contractor shall insure that the temporary pumping system is properly maintained and a responsible operator shall be on hand at all times when pumps are operating.

### **Extra Materials:**

Spare parts for pumps and piping shall be kept on site as required. Adequate hoisting equipment for each pump and accessories shall be maintained on the site.

### 2.4 PREPARATION:

#### **Precautions:**

Contractor is responsible for locating any existing utilities in the area the Contractor selects to locate the bypass pipelines. The Contractor shall locate his bypass pipelines to minimize any disturbance to existing utilities and shall obtain approval of the pipeline locations from the City and Borough of Wrangell and the Engineer. All costs associated with relocating utilities and obtaining all approvals shall be paid by the Contractor.

During all bypass pumping operation, the Contractor shall protect the Pumping Station and main and all local sewer lines from damage inflicted by any equipment. The Contractor shall be responsible for all physical damage to the Pumping Station and main and all local sewer lines caused by human or mechanical failure.

### 2.5 INSTALLATION AND REMOVAL

The Contractor shall remove manhole sections or make connections to the existing sewer and construct temporary bypass pumping structures only at the access location indicated on the Drawings and as may be required to provide adequate suction conduit.

Plugging or blocking of sewage flows shall incorporate a primary and secondary plugging device. When plugging or blocking is no longer needed for performance and acceptance of work, it is to be removed in a manner that permits the sewage flow to slowly return to normal without surge, to prevent surcharging or causing other major disturbances downstream.

When working inside manhole or force main, the Contractor shall exercise caution and comply with OSHA requirements when working in the presence of sewer gases, combustible or oxygen-deficient atmospheres, and confined spaces.

The installation of the bypass pipelines is prohibited in all saltmarsh/wetland areas. The pipeline must be located off streets and sidewalks and on shoulders of the roads. When the

## **SECTION 15413 – SEWER BYPASS PUMPING SYSTEMS**

bypass pipeline crosses local streets the contractor must protect the bypass pipelines in trenches and cover with temporary pavement. Upon completion of the bypass pumping operations, and after the receipt of written permission from the Engineer, the Contractor shall remove all the piping, restore all property to pre- construction condition and restore all pavement. The Contractor is responsible for obtaining any approvals for placement of the temporary pipeline within public ways from the City and Borough of Wrangell.

**END OF SECTION**

## GENERAL SECTION 16050 – ELECTRICAL WORK, GENERAL

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

#### 1.2 THE REQUIREMENT

- A. The CONTRACTOR shall provide electrical work, complete and operable, in accordance with the Contract Documents.
- B. The provisions of this Section apply to all sections in Division 16, except as indicated otherwise.
- C. The WORK of this Section is required for operation of electrically-driven equipment provided under specifications in other Divisions. The CONTRACTOR's attention is directed to the requirement for proper coordination of the WORK of this Section with the WORK of equipment specifications, and the WORK of instrumentation sections.

#### 1.3 REFERENCE STANDARDS

- A. The WORK of this Section and all sections in Division 16 shall comply with the following, as applicable:

NEC (NFPA 70): National Electrical Code

NETA; International Electrical Testing Association

NEMA 250: Enclosures for Electrical Equipment (1000 Volts Maximum)

NECA 1: Standard Practice for Good Workmanship in Electrical Construction.

IBC: International Building Code

ASCE 7-10: American Society of Civil Engineer Publication 7-10

- B. Electrical equipment shall be listed by and shall bear the label of Underwriters' Laboratories, Inc. (UL).

- C. Installation of electrical equipment and materials shall comply with OSHA Safety and Health Standards, state building standards, and applicable local codes and regulations.
- D. Where the requirements of the specifications conflict with UL, NEMA, NFPA, or other applicable standards, the more stringent requirements shall govern.

#### 1.4 PUBLIC UTILITIES REQUIREMENTS

- A. The CONTRACTOR shall contact the serving utility and verify compliance with requirements before construction. The CONTRACTOR shall coordinate schedules and payments for work by all utilities. OWNER shall pay all charges levied by the serving utilities as part of the WORK.
- B. Electrical service shall be as indicated on the drawings and be as required by the serving utility.
- C. The CONTRACTOR shall verify and provide all service conduits, fittings, grounding devices, and all service wires not provided by the serving utility.
- D. The CONTRACTOR shall verify with the utility the exact location of each service point and type of service.

#### 1.5 DEFINITIONS PERMITS AND INSPECTION

- A. All electrical permits shall be obtained by the CONTRACTOR. The OWNER shall pay the inspection fees.
- B. The OWNER shall pay all connection and turn-on service charges required by the utility company.

#### 1.6 CONTRACTOR SUBMITTALS

- A. Furnish submittals in accordance with Section 01300 – Contractor Submittals.
- B. Shop Drawings: Include the following:
  - 1. Complete material lists stating manufacturer and brand name of each item or class of material.
  - 2. Shop Drawings for all grounding WORK not specifically indicated.
  - 3. Front, side, rear elevations, and top views with dimensional data.
  - 4. Location of conduit entrances and access plates.
  - 5. Component data.
  - 6. Connection diagrams, terminal numbers, internal wiring diagrams, conductor size, and cable numbers.

7. Method of anchoring, seismic requirements, weight.
  8. Types of materials and finish.
  9. Nameplates.
  10. Temperature limitations, as applicable.
  11. Voltage requirement, phase, and current, as applicable.
  12. Front and rear access requirements.
  13. Test reports.
  14. Grounding requirements.
  15. Catalog cuts of applicable pages of bulletins or brochures for mass produced, non-custom manufactured material. Catalog data sheets shall be stamped to indicate the project name, applicable Section and paragraph, model number, and options. This information shall be marked in spaces designated for such data in the ENGINEER's stamp.
- C. Shop Drawings shall be custom prepared. Drawings or data indicating "optional" or "as required" equipment are not acceptable. Options not proposed shall be crossed out or deleted from Shop Drawings.
- D. Materials and Equipment Schedules: The CONTRACTOR shall deliver to the ENGINEER within 30 days of the commencement date in the Notice to Proceed, a complete list of all materials, equipment, apparatus, and fixtures proposed for use. The list shall include type, sizes, names of manufacturers, catalog numbers, and other such information required to identify the items.
- E. O+M Manuals: Provide Operations and Maintenance manuals in accordance with Section 01300 – Contractor Submittals.
- F. Record Drawings: The CONTRACTOR shall show invert and top elevations and routing of all duct banks and concealed below-grade electrical installations. Record Drawings shall be prepared, be available to the ENGINEER, and be submitted according to Section 01300 – Contractor Submittals.
- G. Calculations: Anchor bolt calculations and details are required for all equipment weighing more than 400 pounds. The calculations and details shall meet the requirements of IBC, and shall be signed and stamped by a professional engineer registered in the State of Alaska. Equipment requiring structural calculations:
1. Fiberglass control shelter
  2. Equipment support racks; Service and Explosion-proof racks.

## 1.7 SHEET SPECIFICATIONS

- A. Where equipment is specified on the drawings only and no corresponding specification section is provided contractor shall provide the material specified as shown on the drawings.
- B. Material part numbers shown on drawings indicate the basis of design product. Contractor shall provide material as specified or equal. Alternative products shall be comparable in material, finish, type, dimensions, weight, function, and accessories to the specified basis of design products.
- C. Submittals shall be provided for all drawing specified materials. Submittals shall be submitted under 16050. Submittals shall comply with this section.

## 1.8 ENCLOSURE ENVIRONMENTAL DESIGNATIONS

### A. General:

1. Enclosure requirements specifically indicated within any of the project specifications sections shall comply with those requirements. Where not specifically indicated provide enclosures in compliance with this section
2. Raceway system enclosures shall comply with Section 16110 – Electrical Raceway Systems.
3. Existing electrical equipment and enclosures designated for reuse are not required to comply with paragraph 1.8.
4. Electrical enclosures and equipment installed within the Control Shelter shall be NEMA 4. The following equipment is excluded from the NEMA 4 requirement: fans, heater, thermostats, phone jacks, light fixtures, sensors.
5. Exterior service equipment including generator connection equipment shall be stainless steel.
6. Electrical WORK in below ground non-hazardous facilities, outdoor locations, and interior wet locations shall be NEMA 4X.
7. Installations in hazardous locations shall conform strictly to the requirements of the Class, Group, and Division indicated.

### B. Material Requirements:

1. NEMA 4X enclosures shall be stainless steel.
2. NEMA 1, 3R and 4 enclosures shall be steel, coated with ANSI 61 grey paint.

### C. Area Designations:

1. Dry Well: NEMA 4X
2. Wet Well: NEMA 4X
3. Exterior Locations: NEMA 4X
4. Interior Control Shelter\*: NEMA 4 (see 1.8.A.4 above for exclusions)

## 1.9 TESTS

- A. The CONTRACTOR shall be responsible for factory and field tests required by specifications in Division 16 and by the ENGINEER or other authorities having jurisdiction. The CONTRACTOR shall furnish necessary testing equipment and pay costs of tests, including all replacement parts and labor, due to damage resulting from damaged equipment or from testing and correction of faulty installation.
- B. Where test reports are indicated, proof of design test reports for mass-produced equipment shall be submitted with the Shop Drawings, and factory performance test reports for custom-manufactured equipment shall be submitted and be approved prior to shipment. Field test reports shall be submitted for review prior to Substantial Completion.
- C. Equipment or material which fails a test shall be removed and replaced.

## 1.10 TEMPORARY POWER

- A. Contractor to provide all equipment and labor required to power temporary bypass equipment.
- B. Provide temporary power from existing service equipment.
- C. Provide temporary distribution equipment protection as required for safe, code compliant, temporary installation.

## 1.11 DEMOLITION AND RELATED WORK

- A. The CONTRACTOR shall perform electrical demolition WORK as indicated on the electrical drawings and in parts of this Specification Section. The CONTRACTOR is cautioned that demolition WORK may also be indicated on non-electrical drawings. Coordinate electrical de-energization, disconnection, and removal with all trades and the overall sequence of construction.
- B. Electrical requirements associated with removed equipment shall be:
  - 1. Remove control and signal wiring as indicated.
  - 2. Remove all abandoned conduits associated with removed equipment.
  - 3. Where contractor is directed to abandon conduits in place contractors shall provide each conduit not terminating in a junction box or enclosure with end caps approved for use with the conduit type. Abandoned Junction boxes, enclosures, etc., shall be provided with covers, KO caps, or other closures as required to cover all openings.
  - 4. Encased conduits shall be cut flush to the floor or wall and grouted closed.
  - 5. Remove control panels, equipment and associated support structures.



6. Remove pump cords, level sensors, level switches, and other electrical control devices.
- C. Where new lighting and receptacles are installed, old lighting, receptacles, switches, wiring, and conduits shall be removed.
- D. Existing conduits shall not be reused.
- E. Materials and equipment not indicated to be removed and returned to the OWNER shall, upon removal, become the CONTRACTOR's property and shall be disposed of off-site.
- F. Material and equipment indicated to be relocated or reused shall be removed and relocated, and reinstalled with care to prevent damage thereto.
- G. Materials indicated to be returned to the OWNER shall be placed in boxes with the contents clearly marked and be stored at a location determined by the Construction Manager.
- H. Where panelboards are indicated to have circuits removed and reconnected the panelboard schedule shall be replaced with a new printed schedule. Pencil or magic marker markings directly on the panelboard or breaker are not permitted.

#### 1.12 CONSTRUCTION SEQUENCING

- A. Continuance of facility operation during demolition and the installation process is critical at all facilities. Therefore, the CONTRACTOR shall carefully examine all work to be done in, on, or adjacent to existing equipment. Work shall be scheduled, subject to the OWNER's approval, to minimize required process or equipment shutdown time. The CONTRACTOR shall submit a written request including sequence and duration of activities to be performed during station bypass and shutdown.
- B. Proposed Construction Sequencing:
  1. CONTRACTOR shall provide a schedule of electrical work based on equipment delivery dates and installation time requirements. Contractor shall coordinate with civil and mechanical contractors for bypass and shutdown schedule.
  2. The CONTRACTOR shall to the greatest extent possible have all underground utilities, new service equipment, control shelters, and auxiliary equipment installed onsite or stored where readily available prior to pump station bypass and shutdown. Utility work required for service cutover shall be scheduled prior to bypass
  3. During bypass CONTRACTOR shall:
    - a. Coordinate with local electrical utility for electrical service cutover to new service equipment.

- b. Perform all new installation work and refurbishing work at the wet well and demolition at the dry well.

1.13 CONTRACTORS PRE-BID INSPECTION RESPONSIBILITY:

- A. The CONTACTOR is advised to visit the Site before submitting a Bid to better acquaint itself with the WORK of this Contract. Lack of knowledge will not be accepted as a reason for granting extra compensation to perform the WORK.

1.14 WARRANTY:

- A. The warranty shall start from the date of final acceptance of the completed project, and shall extend for one (1) year.

**PART 2 - PRODUCTS**

2.1 GENERAL

- A. Equipment and materials shall be new, and/or shall be constructed for this project utilizing new component products and installed in new enclosures or assemblies.
  - 1. Replacement, retrofit, or add on equipment shall match the existing equipment. Equipment supplied to refurbish or add onto existing equipment shall be new or new unused stock with a manufacturer date newer than the existing equipment. All equipment and components shall be listed by UL, and shall bear the UL label where UL requirements apply.
  - 2. Equipment and materials shall be the products of experienced and reputable manufacturers in the industry. Equipment supplied to refurbish or add onto existing equipment shall be listed for retrofit or field modification use with existing equipment.
  - 3. Similar items in the WORK shall be products of the same manufacturer. Equipment and materials shall be of industrial grade standard of construction.
- B. Where a NEMA enclosure type is indicated in a non-hazardous location, the CONTRACTOR shall utilize that type of enclosure, despite the fact that certain modifications, such as cutouts for control devices, may negate the NEMA rating.

2.2 MOUNTING HARDWARE

- A. Miscellaneous Hardware:

1. Nuts, bolts, and washers shall be stainless steel.
2. Threaded rods for trapeze supports shall be continuous-threaded, hot dipped galvanized or stainless steel, 3/8-inch diameter minimum.
3. Strut for mounting of conduits and equipment shall be hot dipped galvanized or stainless steel. Where contact with concrete or dissimilar metals may cause galvanic corrosion, suitable non-metallic insulators shall be utilized to prevent such corrosion.
4. Anchors for attaching equipment to concrete walls, floors and ceilings shall be stainless steel expansion anchors, such as "Rawl-Bolt," "Rawl-Stud" or "Lok-Bolt" as manufactured by Rawl; similar by Star, or equal. Wood plugs shall not be permitted.

### 2.3 ELECTRICAL IDENTIFICATION

- A. Nameplates: Nameplates shall be fabricated from black-letter, white-face laminated plastic engraving stock, Rowmark Ultra-Mattes, or equal. Each shall be fastened securely, using fasteners of brass, cadmium-plated steel, or stainless steel, screwed into inserts or tapped holes, as required. Engraved characters shall be block style, with no characters smaller than 1/4-inch in height.
- B. Conductor and Equipment Identification: Conductor and equipment identification devices shall be heat-shrink plastic tubing with machine printing. Lettering shall read from left to right and shall face toward the front of the panel.
- C. Signs:
  1. Warning signs: indoor and outdoor locations; adhesive type, constructed of flexible polyester with weather resistant clear polyester overlamine.
  2. Custom signs: Per Nameplates above.

## PART 3 - EXECUTION

### 3.1 GENERAL

- A. Incidentals: the contractor shall provide all materials and incidentals required for a complete and operable system, even if not required explicitly by the specifications or the drawings. Typical incidentals are terminal lugs not furnished with vendor-supplied equipment, compression connectors for cables, splices, junction and terminal boxes, and control wiring required by vendor-furnished equipment to connect with other equipment indicated in the contract documents.
- B. Field Control of Location and Arrangement: The Drawings diagrammatically indicate the desired location and arrangement of outlets, conduit runs, equipment, and other items. Exact locations shall be determined by the CONTRACTOR in

the field, based on the physical size and arrangement of equipment, finished elevations, and other obstructions. Locations on the Drawings, however, shall be followed as closely as possible.

1. The CONTRACTOR shall route the conduits in accordance with the indicated installation requirements. All conduit shall be exposed or underground.
  2. Conduit and equipment shall be installed in such a manner as to avoid all obstructions, preserve headroom, and keep openings and passageways clear. Where the Drawings do not indicate exact locations, the CONTRACTOR shall determine such locations. If equipment is installed without ENGINEERS approval and must be moved, it shall be moved without additional cost to the OWNER.
- C. Workmanship: Comply with NECA 1 and these specifications. Materials and equipment shall be installed in strict accordance with printed recommendations of the manufacturer. Installation shall be accomplished by workers skilled in the work. Installation shall be coordinated in the field with other trades to avoid interferences.
- D. Protection of Equipment and Materials: The CONTRACTOR shall fully protect materials and equipment against damage from any cause. Materials and equipment, both in storage and during construction, shall be covered in such a manner that no finished surfaces will be damaged, marred, or splattered with water, foam, plaster, or paint. Moving parts shall be kept clean and dry. The CONTRACTOR shall replace or refinish damaged materials or equipment, including faceplates of panels and switchboard sections, as part of the WORK.
- E. CONTRACTOR is responsible for any damage to OWNER and CONTRACTOR furnished control panels incurred during installation. CONTRACTOR shall protect control panels any interior components from damage, drill waste, filing, etc. CONTRACTOR shall protect PLC and other electronic components from filings, drill waste, or other foreign debris during installation. Panels components found damaged shall be replaced at CONTRACTORS expense.

### 3.2 CORE DRILLING

- A. The CONTRACTOR shall perform core drilling required for installation of raceways through concrete walls, floors, and wet wells. Locations of penetrations, as may be required, shall be based on field conditions and shall be adjusted to preclude cutting reinforcing steel which shall be located by radiographic methods. Verify all exact core drilling locations based on equipment actually furnished, as well as exact field placement. To the extent possible, identify the existence and locations of encased raceways and other piping in existing walls and floors with the OWNER prior to any core drilling activities. Damage to any encased conduits, wiring, and piping shall be repaired as part of the WORK.
- B. All penetrations required to extend a conduit or wireway through concrete walls, roofs, and floors or masonry walls shall be core drilled.

- C. All core penetrations of fire walls shall be made with adequate space for the contractors selected firestopping method.

### 3.3 EQUIPMENT ANCHORING

- A. Floor supported, wall-, or ceiling-hung equipment and conduits shall be anchored in place by methods that will meet seismic requirements in the area where the project is located. Wall-mounted panels that weigh more than 400 pounds, or which are within 18 inches of the floor, shall be provided with fabricated steel support pedestals. If the supported equipment is a panel or cabinet enclosed within removable side plates, it shall match supported equipment in physical appearance and dimensions.
- B. Anchoring methods and leveling criteria in the printed recommendations of the equipment manufacturers are a part of the WORK of this Contract. Such recommendations shall be submitted as Shop Drawings under Section 01300 – Contractor Submittals.
- C. Panels, conduit, and other equipment shall be anchored and supported for Seismic requirements of IBC.
- D. Equipment Supports: Unless otherwise indicated, equipment supports, anchors, and restrainers shall be adequately designed for static, dynamic, wind, and seismic loads as stated in ASCE 7-10 (as referenced by IBC). Submitted design calculations for equipment supports and anchorage shall bear the signature and seal of a Professional Engineer registered in the State of Alaska.
- E. Anchors: All anchor bolts shall be designed to resist all applicable loads including, but not limited to, the loads listed above. Anchor bolt calculations shall clearly show that the capacity of the anchor and the capacity of the concrete that the anchor is embedded in are adequate to resist all loads stated in the IBC and ASCE 7-10, including gravity loads, wind and seismic loads, and dynamic loads associated with the equipment operation. The anchorage calculations shall satisfy the ductile detailing requirements stated in ASCE 7-10, Chapter 13, Section 13.4.2. Reduction factors associated with edge distance, embed length, and bolt spacing shall all be considered and based on the actual dimensions of the concrete that resists the anchorage forces. Anchor bolt details shall include the required bolt material, diameter, embed, and edge distances.
- F. Anchor bolt calculations and details shall be submitted and shall bear the signature and seal of a Professional Engineer registered in the State of Alaska.

### 3.4 EQUIPMENT IDENTIFICATION

- A. General: Equipment and devices shall be identified as follows:
  - 1. Nameplates shall be provided for all panelboards, control and instrumentation panels, starters, disconnect switches, and pushbutton stations. In addition to nameplates, control buttons, switches, and other control devices shall be equipped with standard collar-type legend plates.

2. Control devices within enclosures shall be identified as indicated. Identification shall be similar to the subparagraph above.
3. Equipment names and tag numbers, where indicated on the Drawings, shall be utilized on all nameplates.
4. The CONTRACTOR shall furnish typewritten circuit directories for panelboards; circuit directory shall accurately reflect the outlets or equipment connected to each circuit.

### 3.5 SIGNAGE

#### A. Warning Signs:

1. 600 volts nominal, or less. – Enclosures that contain live parts shall be marked with conspicuous signs indicating high voltage and prohibiting entry by unqualified persons.

### 3.6 REPAIRS AND PROTECTION

#### A. Galvanized Surfaces:

1. Field repairs to damaged galvanizing shall be performed by preparing the surface and applying a coating.
2. Surface preparation shall consist of removing oil, grease, soil, and soluble material by cleaning with water and detergent (SSPC SP1) followed by brush-off blast cleaning (SSPC SP7) over an area extending at least 4 inches into the undamaged area.
3. The coating shall be applied to at least 3 mils dry film thickness, and shall be Zinc-Clad XI by Sherwin-Williams, Galvax by Alvin Products, Galvite by ZRC Worldwide, or equal.

#### B. Touchup Painting: Immediately after erection, clean exposed areas where primer is damaged or missing and paint with the same material as used for shop painting to comply with SSPC-PA 1 for touching up shop-painted surfaces.

1. Clean and prepare surfaces by SSPC-SP 2 hand-tool cleaning or SSPC-SP 3 power-tool cleaning.

### 3.7 CLEANING

- #### A.
- Before final acceptance, the electrical WORK shall be thoroughly cleaned. Exposed parts shall be thoroughly clean of cement, plaster, and other materials. Oil and grease spots shall be removed with a non-flammable cleaning solvent. Such surfaces shall be carefully wiped and all cracks and corners scraped out. Touch-up paint shall be applied to scratches on panels and cabinets. Electrical cabinets or enclosures shall be vacuum-cleaned.

- B. CONTRACTOR shall group, coil, and tie wrap all spare cables at the bottom of the Local Control Panels. The wires shall be grouped according to the device, control panel, or MCC section they originate from. Cable groups shall be tagged according to their point of origin.
  - C. All debris shall be removed from the void below the panels.
- 3.8 CONTROL PANEL quality assurance
- A. The CONTRACTOR shall ensure all panels are UL-listed upon completion of the WORK.
  - B. Field modifications shall require field evaluation.

**END OF SECTION 16050**

## **SECTION 16060 - GROUNDING AND BONDING**

### **PART 1 - GENERAL**

#### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

#### 1.2 SUMMARY

- A. Section includes grounding and bonding systems and equipment.

#### 1.3 ACTION SUBMITTALS

- A. Product Data: For each type of product provided.

#### 1.4 CLOSEOUT SUBMITTALS

- A. Operation and Maintenance Data: None

#### 1.5 QUALITY ASSURANCE

- A. Electrical Components, Devices, and Accessories: Listed and labeled as defined in NFPA 70, by a qualified testing agency, and marked for intended location and application.
- B. Comply with UL 467 for grounding and bonding materials and equipment.

### **PART 2 - PRODUCTS**

#### 2.1 SYSTEM DESCRIPTION

- A. Electrical Components, Devices, and Accessories: Listed and labeled as defined in NFPA 70, by a qualified testing agency, and marked for intended location and application.
- B. Comply with UL 467 for grounding and bonding materials and equipment.



## 2.2 CONDUCTORS

- A. Insulated Conductors: Copper wire or cable insulated for 600 V unless otherwise required by applicable Code or authorities having jurisdiction. Provide XHHW-2 insulated copper conductors.
- B. Bare Copper Conductors:
  - 1. Solid Conductors: ASTM B 3.
  - 2. Stranded Conductors: ASTM B 8.

## 2.3 CONNECTORS

- A. Listed and labeled by an NRTL acceptable to authorities having jurisdiction for applications in which used and for specific types, sizes, and combinations of conductors and other items connected.
- B. Bolted Connectors for Conductors and Pipes: Copper or copper alloy.
- C. Welded Connectors: Exothermic-welding kits of types recommended by kit manufacturer for materials being joined and installation conditions.

## 2.4 GROUNDING ELECTRODES

- A. Ground Rods: Copper-clad steel; 5/8 by 96 inches.

# **PART 3 - EXECUTION**

## 3.1 APPLICATIONS

- A. Conductors: Install solid conductor for No. 8 AWG and smaller, and stranded conductors for No. 6 AWG and larger unless otherwise indicated.
- B. Conductor Terminations and Connections:
  - 1. Pipe and Equipment Grounding Conductor Terminations: Bolted connectors.
  - 2. Underground Connections: Welded connectors or bolted connections listed for underground used.
  - 3. Connections to Ground Rods at Test Wells: Bolted connectors.

## 3.2 GROUNDING AT THE SERVICE

- A. Equipment grounding conductors and grounding electrode conductors shall be connected to the ground bus. Install a main bonding jumper between the neutral and ground buses.

### 3.3 EQUIPMENT GROUNDING

- A. Install insulated equipment grounding conductors with all feeders and branch circuits.
- B. Outdoor Equipment Racks: Verify continuity to service ground bus. Where non-continuous install separate #8 equipment grounding connected to ground rods.

### 3.4 INSTALLATION

- A. Grounding Conductors: Route along shortest and straightest paths possible unless otherwise indicated or required by Code. Avoid obstructing access or placing conductors where they may be subjected to strain, impact, or damage.
- B. Ground Rods: Drive rods until tops are 2 inches below finished floor or final grade unless otherwise indicated.
  - 1. Interconnect ground rods with grounding electrode conductor below grade and as otherwise indicated. Make connections without exposing steel or damaging coating if any.
  - 2. For grounding electrode system, install at least two rods spaced at least one-rod length from each other and located at least the same distance from other grounding electrodes, and connect to the service grounding electrode conductor.
- C. Concrete-Encased Grounding Electrode (Ufer Ground): Fabricate according to NFPA 70; using electrically conductive coated steel reinforcing bars or rods, at least 20 feet long. If reinforcing is in multiple pieces, connect together by the usual steel tie wires or exothermic welding to create the required length.
  - 1. Node 4 and Node 6: Bond to existing Ufer Ground at existing wet well.
  - 2. Node 6: Provide Ufer ground at new control building concrete pad.

### 3.5 FIELD QUALITY CONTROL

- A. Perform tests and inspections.
- B. Tests and Inspections:
  - 1. After installing grounding system but before permanent electrical circuits have been energized, test for compliance with requirements.
  - 2. Inspect physical and mechanical condition. Verify tightness of accessible, bolted, electrical connections with a calibrated torque wrench according to manufacturer's written instructions.

**END OF SECTION 16060**

## SECTION 16100 – FIBERGLASS SHELTERS

### PART 1 - GENERAL

#### 1.1 SECTION INCLUDES

- A. Fiberglass Control Shelter:
  - 1. Intent: Contractor to provide and install fiberglass control shelters complete in accordance with these specifications and where shown on the drawings.
- B. Pre-engineered fiberglass shelters
  - 1. This specification provides two shelters:
    - a. Pump Station 4 Control Shelter
    - b. Pump Station 6 Control Shelter
- C. Ventilation equipment for pre-engineered structures.

#### 1.2 DEFINITIONS

- A. FRP: Fiberglass Reinforced Polyester Laminate.

#### 1.3 SUBMITTALS (provided by Shelter Manufacturer)

- A. Submit under provisions of Section 01300.
- B. Product Data: For all product supplied or incorporated into the product including:
  - 1. Certified independent test results of representative FRP laminate.
  - 2. Materials of construction; laminates, foam insulation, structural members, gelcoats, and other materials incorporated into the shelter.
  - 3. Mounting seal gasket
- C. Shop Drawings:
  - 1. Show dimensions, jointing and connections, fasteners and anchors.
  - 2. Sizes, spacing, and location of structural members, connections, attachments, openings, and fasteners.
  - 3. Color. Provide sample.
  - 4. Door drawing and data. Include door frame details and hardware data
  - 5. Foundation attachment methods and required materials
- D. Calculations: Structural design calculations, sealed by an independent Professional Engineer licensed in the State of Alaska.

1. Structural design to include design for anchoring shelter to foundation slab.
- E. Manufacturer's installation instructions.
- F. Manufacturer's gelcoat repair instructions.

#### 1.4 SHELTER DESCRIPTION

- A. Shelter shall be of molded monolithic construction of fiberglass reinforced polyester laminate with an insulating foam core.
  1. Paneled construction shall not be acceptable.
- B. Size: Interior space as shown on the drawings.
- C. Pre-engineered designed to IBC standards to withstand the following structural loading for the local conditions or as follows:
  2. 130 miles per hour wind load,
  3. 40 PSF snow load
  4. Seismic Zone 4
- D. Electrical Equipment
  1. Refer to electrical drawings for general electrical requirements, lighting, panelboards, control panels, heater, switches, thermostats, and associated equipment.
  2. Provide suitable structural supports and mounting panels integrated into the fiberglass structure to support all electrical gear as shown on the drawings.

#### 1.5 DELIVERY, STORAGE, AND HANDLING

- A. Protect shelter from weather: provide material for protection during storage, shipment until installed and weatherproofed onsite.
- B. Protect from shipping and storage damage.
- C. Manufacturer shall provide all packing materials required to prevent damage during storage and shipping.
- D. Contractor shall provide protection from damage, after installation, until substantial completion.

#### 1.6 CONTRACTOR INSTALLATION

- A. Contractor shall install shelter as specified. Contractor shall provide installation accessories as required for a complete installation.

## PART 2 - PRODUCTS

### 2.1 MANUFACTURERS (or equal)

- A. CAC Plastics, LLC; Wasilla, Alaska: [www.cacalaska.com](http://www.cacalaska.com)
- B. TRACOM, Inc.; Alpharetta, Georgia: [www.tracomfrp.com](http://www.tracomfrp.com)
- C. AK Supply, Inc.; Anchorage, Alaska: [www.aksupply.net](http://www.aksupply.net)

### 2.2 MATERIALS

- A. General Construction:
  - 1. One-Piece Molded Composite Construction.
  - 2. The walls and roof shall be integral with smooth radii for all corners. No roof overhang shall be allowed.
  - 3. Laminate: Isophthalic polyester resin with high performance, chopped, commercial grade glass strand fiber reinforcement with a suitable coupling agent.
    - a. Minimum glass content: 30%.
    - b. Exterior surface: 15 mil (minimum) gel coat with U.V. inhibitors and a satin finish lightly textured and free from fiber pattern, roughness, or other irregularities.
    - c. Exterior laminate: 1/8 inch thick (minimum); chemically bonded to the surface gel coat and encapsulating the foam core.
    - d. Interior laminate: 1/8 inch thick (minimum); chemically bonded to the interior gel coat and encapsulating the foam core.
    - e. Foam insulation core (see below)
    - f. Interior surface: 15 mil (minimum) gel coat with U.V. inhibitors and a textured finish, free from exposed glass or other irregularities.
  - 1. Core:
    - a. Rigid closed cell, self-extinguishing (Class 1), polyurethane foam with a density of 2.5 pounds per cubic foot. Lower density foams shall not be acceptable.
    - b. Wall thickness as required for an initial insulating value of R-21, minimum.
- B. The manufacturer shall maintain a continuous quality control program and upon request shall furnish to the engineer certified test results of the physical properties.

### 2.3 COMPONENTS

- A. Doors:
  - 1. Quantity: As shown on drawings.

2. The hatch-type door shall be weatherproofed with a continuous neoprene gasket.
3. Construction:
  - a. One-piece molded fiberglass construction 78 inches high, 1-3/4 inches thick, and 36 inches wide. Door shall be one piece with the same sandwich construction as shelter walls.
  - b. Neoprene gasket shall provide continuous seal of door to frame. Misalignment and incomplete seals shall be corrected at the contractor's expense.
  - c. Mount door with Three T-316 stainless steel hinges. Door must be readily replaceable.
  - d. One-piece, purpose built, 3 inches deep fiberglass drip cap over doors; drip cap to extend 2 inches each side past door. Cut angle shall not be acceptable.
  - e. Reinforced raised threshold for support and seal of bottom of door.
  - f. Stainless steel single-point key lockable door operator.
  - g. Heavy duty stainless steel, dual compression spring cushioned overhead door stop.
  - h. Doors shall open outward.
- B. Integral Floor
  1. None
  2. Provide integral mounting flange mounting to concrete slab.
- C. Mounting Flange
  1. Internal 3 inches wide x 1/4 inch thick (minimum) with closed cell neoprene sponge rubber gasket 2 inches wide x 3/8 inch thick to provide a weather tight seal around the building perimeter.
- D. Interior Equipment Support Panels
  1. Equipment mounting panel: 3/4 inches thick marine grade plywood equipment mounting panels laminated into wall for support of internal mounted equipment.
  2. Provide mounting panels on all walls floor to ceiling.
  3. Provide mounting panels on ceiling from wall to wall.
- E. Lifting Eyes
  1. Provide a minimum of two removable stainless steel eye bolts with 6 inch shank lengths.
- F. Shelter Anchor & Seal to Foundation

1. Provide Internal 3 inches wide x 1/4 inch thick (minimum) Flange to anchor shelter to concrete pad.
2. Provide 2(ea) foundation seals (one is spare). Provide closed cell neoprene sponge rubber gasket 2 inches wide x 3/8 inch thick to provide a weather tight seal around the building perimeter.
3. Shelter supplier to provide stainless steel anchor bolts and waterproofing neoprene gasketing to secure the enclosure to the foundation slab.
4. Anchor bolt size and spacing designed by building manufacturers engineer to withstand design conditions described herein.
5. Provide recommended anchor bolts shipped loose with shelter.

G. HARDWARE

1. All hardware shall be Stainless Steel

H. FINISHES

1. The shelter shall be provided with a smooth interior and exterior satin finish.
2. Interior and Exterior Color: Cloud White. Submit color sample for approval.

### **PART 3 - EXECUTION**

#### 3.1 EXAMINATION

- A. Receive and verify shelter is undamaged and door is operable prior to setting. Report damage to Construction Manager for repair or replacement approval.
- B. Verify that the concrete slab is level, true to plane, and of the correct dimensions to receive the structure. Correct all deficiencies before proceeding.

#### 3.2 INSTALLATION

- A. Install products in accordance with engineer's instructions, contract drawings construction managers' instructions, local codes, and in a manner consistent with the installation instructions and recommendation of the manufacturer.
- B. Verify placement of shelter with construction manager prior to installation.
- C. Move and position the shelter using the lifting eyes provided. Where more than one lifting eye is provided use a spreader bar
- D. The neoprene gasket provided shall be positioned between the concrete slab and the building mounting flange.
  1. Verify seal alignment prior to installing anchor bolts.

- E. Anchor shelter to foundation
  - 1. Anchor shelter per manufacturer's instructions.
  - 2. Layout the anchor bolt pattern. The anchor bolts should be installed in accordance with the engineer's instructions.
  - 3. Drill and set the anchor bolts starting with one on each side of the doors. The anchor bolts behind and in front of the doors should be flat head anchors if the mounting flange is external.
  - 4. Drill the anchor bolt holes to the depth and diameter required by the anchor bolt manufacturer. Stainless steel wedge style concrete anchors
  - 5. Verify the operation of the doors before installing the remaining anchor bolts.
    - a. Failure to verify the operation of the doors before the remaining anchor bolts are set may result in the binding of the door against the door frame.
    - b. Door binding, misalignment due to installation mistakes shall be repaired at the contractor's expense.
  - 6. After all anchor bolts have been completely set, remove the door spacers.
- F. Seal the exterior joint between flange and the concrete slab with sealant to ensure watertightness.
  - 1. Sealant: Sikadur Combiflex or equal
- G. Seal field penetrations as shown on the drawings.

### 3.3 FINISH REPAIR

- A. Touch-up and repair any damage during installation.
  - 1. Provide touch-up and repair per manufacturer's instructions
  - 2. Provide and turn over to owner 1 quart touch up gelcoats for each color used.
  - 3. Submit repair instructions with Operations and Maintenance manual.

### 3.4 ADJUST AND CLEAN

- A. Clean surfaces in accordance with the manufacturer's instructions.
- B. Remove trash and debris, and leave the site in a clean condition.

**END OF SECTION 16100**



## **SECTION 16120 - CONDUCTORS AND CABLES**

### **PART 1 - GENERAL**

#### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

#### 1.2 SUMMARY

- A. Section Includes:
  - 1. Building and Control wires and cables rated 600 V and less.
  - 2. Connectors, splices, and terminations rated 600 V and less.

#### 1.3 DEFINITIONS

- A. VFD: Variable frequency (motor) drive

#### 1.4 ACTION SUBMITTALS

- A. Product Data: For each type of product provided.

#### 1.5 INFORMATIONAL SUBMITTALS

- A. Qualification Data: For testing agency.
- B. Field quality-control reports.

### **PART 2 - PRODUCTS**

#### 2.1 CONDUCTORS AND CABLES

- A. Power conductors:
  - 1. Copper Conductors: Comply with NEMA WC 70/ICEA S-95-658.
  - 2. Conductor Insulation: Comply with NEMA WC 70/ICEA S-95-658 for Type XHHW-2.
- B. Control Conductors:
  - 1. Control wire in conduit shall be the same type as power conductors indicated above.

2. Control wiring shall be No. 14 19-strand tinned copper AWG.

C. Instrumentation Cables

1. Single pair, No. 18 AWG, twisted, shielded cable shall be Belden Part No. 9341, or equal.
2. 600V rated.

2.2 CONNECTORS AND SPLICES

- A. Description: Factory-fabricated connectors and splices of size, ampacity rating, material, type, and class for application and service indicated.

2.3 CABLE TERMINATIONS

- A. Compression connectors shall be Burndy "Hi Lug", Thomas & Betts "Sta-Kon," or equal. Threaded connectors shall be split bolt type of high strength copper alloy. Pressure type, twist-on connectors will not be acceptable.
- B. Pre-insulated fork tongue lugs shall be Thomas & Betts, Burndy, or equal.
- C. General purpose insulating tape shall be Scotch No. 33, Plymouth "Slip-knot," or equal. High temperature tape shall be polyvinyl as manufactured by Plymouth, 3M, or equal.

2.4 WIRE AND CABLE IDENTIFICATION PRODUCTS

- A. Labels for coding 600-volt wiring shall be machine printable or preprinted self-adhesive, self-laminating polyester labels or self-adhesive vinyl labels with the conductor or cable designation, origin, and destination. Brady, 3M or equal.
- B. Lettering shall read from left to right, and face the front of the panel.
- C. Field wires terminating at a Control Panel shall be labeled with the wire number shown on the Panel wiring diagrams. The CONTRACTOR shall mark all as-built drawings with wire labels. See cable identification requirements in Part 3 of this Section.
- D. Color-Coding Conductor Tape: Colored, self-adhesive vinyl tape not less than 3 mils thick by 1 to 2 inches wide.

## **PART 3 - EXECUTION**

### **3.1 CONDUCTOR MATERIAL APPLICATIONS**

- A. Feeders: Copper. Solid or stranded for No. 10 AWG and smaller; stranded for No. 8 AWG and larger.
- B. Branch Circuits: Copper. Solid or stranded for No. 10 AWG and smaller; stranded for No. 8 AWG and larger, except VFC cable, which shall be stranded.

### **3.2 CONDUCTOR INSULATION APPLICATIONS.**

- A. Cord Drops and Portable Appliance Connections: Type SO, extra hard service cord with stainless-steel, wire-mesh, strain relief device at terminations to suit application.
- B. All power and control conductors: Type XHHW-2.
- C. Instrumentation wiring: Shielded cables as required; Belden or equal with 600V insulation rating.

### **3.3 INSTALLATION OF CONDUCTORS AND CABLES**

- A. The following wiring shall be run in separate raceways:
  - 1. 24 VDC discrete signal and instrument power supply.
  - 2. 4-20 mA analog signal.
  - 3. All AC circuits.
- B. Complete raceway installation between conductor and cable termination points according to Section 16130 "Raceways and Boxes" prior to pulling conductors and cables.
- C. Use manufacturer-approved pulling compound or lubricant where necessary; compound used must not deteriorate conductor or insulation. Do not exceed manufacturer's recommended maximum pulling tensions and sidewall pressure values.
- D. Use pulling means, including fish tape, cable, rope, and basket-weave wire/cable grips, that will not damage cables or raceway.
- E. Install exposed cables parallel and perpendicular to surfaces of exposed structural members, and follow surface contours where possible.
- F. Wire in panels, cabinets, and wireways shall be neatly grouped using nylon tie straps, and shall be fanned out to terminals.
- G. Wet Well Conduit Seals: Conduit entering wet wells shall be sealed with duct seal at the end of the conduit where the conduit enters the wet well. Provide cloth rag backing and 1" of duct seal so duct seal can be removed in the future.

- H. Common neutrals prohibited. Each circuit shall be provided with a dedicated neutral conductor.
- I. Provided dedicated conduits for VFD output circuits. No other circuits shall share conduit with VFD output circuits.
- J. Spare control and instrumentation wire shall be properly taped and terminated as spare.

### 3.4 CONNECTIONS

- A. Tighten electrical connectors and terminals according to manufacturer's published torque-tightening values. If manufacturer's torque values are not indicated, use those specified in UL 486A-486B.
- B. Make splices, terminations, and taps that are compatible with conductor material and that possess equivalent or better mechanical strength and insulation ratings than unspliced conductors.
- C. Wiring at Outlets: Install conductor at each outlet, with at least 6 inches of slack.

### 3.5 Instrumentation Wire and Cable

- A. Shielded instrumentation cables shall be grounded at one end only, the receiving end (i.e., in the pump control panel) on a 4-20 mA system

### 3.6 IDENTIFICATION SCHEDULE

- A. Power-Circuit Conductor Identification, 600 V or Less: For conductors in vaults, pull and junction boxes use color-coding conductor tape to identify the phase.
  - 1. Color-Coding for Phase and Voltage Level Identification, 600 V or Less: Use colors listed below for ungrounded service feeder and branch-circuit conductors.
    - a. Color shall be factory applied or field applied for sizes larger than No. 8 AWG, if authorities having jurisdiction permit.
    - b. Colors for 240/120-V Circuits:
      - 1) Phase A: Black.
      - 2) Phase B: Red.
    - c. Colors for 480/277-V Circuits:
      - 1) Phase A: Brown.
      - 2) Phase B: Orange.
      - 3) Phase C: Yellow.

- d. Field-Applied, Color-Coding Conductor Tape: Apply in half-lapped turns for a minimum distance of 6 inches from terminal points and in boxes where splices or taps are made. Apply last two turns of tape with no tension to prevent possible unwinding. Locate bands to avoid obscuring factory cable markings.
- B. Identify each spare conductor at each end with identity number and location of other end of conductor, and identify as spare conductor.

### 3.7 FIELD QUALITY CONTROL

- A. Perform the following tests and inspections:
- 1. After installing conductors and cables and before electrical circuitry has been energized, test service entrance and feeder conductors, conductors feeding the pump control panel, and low voltage panel for compliance with requirements.
  - 2. Perform each visual and mechanical inspection and electrical test stated in NETA Acceptance Testing Specification. Certify compliance with test parameters.
- B. Test and Inspection Reports: Prepare a written report to record the following:
- 1. Procedures used.
  - 2. Results that comply with requirements.
  - 3. Results that do not comply with requirements and corrective action taken to achieve compliance with requirements.
- C. Cables will be considered defective if they do not pass tests and inspections.

**END OF SECTION 16120**

## **SECTION 16130 - RACEWAYS AND BOXES**

### **PART 1 - GENERAL**

#### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

#### 1.2 DEFINITIONS

- A. ARC: Aluminum rigid conduit.
- B. GRC: Galvanized rigid steel conduit.
- C. IMC: Intermediate metal conduit.

#### 1.3 ACTION SUBMITTALS

- A. Product Data: For product supplied under this section including surface raceways, wireways, fittings, floor boxes, hinged-cover enclosures, cabinets, and warning tapes.
- B. Shop Drawings: For custom enclosures and cabinets. Include plans, elevations, sections, and attachment details.
- C. Redline Drawings: Submit redline drawing showing underground conduit routing plan view. Show general location and routing of all underground conduits installed or encountered in excavations.

### **PART 2 - PRODUCTS**

#### 2.1 METAL CONDUITS, TUBING, AND FITTINGS

- A. Listing and Labeling: Metal conduits, tubing, and fittings shall be listed and labeled as defined in NFPA 70, by a qualified testing agency, and marked for intended location and application.
- B. GRC: Comply with ANSI C80.1 and UL 6.
- C. PVC-Coated GRC: PVC-coated Galvanized Rigid Steel Conduit.
  - 1. Comply with NEMA RN 1.
  - 2. Coating Thickness: 0.040 inch, minimum.

- D. LFMC: Flexible steel conduit with PVC jacket and complying with UL 360.
- E. Fittings for Metal Conduit: Comply with NEMA FB 1 and UL 514B.
  - 1. Conduit Fittings for Hazardous (Classified) Locations: Comply with UL 886 and NFPA 70.
  - 2. Expansion Fittings: PVC or steel to match conduit type, complying with UL 651, rated for environmental conditions where installed, and including flexible external bonding jumper.
  - 3. Coating for Fittings for PVC-Coated Conduit: Minimum thickness of 0.040 inch, with overlapping sleeves protecting threaded joints.
  - 4. Fittings and boxes for use with PVC-coated GRC, including LFMC fittings, shall be PVC-coated and shall be products of the same manufacturer as the PVC-coated conduit.
- F. Joint Compound for GRC or PCV-Coated GRC: Approved for use to lubricate and protect threaded conduit joints from corrosion and to enhance their conductivity.

## 2.2 METAL WIREWAYS AND AUXILIARY GUTTERS

- A. Description: Sheet metal, complying with UL 870 and NEMA 250, Type 4, unless otherwise indicated, and sized according to NFPA 70.
  - 1. Wireways shall be of the lay-in type and shall be type 316 L stainless steel.
  - 2. Power, control, signal and communications cables shall be separated by grounded metallic dividers in wireways or shall be run in separate wireways.
    - a. Wireway dividers shall stainless steel with stainless steel wireways, and shall be grounded by means of an individual grounding conductor. Non-metallic dividers will not be acceptable.
  - 3. Wireway fittings and sections shall have non-magnetic stainless steel screws. Covers shall be attached by hinges and clamps to the bodies. Covers attached by means of clips or screws will not be acceptable.
  - 4. Wireway covers and bodies shall be a minimum of 14 gauge for stainless steel construction.
  - 5. Wireway bodies shall be grounded.
  - 6. Wire gutter shall be front bottom hinged on horizontal runs.
  - 7. Fittings and Accessories: Include covers, couplings, offsets, elbows, expansion joints, adapters, hold-down straps, end caps, and other fittings to match and mate with wireways as required for complete system.

## 2.3 BOXES, ENCLOSURES, AND CABINETS

- A. General Requirements for Boxes, Enclosures, and Cabinets: Boxes, enclosures, and cabinets installed in wet locations shall be listed for use in wet locations.
- B. Cast-Metal Outlet and Device Boxes: Comply with NEMA FB 1, ferrous alloy aluminum, Type FD, with gasketed cover.
- C. Cast-Metal Access, Pull, and Junction Boxes: Comply with NEMA FB 1 and UL 1773, cast aluminum, or galvanized, cast iron, with gasketed cover.
- D. Device Box Dimensions: 4 inches square by 2-1/8 inches deep.
- E. Gangable boxes are prohibited.
- F. Hinged-Cover Enclosures: Comply with UL 50 and NEMA 250, Type 4 (interior locations) or Type 4X stainless steel (exterior locations) with continuous-hinge cover with flush latch unless otherwise indicated.
  - 1. Metal Enclosures: Steel, finished inside and out with manufacturer's standard enamel.
  - 2. Interior Panels: Steel; all sides finished with manufacturer's standard enamel.
- G. Cabinets:
  - 1. NEMA 250, Type 4 (interior locations) or Type 4X stainless steel (exterior locations) with removable interior panel and removable front, finished inside and out with manufacturer's standard enamel.
  - 2. Hinged door in front cover with flush latch and concealed hinge.
  - 3. Key latch to match panelboards.
  - 4. Metal barriers to separate wiring of different systems and voltage.
  - 5. Accessory feet where required for freestanding equipment.

## 2.4 CONDUIT SEAL

- A. High-Expansion Foam Duct Sealants
  - 1. Sealants shall be closed cell, removable, urethane foam, providing an airtight seal up to 10 psi.
  - 2. Provide Polywater FST Foam Sealant or similar UL listed, conductor insulation compatible, foam sealant

## 2.5 WET WELL PENETRATION SEALS

- 1. Provide Link-Seal Metraflex or similar watertight compression seal.



## 2.6 UNDERGROUND-LINE WARNING TAPE

### A. Tape:

1. Recommended by manufacturer for the method of installation and suitable to identify and locate underground electrical and communications utility lines.
2. Printing on tape shall be permanent and shall not be damaged by burial operations.
3. Tape material and ink shall be chemically inert, and not subject to degrading when exposed to acids, alkalis, and other destructive substances commonly found in soils.

### B. Color and Printing:

1. Comply with ANSI Z535.1 through ANSI Z535.5.
2. Inscriptions for -Colored Tapes: "CAUTION BURIED ELECTRIC LINE BELOW", or similar.

### C. Type:

1. Detectable three-layer laminate, consisting of a printed pigmented polypropylene film, a solid aluminum-foil core, and a clear protective film that allows inspection of the continuity of the conductive core, bright-colored, continuous-printed on one side with the inscription of the utility, compounded for direct-burial service.
2. Overall Thickness: 5 mils.
3. Foil Core Thickness: 0.35 mil.
4. Weight: 28 lb/1000 sq. ft..
5. 3-Inch Tensile According to ASTM D 882: 70 lbf, and 4600 psi.

## PART 3 - EXECUTION

### 3.1 RACEWAY APPLICATION

#### A. Outdoors: Apply raceway products as specified below unless otherwise indicated:

1. Exposed Conduit: PVC-coated GRC.
2. Underground Conduit: PVC-coated GRC.
3. Connection to Vibrating Equipment (Including Transformers and Hydraulic, Pneumatic, Electric Solenoid, or Motor-Driven Equipment): LFMC. Do not use FMC.
4. Boxes and Enclosures, Aboveground: NEMA 250, Type 4X.

#### B. Indoors: Apply raceway products as specified below unless otherwise indicated:

1. PVC-Coated GRC or GRC.

2. Connection to Vibrating Equipment (Including Transformers and Hydraulic, Pneumatic, Electric Solenoid, or Motor-Driven Equipment): LFMC. Do not use FMC.
  3. Damp or Wet Locations: PVC-Coated GRC.
  4. Boxes and Enclosures: NEMA 250, Type 4.
- C. Minimum Raceway Size: 1/2-inch 3/4-inch trade size.
- D. Raceway Fittings: Compatible with raceways and suitable for use and location.
1. Rigid and Intermediate Steel Conduit: Use threaded rigid steel conduit fittings unless otherwise indicated. Comply with NEMA FB 2.10.
  2. PVC Externally Coated, Rigid Steel Conduits: Use only fittings listed for use with this type of conduit. Patch and seal all joints, nicks, and scrapes in PVC coating after installing conduits and fittings. Use sealant recommended by fitting manufacturer and apply in thickness and number of coats recommended by manufacturer.
  3. Flexible Conduit: Use only fittings listed for use with flexible conduit. Comply with NEMA FB 2.20.

### 3.2 INSTALLATION

- A. Comply with NECA 1 and NECA 101 for installation requirements except where requirements on Drawings or in this article are stricter. Comply with NECA 102 for aluminum conduits. Comply with NFPA 70 limitations for types of raceways allowed in specific occupancies and number of floors.
- B. All wiring shall be run in conduit.
- C. Separate raceway systems shall be provided for:
1. Analog signals
  2. 24 VDC discrete signals and instrument power supply conductors
  3. 120 VAC and higher wiring.

When non-loop powered instruments have only one raceway port, the CONTRACTOR may run both the analog and 24 VDC wiring in a short length of 1/2" LFMC to a splitter box where the wiring must then be separated into the required raceway system. The length of LFMC must be kept to the absolute minimum and must not exceed 3 feet unless written approval has been given by the ENGINEER.

- D. Raceway systems shall be electrically and mechanically complete before conductors are installed. Bends and offsets shall be smooth and symmetrical, and shall be accomplished with tools designed for this purpose. Factory elbows shall be utilized wherever possible. All fittings and connections shall be made tight.
- E. Exposed raceways shall be installed at least 1/2-inch from walls or ceilings except that at locations above finished grade where damp conditions do not prevail, exposed raceways shall be installed 1/4-inch minimum from the face of walls or ceilings by the use of clamp backs or struts.

- F. For underground conduits 2" and larger provide 24" min. radius sweeps (90 degree bend). Submit pulling calculations for service conductors prior to installation.
- G. Complete raceway installation before starting conductor installation.
- H. Arrange stub-ups so curved portions of bends are not visible above finished slab.
- I. Install no more than the equivalent of three 90-degree bends in any conduit run except for control wiring conduits, for which fewer bends are allowed. Support within 12 inches of changes in direction.
- J. Support conduit per NFPA 70.
- K. Threaded Conduit Joints, Exposed to Wet, Damp, Corrosive, or Outdoor Conditions: Apply listed compound to threads of raceway and fittings before making up joints. Follow compound manufacturer's written instructions.
- L. Coat field-cut threads on PVC-coated raceway with a corrosion-preventing conductive compound prior to assembly.
- M. Raceway Terminations at Locations Subject to Moisture or Vibration: Use insulating bushings to protect conductors including conductors smaller than No. 4 AWG.
- N. Terminate threaded conduits into threaded hubs or with locknuts on inside and outside of boxes or cabinets. Install bushings on conduits up to 1-1/4-inch trade size and insulated throat metal bushings on 1-1/2-inch trade size and larger conduits terminated with locknuts. Install insulated throat metal grounding bushings on service conduits.
- O. Install raceways square to the enclosure and terminate at enclosures with locknuts. Install locknuts hand tight plus 1/4 turn more.
- P. Do not rely on locknuts to penetrate nonconductive coatings on enclosures. Remove coatings in the locknut area prior to assembling conduit to enclosure to assure a continuous ground path.
- Q. Cut conduit perpendicular to the length. For conduits 2-inch trade size and larger, use roll cutter or a guide to make cut straight and perpendicular to the length.
- R. Install pull wires in empty raceways. Use polypropylene or monofilament plastic line with not less than 200-lb tensile strength. Leave at least 12 inches of slack at each end of pull wire. Cap underground raceways designated as spare above grade alongside raceways in use.
- S. Install surface raceway with a minimum 2-inch radius control at bend points.
- T. Install raceway sealing fittings at accessible locations according to NFPA 70 and fill them with listed sealing compound. Install raceway sealing fittings according to NFPA 70.

- U. Install devices to seal raceway interiors at accessible locations. Locate seals so no fittings or boxes are between the seal and the following changes of environments. Seal the interior of all raceways at the following points:
  1. Where conduits pass from warm to cold locations, such as boundaries of refrigerated spaces.
  2. Where an underground service raceway enters a building or structure.
  3. Where otherwise required by NFPA 70.
  
- V. Flexible Conduit Connections: Comply with NEMA RV 3. Use a maximum of 36 inches of flexible conduit for equipment subject to vibration, noise transmission, or movement; and for transformers and motors.
  1. Use LFMC in all locations. Do not use FMC.
  
- W. Mount boxes at heights indicated on Drawings. If mounting heights of boxes are not individually indicated, give priority to ADA requirements. Install boxes with height measured to center of box unless otherwise indicated.
  
- X. Fasten junction and pull boxes to or support from building structure. Do not support boxes by conduits.
  
- Y. Provide dedicated raceway for VFD output circuits. No other circuits shall share raceway with VFD output circuits. Route raceways containing VFD load side circuits at least 12" from raceways containing control or communications circuits.

### 3.3 WET WELL CONDUIT PENETRATIONS

- A. Existing penetrations
  1. Field locate existing penetrations.
  2. Reuse existing penetrations where available, located for easy conduit routing, and suitable for re-use.
  3. Grout fill unused existing penetrations.
  4. Enlarge existing penetrations as required to install watertight seals.
  
- B. New Penetrations
  1. Provide new core-drilled where required.
  2. Size penetrations for conduit and watertight seals.
  
- C. Access to Penetrations
  1. Provide all excavation and backfill required to facilitate access to existing penetrations and any required core drilling.

3.4 FOR ELECTRICAL PENETRATION SEALS AND SLEEVES.

- A. Provide watertight seals at underground and wet well concrete penetrations
- B. Provide penetration sleeves at building penetrations. Fill annular spaces with 1 hour fire stopping material. Provide covers for annular spaces to cover and protect fire rated seal material. Covers shall match building finish.

3.5 INSTALLATION OF UNDERGROUND CONDUIT

- A. Excavation for Direct-Buried Conduit:
  - 1. Trench Bottoms: Excavate and shape trench bottoms to provide uniform bearing and support of conduit. Shape subgrade to provide continuous support for joints, fittings, and bodies of conduits. Remove projecting stones and sharp objects along trench subgrade.
    - a. For conduit less than 6 inches in nominal diameter, hand-excavate trench bottoms and support pipe and conduit on an undisturbed subgrade.
    - b. Where native soils are rocky or unyielding provide sand bedding. Excavate trenches 3 inches deeper than elevation required allow for bedding course.
- B. Backfill for Direct-Buried Conduit:
  - 1. After installing conduit, backfill and compact. Start at tie-in point, and work toward end of conduit run, leaving conduit at end of run free to move with expansion and contraction as temperature changes during this process. Firmly hand tamp backfill around conduit to provide maximum supporting strength. After placing controlled backfill to within 12 inches of finished grade, make final conduit connection at end of run and complete backfilling with normal compaction.
  - 2. Place backfill on subgrades free of mud, frost, snow, or ice.
  - 3. Place and compact bedding course on trench bottoms and where required. Shape bedding course to provide continuous support for joints, fittings, and bodies of conduits.
  - 4. Initial Backfill:
    - a. Soil Backfill: Place and compact initial backfill of subbase material or satisfactory soil, free of particles larger than 1 inch in any dimension, to a height of 12 inches over the pipe or conduit.
    - b. Carefully compact initial backfill under pipe haunches and compact evenly up on both sides and along the full length of piping or conduit to avoid damage or displacement of piping or conduit.
  - 5. Final Backfill:
    - a. Soil Backfill: Place and compact final backfill of satisfactory soil to final subgrade elevation.

6. Compaction: For utility trenches, compact each layer of initial and final backfill soil material at 85 percent.
7. Warning Tape, Underground.
  - a. Install continuous underground-line warning tape directly above line 12" above conduits. Use multiple tapes where width of multiple lines installed in a common trench exceeds 16 inches overall.

C. Grading

1. General: Uniformly grade areas to a smooth surface, free of irregular surface changes. Comply with compaction requirements and grade to match existing adjacent elevations. Follow existing slopes to maintain drainage.
2. Provide a smooth transition between adjacent existing grades and backfill.
3. Cut out soft spots, fill low spots, and trim high spots to comply with required surface tolerances.

D. Underground Conduit Redline Drawings

1. Contractor shall provide redline markup drawings showing underground conduit routing for all underground conduits installed. Include abandoned, non-project conduits, or other obstruction encountered during excavation.
2. Provide markups on full size set of site electrical plan view drawings.

3.6 PROTECTION

A. Protect coatings, finishes, and cabinets from damage and deterioration.

1. Repair damage to galvanized finishes as specified in section 16050, paragraph: Repairs and Protection.
2. Repair damage to PVC coatings or paint finishes with matching touchup coating recommended by manufacturer.

**END OF SECTION 16130**

## **SECTION 16140 - WIRING DEVICES**

### **PART 1 - GENERAL**

#### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

#### 1.2 SUMMARY

- A. Section Includes:
  - 1. Receptacles and associated device plates.
  - 2. Weather-resistant receptacles.
  - 3. Snap switches dimmers.

#### 1.3 DEFINITIONS

- A. GFCI: Ground-fault circuit interrupter.
- B. Pigtail: Short lead used to connect a device to a branch-circuit conductor.

#### 1.4 ACTION SUBMITTALS

- A. Product Data: For each type of product provided.

### **PART 2 - PRODUCTS**

#### 2.1 GENERAL WIRING-DEVICE REQUIREMENTS

- A. Wiring Devices, Components, and Accessories: Listed and labeled as defined in NFPA 70, by a qualified testing agency, and marked for intended location and application.
- B. Comply with NFPA 70.

#### 2.2 STRAIGHT-BLADE RECEPTACLES

- A. Convenience Receptacles, 125 V, 20 A: Comply with NEMA WD 1, NEMA WD 6 Configuration 5-20R, UL 498, and FS W-C-596.

- B. Provide weather/corrosion resistant extra heavy duty industrial type receptacles: Provide Hubbell HBL52CM62I or similar.

### 2.3 GFCI RECEPTACLES

- A. GFCI Receptacles not allowed. Protect all 120VAC purpose receptacles with GFCI circuit breakers.
- B. Provide GFCI breakers to be installed in existing loadcenters as required.
  - 1. Node 4 loadcenter: Eaton Type BR, 10k AIC
  - 2. Node 6 Loadcenter: Westinghouse Type BR, 10k AIC

### 2.4 GENERATOR RECEPTACLES

- A. Provide generator receptacles as shown on drawings.

### 2.5 TOGGLE SWITCHES

- A. Comply with NEMA WD 1, UL 20, and FS W-S-896, rated 120/277 V, 20 A,
- B. Provide weather resistant extra heavy duty industrial type receptacles: Provide Hubbell HBL1221I or similar.

### 2.6 WALL PLATES

- A. Single and combination types shall match corresponding wiring devices.
- B. Interior Locations: Malleable iron plates with zinc electroplating.
- C. Exterior Locations: PVC-Coated raintight.

### 2.7 FINISHES

- A. Device Color:
  - 1. Wiring Devices Connected to Normal Power System: IVORY unless otherwise indicated or required by NFPA 70 or device listing.
- B. Wall Plate Color: Not applicable. Provide unpainted metal plates, see Wall Plates above.



## **PART 3 - EXECUTION**

### **3.1 INSTALLATION**

- A. Comply with NECA 1, including mounting heights listed in that standard, unless otherwise indicated.
- B. Conductors:
  - 1. Do not strip insulation from conductors until right before they are spliced or terminated on devices.
  - 2. Strip insulation evenly around the conductor using tools designed for the purpose. Avoid scoring or nicking of solid wire or cutting strands from stranded wire.
  - 3. The length of free conductors at outlets for devices shall meet provisions of NFPA 70, Article 300, without pigtailed.
- C. Device Installation:
  - 1. Replace devices that have been in temporary use during construction and that were installed before building finishing operations were complete.
  - 2. Keep each wiring device in its package or otherwise protected until it is time to connect conductors.
  - 3. Do not remove surface protection, such as plastic film and smudge covers, until the last possible moment.
  - 4. Connect devices to branch circuits using pigtails that are not less than 6 inches in length.
  - 5. When there is a choice, use side wiring with binding-head screw terminals. Wrap solid conductor tightly clockwise, two-thirds to three-fourths of the way around terminal screw.
  - 6. Use a torque screwdriver when a torque is recommended or required by manufacturer.
  - 7. When conductors larger than No. 12 AWG are installed on 15- or 20-A circuits, splice No. 12 AWG pigtails for device connections.
  - 8. Tighten unused terminal screws on the device.
  - 9. When mounting into metal boxes, remove the fiber or plastic washers used to hold device-mounting screws in yokes, allowing metal-to-metal contact.
- D. Receptacle Orientation:
  - 1. Install ground pin of vertically mounted receptacles down.
- E. Arrangement of Devices: Unless otherwise indicated, mount flush, with long dimension vertical and with grounding terminal of receptacles on top. Group adjacent switches under single, multigang wall plates.
- F. Adjust locations of floor service outlets and service poles to suit arrangement of partitions and furnishings.

### 3.2 IDENTIFICATION

- A. Comply with Section 16050.

### 3.3 FIELD QUALITY CONTROL

- A. Perform the following tests and inspections:

1. Test Instruments: Use instruments that comply with UL 1436.
2. Test Instrument for Convenience Receptacles: Digital wiring analyzer with digital readout or illuminated digital-display indicators of measurement.

- B. Tests for Convenience Receptacles:

1. Line Voltage: Acceptable range is 105 to 132 V.
2. Percent Voltage Drop under 15-A Load: A value of 6 percent or higher is unacceptable.
3. Ground Impedance: Values of up to 2 ohms are acceptable.
4. GFCI Trip: Test for tripping values specified in UL 1436 and UL 943.
5. Using the test plug, verify that the device and its outlet box are securely mounted.
6. Tests shall be diagnostic, indicating damaged conductors, high resistance at the circuit breaker, poor connections, inadequate fault current path, defective devices, or similar problems. Correct circuit conditions, remove malfunctioning units and replace with new ones, and retest as specified above.

**END OF SECTION 16140**

## SECTION 16442 - PANELBOARDS

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

#### 1.2 SUMMARY

- A. Section Includes:
  - 1. Panelboards
  - 2. Mini Power Centers

#### 1.3 ACTION SUBMITTALS

- A. Product Data: For each type of panelboard, switching and overcurrent protective device, transient voltage suppression device, accessory, and component indicated. Include dimensions and manufacturers' technical data on features, performance, electrical characteristics, ratings, and finishes.
- B. Shop Drawings: For each panelboard and related equipment.
  - 1. Include dimensioned plans, elevations, sections, and details. Show tabulations of installed devices, equipment features, and ratings.
  - 2. Detail enclosure types and details for types other than NEMA 250, Type 1.
  - 3. Detail bus configuration, current, and voltage ratings.
  - 4. Short-circuit current rating of panelboards and overcurrent protective devices.
  - 5. Include evidence of NRTL listing for series rating of installed devices.
  - 6. Detail features, characteristics, ratings, and factory settings of individual overcurrent protective devices and auxiliary components.
  - 7. Include wiring diagrams for power, signal, and control wiring.

#### 1.4 INFORMATIONAL SUBMITTALS

- A. Qualification Data: For qualified testing agency.
- B. Seismic Qualification Certificates: Submit certification that panelboards, overcurrent protective devices, accessories, and components will withstand seismic forces include the following:

1. Basis for Certification: Indicate whether withstand certification is based on actual test of assembled components or on calculation.
2. Dimensioned Outline Drawings of Equipment Unit: Identify center of gravity and locate and describe mounting and anchorage provisions.
3. Detailed description of equipment anchorage devices on which the certification is based and their installation requirements.

#### 1.5 QUALITY ASSURANCE

- A. Testing Agency Qualifications: Member company of NETA or an NRTL.
  1. Testing Agency's Field Supervisor: Currently certified by NETA to supervise on-site testing.
- B. Source Limitations: Obtain panelboards, overcurrent protective devices, components, and accessories from single source from single manufacturer.
- C. Product Selection for Restricted Space: Drawings indicate maximum dimensions for panelboards including clearances between panelboards and adjacent surfaces and other items. Comply with indicated maximum dimensions.
- D. Electrical Components, Devices, and Accessories: Listed and labeled as defined in NFPA 70, by a qualified testing agency, and marked for intended location and application.
- E. Comply with NEMA PB 1.
- F. Comply with NFPA 70.

#### 1.6 DELIVERY, STORAGE, AND HANDLING

- A. Store in dry location.
- B. Remove loose packing and flammable materials from inside panelboards.
- C. Handle and prepare panelboards for installation according to NECA 407.

#### 1.7 COORDINATION

- A. Coordinate layout and installation of panelboards and components with other construction that penetrates walls or is supported by them, including electrical and other types of equipment, raceways, piping, encumbrances to workspace clearance requirements, and adjacent surfaces. Maintain required workspace clearances and required clearances for equipment access doors and panels.

## 1.8 WARRANTY

- A. Special Warranty: Manufacturer's standard form in which manufacturer agrees to repair or replace transient voltage suppression devices that fail in materials or workmanship within specified warranty period.
  - 1. Warranty Period: Five years from date of Substantial Completion.

## PART 2 - PRODUCTS

### 2.1 GENERAL REQUIREMENTS FOR PANELBOARDS

- A. Enclosures: Surface-mounted cabinets.
  - 1. Rated for environmental conditions at installed location.
    - a. Indoor Locations: NEMA 250, Type 12.
  - 2. Front: Secured to box with concealed trim clamps. For surface-mounted fronts, match box dimensions; for flush-mounted fronts, overlap box.
  - 3. Hinged Front Cover: Entire front trim hinged to box and with standard door within hinged trim cover.
  - 4. Skirt for Surface-Mounted Panelboards: Same gage and finish as panelboard front with flanges for attachment to panelboard, wall, and ceiling or floor.
  - 5. Gutter Extension and Barrier: Same gage and finish as panelboard enclosure; integral with enclosure body. Arrange to isolate individual panel sections.
  - 6. Finishes:
    - a. Panels and Trim: galvanized steel, factory finished immediately after cleaning and pretreating with manufacturer's standard two-coat, baked-on finish consisting of prime coat and thermosetting topcoat.
    - b. Back Boxes: Galvanized steel with same finish as panels and trim.
    - c. Fungus Proofing: Permanent fungicidal treatment for overcurrent protective devices and other components.
  - 7. Directory Card: Inside panelboard door, mounted in transparent card holder.
- B. Incoming Mains Location: Top or Bottom, Contractor Coordinated.
- C. Phase, Neutral, and Ground Buses:
  - 1. Material: Tin-plated aluminum or copper.
  - 2. Equipment Ground Bus: Adequate for feeder and branch-circuit equipment grounding conductors; bonded to box.

- D. Conductor Connectors: Suitable for use with copper conductor material and sizes.
  - 1. Material: Tin-plated aluminum or Hard-drawn copper.
  - 2. Main and Neutral Lugs: Mechanical type.
  - 3. Ground Lugs and Bus-Configured Terminators: Mechanical type.
  - 4. Feed-Through Lugs: Mechanical type, suitable for use with conductor material. Locate at opposite end of bus from incoming lugs or main device.
- E. Future Devices: Mounting brackets, bus connections, filler plates, and necessary appurtenances required for future installation of devices.
- F. Panelboard Short-Circuit Current Rating: Fully rated to interrupt symmetrical short-circuit current available at terminals.

## 2.2 PERFORMANCE REQUIREMENTS

- A. Seismic Performance: Panelboards shall withstand the effects of earthquake motions determined according to SEI/ASCE 7.
  - 1. The term "withstand" means "the unit will remain in place without separation of any parts from the device when subjected to the seismic forces specified."

## 2.3 PANELBOARDS

- A. Panelboards: NEMA PB 1.
- B. Mains: As shown on drawings.
- C. Branch Overcurrent Protective Devices: Bolt-on circuit breakers, replaceable without disturbing adjacent units.

## 2.4 DISCONNECTING AND OVERCURRENT PROTECTIVE DEVICES

- A. Molded-Case Circuit Breaker (MCCB): Comply with UL 489, with series-connected rating interrupting capacity to meet available fault currents.
  - 1. Thermal-Magnetic Circuit Breakers: Inverse time-current element for low-level overloads, and instantaneous magnetic trip element for short circuits. Adjustable magnetic trip setting for circuit-breaker frame sizes 250 A and larger.
  - 2. GFCI Circuit Breakers: Single- and two-pole configurations with Class A ground-fault protection (6-mA trip).
  - 3. Molded-Case Circuit-Breaker (MCCB) Features and Accessories:
    - a. Standard frame sizes, trip ratings, and number of poles.

- b. Lugs: Mechanical style, suitable for number, size, trip ratings, and conductor materials.
- c. Application Listing: Appropriate for application; Type SWD for switching fluorescent lighting loads; Type HID for feeding fluorescent and high-intensity discharge (HID) lighting circuits.
- d. Ground-Fault Protection: Integrally mounted relay and trip unit with adjustable pickup and time-delay settings, push-to-test feature, and ground-fault indicator.
- e. Handle Padlocking Device: Fixed attachment, for locking circuit-breaker handle in off position.
  - 1) Provide padlocking devices for all 480V breakers.

## 2.5 MINI POWER CENTERS

- A. Reuse existing low-voltage mini power centers.
  - 1. Remove and store power centers.
  - 2. Reinstall power centers where shown on the drawings

## PART 3 - EXECUTION

### 3.1 EXAMINATION

- A. Receive, inspect, handle, and store panelboards according to NECA 407.
- B. Examine panelboards before installation. Reject panelboards that are damaged or rusted or have been subjected to water saturation.
- C. Examine elements and surfaces to receive panelboards for compliance with installation tolerances and other conditions affecting performance of the Work.
- D. Proceed with installation only after unsatisfactory conditions have been corrected.

### 3.2 INSTALLATION

- A. Install panelboards and accessories according to NECA 407.
- B. Temporary Lifting Provisions: Remove temporary lifting eyes, channels, and brackets and temporary blocking of moving parts from panelboards.
- C. Comply with mounting and anchoring requirements specified in Section 16074 "Seismic Controls for Electrical Systems."
- D. Mount top of trim 84 inches above finished floor unless otherwise indicated.
- E. Mount panelboard cabinet plumb and rigid without distortion of box.

- F. Install filler plates in unused spaces.
- G. Arrange conductors in gutters into groups and bundle and wrap with wire ties after completing load balancing.
- H. Comply with NECA 1.

### 3.3 IDENTIFICATION

- A. Identify field-installed conductors, interconnecting wiring, and components; comply with section 16120.
- B. Provide warning signs complying with Section 16050 and NFPA 70.
- C. Create a directory to indicate installed circuit loads after balancing panelboard loads. Use a computer or typewriter to create directory; handwritten directories are not acceptable.
- D. Panelboard Nameplates: Label each panelboard with a nameplate complying with requirements for identification specified in Section 16050.

### 3.4 FIELD QUALITY CONTROL

- A. Acceptance Testing Preparation:
  - 1. Test insulation resistance for each panelboard bus, component, connecting supply, feeder, and control circuit.
  - 2. Test continuity of each circuit.
- B. Tests and Inspections:
  - 1. Perform each visual and mechanical inspection and electrical test stated in NETA Acceptance Testing Specification. Certify compliance with test parameters.
  - 2. Correct malfunctioning units on-site, where possible, and retest to demonstrate compliance; otherwise, replace with new units and retest.
- C. Prepare test and inspection reports, including a certified report that identifies panelboards included and that describes scanning results. Include notation of deficiencies detected, remedial action taken, and observations after remedial action.

**END OF SECTION 16442**



## SECTION 17100 – PUMP CONTROL

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections and requirements of the applicable Division 16 sections apply to this Section.

#### 1.2 SUMMARY

- A. Section Includes:
  - 1. Controls Integrator requirements
  - 2. Pump Control Panel
  - 3. Level Instruments

#### 1.3 CONTROLS INTEGRATOR

- A. The Contractor thru a Controls Integrator shall provide all Pump Control Panels, Instrumentation, oversight of re-use of existing SCADA Panels, programming, and system configuration to provide a complete and operable control and SCADA system in accordance with the Contract Documents.
- B. Responsibilities
  - 1. The Contractor shall procure the services of a Controls Integrator to provide services as indicated in this specifications.
  - 2. The Contractor, through the use of a Controls Integrator, panel fabricator, and qualified electrical and mechanical installers, shall be responsible to the OWNER for the implementation of pump control and SCADA systems and the integration of the Pump Control Panel with required instrumentation, SCADA panel, and communications devices.
  - 3. Due to the complexities associated with the interfacing of numerous control system devices, it is the intent of these Specifications that the Controls Integrator be responsible to the Contractor for the integration of the Pump Control Panel with field devices, instrumentation, pumps, and SCADA panel with the objective of providing a completely integrated control system free of signal incompatibilities.
  - 4. The Contractor thru the Controls Integrator shall oversee the procurement, installation, programming, and commissioning of the control system. The Controls Integrator shall provide the following services:
    - a. Oversee the procurement of the Pump Control Panel to ensure all required I/O is included, Ensure communication protocols are

included and enabled, Ensure that I/O for SCADA control is included.

- b. Update and revise loop diagram contract drawings based on pump controller I/O provided. Submit revised drawings for approval prior to installation. Incorporate revised drawings into Record Drawings.
  - c. Oversee the removal, storage, and reinstallation of the existing SCADA control panel. Verify SCADA panel is operational prior to removal and provide operational testing after reinstallation. Update programming as required.
  - d. Oversee the re-installation of SCADA radio antenna and reestablish radio communications.
  - e. Determine method, analog or Modbus, for communications between the MSU and the SCADA panel. Provide installation, programming, testing, for communications method.
  - f. Setup Multismart pump controller and train Owner's personnel MSU use.
  - g. Provide programming at the Water Treatment Plant PLC and HMI. Update programming and screens as required to integrate the I/O specified on the drawings. Coordinate with Owner for HMI screen approval.
  - h. Install and setup for Owner the Multismart pump view kit and cellular antenna. Provide one year of cellular service from local provider as required. Setup and demonstrate Owner access to the pumpview website.
  - i. Additional oversight, programming, troubleshooting, and commissioning as required for a complete and operable system.
5. Any Controls Integrator responsibilities in addition to the list above are at the discretion of the Contractor and the Controls Integrator. Additional requirements in this Section which are stated to be the Contractor's responsibility may be performed by the Instrumentation Supplier if the Contractor and Controls Integrator so agree.
6. Equipment and materials selected by the Contractor that do not achieve design requirements after installation shall be replaced or modified by the Instrumentation Supplier to attain compliance. The cost for doing so shall be the Contractor's responsibility. Following replacement or modification, the Contractor shall retest the system and perform any additional procedures needed to place the complete PLCS in satisfactory operation and attain design compliance approval from the construction manager.

C. Pump Control Panel Designer and Fabricator

1. The pump Control Panel shall be fabricated by the Pump Supplier.

1.4 SUBMITTALS

- A. Submittal format shall conform to section 01300 and this section.

- B. Product Data: For each component supplied as part of the control panel. Include dimensions and manufacturers' technical data on features, performance, electrical characteristics, ratings, and finishes.
- C. Shop Drawings: For each panel and related equipment.
- D. Control Panel Submittal: The Panel Manufacturer shall submit a control panel submittal for each control panel provided. The control panel submittal shall completely define and document the construction, enclosure, finish, fuses, circuit breakers, internally-mounted hardware, controls, communications hardware, and system PLC or controllers.
- E. All panel drawings shall, as a minimum, be 11"x17" size with all data sheets and manufacturer specification sheets being 8.5"x11" size. The submittal shall be submitted as a singular complete bound volume or multi-volume package within 60 calendar days after Notice to Proceed, and shall have the following contents:
  - 1. A complete index shall appear in the front of each bound volume. All drawings and data sheets associated with a panel shall be grouped together.
  - 2. Enclosures:
    - a. Provide enclosure manufactures drawings and specifications for enclosure provided.
    - b. Where the enclosure is not a standard product of an existing manufacturer provide scale construction drawings which define and quantify the type and gauge of steel to be used for panel fabrication, the ASTM grade to be used for structural shapes and straps, panel door locks and hinge mechanisms, type of bolts and bolt locations for section joining and anchoring, details and proposed locations for "UNISTRUT" members, stiffener materials and locations, electrical terminal box and outlet locations, electrical access locations, print pocket locations, and lifting lug material and locations. Indicate NEMA 250 rating and test methods and UL listings.
  - 3. Cutout locations and sizes shall be shown.
  - 4. Complete panel equipment layouts shall be provided. Provide separate drawings for backpanel and swing door controls. Layouts will show the location and orientation all equipment and components within the panel. Provide a keyed index with description of each component.
  - 5. Provide complete wiring diagrams for each panel. Wiring diagrams shall indicate electrical devices, terminals, and interconnecting wiring. These diagrams shall show interconnecting wiring by lines, designate terminal assignments, and show the physical location of all electrical and control devices. Wiring diagrams will indicated termination locations for field devices show on the drawings to be installed as part of this project.
  - 6. Updated field wiring diagrams based on exact termination locations within panel and devices provided.
  - 7. A bill of material which enumerates all devices associated with the control panel.

- F. Structural Support Calculations:
  - 1. Calculations: Control panel mounting design and structural calculations. The calculations and details shall meet the requirements of Section IBC, and shall be signed and stamped by a professional engineer registered in the State of Alaska. Where structural calculations are not required, provide documentation from the engineer stating that no calculation required and reference code section and reason.
- G. Panel Cooling Calculations
  - 1. Provide panel cooling calculations to justify cooling method adequacy.
- H. Field testing and calibration procedures:
  - 1. Provide manufactures field testing and commissioning procedures.
- I. Controllers
  - 1. Provide complete set of installation, operations, and maintenance manuals.
  - 2. Upon completion of programming and commissioning of the project complete list of settings and procedures for programming shall be submitted. Provide an electronic copy of the final settings suitable for downloading and restoring the controller.
- J. Record Drawings
  - 1. The CONTRACTOR shall keep current a set of complete loop and schematic diagrams which shall include all field and panel wiring, routing, mounting details, point-to-point diagrams with cable, wire, and termination numbers. These drawings shall include all instruments and instrument elements. Two sets of drawings electronically formatted in AUTOCAD on CD-ROM and two hard copies shall be submitted after completion of all commissioning tasks. All such drawings shall be submitted for review prior to acceptance of the completed work by the OWNER.

## 1.5 QUALITY ASSURANCE

- A. Control panels shall be built to UL, ETL, or an independent testing laboratory acceptable to the local code enforcement agency having jurisdiction. The panels shall have UL or ETL labels attached to them by the panel builder. The panel builder shall provide with each panel a certification from the independent testing lab inspector that the panel is built to their standards.
- B. Source Limitations: Obtain controllers, enclosures, contactors, overcurrent protective devices, components, relays, terminal blocks and accessories from single source from single manufacturer.

- C. Product Selection for Restricted Space: Panels are required to fit within the fiberglass shelter as shown on the drawings.
- D. Electrical Components, Devices, and Accessories: Listed and labeled as defined in NFPA 70, by a qualified testing agency, and marked for intended location and application.
- E. Comply with NEMA PB 1.
- F. Comply with NFPA 70.

#### 1.6 DELIVERY, STORAGE, AND HANDLING

- A. Store panels in dry locations. Protect panels from weather.
- B. Handle and prepare panel for installation per manufacturer's instructions.

#### 1.7 COORDINATION

- A. Contractor shall coordinate layout and installation of panels and components with other construction that penetrates walls or is supported by them, including electrical and other types of equipment, raceways, piping, encumbrances to workspace clearance requirements, and adjacent surfaces. Maintain required workspace clearances and required clearances for equipment access doors and panels.
- B. The Contractor thru the Controls Integrator shall oversee the procurement, installation, programming, and commissioning of the control system.

#### 1.8 DEFINITIONS

- A. MSU: Flygt Multitrode Multismart Pump Station Manager (MSU or MSU controller).

#### 1.9 OPERATING CONDITIONS

- A. The control panels shall be designed and constructed for satisfactory operation and long, low maintenance service under the following conditions:
  - 1. Environment - water treatment pump station.
  - 2. Indoor Temperature Range - 32 through 84 degrees F
  - 3. Relative Humidity - 20 through 90 percent, non-condensing
  - 4. Seismic Zone 4
  - 5. Panels, instruments, and conduits shall be anchored to meet seismic restraint requirements of the International Building Code.

## 1.10 WARRANTY

- A. Special Warranty: Manufacturer's standard form in which manufacturer agrees to repair or replace components devices that fail in materials or workmanship within specified warranty period.
  - 1. MSU Controller Warranty Period: Five years from date of Substantial Completion.
  - 2. Other panel components: component manufacturer's standard warranty.
  - 3. Labor: Panel supplier provides warranty repair work due to defective components.

## PART 2 - PRODUCTS

### 2.1 GENERAL

- A. All materials and all PLCS equipment furnished under this Contract shall be new, free from defects, of first quality, and produced by manufacturers regularly engaged in the manufacture of these products.
- B. Hardware Commonality: Where there is more than one item of similar equipment being furnished all such similar equipment shall be the product of a singular manufacturer.

### 2.2 PUMP CONTROL PANELS

- A. Pump control panel shall be provided as a packaged system from the pump supplier.
- B. Pump control panel shall utilize the Flygt Multitrode Multismart Pump Station Manager (MSU or MSU controller).
- C. The pump controller shall provide user ready automatic control of pumps with an intuitive HMI interface. The pump controller shall contain pre-designed operational parameters that are selected and configured via the user interface (HMI).
- D. The panel supplier shall design, construct, and program the pump control panel for this project. Supplier shall enable all controller features and accessories required for pump stations operation as specified. Supplier shall provide all control panel components and accessories required for specified pump operation and control features. Panel supplier shall provide control panel features required and recommended for pump station control, including:
  - 1. NEMA 4X Enclosures. Stainless Steel. Sized as required. Control HMI, power and control switches, and indicator lights to be mounted on inner door.

2. Multismart pump station Manager with graphical user interface (HMI) display for configuration settings, control operations, and advanced programming.
  3. Hand-Off-Auto Control Switch for each pump.
  4. Pump Running Pilot Lights, Each pump.
  5. Lockable disconnects for each pump.
  6. Control panel environmental and condensation controls, including heating and cooling systems with thermostatic controls.
    - a. Submit heating and cooling equipment sizing calculations.
  7. Pump Alternator (physical or within controller programming)
  8. Motor Contactors with Solid State Overload protection, or VFD, as required and rated for controlled motors.
  9. All Panel to be inspected and labeled by a Nationally Recognized Testing Laboratory (i.e.: UL Labeled).
  10. Provide energy monitoring and motor protection including any required accessories.
  11. 24VDC control power with backup battery system.
  12. Elapsed run time for each pump, electronic within controller.
  13. Power quality monitoring functions with run inhibit in hand or auto. (Overvoltage, undervoltage, loss of phase, and phase reversal monitoring)
  14. Provide intrinsically safe barriers required for sensors installed in hazardous locations (level probe)
  15. Nominal 12" x 12" spare space for Owner installed equipment.
- E. Panel supplier shall provide all standard functions required to implement the required I/O and communicate with the existing SCADA panel.
1. Provide Multismart pump view kit for AT&T with High Gain Antenna and One year prepaid pumpview access. Provide cable, conduit, and mounting hardware as required for installation of antenna at new antenna post.
    - a. Provide and setup cellular service from local cellular provider as required. Provide one year of cellular service, prepaid. Setup service in Owners name. Coordinate with owner for details.
  2. Enable Modbus RTU

3. I/O Expansion modules as required to provide control for Owner I/O shown on drawings. Including outputs to existing SCADA panel.

## 2.3 PUMP STATION CONTROL DETAILS

### A. Node 4 Control Panel:

1. This pump station will require control of three pumps.
2. Coordinate with pump supplier for pump sizes provided.
3. Size panel components based on pumps provided.
4. Voltage available at pump station 480/277V three phase.
5. Provide NEMA rated Motor Contactors with solid state overload relays.
  - a. Provide auxiliary 1NO/1NC contacts at contactors.
  - b. Provide auxiliary 1NO/1NC contacts at overload relays.

### B. Node 6 Control Panel:

1. This pump station will require control of three pumps.
2. Coordinate with pump supplier for pump sizes provided.
3. Size panel components based on pumps provided.
4. Voltage available at pump station 480/277V three phase.
5. Provide Variable Frequency Drive (VFD) Controllers for each drive pump at Node 6.
6. Enable VFD Control options at multismart control controller.
7. Provide auxiliary components required for VFD control.
8. Enable VFD options at MSU Controller.
9. Provide VFD fault annunciation at the MSU Controller.

## 2.4 LEVEL SENSORS

- A. Wet well liquid level sensors shall be multi-sensor conductive liquid level probes specifically designed for use in monitoring liquid levels in untreated sewage pump station wet wells. Level probes shall be standard probes complete with 316 stainless steel mounting bracket and integral probe cleaning device and multi-strand cable. Sensors shall be fabricated from high-grade non-corroding stainless steel alloy. Probe casings shall be fabricated from uPVC extruded tubing. Sensors shall have a nominal diameter of 1-1/4 inches. The level probes shall be provided with intrinsically safe barriers at the pump control panel.



- B. Provide FLYGT MULTITRODE Ultra-Reliable Level Probe compatible with Multismart pump station manager controller.
- C. Level sensors shall be rated for installation in Class 1 Division 1 hazardous locations.
- D. Probe shall have minimum length of 78 inches and shall have a total of 10 independent sensors, with sensors spaced approximately 6 inches apart and located at the control elevations shown on the Drawings. Coordinate with supplier to provide probe length applicable to the control depths shown on the Mechanical drawings.
- E. Probe cable shall be of sufficient length to afford a continuous un-spliced run between the sensor and the pump control panel plus 20' on additional length. The additional length shall be coiled neatly on support hook in the wet well. Provide stainless steel support hooks as required.
- F. Warranty: provide manufacturer's standard 10 year warranty.
- G. Accessories: As required for complete and operable installation including:
  - 1. Extended hanger bracket with probe cleaner and cable hook.
- H. All hardware to be stainless steel.

## 2.5 OPERATIONS AND MAINTENANCE MANUALS

- A. Manufacturer shall provide operations and maintenance data for each control panel and each individual component within the panel.
- B. Manufacturer shall provide Complete Operations, troubleshooting, and programming manuals for the Multismart Pump Station Manager shall be provided.
- C. Operations and maintenance manual will include the following:
  - 1. Panel supplier and panel manufacturer's complete contact information.
  - 2. Complete as-built control panel drawings and wiring diagrams.
  - 3. Complete bill of materials indicating parts name, manufacturer, part or catalog number, and supplier.
  - 4. Catalog data and information for each component.
  - 5. Installation and maintenance data for each component.
  - 6. Multismart Controller operational support contact information.
  - 7. Complete installation, operations, and programming guide for variable frequency drives.
  - 8. Provide manufacturer's field testing and commissioning procedures. Including signed field test report.
- D. Operations and maintenance manuals shall be provided on CD-ROM or Flash Drive.

1. Documents shall be provide in Adobe PDF format. Drawings shall be provided in AutoCAD DWG format and PDF format.
2. Copies:
  - a. Provide 1(ea) copy for review.
  - b. Upon review and approval provide Three Copies for final approved documents.

E. TRAINING & SUPPORT

1. The Manufacturers Authorized representative of the Multismart Pump Station Manager shall be employed to provide 8 hours onsite training with Owner's personnel. Coordinate with owner for dates and time. All travel, lodging, and expenses shall be included.
  - a. Training shall be provided after substantial completion. Pumps, level controls and other devices shall be operational at the time of the training.
2. Provide 16 hours of phone technical support.
3. Provide Support contact information within Operations and Maintenance manual.

**PART 3 - EXECUTION**

3.1 EXAMINATION

- A. Receive, inspect, handle, and store control panels per manufactures instructions.
- B. Examine control panels before installation. Reject control panels that are damaged or rusted or have been subjected to water saturation.
- C. Examine panels for compliance with specifications and shop drawings.
- D. Proceed with installation only after unsatisfactory conditions have been corrected.

3.2 INSTALLATION

- A. The Contractor shall utilize qualified personnel to accomplish, or supervise the physical installation of all elements, components, accessories, or assemblies that it provides. The Contractor shall employ installers who are skilled and experienced in the installation and connection of all elements, components, accessories, and assemblies it provides.
- B. Install panels and accessories according to NECA 1.
- C. Equipment Locations: The monitoring and control system configurations indicated are diagrammatic. The locations of equipment are approximate. The exact locations and routing of wiring and cables shall be governed by structural

conditions and physical interferences and by the location of electrical terminations on equipment. Equipment shall be located and installed so that it will be readily accessible for operation and maintenance. Where job conditions require reasonable changes in approximated locations and arrangements, or when the Owner exercises the right to require changes in location of equipment which do not impact material quantities or cause material rework, the Contractor shall make such changes without additional cost to the Owner.

- D. Conduit, Cables, and Field Wiring.
  - 1. Conduit, cables, and wirings shall be provided under Division 16 sections.
- E. Temporary Lifting Provisions: Remove temporary lifting eyes, channels, and brackets and temporary blocking of moving parts from panels.
- F. Mounting: Comply with IBC mounting and anchoring requirements. Submit installation method and calculations.
- G. Mount pump control panel with strut channel in the fiberglass shelter as shown on the drawings.
- H. Mount panel cabinet plumb and rigid without distortion of box.
- I. Arrange conductors in gutters into groups and bundle and wrap with wire ties after completing load balancing.
- J. Comply with NECA 1.
- K. Installation Criteria and Validation: Field-mounted components and assemblies shall be installed and connected according to the requirements below:
  - 1. Installation personnel have been instructed on installation requirements of the Contract Documents.
  - 2. Technical assistance is available to installation personnel at least by telephone.
  - 3. Installation personnel have at least one copy of the approved Shop Drawings and data.
  - 4. Instrument process sensing lines shall be installed per manufactures instructions.
  - 5. Flexible cables and capillary tubing shall be installed in flexible conduits. The lengths shall be sufficient to withdraw the element for periodic maintenance.
  - 6. Power and signal wires shall be terminated with crimped type lugs.
  - 7. Connectors shall be, as a minimum, watertight.
  - 8. Wires shall be mounted clearly with an identification tag that is of a permanent and reusable nature.
  - 9. Wire and cable shall be arranged in a neat manner and securely supported in cable groups and connected from terminal to terminal

without splices, unless specifically approved by the ENGINEER. Wiring shall be protected from sharp edges and corners.

10. Mounting stands and bracket materials and workmanship shall comply with requirements of the Contract Documents.
  11. Verify the correctness of each installation, including polarity of electric power and signal connections, and make sure process connections are free of leaks. The CONTRACTOR shall certify in writing that discrepancies have been corrected for each loop or system checked out.
- L. The OWNER will not be responsible for any additional cost of rework attributable to actions of the CONTRACTOR or the Instrumentation Supplier

### 3.3 IDENTIFICATION

- A. Panel Nameplates: Label each control panel with a nameplate complying with requirements for identification specified in Section 16050.
- B. Identify field-installed conductors, interconnecting wiring, and components; provide warning signs complying with Sections 16050 and 16120.

### 3.4 FIELD TESTING AND COMMISSIONING

- A. Contractor shall field test and commission the Multismart control panel and controlled devices.
- B. Contractor shall complete and submit the manufacturers field test reports.

### 3.5 PERFORMANCE TEST

- A. The entire pump control and SCADA system including the pump control panel, field instruments, power supplies, and wiring shall operate for 30 days without failure.
- B. The CONTRACTOR shall furnish support staff as required to satisfy the repair or replacement requirements.
- C. If any component, other than field instruments or existing SCADA panel, fails during the performance test, it shall be repaired or replaced and the pump control panel and SCADA system shall be restarted for another 30-day period.

**END OF SECTION 17100**

**APPENDIX A – DEC APPROVAL TO CONSTRUCT**

**DEC APPROVAL TO CONSTRUCT**

**City and Borough of Wrangell Sewer Pumps Replacement Project**

**Pump Stations 4 & 6 Improvements**



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

**Department of Environmental  
Conservation**

DIVISION OF WATER  
Wastewater Discharge Permit Program

410 Willoughby Avenue, Suite 303  
Post Office Box 111800  
Juneau, Alaska 99811-1800  
Main: 907.465.5300  
Fax: 907.465.5274  
[www.dec.alaska.gov/water](http://www.dec.alaska.gov/water)

July 14, 2015

Chris Pletnikoff, P.E.  
DOWL  
4041 B Street  
Anchorage, Alaska 99502

Re: Approval to Construct Authorization  
Pump Station 4 and 6 Upgrades, Wrangell, Alaska  
ADEC Plan Tracking Number 25281

Dear Mr. Pletnikoff:

The Department reviewed the engineering plans and supporting documentation submitted for the referenced project. In accordance with 18 AAC 72.225, Approval to Construct the proposed wastewater improvements is hereby granted. The project includes pump station upgrades to Pump Stations 4 and 6. A Construction and Operation Certificate has been enclosed for your records.

**Advisories and Recommendations:**

1. This construction approval is valid for two years. If the project is not constructed within two years, new plans and associated fees must be submitted to ADEC for review and approval.
2. This approval is contingent upon compliance with the conditions of Wastewater Disposal Regulations, 18 AAC 72.235, Construction Certification. The noted section of the regulations requires that a "Certification of Construction" be completed and submitted to the department within ninety (90) days of completion of construction. Record drawings, submitted by your engineer, must indicate any changes or deviations from the approved plans to facilitate final review. A "Certification of Construction" form is enclosed for your use.
3. This approval is contingent upon your receipt of any other state, federal or local authorizations which are required for your project. You are required to obtain all other necessary authorizations before proceeding with your project.
4. You are advised that if this development will require placing fill in wetlands or working in a stream, river, or lake, permits from the U.S. Army Corps of Engineers and the Alaska Department of Fish and Game may be required. A Coastal Projects Questionnaire will help you identify other permits and approvals that may be required for your project.

Any person who disagrees with this decision may request an adjudicatory hearing in accordance with 18 AAC 15.195 – 18 AAC 15.340 or an informal review by the Division Director in accordance with 18 AAC 15.185. Informal review requests must be delivered to the Division Director, 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801, within 15 days of receipt of the plan review decision. Adjudicatory hearing requests must be delivered to the Commissioner of the Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801, within 30 days of the decision. If a hearing is not requested within 30 days, the right to appeal is waived.

Please call me at 907-465-5167 if you have comments or questions.

Sincerely,



Robert E. Kimble  
Engineering Associate I

Enclosure: *Construction and Operation Certificate*  
*Certification of Construction for Domestic Wastewater Systems*

cc: Ruby McMurren, City and Borough of Wrangell, w/o enclosure