



“Protecting Public Health and the Environment”

CONTRACT No. B-029A

PASSAIC VALLEY SEWERAGE COMMISSION
600 WILSON AVENUE
NEWARK, ESSEX COUNTY, NEW JERSEY 07105

CONTRACT AND SPECIFICATIONS

FOR

**FINAL CLARIFIER PHASE III B MODIFICATIONS:
FINAL CLARIFIERS CONCRETE REHABILITATION
PROJECT**

COMMISSION

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KENNETH J. LUCIANIN, VICE CHAIRMAN
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EXECUTIVE DIRECTOR

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NJEIT Project No. S340689

FEBRUARY 2017

A handwritten signature in black ink, appearing to read "Steven A. Fangmann", is written over a horizontal line.

STEVEN A. FANGMANN, P.E.

N.J. Professional Engineer - Lic. No. 42631
D&B ENGINEERS AND ARCHITECTS, P.C.



**PROJECT MANUAL
for**

**FINAL CLARIFIER PHASE III B MODIFICATIONS: FINAL CLARIFIERS
CONCRETE REHABILITATION PROJECT
CONTRACT NO. B-029A**

NJEIT Project No. S340689-38


**PASSAIC VALLEY SEWERAGE COMMISSION
Newark, New Jersey**

**By
D&B Engineers and Architects, P.C.**

330 Crossways Park Drive

Woodbury, N.Y. 11797

February 2017


Steven A. Fangmann, P.E.
Professional Engineer Lic. No. 42631



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Vice Chairman

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Commissioners

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Executive Director

JOSEPH F. KELLY
Clerk

CONTRACT NO. B-029A

CONTRACT AND SPECIFICATIONS

TO

FINAL CLARIFIER PHASE III B MODIFICATIONS: FINAL CLARIFIER CONCRETE REHABILITATION PROJECT

February 2017

A handwritten signature in black ink, appearing to read "S. A. Fangmann", is written over a horizontal line.

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PASSAIC VALLEY SEWERAGE COMMISSION
NEWARK, NEW JERSEY

FINAL CLARIFIERS PHASE III MODIFICATIONS: FINAL CLARIFIERS CONCRETE
REHABILITATION PROJECT

CONTRACT NO. B-029A

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SECTION 00010

INVITATION TO BID

Notice is hereby given for receiving sealed Proposals by the Passaic Valley Sewerage Commission (PVSC) for:

CONTRACT NO. B-029A
FINAL CLARIFIERS PHASE III B MODIFICATIONS: FINAL CLARIFIERS CONCRETE
REHABILITATION PROJECT

Proposals to be enclosed in opaque sealed envelopes, addressed to the Passaic Valley Sewerage Commission, Purchasing Department, Main Training Room, Warehouse Building, 600 Wilson Avenue, Newark, New Jersey 07105, with name and address of Bidder, Contract Numbers, Contract Name and Bid Opening Date plainly marked outside. Bids will be accepted by mail. They must be sealed and identified as indicated above, enclosed in a mailing envelope with proper postage, and received during the time set for receiving bids. Sealed Bid Proposals shall be received by PVSC's (address above) on October 28, 2016 until 10:00 in the morning, prevailing time for public opening and reading. Bids shall be opened publicly and read aloud after the closing time, 10:00 a.m. All interested parties are invited to attend. The bid opening will take place at PVSC's Main Training Room on the second floor in the Warehouse Building. Bids may be withdrawn or modified prior to the time for the opening of bids or the authorized postponement thereof. No bid may be withdrawn for a period of 60 calendar days after the date of the opening of bids. PVSC reserves the right to reject any and all Bids and waive any Bid informalities, defects or irregularities when it has sound documented business reasons which are in the best interest of PVSC and the project, and the New Jersey Environmental Infrastructure Trust (NJEIT), and pursuant to Law and Local Public Contract Law. Any award will be made to the lowest responsible bidder.

No bid will be received unless in writing on the forms furnished, and unless accompanied by bid security in the form of a bid bond, cashier's check, or a certified check made payable to the PVSC in an amount equal to 10% of the amount of the total bid, but not exceeding \$20,000, executed by a Surety Company duly authorized to do business in the State of New Jersey. The successful Bidder must furnish a 100 percent construction performance bond, and a 100 percent construction payment bond, a maintenance bond, and an environmental maintenance bond with a surety company acceptable to the Owner. Complete instruction for preparing Bids and a maintenance bond are included in the Bidding Documents.

Work to be performed under Contract No. B-029A includes furnishing all labor, materials, supplies, and equipment required by the Contract Documents for the complete rehabilitation of PVSC's Twelve (12) Final Clarifier Concrete Rehabilitation located at the Passaic Valley Sewerage Commission Facility. Work includes, but not limited to, repair and coating of the final tank walls within one (1) foot above the water line with approved manufacturer's from previous testing, coating both sides of the influent trough, final tanks floor repaired with grout, all expansion joints replaced, effluent trough coated, columns of final tanks concrete coated, and joints to be repaired. The work is to be done from April to September since the concrete repairs are weather dependent and is scheduled (4) tanks repaired in 2017, (4) for 2018 and the remaining (4) for 2019.

A pre-bid meeting and tour of the Project Area will be held on October 4, 2016. The meeting will take place at PVSC's OEM Main Conference Room, second floor, Operations Engineering & Maintenance

(OEM) Building, 600 Wilson Avenue, Newark NJ, with site visit to the final tanks follow. Bidders are strongly recommended to attend the pre-bid meeting and site visit.

Copies of the Bidding Documents will be available at the offices of the PURCHASING DEPARTMENT, PVSC, 600 WILSON AVENUE, NEWARK, NEW JERSEY, 07105 on the date of this advertisement, during regular business hours, 8:15 a.m. and 4:15 p.m. Contact is Mr. Thomas Fuscaldo, Purchasing Agent, of PVSC (973-817-5702). Cost of complete full-sized Bidding Documents is \$100.00 per set (non-refundable) for each set of contract documents ordered payable by business check to Passaic Valley Sewerage Commission. Bidding Documents (i.e. plans and specifications) will be available for examination at the Office of the Purchasing Department at Passaic Valley Sewerage Commission. If for any reason, the Contract is not awarded, refunds of the Bidding Documents fee will be immediately returned to Bidders when the Bidding Documents are returned in reasonable condition within 90 days of notice that the Contract has not been awarded.

All Bidders and their subcontractors of any tier, shall be registered with the New Jersey Department of Labor pursuant to the Public Works Contractor Registration Act, P.L. 1999, c238. A copy of the Bidder's registration certificate shall be provided with each bid.

The Contract is expected to be funded in part with the funds from the NJDEP and the NJEIT. Neither the United States nor the State of New Jersey, the NJEIT, nor any of their departments, agencies, or employees is, or will be, a party to the Contract or any lower tier contract or subcontract. The Contract or Subcontract will be subject to regulations contained in N.J.A.C. 7:22-3.1 et seq., 4.1 et seq., 5.1 et seq., 9.1 et seq. and 10 et seq., Local Public Contract, Department of Labor Current Wage Rate Determination, Prevailing Wage Act, Contract Work Hours and Safety Standard Act, Copland Act, Davis Bacon Act, Buy American Clause, Debarment and Suspension, and Socially and Economically Disadvantaged (SED) (N.J.A.C. 7:22-9.1 et seq.). Pursuant to N.J.S.A. 10:5-33: "Bidders are required to comply with the requirements of P.L. 1975, c.127."

All bidders are encouraged to include a commitment to the use of small, minority, women's and labor surplus area businesses and shall be in conformity with N.J.A.C. 7:22-3.17(a)(24) and 7:22-4.17(a) with a goal of not less than 10% participation of small business enterprises owned and controlled by socially and economically disadvantaged individuals (SED's). Further details regarding special requirements of contractors to comply with the Project Plan developed by the owner for SED participation are included in the Information for Bidders and the Supplemental General Conditions.

Copies of the Bidding Documents will be available at the office of the Engineer, D&B Engineers and Architects, P.C., 3000 Hadley Road, South Plainfield, NJ 070-1119 (phone: 516-422-8473) on the date of this advertisement, during regular business hours, 9:00 am to 4:30 pm. Contact at this firm is Mr. Steven A. Fangmann (phone: 516-364-9890). Cost of complete Bidding Documents is \$100.00 per set (non-refundable) for each set of contract documents ordered payable by check to Passaic Valley Sewerage Commission only. Bidding Documents and drawings will be available for examination at this South Plainfield office.

N.J.D.E.P. approval is necessary for any and all addenda issued for inclusion as part of the approved contract documents.

Passaic Valley Sewerage Commission
Joseph F. Kelly, Clerk

SECTION 00100

INSTRUCTIONS TO BIDDERS

1.01 Defined Terms

Terms used in these Instructions to Bidders have the meanings assigned to them in the General Conditions and Supplemental General Conditions (Specification Sections 00700 and 00800). The "OWNER" is the Passaic Valley Sewerage Commission. The "ENGINEERS" are identified in the Invitation to Bid. The term "Bidder" means one who submits a bid directly to OWNER, as distinct from a sub-bidder, who submits a bid to a Bidder. The term "Successful Bidder" means the Bidder to whom OWNER (on the basis of OWNER'S evaluation) makes an award. The term "Bidding Documents" includes the Contract and Specifications, Contract Drawings and all Addenda issued prior to receipt of Bids.

1.02 Copies of Bidding Documents

- A. Complete sets of the Bidding Documents may be obtained from the ENGINEER as described in the Invitation to Bid. Bidding Documents will be available for examination at the OWNER'S office.
- B. Complete sets of the 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.
- C. 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.

1.03 Qualifications of Bidders

- A. To demonstrate qualifications to perform the Work, each Bidder must submit with his Bid a fully completed Bidder's Qualification Form (Specification Section 00400). Failure to submit a completed Bidder's Qualification Form may lead to rejection of the Bid. The information supplied by the Bidder on the Bidder's Qualification Form will be used to ascertain the Bidder's history, reputation, organization and capacity for satisfactory and faithful performance of their work and work of a similar character and will not otherwise be made public, except as provided by law.
- B. OWNER may make such additional investigation as it deems necessary to determine the qualifications of Bidder to perform the Work and Bidder shall furnish to OWNER all such information and data for this purpose as OWNER may request. OWNER reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the OWNER that such Bidder is properly qualified to carry out the obligations of the Agreement, and to complete the Work contemplated therein. Conditional Bids may not be accepted.

1.04 Examination of Contract Documents and Site

- A. It is the responsibility of each Bidder before submitting a Bid to (a) examine the Bidding Documents thoroughly, (b) consider Federal, State and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work, (c) study and carefully correlate Bidder's observations with the Bidding Documents, (d) notify ENGINEER of all conflicts, errors or discrepancies in the Bidding Documents.
- B. On request, OWNER will provide each Bidder access to the site to conduct such investigation and tests, as each Bidder deems necessary for submission of Bidder's Bid.
- C. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of the Bidding Documents, that without exception the Bid is premised upon performing and, furnishing the Work required by the Bidding Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Bidding Documents, and that the Bidding Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- D. The specifications provide model numbers, styles or other product references available from various dated and current manufacturer's product literature. In the event such model numbers styles or references no longer exist, the CONTRACTOR is to provide the named manufacturer's most current replacement product available at the time of bid and suitable for the intended application, or the equivalent product of an equal manufacturer. Verification will be required that the referenced equipment is no longer available from the manufacturer.

1.05 Interpretations and Addenda

- A. All questions about the meaning or intent of the Bidding Documents are to be directed to ENGINEER in writing. In addition, questions will also be accepted verbally at the prebid meeting. Interpretations or clarifications and replies considered necessary by ENGINEER, and approved by NJDEP, in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by ENGINEER as having received the Bidding Documents. Questions received less than ten (10) working days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Verbal and other interpretations or clarifications will be without legal effect.
- B. Addenda may also be issued to modify the Bidding Documents as deemed advisable by OWNER or ENGINEER, and as approved by NJDEP. Notice of revisions or addenda to advertisement or Bid Documents relating to Bids shall, no later than seven (7) working days, prior to the date for acceptance of Bids, be made available by notification in writing by Certified Mail, fax, etc. to any person who has submitted a Bid or who has received the Bidding Documents (N.J.S.A. 40A:-11-23). -Issued addenda become part of the Contract Documents.

1.06 Bid Security

With his Bid, each Bidder shall deliver a Bid Security as stated in the Invitation to Bid and meeting the requirements of the General Conditions and Supplemental General Conditions

(Specification Sections 00700 and 00800). The total Bid (Including Allowances) is the basis for establishing the amount of Bid Security. The Bid Security shall be payable via a certified or bank cashier's check drawn to the order of PVSC or in the form of a Bid Bond executed by a Surety Company duly authorized to do business in the state of New Jersey. The Bid Security shall be in the amount of the lesser of 10% of the amount of the total bid or \$20,000.

OWNER shall award the contract or reject all Bids within such time as may be specified in the Invitation to Bid, except that the Bids of any Bidders who consent thereto may, at the request of the OWNER, be held for consideration for such longer period as may be agreed. All Bid Security, except the security of the three (3) apparent lowest responsible Bidders, shall be returned unless otherwise required by the Bidder, within ten (10) working days after the opening of the Bids and the Bids and such Bidders shall be considered as withdrawn. Within three (3) working days after the awarding and signing of the contract and the approval of the contractor's Performance Bond, the Bid Security of the remaining unsuccessful Bidders shall be returned to them (N.J.S.A. 40A:11-23).

1.07 Contract Time

The numbers of days within which, or the dates by which, the Work is to be substantially completed (the Contract Time) are 978 days or October 25, 2019 as set forth in the Contract Documents.

1.08 Damages

Provisions for damages are set forth in the Contract Documents.

It is the responsibility of each Bidder before submitting their bid to familiar themselves with the N.J.S.A. 40A:11-33 (Forfeiture of deposit in certain cases) and 40A:11-34 (Penalties for false statements) regarding the penalties for falsification with submitting their bid.

1.09 Substitutes or "Or Equal" Items

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or equal" item of material or equipment may be furnished or used by CONTRACTOR if acceptable to ENGINEER, applications for such acceptance will not be considered by ENGINEER until after the Effective Date of the Contract. The procedure for submission of any such application by CONTRACTOR and Consideration by ENGINEER is set forth in Article 6 of the General Conditions.

1.10 Subcontractors, Suppliers, and Others

- A. The Bidder shall comply with N.J.S.A. 40A:11-16, as amended by L1997, C408.
- B. If OWNER or ENGINEER after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, either may before the Notice of Award is given, request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid-price. If apparent Successful Bidder declines to make any such substitution, OWNER may award the contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and

organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid Security of any Bidder.

Bidder shall submit with its Bid the "Subcontractor listing" Form in Specification Section 00401. If requested by N.J.S.A. 40A:11-16, Bidder shall also submit a certificate as provided therein.

1.11 Bid Form

- A. A Bid Form for each Contract is included with the Bidding Documents in Specification Section 00300. All blanks on the applicable Bid Form must be completed in ink or by typewriter.
- B. Attention is directed to the fact that a complete set of Bidding and Contract forms are bound within these Bidding Documents. These forms can be detached.
- C. Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.
- D. Bids by partnerships must 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 together with the places of residence for each partner.
- E. Bids by individuals must be executed in the name of individual and shall include his business address and place of residence.
- F. Bids by limited liability companies must be executed in the LLC's name and signed by the managing member, whose title must appear under his signature. The LLC's address and State of formation must be shown below the signature. If a Member other than the managing member of the LLC executes the bid such signature shall be accompanied by evidence of authority to sign.
- G. The Bid constitutes an acknowledgement of receipt of all Addenda, the numbers and dates of which shall be filled in on the Specification Section 00307 Form.
- H. The address, telephone and fax numbers for communications regarding the Bid must be shown.
- I. All names must be typed or printed below the signature, which must be ink to be considered.
- J. A statement of Ownership form and Non-collusion Affidavit must be signed by the Bidder in order for the bid to be considered complete.

1.12 Submission of Bids

Bids shall be submitted at the time and place indicated in the Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked as instructed in the Invitation to Bid and with the name and address of the Bidder and accompanied by the Bid security and other required

documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "Bid Enclosed" on the face of it.

1.13 Modification and Withdrawal of Bids

- A. Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.
- B. Requests for withdrawal of bids after Bid opening due to clerical error shall be made in accordance with appropriate laws.

1.14 Opening of Bids

Bids will be opened as stated in the Invitation to Bid.

1.15 Bids to Remain Subject to Acceptance

All Bids will remain subject to acceptance for sixty (60) calendar days after the day of the Bid opening, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to that date.

1.16 Rejection of Proposal

Pursuant to law, the OWNER at its discretion may reject any or all Bids or parts thereof only when it has sound documented business reasons which are in the best interest of the OWNER, the project and the New Jersey Environmental Infrastructure Financing Program. A Bid Proposal may be rejected if the Bid shows any omission, alterations of form, addition or deductions not called for, conditional or uninvited alternate bids, or irregularities of any kind. However, the OWNER reserves the right to waive any informalities, defects or irregularities in Bid proposals.

No contract for work shall be awarded to a contractor or subcontractor who is included on the New Jersey State Treasurer's list of debarred, suspended and disqualified bidders. Submission of false, deceptive, or fraudulent statements or information by bidders shall result in bid rejection or, if applicable, revocation of an awarded contract. Additionally, any such bidder will be subject to the criminal and/or civil penalties provided by all applicable state and federal laws.

1.17 Award of Contract

- A. Pursuant to law, the OWNER may reject bids when it has sound, documented business reasons which are in the best interest of the OWNER. OWNER reserves the right to waive any and all informalities not involving price, time or changes in the Work and to negotiate, to the extent permitted by applicable law contract terms with the Successful Bidder, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Bids. Discrepancies in 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. Discrepancies between works and figures will be resolved in favor of words and any summations or multiplications recalculated.

- B. In evaluating Bids, OWNER will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, prices and other data, as may be requested in the Bid Form prior to the Notice of Award.
- C. OWNER may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted. OWNER also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.
- D. OWNER may conduct such investigations as OWNER deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to OWNER'S satisfaction within the prescribed time.
- E. If the Contract is to be awarded, it will be awarded to the lowest responsible Bidder pursuant to Law and the Local Public Contract Law.

1.18 Contract Security

Article 5 of the General Conditions and the Supplemental General Conditions set forth OWNER'S requirements as to Performance and Payment Bonds (Specification Section 00600). When the Successful Bidder delivers the executed Contract to OWNER, it must be accompanied by the required Performance and Payment Bonds, Insurance, Environmental Maintenance Bond, and Maintenance Bond.

1.19 Signing of Contract

When OWNER gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Contract with all other written Contract Documents attached. Within ten (10) working days thereafter CONTRACTOR shall sign and deliver the required number of counterparts of the Contract and attached documents to OWNER with the required Bonds. Thereafter OWNER shall deliver one (1) fully signed counterpart to CONTRACTOR.

If Successful Bidder shall fail or neglect to sign and execute the Contract and bonds with ten (10) working days after Notice of Award, such failure or neglect may be deemed to be an abandonment and breach of Contract by the Bidder and shall be just cause for an annulment of the award and action for breach of contract. Upon such abandonment, OWNER shall have the authority to make an award to another Bidder or re-advertise for Bids. In addition, OWNER may exclude Bidder from bidding on subsequent PVSC projects for such a period, as the OWNER may deem appropriate. Further, the Bidder improperly failing to execute the contract shall be liable for all damages incurred, including but not limited to:

- The increased contract price incurred in awarding the contract to another Contractor.

- For an amount for any delay caused in said failure at the liquidated per diem rate for delay damages set forth in the Contract.
- The increased administrative and/or consultant costs incurred as a result of said failure.

It is understood and agreed by said Bidder that, upon notice of said failure, the surety shall pay the OWNER the amount provided for the Proposal Guarantee in accordance with the provisions of the Proposal and the OWNER shall be entitled to collect on any certified checks or Proposal, or Performance and Payment Bonds posted as security for execution.

1.20 Pre-bid Meeting

A pre-bid meeting and tour of the Project Area will be held as stated in the Invitation to Bid. The pre-bid meeting is strongly encouraged, not mandatory. Representatives of OWNER and ENGINEER will be present to receive questions verbally on the Project. No technical questions will be answered at the meeting. ENGINEER will transmit to all prospective Bidders of record such Addenda as ENGINEER considers necessary in response to questions arising at the meeting.

1.21 Sales Tax

The OWNER is exempt from payment of sales tax on all materials to be incorporated into the project. CONTRACTOR shall follow requirements in Article 6 of the General Conditions on sales tax.

1.22 Retainage

Provisions concerning retainage are set forth in the General Conditions and Supplemental General Conditions.

1.23 Nondiscrimination Provisions

Bidders are required to comply with all applicable Federal and State Statutes, Rules and Regulations including but not limited to Title VI of the Civil Rights Act of 1964, as amended (42 USC 2000d-2000d-4A) and the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law against Discrimination, N.J.S.A. 10:5-1, et seq., and the rules and regulations promulgated pursuant thereto. Bidders must submit with their bid a signed affidavit stating that it shall comply with the affirmative action program (Specification Section 00306).

Successful Bidders shall, submit a list of all subcontractors who will perform work on the project and written signed statements from authorized agents of the labor pools with which they will or may deal for employees on the work, together with supporting information to the effect that said labor pools will affirmatively cooperate in or offer no hindrance to the recruitment, employment, and equal treatment of employees seeking employment and performing work under the contract or, a certification as to what efforts have been made to secure such statements when such agents or labor pools have failed or refused to furnish same prior to the award of the Contract.

1.24 Collusive Bids

The proposal of any Bidder or Bidders who engage in collusive bidding shall be rejected. Any bidder who submits more than one proposal in such manner as to make it appear that the proposals submitted are on a competitive basis from different parties shall be considered a collusive bidder. The OWNER may reject the Bid proposals of any collusive Bidder upon Bid opening. However, nothing in this section shall prevent a Bidder from superseding a Bid proposal by a subsequent proposal delivered prior to Bid opening which expressly revokes the previous Bid.

1.25 Wage Determination Rates

The successful bidder will be required to comply with all provisions of prevailing wage rates as determined by the New Jersey Department of Labor.

The CONTRACTOR's attention is directed to the prevailing wage rates contained in Exhibit 1 and to the applicable provisions of the New Jersey Prevailing Wage Act, Chapter 150, of the Laws of 1963 as amended, governing the prevailing rates of wages for workmen who are employed on this project. All applicable provisions of said Prevailing Wage Act and Amendments thereto shall be considered part of this Contract and made a part hereof. The Contractor shall pay not less than the prevailing wage rate to workers employed in the performance of any contract for the project, in accordance with the rate determined by the Commissioner of New Jersey Department of Labor pursuant to N.J.S.-A. 34:11-56.25 et seq. OR the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater. The Contractor shall refer to Exhibit 3 of the Supplemental General Conditions for the requirements of the Davis-Bacon Act.

The Bidder does also declare and represent that in the event of any change of such prevailing rates at any time before the execution and delivery of the Contract between the Bidder and the OWNER for the work of construction of the project, or at any time thereafter, the new rates, if applicable, will become minimum rates for work performed thereafter under said Contract. No increase in the Contract price shall be claimed by the Bidder and no such increase will be granted by the OWNER as a result of such change.

In the event it is found that any employee of the Contractor or any subcontractor covered by the contract, has been paid a rate of wages less than the minimum wage required to be paid by the contract, the Owner may terminate the Contractor's or subcontractor's right to proceed with the work, or such part of the work, as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The Contractor and his sureties shall be liable to the local government for any excess costs occasioned thereby.

1.26 Construction Drawings and Specifications Provided by ENGINEER

After the award and prior to signing of the Contract, the OWNER will furnish the successful Bidder with a complete set of conformed drawings "Issued for "Construction". After the Contract has been awarded the CONTRACTOR will be furnished with five (5) sets of conformed drawings "Issued for Construction" and five (5) sets of the Specifications. The CONTRACTOR may purchase additional sets at cost.

1.27 Special Legal Requirements

This Contract will be awarded pursuant to the authority of -PVSC's authorizing statute N.J.S.A. 58:14-1 et seq. ("Authorizing Statute"). Where the Authorizing -Statute is silent, it is PVSC's

policy to be guided by the provisions of New Jersey Local Public Contracts Law, N.J.S.A. 40A:11 et seq.

Bidders are required to make the good faith efforts to assure that disadvantaged business enterprises, women's business enterprises and labor surplus area firms are used when possible as specified in 40 CFR part 33.

The Contract is expected to be funded in part with the funds from the New Jersey Department of Environmental Protection and the New Jersey Environmental Infrastructure Trust. -Neither the United States nor the State of New Jersey, the New Jersey Environmental Infrastructure Trust, nor any of their departments, agencies, or employees is, or will be, a party to the Contract or any lower tier contract or subcontract. -The Contract or Subcontract will be subject to regulations contained in N.J.A.C. 7:22-3.1 et seq., 4.1 et seq., 5.1 et seq., 9.1 et seq. and 10 et seq., Local Public Contracts Law, Department of Labor Current Wage Rate Determination, Prevailing Wage Act, Contract Work Hours and Safety Standard Act, Copland Act, Davis Bacon Act, Buy American Clause, Debarment and Suspension, and Socially and Economically Disadvantaged (SED) (N.A.J.C. 7:22-9).

All bids shall include a commitment to the use of small, minority, women's and labor surplus area businesses and shall be in conformity with N.J.A.C. 7:22-3.17(a)(24) and 7:22-4.17(a) with a goal of not less than 10% participation of small business enterprises owned and controlled by socially and economically disadvantaged individuals (SED's). Further details regarding required SED participation are included in the Information for Bidders and the Supplemental General Conditions.

Starting in January 2007, all business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they receive contracts in excess of \$50,000 from public entities in a calendar year. Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

Bidder shall submit with their bid an executed "Two-Year Vendor Certification and Disclosure of Political Contributions" form (a copy of which can be found at http://www.state.nj.us/treasury/purchase/forms/eo134/c51_eo117_cd_02_10_09.pdf) if the Contractor does not have Two-Year Certification at the time of the Bid, as required by Executive Order 117.

1.28 American Goods and Products to be Used where Possible

In accordance with N.J.S.A. 40A:11-18 only manufactured and farm products of the United States, whenever available, will be used in the Work.

1.29 Public Works Contractor Registration

No contractor shall bid on any contract for public work as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26), amended 2003, c.91, s.2., unless the contractor is registered pursuant to this act. No contractor shall list a subcontractor in a bid proposal for the contract unless the subcontractor is registered pursuant to P.L.1999, c.238 (C.34:11-56.48 et seq.) at the time the bid is made. No contractor or subcontractor, including a subcontractor not listed in the bid proposal,

shall engage in the performance of any public work subject to the contract, unless the contractor or subcontractor is registered pursuant to that act. The Bidder may submit a copy of the Certificate of Registration issued by the Commissioner of Labor with the Bid.

Each contractor shall, after the bid is made and prior to the awarding of the contract, submit to the public entity the certificates of registration for all subcontractors listed in the bid proposal. Applications for registration shall not be accepted as a substitute for a certificate of registration for the purposes of this section, as required by L.1999,c.238,s.8; amended 2003, c.91., s.4.

1.30 New Jersey Business Registration Requirements

In accordance with P.L. 2004, c.57, no contract shall be entered into by any contracting agency unless the contractor provides proof of business registration prior to contract award. Proof of business registration shall be a copy of a Business Registration Certificate issued by the New Jersey Department of the Treasury, Division of Revenue.

As part of the Bid submission, the Bidder may include the proofs of all named or listed subcontractors in the Bid including subcontractors listed for minority business enterprise utilization. The Public Works Contractor Registration Act requires bidders be registered under the Act at the time of bid, but allows the Contractor to submit the Certificate prior to contract award.

The requirement of proof of business registration extends down through all levels (tiers) of the project for all contracts with a value greater than 15 percent of the Owner's bid threshold.

Before final payment on the contract is made by the contracting agency, the contractor shall submit an accurate list and the proof of business registration of each subcontractor or supplier used in the fulfillment of the contract, or shall attest that no subcontractors were used. Contractor shall submit subcontractors' business registration certificate to Owner/Engineer prior to executing subcontract with any subcontractor/vendor who knowingly supplies goods or services to a public agency if the value is greater than 15 percent of the Owner's bid threshold.

For the term of the contract, the contractor and each of its affiliates and a subcontractor and each of its affiliates [N.J.S.A. 52:32-44(g)(3)] shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act on all sales of tangible personal property delivered into this State, regardless of whether the tangible personal property is intended for a contract with a contracting agency.

A business organization that fails to provide a copy of a business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44 et al.) or subsection e. or f. of section 92 of P.L.1977, c.110 (C.5:12-92), or that provides false business registration information under the requirements of either of those sections, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

1.31 NJDEP and Environmental Infrastructure Trust Right to Stop Work

The NJDEP may order work to be stopped under this Contract for good cause pursuant to N.J.A.C. 7:22-3.43 and 7:22-4.43. Such stoppage may be treated under the clauses of this Contract, entitled "Suspension of Work and Termination".

1.32 Investment Activities in Iran

In accordance with N.J.S.A. 52:32-58, Bidder shall certify and submit with their bid as set forth therein on a form of Certification promulgated by State of New Jersey Division of Purchase and Property entitled "Disclosure of Investment Activities in Iran". The form of Certification and accompanying list dated January 28, 2013 can be found at http://www.state.nj.us/treasury/purchase/forms/DPA_Form_Packet.pdf (page 6 of 17) and <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>, respectively. **It is the responsibility of Bidder to insure that the most up to date list issued by the Division of Purchase and Property is attached to the Certification submitted with this Bid.**

1.33 New Jersey Office of State Comptroller Records Retention language (N.J.A.C. 17:44-2.2)

The Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request. N.J.A.C. 17:44-2.2.

1.34 Americans with Disabilities Act Provisions

The CONTRACTOR and the OWNER do hereby agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. §12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the OWNER pursuant to this contract, the CONTRACTOR agrees that the performance shall be in strict compliance with the Act. In the event that the CONTRACTOR, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this Contract, the CONTRACTOR shall defend the OWNER in any action or administrative proceeding commenced pursuant to this Act. The CONTRACTOR shall indemnify, protect, and save harmless the OWNER, its agents, servants, and employees from and against any and all suits, claims, losses demands, or damages, or whatever kind or nature arising out of or claimed to arise out of the alleged violation. The CONTRACTOR shall at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the OWNER grievance procedure, the CONTRACTOR agrees to abide by any decision of the OWNER which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the OWNER or if the OWNER incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the CONTRACTOR shall satisfy and discharge the same at its own expense.

The OWNER shall, as soon as practicable after a claim has been made against it, give written notice thereof to the CONTRACTOR along with full and complete particulars of the claim. If any action or administrative proceedings is brought against the OWNER or any of its agents, servants, and employees, the OWNER shall expeditiously forward or have forwarded to the CONTRACTOR every demand, complaint, notice, summons, pleading, or other process received

by the OWNER or its representatives. It is expressly agreed and understood that any approval by the OWNER of the services provided by the CONTRACTOR pursuant to this contract will not relieve the CONTRACTOR of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the OWNER pursuant to this paragraph. It is further agreed and understood that the OWNER assumes no obligation to indemnify or save harmless the CONTRACTOR, its agents, servants, employees and subcontractors for any claim which may arise out to their performance of this Agreement. Furthermore, the CONTRACTOR expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the CONTRACTOR'S obligations assumed in this agreement, nor shall they be construed to relieve the CONTRACTOR from any liability, nor preclude the OWNER from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

1.35 Notice of Executive Order 125 Requirement for Posting of Winning Proposal and Contract Documents

Pursuant to Executive Order No. 125, signed by Governor Christie on February 8, 2013, the Office of the State Comptroller ("OSC") is required to make all approved State contracts for the allocation and expenditure of federal reconstruction resources available to the public by posting such contracts on an appropriate State website. Such contracts are posted on the New Jersey Sandy Transparency website located at: <http://nj.gov/comptroller/sandytransparency/contracts/sandy/>.

The contract resulting from this [RFP/RFQ] is subject to the requirements of Executive Order No. 125. Accordingly, the OSC will post a copy of the contract, including the [RFP/RFQ], the winning bidder's proposal and other related contract documents for the above contract on the Sandy Transparency website.

In submitting its proposal, a bidder may designate specific information as not subject to disclosure. However, such bidder must have a good faith legal and/ or factual basis to assert that such designated portions of its proposal (i) are proprietary and confidential financial or commercial information or trade secrets or (ii) must not be disclosed to protect the personal privacy of an identified individual. The location in the proposal of any such designation should be clearly stated in a cover letter, and a redacted copy of the proposal should be provided.

The State reserves the right to make the determination as to what is proprietary or confidential, and will advise the winning bidder accordingly. The State will not honor any attempt by a winning bidder to designate its entire proposal as proprietary, confidential and/or to claim copyright protection for its entire proposal. In the event of any challenge to the winning bidder's assertion of confidentiality with which the State does not concur, the bidder shall be solely responsible for defending its designation.

END OF SECTION

SECTION 00200

CHECK LIST FOR BIDDERS

- 1. Failure to submit any items on the checklist below, the receipt of which is mandated by N.J.S.A. 40A:11-23.2 will constitute cause for the Bid to be rejected."**

<u>Item</u>	<u>Description of Item</u>	<u>Contract Section</u>	<u>Initial if Completed</u>
1	Bid Form	00300	_____
2	Bid Bond or Certified Check (Bid Guarantee Required by N.J.S.A. 40A:11-21)	00301	_____
3	Consent of Surety (N.J.S.A. 40A:11-22)	00302	_____
4	Surety Disclosure Statement & Certification	00302A	_____
5	Bidder's Affidavit	00303	_____
6	Non-Collusion Affidavit	00304	_____
7	Statement of Ownership (N.J.S.A. 52:25-24.2)	00305	_____
8	Affirmative Action Affidavit	00306	_____
9	If applicable, Acknowledgement of Receipt of Notices or Revisions or Addenda Of an Advertisement, Specifications or Changes to Bid Document Form	00307	_____
10	Certification of Nonsegregated Facilities	00308	_____
11	Certification of Bidder's Status	00309	_____
12	Bidder's Qualification Form	00400	_____
13	Subcontractor Listing (NJSA 40A: 11-16)	00401	_____
14	Business Registration Certificate (N.J.S.A. 52:32-44)	(00100, paragraph 1.30)	_____
15	Executive Order 117 Certification	(00100, paragraph 1.27)	_____
16	Public Works Contractor Registration	00402	_____
17	Certificate of Equal Opportunity	00403	_____
18	Certification of Affirmative Action Plan Contractors and Subcontractors	00404	_____
19	American Iron and Steel Certification	00405	_____
20	Disclosure of Investment Activities in Iran (N.J.S.A. 52:32-58)	00406	_____

The undersigned hereby acknowledges and has submitted the above listed requirements.

Name of Contractor

Signature of Representative

Print:

Title:

Date:

Note: This form is to help the bidder in preparing his proposal. All information must be filled out in this Section.

END OF SECTION

SECTION 00300

BID FORM

To: PASSAIC VALLEY SEWERAGE COMMISSION:

Bid Submitted For: CONTRACT NO. B-029A – FINAL CLARIFIERS PHASE III B
MODIFICATIONS: FINAL CLARIFIERS CONCRETE REHABILITATION PROJECT

Pursuant to and in compliance with your Invitation to Bid and the Instructions to Bidders relating thereto, the undersigned hereby proposes to furnish all labor, materials, supplies, equipment and other facilities necessary or proper for or incidental to the above Contract, as required by and in strict accordance with the Bidding Documents for the amount named in the proposal hereinafter described. In making this proposal the Bidder hereby declares that all provisions of Addenda which have been issued have been complied with in preparing bids.

Name of Bidder:

Bidder:

(Individual, Partnership, Corporation, Joint Venture; L.L.C. as case may be)

Bidder's Business Address:

Telephone No.: _____ Fax No.: _____

Date of Bid: _____

(If Bidder is an Individual, fill in the following blanks:)

Name of Individual:

Residence of Individual:

(If Bidder is a Partnership, fill in the following blanks:)

Name and Title of Partner:

(If Bidder is a Corporation, fill in the following blanks:)

Organized under the laws of the State of:

Name and Residence of President:

Name and title of person signing this bid form if not President (copy of authority to sign must be attached)

Name and Residence of Secretary:

(If Bidder is a Limited Liability Company, fill in the following blanks:)

Formed under the laws of the State of:

Name of Managing Member:

Name and title of person signing this bid form if other than Managing Member (copy of authority to sign must be attached)

The undersigned, as Bidder, declares that he/she is authorized to sign this Bid Form on behalf of Bidder ; that he/she has carefully examined the annexed proposed form of contract and bond and the drawings therein referred to; and that he proposes and agrees, if this proposal is accepted, to contract with the Passaic Valley Sewerage Commission (PVSC), in the form of the copy of the Contract deposited in the office of the PVSC, to perform all the work described in the Contract Specifications in the manner and time therein prescribed, and according to the requirements of the Engineer as therein set forth, and that he will take in full payment therefor the sums, exclusive of all taxes, proposed herein.

If this proposal shall be accepted by the PVSC, and the undersigned shall fail to contract as aforesaid, as specified in the General Conditions according to the address herewith given, that the contract is ready for signature, then the PVSC may at their option determine that the bidder has abandoned the contract and thereupon the proposal and acceptance shall be null and void, and the certified check and/or Bid Bond and the proceeds thereof for _____dollars (Bid Security) accompanying this proposal shall become the property of the PVSC and additionally the bidder shall be liable to PVSC for any and all damages accruing to PVSC by reason of said default; otherwise the accompanying check and/or Bid Bond, shall be returned to the undersigned.

Signature of Bidder with residence and business address:

Dated: _____ Corporate Seal:

Attest: _____

Name: _____

Print: _____

Title: _____

Other (Specify): _____

THE BIDDER AFFIRMS AND DECLARES:

- A. That he has carefully examined the site of the work and that, from his own personal investigations and research, has satisfied himself as to the nature and location of the work; the character, quality and quantity of existing materials. All difficulties likely to be encountered; the kind and extent of labor, equipment, other facilities needed for the performance of the work; the general and local conditions; and all other items and conditions which may, in any way, affect the work or its performance.
- B. The Bidder also declares that he has carefully examined and fully understands all the component parts of this Contract, that the work can be performed as called for by the Contract, and that he will execute the Contract and will completely perform it in strict accordance with its terms for the prices.
- C. That the Bidder will execute work for the Allowance items as directed by the Engineer. It is also understood and agreed that the Final Contract Payment for allowance Items will be based upon such actual payments, and not on the approximate amount cited herein.
- D. That the Bidder declares the attached "Qualification Form" is in all respects a true and complete statement of the qualifications and financial condition of the Bidder.
- E. The price is exclusive of N.J. State and Federal Taxes.
- F. Prices shall also include all transportation charges on materials removed from site and charges pertaining to disposal and other costs pertaining to the execution of the work.
- G. He shall maintain for the duration of the work to be done under this contract, insurance in the amounts specified in the Contract. Upon execution of the Contract, the contractor shall furnish all certificates of insurance as required and set forth herein.
- H. That he understands and agrees to the conditions for liquidated damages.
- I. Upon completion, inspection, and acceptance by P.V.S.C. of the work, CONTRACTOR shall turn over to P.V.S.C. the Maintenance Bond (Specification Section 00601) for the one (1) year Correction Period specified in the Contract Documents.
- J. The Bidder has clearly marked on the outside of the sealed envelope that contains his/her bid, the Bidder's name, contract name and number, and bid opening date.

DETERMINATION OF LOW BID. Determination of low bid will be made by comparing:

- A. Bids on the Lump Sum and Unit Price Items compared on the basis of a total bid price, arrived at by taking the sum of the Approximate Quantities of the various items multiplied by the corresponding Unit Price, and including Lump Sum Bid on individual items, in accordance with the items set forth in the bid proposal, and will include the Allowance Items.

Bidders are warned that the Approximate Quantities of the various items of work and material is estimated only, and is given solely to be used as a uniform basis for

the comparison of bids. The quantities actually required to complete the contract work may be more or less than estimated.

- B. The Allowance Items are intended to provide for work that may later be determined to be necessary for this project. The use of Allowance Items will require prior approval by the owner.
- C. Any Alternative Item shall be awarded at the Owner's discretion. The awarding of alternative bid items, in addition to the base bid, may alter the apparent low bidder. The Owner's determination of the apparent low bidder shall be made based upon New Jersey Public Contract Law and Regulation, N.J.S.A 40A:11-1.

A BID ON CONTRACT NO. B-029A

FINAL CLARIFIERS PHASE III B MODIFICATIONS: FINAL CLARIFIERS CONCRETE REHABILITATION PROJECT

CONTRACT BID ITEMS

ITEM	QUANTITY	LUMP SUM OR UNIT PRICE WRITTEN IN WORDS	BID PRICE WRITTEN IN FIGURES	
			Dollars	Cents
1	LUMP SUM	<p>CONCRETE RESURFACING AND PROTECTIVE LINING FOR ALL FINAL CLARIFIER WALLS (168,000 SF), INFLUENT CHANNELS (32,000 SF), KNEE WALLS AND COLUMNS (23,000 SF), TO INCLUDE ALL LABOR, MATERIALS, AND EQUIPMENT FOR THE DEMOLITION AND INSTALLATION TO COMPLETE THE WORK.</p> <p>_____</p> <p align="center">Specify approved coating to be used</p> <p>(Must be written in words)</p> <p>FOR _____</p> <p align="center">Dollars Cents</p>		
2	1,200 LINEAR FEET	<p>PRESSURE GROUTING FOR CRACKS, TO INCLUDE ALL LABOR, MATERIAL, AND EQUIPMENT FOR THE REPAIRS.</p> <p>(Must be written in words)</p> <p>UNIT PRICE: _____ x QUANTITY =</p> <p align="center">Dollars Cents / Linear Feet</p> <p>(Total Bid Price for this item written in words):</p> <p>_____</p> <p align="center">Dollars Cents</p>		
3	1,200 SQUARE FEET	<p>FLOOR GROUT SPALL DELAMINATION REPAIR, TO INCLUDE ALL LABOR, MATERIAL, EQUIPMENT, AND DEMOLITION FOR THE REPAIRS.</p> <p>(Must be written in words)</p> <p>UNIT PRICE: _____ x QUANTITY =</p> <p align="center">Dollars Cents / Square Feet</p> <p>(Total Bid Price for this item written in words):</p> <p>_____</p> <p align="center">Dollars Cents</p>		

A BID ON CONTRACT NO. B-029A

FINAL CLARIFIERS PHASE III B MODIFICATIONS: FINAL CLARIFIERS CONCRETE REHABILITATION PROJECT

CONTRACT BID ITEMS

ITEM	QUANTITY	LUMP SUM OR UNIT PRICE WRITTEN IN WORDS	BID PRICE WRITTEN IN FIGURES	
			Dollars	Cents
4	300 SQUARE FEET	<p>CONCRETE SPALLING AND REBAR TREATMENT, TO INCLUDE ALL LABOR, MATERIAL, EQUIPMENT AND DEMOLITION FOR THE REPAIRS.</p> <p>(Must be written in words)</p> <p>UNIT PRICE: _____ x QUANTITY = Dollars Cents / Square Feet</p> <p>(Total Bid Price for this item written in words): _____ Dollars Cents</p>		
5	12 EACH	<p>SLUICE GATE AND ACTUATORS - INFLUENT VALVES, AND PLATFORMS TO INCLUDE ALL LABOR, MATERIAL, AND EQUIPMENT ALONG WITH PIPING REQUIRED.</p> <p>(Must be written in words)</p> <p>UNIT PRICE: _____ x QUANTITY = Dollars Cents / Each</p> <p>(Total Bid Price for this item written in words): _____ Dollars Cents</p>		
6	18,000 LINEAR FEET	<p>EXPANSION JOINT FOR FINAL CLARIFIERS, FLOORS, WALLS AND TROUGHS – REMOVE AND REPLACEMENT, TO INCLUDE ALL LABOR, MATERIAL, EQUIPMENT FOR THE REPAIRS.</p> <p>(Must be written in words)</p> <p>UNIT PRICE: _____ x QUANTITY = Dollars Cents / Linear Feet</p> <p>(Total Bid Price for this item written in words): _____ Dollars Cents</p>		

A BID ON CONTRACT NO. B-029A

FINAL CLARIFIERS PHASE III B MODIFICATIONS: FINAL CLARIFIERS CONCRETE REHABILITATION PROJECT

CONTRACT BID ITEMS

ITEM	QUANTITY	LUMP SUM OR UNIT PRICE WRITTEN IN WORDS	BID PRICE WRITTEN IN FIGURES	
			Dollars	Cents
7	1,440 LINEAR FEET	<p>STAINLESS STEEL DEFLECTOR PLATE (NOTE: 12 CORNERS PER TANK) (10' X 1' X 1/4") INCLUDES ALL THE LABOR, MATERIAL, AND EQUIPMENT FOR THE INSTALLATION.</p> <p>(Must be written in words)</p> <p>UNIT PRICE: _____ x QUANTITY =</p> <p align="center">Dollars Cents / Linear Feet</p> <p>(Total Bid Price for this item written in words):</p> <p>_____</p> <p align="center">Dollars Cents</p>		
8	ALLOWANCE	<p>ALLOWANCE FOR ADDITIONAL MISCELLANEOUS CONCRETE RESURFACING, CONCRETE REPAIRS, FLOOR/GROUT REPAIRS, PRESSURE GROUTING, AND EXPANSION JOINT REMOVAL AND REPLACEMENT ALONG WITH REPAIRS, TO STEPS, WALKWAYS AND STRUCTURAL ELEMENTS, THAT INCLUDES ALL LABOR, MATERIAL, AND EQUIPMENT.</p> <p>FOR <u> FIVE HUNDRED THOUSAND ZERO </u></p> <p align="center">Dollars Cents</p>	\$500,000	00
9	LUMP SUM	<p>TARP CONTAINMENT (NEW EACH YEAR) – 09 97 26-3.01-D (TO BEGIN EVERY MARCH 1ST, THE LABOR, MATERIAL AND EQUIPMENT FOR THE INSTALLATION.</p> <p>(Must be written in words)</p> <p>FOR _____</p> <p align="center">Dollars Cents</p>		
10	LUMP SUM	<p>PMWEB – PROJECT MANAGEMENT: SOFTWARE, TRAINING, SUPPORT AND LICENSES DOCUMENT MANAGEMENT SYSTEM</p> <p>(Must be written in words)</p> <p>FOR _____</p> <p align="center">Dollars Cents</p>		

A BID ON CONTRACT NO. B-029A

FINAL CLARIFIERS PHASE III B MODIFICATIONS: FINAL CLARIFIERS CONCRETE REHABILITATION PROJECT

CONTRACT BID ITEMS

ITEM	QUANTITY	LUMP SUM OR UNIT PRICE WRITTEN IN WORDS	BID PRICE WRITTEN IN FIGURES	
			Dollars	Cents
11	LUMP SUM	MOBILIZATION (As stated in NJAC 7:14-2.9) (Must be written in words) FOR _____ Dollars Cents		
12	LUMP SUM	ENVIRONMENTAL INFRASTRUCTURE PROJECT SIGN DETAILS (SPECIFICATION 01010-9) (Must be written in words) FOR _____ Dollars Cents		
13	ALLOWANCE	FOR CONCRETE REPAIRS, RESURFACING AND COATING OF THE EFFLUENT LAUNDERS, REMOVAL AND REINSTALLATION OF FIBERGLASS WEIRS, TESTING/INSPECTION, ETC. COST SHALL INCLUDE ALL MATERIALS, EQUIPMENT, AND LABOR, IF AND WHERE DIRECTED. (Must be written in words) FOR <u>ONE MILLION</u> <u>ZERO</u> Dollars Cents	\$1,000,000	00

ALTERNATIVE BID ITEM (SEE NOTE 3)

A-1	LUMP SUM	FOR THE LINING OF EFFLUENT LAUNDERS/TROUGHS (202,000 SF), INSTALLATION OF CONTAINMENT, SURFACE PREPARATION, REMOVAL AND RE-INSTALLATION OF WEIRS, ETC WITH <u>SAUEREISEN</u> OR <u>WARREN ENVIRONMENTAL</u> PRODUCT. _____ Specify approved coating to be used (Must be written in words) FOR _____ Dollars Cents		
-----	----------	--	--	--

A BID ON CONTRACT NO. B-029A

FINAL CLARIFIERS PHASE III B MODIFICATIONS: FINAL CLARIFIERS CONCRETE REHABILITATION PROJECT

FINAL BID SHEET

➤ **BASE BID TOTAL ITEMS (Sum of Item No. 1 through No. 13) (in Figures) \$**_____

Amount Written:

_____ **Dollars and** _____ **Cents**

➤ **ALTERNATIVE A-1 TOTAL ITEMS (Sum of Item A-1) (in Figures) \$**_____

Amount Written:

_____ **Dollars and** _____ **Cents**

TOTAL OF BASE BID + ALTERNATIVE BID A-1 (Sum of Base Bid and Alternative A-1 totals) (in Figures)

\$_____

Amount Written:

_____ **Dollars and** _____ **Cents**

Notes:

- 1) The “**Allowance**” **Item No. 8** is intended to provide for work that may later be determined to be necessary for this project that include Miscellaneous Concrete Resurfacing, Concrete Repairs, Pressure Grouting and Expansion Joint Removal and Replacement along with Repairs to Steps, Walkways and Structural Elements that includes all labor, material and equipment.

(SEE ADDITIONAL NOTES NEXT PAGE)

FINAL CLARIFIERS PHASE III B MODIFICATIONS: FINAL CLARIFIERS CONCRETE REHABILITATION PROJECT

FINAL BID SHEET

- 2) The “**Allowance**” **Item No. 13** is intended to provide for work that may later be determined to be necessary for this project that include Miscellaneous Concrete Repairs, Resurfacing and Coating of the Effluent Launderers/Troughs, Removal and Reinstallation of Fiberglass Weirs, Testing/Inspection, all labor, materials, and equipment.
- 3) Any and/ or all Alternative Bid Items shall be awarded at the OWNER’S discretion, and/or shall be subject to the availability of funds.
- 4) Written authorization by the OWNER for utilization of any part of the Allowance shall be required.
- 5) The OWNER reserves the right to omit or add to the construction any portion of the work heretofore enumerated or shown on the plans per Article 10 of the Standard General Conditions of the Construction Contract without claims for loss of anticipated profits.

SECTION 00301

BID BOND

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned, _____, as Principal; and _____ Surety, are hereby held and firmly bound unto the Passaic Valley Sewerage Commission in the penal sum of _____ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed this _____ day of _____ 20____.

The condition of the above obligation is such that whereas the Principal has submitted to the Passaic Valley Sewerage Commission a certain Bid, attached hereto, and hereby made a part hereof, to enter into a contract in writing, to:

CONTRACT NO. B-029A – FINAL CLARIFIERS PHASE III MODIFICATIONS: FINAL
CLARIFIERS CONCRETE REHABILITATION PROJECT

NOW THEREFORE,

- A. If said Bid shall be rejected, or, in the alternate,
- B. If said Bid shall be accepted and the Principal shall execute and deliver a contract in the form of CONTRACT attached hereto (properly completed in accordance with said Bid) and shall furnish a bond for his faithful performance of said CONTRACT, and shall in all other respects perform the agreement created by the acceptance of said Bid.

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

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

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

Principal: _____

Surety: _____ by: _____

SECTION 00302

CONSENT OF SURETY

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the sum of \$1.00, lawful money of the United States, the receipt whereof is hereby acknowledged, paid the undersigned corporation, and for other valuable consideration, the _____
_____(Name of Surety) corporation organized and existing under the laws of the State of _____ and licensed to do business in the State of New Jersey, certifies and agrees, that if CONTRACT NO. B-029A – FINAL CLARIFIERS PHASE III B MODIFICATIONS: FINAL CLARIFIERS CONCRETE REHABILITATION PROJECT is awarded to _____ undersigned corporation will execute the Bond or Bonds as required by the CONTRACT Documents and will become surety in the full amount of the CONTRACT price for the faithful performance of the contract and for payment of all persons supplying labor or furnishing materials in connection hence with.

Signature of Surety by: _____

Print Name: _____

Title: _____

Address: _____

(To be accompanied by the usual proof of authority of officers of surety company to execute the same.)

SURETY DISCLOSURE STATEMENT AND CERTIFICATION

Surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety meets the applicable capital and surplus requirements of R.S. 17:17-6 or R.S. 17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital (where applicable) and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amount(s) as of the calendar year ended December 31, _____ (most recent calendar year for which capital and surplus amounts are available), which amounts have been certified as indicated by certified public accountants (indicating separately for each surety that surety's capital and surplus amounts, together with the name and address of the firm of certified public accountants that shall have certified those amounts):

(3) (a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C. § 9305, the underwriting limitation established therein and the date as of which that limitation was effective is as follows (indicating for each such surety that surety's underwriting limitation and the effective date thereof):

(b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the United States Secretary of the Treasury, the underwriting limitation of that surety as established pursuant to R.S. 17:18-9 as of (date on which such limitation was so established) is as follows (indicating for each such surety that surety's underwriting limitation and the date on which that limitation was established):

(4) The amount of the bond to which this statement and certification is attached is:
\$ _____

SURETY DISCLOSURE STATEMENT AND CERTIFICATION (continued)

(5) If, by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in items (3)(a) or (3)(b) above, or both, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of that reinsurer's participation in the contract is as follows:

and

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L.1993, c.243 (C. 17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE

(to be completed by an authorized certifying agent
for each surety on the bond)

I _____ (Name of Agent), as _____ (Title of Agent) for
_____ (Name of Surety), a corporation/mutual insurance company/other
(circle one) domiciled in _____ (state of domicile), DO
HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me
are true, and ACKNOWLEDGE that, if any of those statements are false, this bond is
VOIDABLE.

(Signature of certifying agent)

(Printed name of certifying agent)

(Title of certifying agent)

SECTION 00303

BIDDER'S AFFIDAVIT

State of)

ss:

County of)

_____ being duly sworn, deposes and says that he resides at

_____ that he is the _____

(Title)

of _____

(Name of Bidder)

who signed the above Proposal or Bid, that he was duly authorized to sign, and that the Bid is a true offer of the Bidder, and the seal attached is the seal of the Bidder and that all the declarations and statements contained in the Bid are true to the best of his knowledge and belief.

(Affiant)

Sworn to and subscribed before me

this _____ day of _____, 20__

Notary Public in and for

_____ County, _____

My Commission Expires

_____, 20__

SECTION 00304

NON-COLLUSION AFFIDAVIT

STATE OF NEW JERSEY, COUNTY OF _____ ss.:

I, _____, of the City of _____ in the
County of _____ and the State of _____ of full age, being duly
sworn according to law on my oath depose and say that:

I am _____ of the firm of _____ the bidder
making the Bid for the above-named contract, and that I executed the said Bid with full authority
so to do; that said bidder has not, directly or indirectly, entered into any agreement, participated
in any collusion, or otherwise taken any action in restraint of free, competitive bidding in
connection with the within Contract; and that all statements contained in said Bid and in this
Affidavit are true and correct, and made with full knowledge that the Passaic Valley Sewerage
Commission relies upon the truth of the statements contained in said Bid and in the statements
contained in this Affidavit in awarding the Contract.

I further warrant that no person or selling agency has been employed or retained to solicit
or secure such Contract upon an agreement or understanding for a commission, percentage,
brokerage or contingent fee, except bona fide employees or bona fide established commercial or
selling agencies maintained by the bidder for the purpose of securing business.

For breach or violation of this warranty the Owner shall have the right to annul the Con-
tract without liability or in its discretion to deduct from the Contract price or consideration the
full amount of such commission, percentage, brokerage or contingent fee.

(Affiant)

Sworn to and subscribed before me

this _____ day of _____, 20____

Notary Public in and for

_____ County, _____

My Commission Expires

_____, 20____

SECTION 00305

STATEMENT OF OWNERSHIP

Under the provisions of the State Law (NJSA 52:25-24.2. Chapter 33 of the Laws of 1977), a Bidder must file a statement of ownership prior to or with the Bid. The statement must contain the names and addresses of all owners of ten percent (10%) or more of the stock of whatever class of the corporation, or the names of individual partners in the partnership, who own ten percent (10%) or greater interest in the partnership, as the case may be. In order for your Bid to be considered, you must list below the names and addresses of those meeting the criteria of the law:

1. Partners with 10% or greater interest.

If none, so indicate. Do not leave this space blank:

Name

Addresses

_____	_____
_____	_____
_____	_____
_____	_____

2. Owners of 10% or more of the stock of the corporation including stock of all classes.

If none, so indicate. Do not leave this space blank:

Name

Addresses

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3. Owners of 10% or more of membership interest in limited liability company:

If none, so indicate. Do not leave this space blank.

Name

Addresses

4. If, under item 2, the name of a partnership, corporation or limited liability company is listed, list below the names of individual partners and/or stockholders of whatever class who own a 10% or greater interest in the partnership, corporation or limited liability company listed under item 2. Disclosure shall be continued until names and address of every non-corporate stockholder, individual partner or member exceeding the 10% membership criteria established in the cited statute has been listed:

If none, so indicate. Do not leave this space blank.

Names

Addresses

Signature: _____
(person who signs Bid proposal)

NOTE: Your attention is directed to the fact that failure to complete the statement of ownership form is a non-waivable deficiency and the Commission in the event of non compliance are required as a matter of law to reject your Bid. All of the information requested is strictly required. Each question must be answered either by providing the requested information or if the answer to the question is "none", that must be written in. If required, attach additional sheets to list all names.

SECTION 00306

AFFIRMATIVE ACTION AFFIDAVIT

(to be completed by firms with more than 50 employees)

_____ of the firm of _____
(name)

being sworn according to law on his oath deposes and says that:

1. I am authorized to make this affidavit on behalf of:

(name of firm)

2. In addition an agreement to comply with an Affirmative Action Program for equal employment opportunity heretofore submitted as part of any pre-qualification statement, or under other conditions of this contract for a similar program, I/we do hereby further affirm that I/we will comply with the rules and regulations which will be promulgated by the State Treasurer as of the effective date therefor pursuant to the Affirmative Action Law (P.L. 1975, c. 127), as amended.

Name and Title

Signature of Authorized Representative

Subscribed and sworn to
before me this _____

day of _____ 20__

Seal Notary Public of New Jersey

AFFIRMATIVE ACTION AFFIDAVIT

(to be completed by firms with fewer than 50 employees)

I _____, of the (City, Town, Borough) of _____ in the County of _____, State of _____, of full age, being duly sworn according to law on my oath depose and say that:

1. I am _____, of the firm of _____, a bidder making a proposal upon

CONTRACT NO. B-029A – FINAL CLARIFIERS PHASE III
MODIFICATIONS: FINAL CLARIFIERS CONCRETE REHABILITATION
PROJECT

2. _____ does not have 50 employees or more inclusive of all officers and employees of every type.

3. I am familiar with the affirmative action requirements of P.L. 1975, c. 127 and rules and regulations issued by the Treasurer, State of New Jersey, pursuant thereto.

4. _____ has complied with all the affirmative action requirements of the State of New Jersey, including those required by the P.L. 1975, c. 127 and rules and regulations issued by the Treasurer, State of New Jersey, pursuant thereto.

5. I am aware that if _____ does not comply with P.L. 1975, c. 127 and rules and regulations issued pursuant thereto, that no monies will be paid by the State of New Jersey, County of _____, (City, Town, Borough) of _____ until an affirmative action plan is approved. I am also aware that the contract may be terminated and the _____, may be debarred from all public contracts, for a period of up to five (5) years.

6. In the event my workforce increases to 50 employees, I must contact the State Affirmative Action Office and complete an Employee Information Report.

Name and Title

Signature of Authorized Representative

Subscribed and sworn to
before me this _____

day of _____, 20__.

Seal Notary Public of New Jersey

AFFIRMATIVE ACTION
AFFIDAVIT

00306-2

SECTION 00307

ACKNOWLEDGEMENT OF RECEIPT OF CHANGES TO BID DOCUMENTS FORM

PASSAIC VALLEY SEWERAGE COMMISSION

FINAL CLARIFIERS PHASE III B MODIFICATIONS: FINAL CLARIFIERS
CONCRETE REHABILITATION PROJECT

(Name of Construction Project)

B-029A

(Contract No.)

The undersigned bidder hereby acknowledges receipt of the following notices, revisions, or addenda to the bid advertisement, specifications or bid documents. By indicating date of receipt, bidder acknowledges the submitted bid takes into account the provisions of the notices, revision or addendum. Note that the PVSC's record of notice to bidders shall take precedence and that failure to include provisions of changes in a bid proposal may be submit for rejection of the bid.

Addendum No.	How Received (mail, fax, Pick-up, etc)	Date Received

Acknowledgement by bidder:

Name of Bidder: _____

By Authorized Representative:

Signature: _____

Printed Name and Title: _____

Date: _____

SECTION 00308

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to contracts, subcontracts, and agreements with Applicants who are themselves performing federally assisted construction contracts, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause.)

The Federally assisted Construction Contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Federally assisted Construction Contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Federally assisted Construction Contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certificate, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation and 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. The Federally assisted Construction Contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files.

Signature

Date

Name and Title of Signer (Please Type)

NOTE: The penalty for making false statements in offers is prescribed in 18 USC 1001.

SECTION 00309

CERTIFICATION OF BIDDER'S STATUS ON
THE STATE TREASURER'S LIST OF
DEBARRED, SUSPENDED AND DISQUALIFIED BIDDERS

STATE OF _____

COUNTY OF _____

I, _____ of the City of, in the State of, _____

full age, being duly sworn according to law on my oath depose and say that:

I am _____ of the firm of _____ the
bidder making the Bid for the above named project; that I executed the said Bid, this
affidavit and all other bidding documents with full authority to do so; and that said bidder
is not now at the time of submission of this bid included on the State of New Jersey
Treasurer's List of Debarred, Suspended and Disqualified Bidders.

By: _____
Deponent's Signature

Date: _____

Deponent's Printed Name and Title

Subscribed and sworn to _____

before me this _____ day of _____, 20____.

Notary Public of
My Commission expires _____, 20____.

SECTION 00400

BIDDER'S QUALIFICATION FORM

1. Name of Contractor _____
2. How many years experience have you had in construction work of the same general type as this Contract? _____
3. Give information about the construction experience of the principals of your present organization who will be involved in the Contract:

Individual's Name	Present Position in Organization	Years of Construction Experience	Size and Type of Work	Proposed Position For This Contract

4. Give information about your present contract workload, or contracts to which you are committed:

Contract Price	Type of Construction	Location Of Work	Percentage Complete	Expected Completion Date	Name and Phone No. of Owner

5. Has your organization, or any other partner thereof, failed to complete a construction contract? ____yes ____no

6. **Provide five (5) references of projects similar in scope and size to that required under this Contract.** Give only engineers, architects or owner's representatives for whom you have done similar work.

<u>Name</u>	<u>Business Address</u>	<u>Telephone</u>	<u>Project</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

7. Is any litigation pending or threatened against your organization?

8. Has your organization been denied award of any construction project where it was the lowest bidder? _____

If yes, give details: _____

9. Give as reference a surety company or companies regarding your organization's financial responsibility and general reliability:

Name of Surety Company _____

Name of Local Agent (if different) _____

Local Address: _____

Telephone _____

Person familiar with Bidder's account: _____

10. Give the names and telephone numbers of personnel in your organization authorized to participate in discussions of the proposed contract

<u>Name</u>	<u>Telephone</u>
_____	_____
_____	_____
_____	_____
_____	_____

SECTION 00401

SUBCONTRACTOR LISTING

Failure to complete this Section is cause for the bid to be rejected (See NJSA 40A:11-16).

Before submitting his bid, the Bidder shall completely familiarize himself with Section 40A:11-16 of the New Jersey Local Public Contracts Law (New Jersey Statutes Annotated 40A:11-16). On contracts for the erection, alteration or repair of any public building, if the Bidder will use subcontractors for the plumbing work and gas fitting and all kindred work, steam and hot water heating and ventilating apparatus, steam power plants and kindred work, electrical work, structural steel and ornamental iron work he shall list below the name and address of each subcontractor to be used for these respective and kindred categories of work. If not applicable or N/A if no subcontractor is used in a given category, please clarify below (boxes should not be left blank).

WORK CATEGORY	NAME	ADDRESS
Plumbing		
Electrical		
Structural Steel		

(Attach additional pages as required)

NOTE: Submission of the names and addresses of the subcontractors required by N.J.S.A. 40A:11-16 is essential and nonwaivable. The names and addresses for subcontractors must be provided for each work category above, otherwise the bid will be deemed nonresponsive. Where more than one subcontractor is named for a work category, the bidder must identify, in the Bid, the scope of work that is to be performed by each subcontractor, as required by P.L. 1997, c. 408. Failure to comply with these statutory requirements will result in the Bid being deemed nonresponsive.

Name and Title of Authorized Representative

Signature of Authorized Representative

SECTION 00402

PUBLIC WORKS CONTRACTOR REGISTRATION

1. In accordance with "The Public Works Contractor Registration Act," P.L., 1999, c238 (N.J.S.A. 34:11 - 56.48 et seq.) amended by P.L. 2003, C091

"No contractor shall bid on any contract for public work as defined in section 2 of P.L. 1963, c150 (C34:11 - 56.26) unless the contractor is registered pursuant in this act. No contractor shall list a subcontractor in a bid proposal for the contract unless the subcontractor is registered pursuant to P.L. 1999, c238 (C34:11 - 56.48 et seq.) at the time the bid is made. No contractor or subcontractor, including a subcontractor not listed in the bid proposal, shall engage in the performance of any public work subject to the contract, unless the contractor is registered pursuant to that act." (N.J.S.A./ 34:11 - 56.51)"

"Contractor means a person, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who enters into a contract which is subject to the provisions of the "New Jersey Prevailing Wage Act," P.L., 1963, c.150, (C.34:11 - 56.25 et seq.) and includes any subcontractor or lower tier subcontractor of a contractor defined herein" (N.J.S.A./ 34:11 - 56.50)

2. Proof of registration is required before an award can be made:

"Each contractor shall, after the bid is made and prior the awarding of the contract, submit to the public entity the certificates of registration for all subcontractors listed in the bid proposal. Applications for registration shall not be accepted as a substitute for a certificate of registration for the purposes of this section." (N.J.S.A. 34:11-56.55)

3. On and after August 16, 2003 Contractors and their listed subcontractors bidding on covered work shall provide proof of the required registration prior to the contract award. [As practical matter, proof of registration should be submitted with the Bid]
4. By signing this form, the Contractor certifies that they shall provide proof of the required registration prior to the contract award.

(Signature)

(Date)

(Name and Title of Signer -
Please Type)

END OF SECTION

PUBLIC WORKS CONTRACTOR
REGISTRATION

00402-1

CERTIFICATE OF EQUAL OPPORTUNITY

The undersigned currently hold contract(s) numbered _____ with _____ which has received funds from the New Jersey Environmental Infrastructure Trust or (a) subcontract(s) with a prime contractor of the (grantee).

You are advised that under the provisions of the above contract(s) or subcontract(s) and in accordance with the President's Executive Orders 11246 and 11375, the undersigned is obliged not to discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The undersigned will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The undersigned agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

This notice is furnished you pursuant to the provisions of the above contract(s) or subcontract(s) and Executive Orders 11246 and 11375.

/s/ _____
Contractor or Subcontractor

Date _____

Copies of this notice will be posted by the undersigned in conspicuous places available to employees or applicants for employment.

- END OF SECTION -

00403-1

SECTION 00404

CERTIFICATION OF AFFIRMATIVE ACTION PLAN
FOR
CONTRACTOR AND SUBCONTRACTORS

Bidder's Name: _____

Address: _____

The Bidder hereby certifies that it shall comply with and shall require its subcontractors to comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5 et seq.) and the rules and regulations promulgated pursuant thereto, including but not limited to N.J.A.C. 17:27-1 et seq.

An affirmative action plan for construction contractors and subcontractors shall consist of the following elements:

1. Provisions in the construction contract containing language required by N.J.A.C. 17:27-3, 4(a) and N.J.A.C. 17:27-7.4, or
2. 41 CFR Part 60-2 and any existing Federally approved or sanctioned affirmative action program.

(Date)

(Signature)

SECTION 00405

AMERICAN IRON AND STEEL CERTIFICATION

The Contractor acknowledges to and for the benefit of the _____ ("Purchaser") and the _____ (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

ACKNOWLEDGEMENT BY BIDDER:

Name Bidder

Name and Title By Authorized Representative

Signature of Authorized Representative

Date

- END OF SECTION -

00405-1

DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Project Name: _____

Bidder Name: _____

PART 1: CERTIFICATION

BIDDERS MUST COMPLETE PART 1 BY CHECKING EITHER BOX

FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL NON-RESPONSIVE

Pursuant to Public Law 2012, c.25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that NEITHER the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Bidders must review this list prior to completing the below certification. Failure to complete the certification will render a bidder's proposal non-responsive. If the New Jersey Director of the Division of Purchase and Property finds a person or entity to be in violation of law, he/she shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking suspension of the party.

PLEASE CHECK THE APPROPRIATE BOX:

- ☐ I certify, pursuant to Public Law 2012, c.25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c.25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. I will skip Part 2 and sign and complete the Certification below: OR
- ☐ I am unable to certify as above because the bidder and/or one of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 List. I will provide a detailed, accurate and precise description of the activities in Part 2 below and sign and complete the Certification below. Failure to provide such will result in the proposal being rendered as non-responsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN.

You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the boxes below.

PLEASE PROVIDE THOROUGH ANSWERS TO EACH QUESTION. IF YOU NEED ADDITIONAL ROOM, ADD ADDITIONAL PAGES.

Name _____ Relationship to Bidder/Owner _____

Description of Activities _____

Duration of Engagement _____ Anticipated Cessation Date _____

Bidder/Officer Contact Name _____

Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the State of New Jersey and the Owner of the project are relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State of New Jersey and the Owner to notify the State of New Jersey and the Owner in writing of any changes to the answers of information contained herein. I acknowledge that I am aware of that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the State of New Jersey and/or the Owner and that the State and/or the Owner at its option may declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print): _____ Signature: _____

Title: _____ Date: _____

00406-1

SECTION 00500

CONTRACT NO. B-029A
PASSAIC VALLEY SEWERAGE COMMISSION
600 WILSON AVENUE
NEWARK, NEW JERSEY 07105

CONTRACT AGREEMENT

FINAL CLARIFIERS PHASE III B MODIFICATIONS: FINAL CLARIFIERS CONCRETE
REHABILITATION PROJECT

THIS AGREEMENT, made and executed this _____ day of _____, 20____, by and between the PASSAIC VALLEY SEWERAGE COMMISSION, a corporate body politic of the State of New Jersey, hereinafter called the "OWNER", acting through its Chairman, and _____, a corporation chartered under the laws of the State of _____ partnership, _____ individual _____ with _____ principal _____ offices _____ at hereinafter called the "CONTRACTOR". OWNER and CONTRACTOR, in consideration of the mutual covenants, hereinafter set forth, agree as follows:

Article 1 - Work

In consideration of the payments to be made as hereinafter provided, and of the performance by OWNER of all the matters and things to be performed by OWNER and herein provided; CONTRACTOR agrees, at its own sole cost and expense, to perform all the labor and services and to furnish all labor, materials, plant and equipment necessary to complete, and to complete in good, substantial, workmanlike and approved manner, all the Work as specified, described or indicated in the Contract Documents, as defined herein and Addenda within the time hereinafter specified and in accordance with the terms, conditions and provisions of the Contract Documents and Addenda.

Article 2 - ENGINEER

The Project has been designed by PVSC, ENGINEERING DEPARTMENT, 600 WILSON AVENUE, NEW JERSEY, NEW JERSEY, 07105, who are hereinafter called ENGINEER and who are to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3 - Contract Times

The CONTRACTOR shall commence work on the day specified in the Notice to Proceed. TIME BEING OF THE ESSENCE of this Contract. The CONTRACTOR shall prosecute the work diligently and uninterruptedly, at a rate to ensure completion sufficient for final acceptance of all work within 978 consecutive calendar days from the day of the CONTRACTOR's receipt of the

written Notice to Proceed. THE CONTRACTOR shall comply with all provisions in the Contract Documents regarding intermediate times of completion of construction.

The CONTRACTOR shall complete certain minimum amounts of work under this Contract by specified times as shown in the following Schedule of Intermediate Completion Times.

Intermediate Completion Time, In Consecutive Calendar Days Contractor's Receipt of Written Notice to Proceed	Minimum Percentage Dollar Value of Work to be Completed Under the Contract (Percentage of Completion)
April 2017 to September 2017	33%
April 2018 to September 2018	66%
April 2019 to September 2019	100%

Time is of the essence for final completion of all work within the time period starting from the CONTRACTOR's receipt of the Notice to Proceed and for intermediate completion of the work by the above Intermediate Completion Times.

Article 4 - Contract Price

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds at the prices agreed upon in the CONTRACTOR's Bid Form attached to this Agreement.

Article 5 - Payment Procedures

OWNER will make partial payments on account of the Contract in accordance with the provisions of Article 14 in the General Conditions.

Article 6 - CONTRACTOR's Representations

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance of or furnishing of the Work.
- 6.2 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- 6.3 CONTRACTOR is financially solvent and is experienced and competent to perform the type of work or to furnish the plant, materials, supplies or equipment to be performed or furnished by him.

Article 7 - Liquidated Damages and other DAMAGES

The OWNER and CONTRACTOR recognize that TIME IS OF THE ESSENCE of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the Contract Time specified in Article 3, plus any extensions thereof allowed in accordance with the General Conditions. Because some of this damage is difficult or impossible to calculate or estimate, the parties agree that the Contractor shall pay OWNER liquidated damages in the amounts set forth in the Contract Agreement in lieu of the above stated actual damage. The Contractor agrees that as liquidated damages (but not as a penalty) for delay beyond the Contract Times specified in Article 3 above, (Exclusive of Additional) architectural/engineering services as provided for below, the Contractor shall pay the Owner for:

- 7.1 Each and every calendar day that the Contractor is not in compliance with the Contract Times and Milestones, the sum of Three Thousand Dollars (\$3,000.00), which sum is hereby agreed upon, not as a penalty but as liquidated damages, which the parties hereto have agreed to be proper and reasonable, and which the Owner will suffer by reason of such default. The Owner shall assess liquidated damages on each of the contract milestones given in Article 3. The Owner reserves the right to retain and/or release liquidated damages until the Contractor has corrected the delay in the schedule or has met subsequent milestones.
- 7.2 In addition to liquidated damages the CONTRACTOR shall pay to the OWNER all costs incurred by the OWNER for additional architectural and engineering services required as a result of the delay. This amount, above and beyond the specified liquidated damages amount, shall be determined by and be equal to the actual architectural and engineering services invoices received by the OWNER. Copies of such invoices will be provided to CONTRACTOR. CONTRACTOR shall pay to the OWNER via reduction made by owner from the CONTRACTOR monthly payment request the full amount of each invoice. If unpaid contract balance is insufficient to reimburse OWNER the additional architectural and engineering services invoice amount, CONTRACTOR shall pay OWNER directly any amount not covered by deductions from the contract balance within 30 calendar days from the CONTRACTOR's receipt of a copy of each invoice from the OWNER.
- 7.3 In the event the Contractor by delay or otherwise has caused Owner damages beyond the amount specified in the liquidated damage provision of any contract between the Owner and Contractor, the Owner shall have the right to seek damages for said additional monies and shall not be limited by any said liquidated damage provision for the amount to be recovered. In addition, the Owner shall have the right to withhold from monies due or to become due the Contractor an amount sufficient to completely pay for said additional damages.

Provided, that CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is for reasons included in Article 12 of the General Conditions. Further, that CONTRACTOR shall, furnish OWNER the required notification of such delays in accordance with Article 12 of the General Conditions.

Article 8 - Contract Documents

The Contract Documents which comprise the Contract between OWNER and CONTRACTOR are attached hereto and made a part hereof and consist of the following:

- 1) Invitation To Bid.
- 2) Instructions To Bidders.
- 3) Bid and any post Bid documentation submitted prior to the Notice of Award.
- 4) This Agreement and Notice to Proceed.
- 5) Construction Performance Bond, Construction Payment Bond and other required Bonds.
- 6) Certificate of Insurance.
- 7) Standard General Conditions, EJCDC Document C700, 2007 edition.
- 8) Supplementary Conditions.
- 9) Specifications (as listed in Table of Contents).
- 10) All drawings (Site and Traffic) inclusive.
- 11) Addenda numbers _____ to _____, inclusive.
- 12) Any modification, including Change Orders, duly delivered after execution of Agreement.

Article 9 - Miscellaneous

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 This Agreement shall be construed in accordance with the laws of the State of New Jersey.
- 9.5 CONTRACTOR agrees that:
 - A. It hereby voluntarily and irrevocably submits itself to the jurisdiction and venue of

any court of competent jurisdiction over the subject matter of this Agreement located within the State of New Jersey in which any litigation is brought based on or arising out of this Agreement.

- B. Any legal process or notice connected with any litigation may be served on CONTRACTOR by United States registered mail, postage prepaid, addressed to CONTRACTOR at its address stated in this Agreement for the furnishing of notices to CONTRACTOR or at CONTRACTOR's last known address, and that service in such manner shall constitute good and valid service of process upon CONTRACTOR.
- C. CONTRACTOR hereby waives any defense which might be available to it in any such litigation based on or alleging lack of jurisdiction or venue, or, if process is served in the manner provided in subparagraph "B" immediately above, invalid service of process, and that it will duly enter its appearance in any such action.
- D. This Agreement may be presented in court as conclusive evidence of the foregoing agreement.

IN WITNESS WHEREOF: The parties hereto have executed this agreement the day and year first above mentioned.

PASSAIC VALLEY SEWERAGE COMMISSION

(SEAL)

BY: _____

ATTEST BY: _____
PASSAIC VALLEY SEWERAGE COMMISSION

CONTRACTOR NAME

BY: _____
CONTRACTOR

(SEAL)

ATTEST BY: _____
CONTRACTOR

Note: If CONTRACTOR is a corporation, an affidavit giving the principal the right to sign the Agreement must accompany the executed Agreement.

NAME OF CORPORATION:

BY: _____

(CORPORATE SEAL)

ATTEST BY: _____

(ADD TYPED OR PRINTED NAMES OF OFFICER AND ATTESTING WITNESS)

Date: _____

SECTION 00600
PERFORMANCE AND PAYMENT BONDS

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____, as Principal and _____, a corporation organized and existing under the laws of the State of _____, as surety, are held and firmly bound unto the Passaic Valley Sewerage Commission as hereinafter set forth, in the full and just several sums of:

- (a) _____ (One hundred percent (100%) of the amount of the contract) for faithful PERFORMANCE of the Contract No. B-029A – FINAL CLARIFIERS PHASE III B MODIFICATIONS: FINAL CLARIFIERS CONCRETE REHABILITATION PROJECT;
- b) _____ (One hundred percent (100%) of the amount of the contract) for PAYMENT of labor and materials

Signed this _____ day of _____ 20__.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT, WHEREAS, the above named principal did on the _____ day of _____, 20__, enter into a contract with the Passaic Valley Sewerage Commission, which said contract is made a part of this bond the same as through set forth herein; NOW, if the said principal shall sell and faithfully do and perform the things agreed by the said principal to be done and performed according to the terms of said contract, and shall pay all lawful claims of subcontractors, materialmen, laborers, persons, firms or corporations for labor performed or materials, provisions, provender or other supplies or teams, fuels, oils, implements or machinery furnished, used or consumed in the carrying forward performing or undertaking shall be for the benefit of any subcontractor, materialman, laborer, person, firm or corporation having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated. The said surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the said contract or in or to the plans or specifications therefore shall in any way affect the obligation of said surety on its bond.

IN WITNESS WHEREOF, the said _____ as principal has caused its corporate seal to be hereto affixed and these presents to be signed by _____ its _____ and attested by _____ its _____ and the said _____ as surety, has caused its corporate seal to be hereto affixed and these presents to be signed by its _____ and attested by its _____ this _____ day of _____ 20__.

By: _____

Attest: _____

Attest: _____

SECTION 00601

MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS; that we _____, hereinafter
called Principal, as Principal, and _____, a corporation of the State of
_____, hereinafter called Surety, are held and firmly bound unto

_____, hereinafter called

Obligee in the sum of _____ DOLLARS, lawful money
of the United States of America, to be paid to the said Obligee, or its successors or assigns, to the
payment of which sum well and truly to be made, we do bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED, sealed and dated this _____ day of _____, 20____

WHEREAS, the Principal entered into a contract with the said Obligee, dated _____

_____ for _____

_____ and

WHEREAS, the Obligee requires that these presents be executed on or before the final completion and
acceptance of said contract and

WHEREAS said contract was completed and accepted on the _____ day of
_____, 20____.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall
remedy, without cost to the Obligee, any defects which may develop during a period of _____
from the date of completion and acceptance of the work performed under the contract, caused by
defective or inferior materials or workmanship, then this obligation shall be void; otherwise it shall be
and remain in full force and effect.

Attest:

By: _____
Principal

Attest:

By: _____
Surety

00601-1

SECTION 00602

ENVIRONMENTAL MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that _____

(Name of Contractor)

(Address of Contractor)

_____ a _____
Corporation, Partnership or Individual

hereinafter called Principal, and _____
(Name of Surety)

_____ hereinafter called Surety, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of _____

dollars \$ _____, in lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, successors, and assigns jointly and severally, firmly by these presents.

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

CONTRACT NO. B-029A

FINAL CLARIFIERS PHASE III B MODIFICATIONS: FINAL CLARIFIERS CONCRETE
REHABILITATION PROJECT

PASSAIC VALLEY SEWERAGE COMMISSION
600 WILSON AVENUE
NEWARK, NEW JERSEY 07105

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice of the Surety and during the one year guaranty period, and during the one year following the guaranty period, and if he shall satisfy all claims and demands incurred under such contract with respect to Environmental sections of the Specifications and shall fully indemnify and save harmless the OWNER from all costs and

damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default; then this obligation shall be void; otherwise to remain in full force and effect.

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

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

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts,
(number)

each one of which shall be deemed an original, this the _____ day of _____, 20_____.

ATTEST:

(Principal)

(Principal) Secretary

(SEAL)

BY: _____

(Address)

Witness as to Principal

(Address)

(Surety)

ATTEST:

By: _____
Attorney-In-Fact

Witness as to Surety

(Address)

(Address)

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

The Environmental Maintenance Bond shall be supplied in the amount of \$25,000 or 50% of the bid price for the materials needed to fulfill the environmental specifications, whichever is greater, when the contract documents are finalized.

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

NO TEXT ON THIS PAGE

SECTION 00800

SUPPLEMENTAL GENERAL CONDITIONS

<u>Article</u>	<u>Title</u>	<u>Page No.</u>
1	Definitions and Terminology	00800-3
2	Preliminary Matters	00800-3
3	Contract Documents: Intent, Amending and Reuse.....	00800-4
4	Availability of Lands; Subsurface and Physical Conditions;	00800-5
5	Bonds and Insurance.....	00800-6
6	CONTRACTOR's Responsibilities.....	00800-9
7	Other Work at the Site.....	00800-12
8	OWNER's Responsibilities	00800-12
9	ENGINEER's Status During Construction.....	00800-12
10	Change in the Work; Claims.....	00800-13
11	Cost of Work; Allowances; Unit Price Work.....	00800-13
12	Change of Contract Price; Change of Contract Times	00800-14
13	Tests and Inspections; Correction, Removal or Acceptance of Defective Work	00800-14
14	Payments to CONTRACTOR and Completion	00800-15
15	Suspension of Work and Termination	00800-20
16	Dispute Resolution	00800-20
17	Miscellaneous	00800-20

Additional Articles

18	Liquidated Damages	00800-21
19	Federal and State Government Provisions.....	00800-22
19.01	Affirmative Action Requirements	
19.02	Anti-Discrimination (NJSA 10:2-1)	
19.03	Foreign Corporations (NJSA 14A:13-3)	
19.04	Statement of Ownership (NJSA 52:24-24.2)	
19.05	Use of Domestic Materials (NJSA 52:33-1 to 52:33-3)	
19.06	Prevailing Wage Rates (NJSA 34:11 - 56:25)	
19.07	State Treasurer's List of Debarred, Suspended and Disqualified Bidders (NJSA 34:11)	
19.08	Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (SEDs) (NJAC 7:22-9)	
19.09	Termination of Loans	
19.10	Davis Bacon Act	
19.11	Construction of Wastewater Treatment Facilities (NJAC 7:14-2)	

<u>Exhibit No.</u>	<u>List of Exhibits</u>
1	Prevailing Wage Rates
2	List of Debarred Contractors and Subcontractors
3	Davis Bacon Act – Labor Standards Provisions for Federally Assisted Construction Contracts (EPA Form 5720-4) and USEPA Attachment 6 – Requirements for Subrecipients that are Government Entities
4	Contract Modification Proposal and Acceptance Form
5	NJAC 7:22-9 and NJAC 7:22-10.11, 12
6	SED Participation Building Phase Quarterly Report (Form OEO-002)
7	SED Participation Monthly Progress Report (Form OEO-003)
8	PVSC SED Utilization Plan
9	NJAC 7:14-2
10	NJSA 2A:44-143, 144
11	List of Drawings

SECTION 00800

SUPPLEMENTAL GENERAL CONDITIONS

These Supplemental General Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C700, 2007 Edition) given as Specification Section 00700 and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

Add the following Section at the beginning of this Article:

1.00 Terms

- A. The terms used in these Supplemental General Conditions which are defined in the Standard General Conditions of the Construction Contract (No. C700, 2007 Edition) given as Specification Section 00700 have the meanings assigned to them in the General Conditions.

1.01 Defined Terms

Definition 18. Omit the word "two".

Delete Definition 42. in its entirety and replace with the following:

"Specifications -- All the terms and stipulations contained in the General Requirements and in the Detailed Specifications. The requirements of the General Requirements shall be considered part of each Item of the Detailed Specifications."

Definition 43. Omit "Work at the Site" and substitute "on the Project".

In the second line of Definition 44. Substantial Completion, delete:

"of ENGINEER", and add "of ENGINEER, and approved by OWNER"

Insert the following at the end of Definition 44. Substantial Completion.

"The date of Substantial Completion shall be certified by the ENGINEER."

Add the following new definition:

"52. *Conditions of the Contract* - The combined General Conditions and Supplemental General Conditions."

ARTICLE 2 – PRELIMINARY MATTERS

Add the following Section to the beginning of this Article:

"2.00 *Execution of Agreement*

- A. At least six counterparts of the Agreement will be executed and delivered by the CONTRACTOR to the OWNER within ten (10) working days of the Notice of Award and receipt of Contract Documents by the CONTRACTOR for execution; and thereafter OWNER will execute and deliver one counterpart to CONTRACTOR."

2.01 *Delivery of Bonds and Evidence of Insurance*

Delete Part B. Evidence of Insurance in its entirety and substitute the following:

- "B. *Evidence of Insurance:* Before any Work at the site is started, Contractor shall deliver to Owner, with copies to Engineer and each additional insured identified in Article 5 of the Supplemental General Conditions, certificates of insurance (and other evidence requested by Owner) which Contractor is required to purchase and maintain in accordance with the requirements of Article 5."

2.03 *Commencement of Contract Times; Notice to Proceed*

Delete in its entirety and substitute the following:

- "A. Except as otherwise provided in (ii) hereinafter, the Contract Time will commence to run on the day indicated in the Notice to Proceed; but in no event will the Contract Time commence to run later than the ninetieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement. By mutual consent of the parties to the Contract, these time limits may be changed.
- B. Notwithstanding the provisions of subsection (i) above, if award of the Bid is challenged, and the Owner determines that a hearing is required on the challenge, or a Court or governmental entity having jurisdiction issues a stay of the award or performance of the Contract, the Contract Time and Effective Date of the Agreement shall be stayed for the time necessary for Owner to conduct a hearing and make a determination on the challenge and/or the time that the Contract award or performance are stayed by a Court or governmental entity having jurisdiction, not to exceed an additional 180 days."

2.06 *Pre-construction Conference; Designation of Authorized Representatives*

Delete in its entirety and substitute the following:

- "A. Within ten (10) days after the Contract Times start to run, but before any Work at the site is started, a pre-construction conference shall be attended by, but without limitations to, the following: Contractor's Representatives, Owner's Representatives, Utility Companies, the New Jersey Department of Environmental Protection, and all other Regulatory Agencies as required. The conference will establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records."

ARTICLE 3- CONTRACT DOCUMENTS: INTENT, AMENDING AND REUSE

3.01 *Intent*

Add the following subparts to Part A:

- "1. Each and every provision of law and clause required by law to be inserted in these Contract Documents shall be deemed to be inserted herein, and they shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or if not correctly inserted, then upon the application of either party, the Contract Documents shall forthwith be physically amended to make such insertion.
2. The Contract Documents indicate the extent and general arrangement of the work. It is the intent of the Contract Documents to obtain an operable Project. Equipment, components, systems, etc., therein shall be made operable by the CONTRACTOR.
3. The Contract Drawings may be supplemented from time to time with additional drawings by the ENGINEER as may be required to illustrate the work or, as the work progresses, with additional Drawings, by the CONTRACTOR, subject to the approval of the ENGINEER. Supplementary Drawings, when issued by the ENGINEER or by the CONTRACTOR, after approval by the ENGINEER, shall be furnished in sufficient quantity to all those who, in the opinion of the ENGINEER, are affected by such Drawings."

3.03 Reporting and Resolving Discrepancies.

A. 3. "or should have known."

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

4.02 *Subsurface and Physical Conditions*

Part B: In the sixth line delete "The Supplementary Conditions", and substitute "Contract Documents"

Add the following Paragraph to Section 4.02:

C. It shall be understood and agreed that the CONTRACTOR will not use any of the information made available to him, or obtained in any examination made by him, in any manner as a basis or ground of claim or demand of any nature against the OWNER or the ENGINEER, arising from or by reason of any variance which may exist between the information offered and the actual materials or structures encountered during the construction.

4.04 *Underground Facilities*

Delete Part B. in its entirety and substitute the following:

B. All information given on the Drawings, or in the Contract Documents, relative to subsurface and latent physical conditions or otherwise affecting the

performance of the Work is from the present sources available to the OWNER and the ENGINEER. It is understood and agreed that the OWNER and the ENGINEER do not warrant or guarantee that the materials, conditions, and pipes, or other structures encountered during the construction will be the same as those indicated on the Drawings or in the Contract Documents. Each Bidder must inform himself fully of the conditions relating to the construction and labor under which the work will be performed; and in particular as to subsurface and groundwater conditions; failure to do so will not relieve a successful bidder of his obligation to furnish all material and labor necessary to carry out the provisions of the Contract Documents and to complete the contemplated work for the considerations and he makes his bid with a full knowledge of conditions, and the kind, quality, and quantity of work required.

It is also understood and agreed that the Bidder or the CONTRACTOR will not use any of the information made available to him, or obtained in any examination made by him, in any manner as a basis or ground of claim or demand of any nature against the OWNER or the ENGINEER, arising from or by reason of any variance which may exist between the information offered and the actual materials or structures encountered during construction.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment and Other Bonds*

Part A: Add the following after "payment bonds" in the first line:

"within ten (10) working days of Notice of Award".

Delete the second sentence and replace with the following:

"The Performance Bond shall remain in effect until completion and acceptance by the OWNER as specified in paragraph 14.07".

Add the following Paragraphs to Section 5.01:

"D. As surety that the CONTRACTOR will faithfully maintain the Work during the twelve (12) month Correction Period, the CONTRACTOR agrees to furnish to the OWNER before final payment shall be made under the terms of this Contract, a suitable Maintenance Bond in the amount of one hundred percent (100%) of the Contract price less the amount of the Environmental Maintenance Bond, with a surety company (licensed by the Commissioner of Banking and Insurance of New Jersey), as surety, running from the date of substantial completion to date twelve (12) months after the date of substantial completion and acceptance as herein before described.

The CONTRACTOR shall note that the form of Maintenance Bond shall be approved by the OWNER prior to the execution thereof by the CONTRACTOR and acceptance thereof by the OWNER. Should the CONTRACTOR fail to commence within one week of notice from the OWNER to make the repairs or replacements required under the terms of the Correction Period set forth above, the OWNER may have said replacements made or repairs done and the expense thereof shall paid by the CONTRACTOR or by the CONTRACTOR's Surety."

"E. The Environmental Maintenance Bond, furnished by the Contractor shall be supplied in the amount of \$25,000 or 50% of the bid price for the Environmental Protection bid items, whichever is greater, and shall remain in full force and effect for one (1) year beyond the end of the Correction Period".

5.03 *Certificates of Insurance*

Add the following paragraph to 5.03:

"F. Wherever in this Article the terms "The Insured" and OWNER occurs with respect to coverage in a policy, it shall mean the OWNER and its agent and agencies, all municipalities where work is being performed under the contract, the ENGINEER, and any other parties specifically designated below, who shall be named as insured in each policy issued. The insurance policies required herein shall not contain any Third Party Beneficiary Exclusion. The State of New Jersey and its venues, employees and officers shall be named insured on each certificate of Insurance."

5.04 *CONTRACTOR's Insurance*

Add the following to the end of the paragraph of Part A:

"The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by law:"

Add the following to Part A, Subparts 1 and 2:

"Workers' Compensation

- | | | |
|-----|-----------------------|--------------|
| (1) | Worker's Compensation | Statutory |
| (2) | Employer's Liability | \$2,000,000" |

Add the following to Part A, Subparts 3, 4 and 5:

"Comprehensive General Liability, including Premise/Operations; Explosion, Collapse and Underground Property Damage; Products/Completed Operations, Broad Form Contractual, Independent CONTRACTORS; Broad Form Property Damage; and Personal Injury liabilities:

- | | | |
|-----|-------------------|---|
| (1) | Bodily Injury: | \$2,000,000 Each Occurrence
\$2,000,000 Annual Aggregate |
| (2) | Property Damage:* | \$1,000,000 Each Occurrence
\$2,000,000 Annual Aggregate |

*Property Damage shall include Explosion, Collapse and Underground Coverages. Property Damage shall include property in the care, custody and control of the insured.

- | | | |
|-----|---|-------------------------------|
| (3) | Personal Injury, with
employment exclusion
deleted. | \$2,000,000 Annual Aggregate" |
|-----|---|-------------------------------|

Add the following to Part A, Subparts 6:

"Comprehensive Automobile Liability including all owned (private and others), hired and non-owned vehicles:

- | | | |
|-----|-----------------|--|
| (1) | Bodily Injury | \$1,000,000 Each Person
\$2,000,000 Each Accident |
| (2) | Property Damage | \$1,000,000 Each Occurrence" |

Add the following Paragraph to Part B:

"7. CONTRACTOR may purchase and maintain excess liability insurance in the umbrella form in order to satisfy the limits of liability required for the insurance to be purchased and maintained in accordance with paragraph 5.04. Evidence of such excess liability shall be delivered to OWNER in accordance with paragraph 5.03 in the form of a certificate indicating the policy numbers and limits of liability of all underlying insurance. The umbrella liability insurance shall have a combined single limit of not less than \$5,000,000."

5.05 *OWNER's Liability Insurance*

Delete Part A of Section 5.05 in its entirety and insert the following in its place:

A. CONTRACTOR shall purchase and maintain a separate OWNER's Protective Liability Policy, issued to OWNER at the expense of CONTRACTOR, including OWNER and ENGINEER as named insured. This insurance shall provide coverage for not less than the following amounts:

- | | | |
|----|-----------------|---|
| 1. | Bodily Injury | \$2,000,000 Each Occurrence |
| 2. | Property Damage | \$1,000,000 Each Occurrence
\$2,000,000 Annual Aggregate |

5.06 *Property Insurance*

Delete the first sentence of Part A and replace with the following:

"CONTRACTOR shall purchase and maintain property insurance upon the Work at the site, written on the completed value form, in an amount equal to the total bid price for the completed construction."

Add a sentence immediately after the paragraph of Part A, Subpart 2 as follows:

"The policy shall contain endorsements covering damage from flood and earthquake."

Delete Part B in its entirety.

5.10 *Partial Utilization, Acknowledgement of Property Insurer.*

Add a new paragraph as follows:

"B. OWNER will continually occupy all facilities involved in this project and will require temporary access to the Work prior to substantial completion. Endorsements to the property insurance policies provided by the CONTRACTOR that protect the interests of all parties shall be provided."

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendant*

Add the following:

"C. CONTRACTOR will be held responsible for the conduct of all personnel on site employed by or through Contract. CONTRACTOR shall employ only competent persons to perform the work of this contract. Whenever OWNER shall notify CONTRACTOR, in writing, that any person on the work, including superintendents and other Supervisors, appears to be incompetent, disorderly, or who disregards the authority of the ENGINEER and/or OWNER, or is otherwise unsatisfactory, such person shall be removed from the Project within the time frame specified by the OWNER, and shall not again be employed on it except with the consent of OWNER."

6.06 *Concerning Subcontractors, Suppliers and Others*

Change this Section Title to read 'Concerning Assignment, Subcontractors, Suppliers and Others:'

Add the following to Part A:

"CONTRACTOR shall not assign, transfer, convey or otherwise dispose of the Contract, or of his legal right, title, or interest in or to the same or to any part thereof, without the prior written consent of the OWNER. CONTRACTOR shall not assign by power of attorney or otherwise any monies due him and payable under this Contract without the prior written consent of the OWNER. Such consent, if given, will in no way relieve the CONTRACTOR from any of the obligations of this Contract. OWNER shall not be bound to abide by or observe the requirements of any such assignment. Acceptance of any Subcontractor, other person or organization by OWNER shall not constitute a waiver of any right of OWNER to reject defective work.

The CONTRACTOR agrees that it is as fully responsible to OWNER for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

CONTRACTOR shall comply with the New Jersey Regulations governing minority and female CONTRACTOR and subcontractor participation on Construction Contracts as required by NJSA 52:32-17. The regulations, which are more specifically set forth in NJAC 17:14-1.1 et seq., are incorporated herein by reference and made a part hereof."

Add the following changes to Part B:

First line, delete: "If the Supplementary Conditions", and substitute "Contract Documents". The fourth line, delete: "Supplementary Conditions", and substitute "Contract Documents".

6.07 *Patent Fees and Royalties*

Delete Part A in its entirety and substitute the following:

"A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the work of any invention, design, process, products or device which is the subject of patent rights or copyrights held by others. CONTRACTOR shall indemnify and hold harmless OWNER AND ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses, including attorney's fees, arising out of any infringement of patent rights or copyrights incident to the use in the performance of the work or furnished by him in fulfillment of the requirements of this Contract. In the event of any claim or action by law on account of such patents or fees, it is agreed that the OWNER may retain out of the monies which are or which may become due to the CONTRACTOR under this Contract, a sum of money sufficient to protect itself against loss, and to retain the same until said claims are paid or satisfactorily adjusted."

6.09 *Laws and Regulations*

Delete Part B in its entirety and substitute the following:

"B. If CONTRACTOR observes that the Specifications or Drawings are at variance with any Laws or Regulations, he shall give ENGINEER prompt written notice thereof. If CONTRACTOR performs any work knowing it to be contrary to such Laws or Regulations, and without such notice to ENGINEER, he shall bear all costs arising therefrom. The CONTRACTOR shall, at all times, observe and comply with and shall cause all his agents and employees and all his Subcontractors to observe and comply with all such existing Laws or Regulations, and shall protect and indemnify the OWNER and the ENGINEER and the municipalities in which work is being performed, and their officers and agents against any claim or liability arising from or based on the violation of any such Law or Regulation, whether by himself or his employees or any of his Subcontractors."

Add the following paragraph:

"D. The CONTRACTOR shall keep itself fully informed of all existing and future state and Federal Laws and Regulations and Municipal Ordinances and Regulations, in any manner affecting the work and the persons engaged or employed in the work, or the materials used in the work, or in any affecting the performance of the work, either with respect to hours of labor or otherwise, and of all such laws, ordinances, regulations, orders and decrees, and shall protect and indemnify OWNER and their officers and agents against any claims or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by itself, or by its agents or employees."

6.10 *Taxes*

Add the following to Part A:

"The materials and supplies to be used in the work of this contract are exempt from sales tax of the State of New Jersey. CONTRACTOR shall obtain the proper certificates, maintain the necessary records and otherwise comply with the requirements of state law."

6.13 *Safety and Protection*

Add the following Paragraph:

"G. The CONTRACTOR throughout the work of this contract shall comply with the OWNER Safety Rules, as well as the Federal Occupational Safety and Health Act and the applicable New Jersey Department of Labor Administrative Codes. The CONTRACTOR shall obtain a copy of the OWNER Safety Rules, these rules, including the wearing of protective head gear, shall be strongly enforced by the CONTRACTOR in respect to his own employees, Subcontractors employees, and other personnel engaged in business with the CONTRACTOR on OWNER's property.

CONTRACTOR's (and Subcontractors) personnel when on OWNER property shall prominently display Company name or logo on their safety helmet (hard hat).

The CONTRACTOR is advised of the 15-MPH speed limit on all plant roads, and will be held responsible for his employees (and Subcontractors) compliance with this and all rules for traffic safety in the plant.

All CONTRACTORs personnel shall wear OSHA approved hard hats and shall display a clearly visible company logo on the hat.

The CONTRACTORs attention is directed toward several New Jersey Labor Department Administrative Codes that influence the conduct of his work in specific areas:

1. NJAC 12:100-9 – Work in Confined Space
2. NJAC 12:100-11 – Control of Hazardous Energy
(Electrical energy lockout and other energy sources such as steam, air, liquids)
3. NJAC 7:31-1-6 – Toxic Catastrophe Prevention Act.

Before any work commences on OWNER property, the CONTRACTOR's Superintendent shall contact the OWNER Facility Supervisor at the site. The OWNER Supervisor will inform the CONTRACTOR of the OWNER emergency plant evacuation plan and where he is to assemble his personnel.

The CONTRACTOR shall instruct and show his personnel where to assemble, at the sound of the OWNER emergency evacuation siren. The facility Supervisor will notify the CONTRACTOR's personnel of the emergency evacuation route they are to follow. At the assembly point, the CONTRACTOR's person in

charge shall account for all his personnel, supply transportation, and see that they utilize the prescribed evacuation route.

Every third Wednesday of each month at 11:00 a.m. the evacuation siren is put through a test cycle, it is not required to assemble for the test cycle.

Where portions of the work of the contract fall under the authority of these Administrative Codes for Public Employees, the CONTRACTOR shall at all times maintain safety standards for his employees equivalent to that imposed by the Codes. This includes, for example, monitoring of air in confined spaces with appropriate instrumentation for noxious or toxic gases, and lockout of hazardous energy such as electrical, steam, air, or liquids under pressure.

The CONTRACTOR shall be responsible for providing first aid, and emergency medical assistance for any of his employees injured on the work site. The CONTRACTOR shall be responsible for arranging emergency assistance with local hospitals, and/or EMT services. The CONTRACTOR's arrangements shall be submitted in writing, with required telephone numbers to OWNER's Security Department. OWNER Security will summon the CONTRACTOR's emergency personnel, if the CONTRACTOR calls OWNER Security from any in plant telephone.

CONTRACTOR's personnel will not be treated in the OWNER Dispensary for minor injuries, cuts, or services."

6.15 *Hazardous Communication Program*

Add the following paragraph:

"B. All hazardous material whether sold, delivered, and/or used to perform a service on the OWNER site, shall be properly labeled in accordance with the New Jersey Worker and Community Right to Know (P.L. 1983, C315, NJSA 34:56A-1 et seq.). The bidder shall provide prior to arrival on site the Material Safety Data Sheets to the OWNER for all the products that he intends to utilize under this contract."

6.19 *CONTRACTOR's General Warranty and Guarantee*

After the first sentence of Part A add the following:

"All materials or equipment delivered to the site shall be accompanied by certificates, signed by an authorized officer of the supplier, and notarized guaranteeing that the materials or equipment conform to specification requirements. Such certificates shall be immediately turned over to the OWNER. Materials or equipment delivered to the site without such certificates will be subject to rejection."

Omit the entire second sentence of Part A.

6.20 *Indemnification*

Delete Part A in its entirety and substitute the following:

"A. To the fullest extent permitted by Laws and Regulations, and except for the willful misconduct of OWNER, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants 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 of other dispute resolution costs including appeals) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage is caused in whole or in part by any negligent act or omission of the CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity."

Add the following new Paragraphs as follows:

"D. Wherever in this Agreement a provision imposes upon the CONTRACTOR an obligation of indemnification, that obligation shall be as set forth in the preceding paragraphs of this provision. CONTRACTOR acknowledges that it is the intent of the parties that any indemnification obligation imposed upon CONTRACTOR pursuant to any provision of this Agreement shall be the broadest called for under this Agreement.

E. Nothing in the Contract Documents shall create or give to third parties any claim or right of action against the CONTRACTOR, the OWNER or the ENGINEER beyond such as may legally exist irrespective of the Contract."

ARTICLE 7 – OTHER WORK AT THE SITE

7.02 *Coordination*

Delete this Section in its entirety.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.02 *Replacement of ENGINEER*

Delete this Section in its entirety.

8.06 *Insurance*

Delete this Section in its entirety.

8.11 *Evidence of Financial Arrangements*

Delete this Section in its entirety.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *OWNER's Representative*

Delete Part A in its entirety and substitute the following:

"A. ENGINEER will be the OWNER's representative during the construction period, and his instructions shall be carried into effect promptly and efficiently."

9.03 *Project Representative*

Part A: In the first sentence delete "If OWNER and ENGINEER agree" and substitute "At OWNER's option".

Add the following paragraphs:

"B. The Resident Project Representative will serve as the ENGINEER's liaison with the CONTRACTOR, working principally through the CONTRACTOR's superintendent to assist him in understanding the intent of the Contract Documents.

C. The Resident Project Representative shall conduct on-site observations of the work in progress to confirm that the work is proceeding in accordance with the Contract Documents. He will verify that tests, equipment and systems start-ups and operating and maintenance instructions are conducted as required by the Contract Documents. He will have the authority to disapprove or reject defective work in accordance with Article 13."

9.09 *Limitations on ENGINEER's Authority and Responsibilities*

Add the following to Part E:

"Except upon written instructions of the ENGINEER, the Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Contract Documents.
3. Shall not undertake any of the responsibilities of CONTRACTOR, Subcontractors or CONTRACTOR's superintendent, or expedite the work.
4. Shall not advise on/or issue directions to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract.
5. Shall not advise on or issue directions as to safety precautions and programs in connection with the work."

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

Add the following to the end of Part B:

"CONTRACTOR certifies that this claim is made in good faith, that the supporting data are accurate and complete to the best of CONTRACTOR's knowledge and belief, and that the amount or time requested accurately reflects the contract adjustment for which CONTRACTOR believes OWNER is liable."

ARTICLE 11 – COST OF THE WORK: CASH ALLOWANCES: UNIT PRICE WORK

11.01 *Cost of the Work*

Delete the fourth sentence in the paragraph of Part A, Subpart 1 in its entirety and replace with the following:

Such employees shall include all labor categories listed in the New Jersey Department of Labor Prevailing Wage Rate Determination.

Delete the second sentence in the paragraph of Part A, Subpart 3 "If required ... be acceptable."

Delete Part A, Subpart 5a in its entirety.

Add the following before the last sentence of the paragraph of Part A, Subpart 5c:

"These rates shall include all fuel, lubricants, insurance, etc. Equipment rental charges shall not exceed the prorated monthly rental rates listed in the current edition of the " 'Compilation' of Rental Rates for Construction Equipment" as published by the Associated Equipment Distributors. Charges per hour shall be determined by dividing the monthly rates by 176."

Delete Part A, Subpart 5.f. in its entirety.

Delete Part A, Subpart 5.g. in its entirety.

Delete Part A, Subpart 5.h. in its entirety.

Delete Part A, Subpart 5.I. in its entirety

11.03 *Unit Price Work*

In Part D, Subpart 1, delete "materially and significantly", and insert "by more than plus or minus twenty percent (20%)".

ARTICLE 12 – CHANGE OF CONTRACT PRICE: CHANGE OF CONTRACT TIMES

12.01 *Change in Contract Price*

Delete part B, Subpart 2 in its entirety and replace with the following:

"2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed upon lump sum which includes an allowance for overhead and profit in accordance with paragraph 12.01.C.2"

Delete Part C, Subpart 1 in its entirety.

Add the following to Part C, Subpart 2.a.:

"CONTRACTOR's fee shall not be applied to payroll taxes, social security contributions, or unemployment taxes. CONTRACTOR's fee of fifteen percent shall not be applied to moveable equipment (i.e., cranes, furniture etc.) purchased

and supplied to the OWNER under a change in the contract price or a construction allowance. CONTRACTOR will be allowed a five percent fee in this case."

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.03 Tests and Inspections

Delete Part B in its entirety and substitute the following:

"B. OWNER shall employ and pay for all inspections and testing services specifically noted as such in the Contract. All others required shall be the responsibility of the CONTRACTOR."

Delete Parts C and D in their entirety and substitute the following:

"C. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to be specifically inspected, tested or approved by any public entity, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish ENGINEER the required certificates of inspection, testing or approval.

D. The OWNER reserves the right to independently perform at its own expense, laboratory tests on random samples of material or performance tests on equipment delivered to the site. These tests, if made, will be conducted in accordance with appropriate referenced standards or Specifications requirements. The entire shipment represented by a given sample, samples or piece of equipment may be rejected on the basis of the failure of samples or pieces of equipment to meet specified test requirements. All rejected materials or equipment shall be removed from the site, whether stored or installed in the work, and the required replacement shall be made, all at no additional cost to the OWNER."

13.05 OWNER May Stop the Work

Insert the following in the third line between "Documents," and "OWNER":

"or if the work interferes with the operation of the existing facility

Add the following at the end of the paragraph of Part A.

"If the OWNER stops work under Paragraph 13.05, Contractor shall be entitled to no extension of Contract Time or increase in Contract Price."

13.06 Corrections or Removal of Defective Work

Add the following Paragraph:

"C. At any time during the progress of the work and up to the date of final acceptance, the ENGINEER shall have the right to reject any work which does not conform to the requirements of the Contract Documents, even though such work has been previously inspected and paid for. Any omissions or failure on the part of the ENGINEER to disapprove or reject any work or materials at the

time of inspection shall not be construed as an acceptance of any defective work or materials."

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

Add the following at the end of the paragraph of Part A:

"The CONTRACTOR shall submit for the ENGINEER's approval, a complete breakdown of all Lump Sum Items in the Proposal. This breakdown, modified as directed by the ENGINEER, will be used as a basis for preparing estimates and establishing progress payments.

14.02 *Progress Payments*

A. Applications for Payments

Delete Subpart 3 in its entirety and substitute the following:

"3. Any Contract, the total price of which exceeds \$100,000.00, entered into by the OWNER involving the construction, reconstruction, alteration, repair or maintenance of any building, structure, facility or other improvement to real property, shall provide for partial payments to be made at least once each month as the work progresses, unless the contractor shall agree to deposit bonds with the contracting unit pursuant to P.L. 1979, c.152 (N.J.S.A.40A:11-16.2)

Application for Progress Payment request shall include the total amount of the work completed to the month prior to date of application for Progress Payment and the amount earned by the CONTRACTOR for the payment period. The payment period may conclude on the last day of the preceding month, or other mutually agreed upon day of the month accompanied by such data and supporting evidence as OWNER or ENGINEER may require.

Forms to be used shall be prepared by the CONTRACTOR and submitted to the ENGINEER for approval.

The OWNER shall withhold two (2) percent of the amount due on each application for Progress Payment pursuant to NJSA 40A: 11-16.3, unless the CONTRACTOR makes the deposits referred to in NJSA 40A:11-16.1. Such withholding shall be in addition to any retainage otherwise authorized by law or the Contract Documents.

The OWNER shall make payments to the CONTRACTOR once each month as the work progresses. Payment may be withheld at any time if the work is not proceeding in accordance with the Contract Documents.

The OWNER will not pay for equipment stored on or off-site and payments will be made on completed work only; unless by special approval. Upon application to the OWNER, the OWNER may, at its own discretion, approve payments for stored equipment provided the equipment has been inspected and approved by the ENGINEER at its stored location.

Where instruction manuals and parts list are specified in the Contract Documents. Payment will not be made until approved Instruction Manuals and Parts Lists have been received and approved by OWNER.

The CONTRACTOR shall furnish evidence that payment received on the basis of materials and equipment not incorporated and suitably stored, has in fact been paid to the respective supplier(s) within thirty days of payment by OWNER. Failure to provide such evidence of payment may result in the withdrawal of previous approval(s) and removal of the cost of related materials and equipment from the next submitted application for Progress Payment.

Upon Substantial Completion the retainage withheld by the OWNER pursuant to NJSA 40A:11-16.3 shall be paid to the CONTRACTOR as provided by law. The OWNER may reinstate the retainage if it is determined that the CONTRACTOR is not making satisfactory progress or there is other specific cause for such retainage.

The NJAC 7:14-2.8 requirements will be followed as needed."

B. Review of Applications:

Add the following to Subpart 1:

"Should CONTRACTOR neglect to pay any undisputed claims, made in writing to OWNER within thirty days after completion of the Work, but continuing unsatisfied for a period of ninety days, OWNER may pay such claim and deduct the amount thereof from the balance due CONTRACTOR. OWNER may also, with the written consent of CONTRACTOR, use any monies retained, due, or to become due under this Contract for the purpose of paying for both labor and materials for the Work, for which claims have not been filed.

Security is provided both by the Payment Bond and the power of OWNER to retain any monies for claims, but payment by one shall in no way impair or discharge the liability of the other.

Any and all liens for work and materials may be paid off by OWNER within a reasonable time after filing for record in accordance with State and local laws, a notice of such liens except where claim on which the lien is filed is being litigated by CONTRACTOR, and in such case OWNER may pay the amount of any final judgement or decree or any such claim within reasonable time after such final judgement or decree shall be rendered.

All monies paid by the OWNER in settlement of liens as aforesaid, with the costs and expenses incurred by OWNER in connection therewith, shall be charged to CONTRACTOR, shall bear interest at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank, and shall be deducted from the next payment due CONTRACTOR under the terms of this Contract."

14.03 *CONTRACTOR's Warranty of Title*

Add the following Paragraph to Section 14.03:

"B. The Application for payment shall be accompanied by such data, satisfactory to OWNER, as will establish OWNER'S title to the material and equipment and protect his interest therein, including applicable insurance. Each subsequent Application for Payment shall include an Affidavit of CONTRACTOR stating that all previous progress payments received on account of the work have been applied to discharge in full all of CONTRACTOR's obligations reflected in prior Applications for Payment.

No materials or supplies for the Work shall be purchased by CONTRACTOR or Subcontractor subject to any chattel mortgage or under conditional sales contract or other agreement by which an interest is retained by the seller. CONTRACTOR warrants that he/she has good title to all materials and supplies used by him/her in the Work, free from all liens, claims or encumbrances.

CONTRACTOR shall indemnify and save OWNER harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers or machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. CONTRACTOR shall at OWNER's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If CONTRACTOR fails to do so, then OWNER may, after having served written notice on the said CONTRACTOR either pay unpaid bills, of which OWNER has written notice, direct, or withhold from the CONTRACTOR's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to CONTRACTOR shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon OWNER to either CONTRACTOR or his/her Surety.

In paying any unpaid bills of the CONTRACTOR, OWNER shall be deemed the agent of CONTRACTOR and any payment so made by the OWNER, shall be considered as payment made under the Contract by OWNER to CONTRACTOR and OWNER shall not be liable to CONTRACTOR for any such payment made in good faith."

14.04 *Substantial Completion*

Delete Parts A, B, and C in its entirety and substitute the following:

"A. CONTRACTOR may, in writing to OWNER and ENGINEER, certify that the entire Project is substantially complete and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Project to determine the status of completion. If ENGINEER and OWNER do not consider the Project substantially complete, ENGINEER will notify CONTRACTOR in writing giving his reasons therefor. If ENGINEER and OWNER consider the Project substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion and the

responsibilities between OWNER and CONTRACTOR for maintenance, heat and utilities. There shall be attached to the certificate a tentative list of items to be completed or corrected before Substantial Completion, and the certificate shall fix the time within which such items shall be completed or corrected, said time to be within Contract Time."

14.05 *Partial Utilization*

Delete Part A, and its subparts, in its entirety and substitute the following:

"A. Prior to Substantial Completion of the Project, OWNER may advise CONTRACTOR in writing to permit him to use a specified part of the Project which OWNER believes may be used without significant interference with construction of the other parts of the Project. Upon receipt of such notice, CONTRACTOR will certify to OWNER and ENGINEER that said part of the Project is substantially complete and request the ENGINEER to issue a certificate of Substantial Completion for that part of the Project. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Project to determine its status of completion. If ENGINEER and OWNER do not consider that it is substantially complete, ENGINEER will notify CONTRACTOR in writing giving his reasons therefor. If ENGINEER and OWNER consider that part of the Project to be substantially complete, ENGINEER will execute and deliver to OWNER and CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Project, attaching thereto a tentative list of items to be completed or corrected before Substantial Completion of the entire Project and fixing the responsibility between OWNER and CONTRACTOR for maintenance and utilities as to that part of the Project. OWNER shall have the right to exclude CONTRACTOR from any part of the Project which ENGINEER has so certified to be substantially complete, but OWNER shall allow CONTRACTOR reasonable access to complete items on the tentative list."

14.07 *Final Payment*

Delete Part B, subpart 1 in its entirety and replace with the following:

"B. 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 - all as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will indicate in writing a recommendation of payment and present the Application to OWNER for payment. Thereupon ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application 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. If the Application and accompanying documentation are appropriate as to form and substance, OWNER shall, within sixty-five days after receipt thereof pay CONTRACTOR the amount recommended by ENGINEER."

No final or semi-final payment shall be made until the CONTRACTOR has executed and delivered a release to OWNER and every member, agent or

employee thereof, from all claims and liability to the CONTRACTOR for everything and anything done or furnished, or any act or neglect of OWNER or of any person relating to or affecting the work.

Before final or semi-final payment, the CONTRACTOR shall deliver to OWNER an affidavit of payment of all claims of suppliers and Subcontractors. In the event that any supplier or Subcontractor has not been paid and the claim is disputed by the CONTRACTOR, the CONTRACTOR shall submit all of the facts in its affidavit and OWNER shall be authorized, in the exercise of its discretion, to withhold from the payment the sum of money sufficient to guarantee payment of the claims. Nothing contained herein, however, shall incur any responsibility by OWNER to any materialman or Subcontractor, nor shall anything contained herein give rise to a cause of action by any Subcontractor or supplier against OWNER.

Before final acceptance and final or semi-final payment by OWNER, the CONTRACTOR shall deliver to OWNER a complete release of all liens arising out of the Contract. CONTRACTOR agrees that at no time shall any municipal liens, mechanic's liens, notices of intention, or secured instrument be filed against the work and should OWNER be compelled to remove or discharge a municipal lien, mechanic's lien, notice of intention or secured instrument, the CONTRACTOR shall reimburse OWNER for all costs.

Before final or semi-final payment, the CONTRACTOR shall deliver to OWNER a consent of the Surety to the final payment."

Upon acceptance of the work performed pursuant to the contract for which the CONTRACTOR has agreed to the withholding of payments pursuant to NJSA 40A:11-16.3 a., all amounts being withheld by the contracting unit shall be released and paid in full to the CONTRACTOR within 45 days of the final acceptance date agreed upon by the CONTRACTOR and the OWNER, without further withholding of any amounts for any purpose whatsoever, provided that the contract has been completed as indicated.

Delete Part C in its entirety.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.02 *OWNER may Terminate for Cause*

Add the following subparts to Part A:

"5. If the CONTRACTOR should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency.

6. If the CONTRACTOR should fail to make prompt payment to Subcontractors for material, labor or equipment rental.

7. If CONTRACTOR abandons the Work, or sublets this Contract or any part thereof, without the previous written consent of OWNER, or if the Contract or any claim thereunder shall be assigned by CONTRACTOR otherwise than as herein specified;"

Add the following to the end of Part F:

"The termination of the employment of the CONTRACTOR under the provisions of this paragraph shall not relieve the surety of its responsibility".

Add the following Section to the end of Article 15:

"15.05 *Three (3) Days Notice:*

A. If the CONTRACTOR or his Subcontractors should neglect to prosecute the work properly or fail to perform any provisions of the Contract Documents, the OWNER, after three (3) days written notice to the CONTRACTOR may without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the CONTRACTOR."

ARTICLE 16 – DISPUTE RESOLUTION

16.01 – *Methods and Procedures*

Delete in its entirety and replace with the following:

"A. All Services under this Contract shall be performed to the satisfaction of the OWNER, which shall in all cases determine the amount and acceptability of the Services which is to be paid for hereunder, and decide all questions which may arise as to the fulfillment of this Agreement on the part of the CONTRACTOR, and its determination and decision thereon shall be final and conclusive, and such determination and decision, in case any question shall arise, shall be a condition precedent to the right of the CONTRACTOR to receive any money hereunder."

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

Add the following subpart to Part A:

"3. No oral statement of any person whosoever shall in any manner or degree modify or otherwise affect the terms of this Contract. Any notice to the CONTRACTOR, from OWNER and ENGINEER, relative to any part of this Contract shall be in writing."

Add the following Section to the end of Article 17:

17.07 *CONTRACTOR's Legal Address*

A. Both the address given in the Bid Form upon which this Agreement is founded, and CONTRACTOR's office at or near the site of the Work are hereby designated as places to either of which notices, letters, and other communications to CONTRACTOR shall be certified, mailed, or delivered. The delivering at the above named place, or depositing in a postpaid wrapper directed to the first-named place, in any post office box regularly maintained by the post office department, of any notice, letter or other communication to CONTRACTOR shall be deemed sufficient service thereof upon CONTRACTOR; and the date of said service shall be the date of such delivery or mailing. The first-named

address may be changed at any time by an instrument in writing, executed and acknowledged by CONTRACTOR, and delivered to OWNER and ENGINEER. Nothing herein contained shall be deemed to preclude or render inoperative the service, of any notice, letter, or other communication upon CONTRACTOR personally.

Add the following additional Article:

ARTICLE 18 - LIQUIDATED DAMAGES

18.01 If the CONTRACTOR shall fail to complete the work within the Contract Time, or extension of time granted by the OWNER in accordance with Article 12, then the CONTRACTOR will pay to the OWNER the amount for damages as specified in the Agreement for each calendar day that the Contract work remains incomplete.

18.02 For the purposes of calculating the number of calendar days for damaged assessment, such calculation shall include the day on which date of completion occurs, but shall not include the day of scheduled completion.

18.03 Penalties and Fines

In the event OWNER is penalized by any governmental entity, including but not limited to the NJDEP, due to any act or omission by the CONTRACTOR, the CONTRACTOR shall be solely responsible for the payment of same. CONTRACTOR shall reimburse OWNER for payment of any such fine and penalty within ten (10) days of receiving notice of payment of such fine or penalty from OWNER. Any monies paid by the CONTRACTOR pursuant to this provision shall not relieve the CONTRACTOR of liability to OWNER for damages sustained by OWNER by virtue of any other provision of this Agreement.

Add the following additional Article:

ARTICLE 19 - FEDERAL AND STATE GOVERNMENT PROVISIONS

19.01 Affirmative Action Requirements

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

- A) The CONTRACTOR or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the CONTRACTOR will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

- B) The CONTRACTOR or subcontractor, where applicable 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 age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
- C) The CONTRACTOR or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the CONTRACTOR's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D) The CONTRACTOR or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.
- E) When hiring or scheduling workers in each construction trade, the CONTRACTOR or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, a, b and c, as long as the Division is satisfied that the CONTRACTOR or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The CONTRACTOR or subcontractor agrees that a good faith effort shall include compliance with the following procedures:
- a) If the CONTRACTOR or subcontractor has a referral agreement or arrangement with a union for a construction trade, the CONTRACTOR or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the CONTRACTOR or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the CONTRACTOR or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the CONTRACTOR or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the CONTRACTOR's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the CONTRACTOR or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the CONTRACTOR or subcontractor further agrees to take said action immediately if it determines or is so notified by the Division that the

union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

- b) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the CONTRACTOR does not have a referral agreement or arrangement with a union for a construction trade, the CONTRACTOR or subcontractor agrees to take the following actions:
 - 1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
 - 2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
 - 3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the CONTRACTOR or subcontractor has a referral agreement or arrangement with a union for the construction trade;
 - 4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the CONTRACTOR or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
 - 5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
 - 6) To adhere to the following procedure when minority and women workers apply or are referred to the CONTRACTOR or subcontractor:
 - (i) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the CONTRACTOR or subcontractor shall in good faith determine the qualifications of such individuals. The CONTRACTOR or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a CONTRACTOR or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the CONTRACTOR or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

- (ii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in paragraph (i) above, whenever vacancies occur. At the request of the Division, the CONTRACTOR or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
 - (iii) If, for any reason, said CONTRACTOR or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the CONTRACTOR or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.
- 7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.
- c) The CONTRACTOR or subcontractor agrees that nothing contained in (B) above shall preclude the CONTRACTOR or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the county employment goal, the CONTRACTOR or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the CONTRACTOR or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the CONTRACTOR or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.
 - d) After notification of award, but prior to signing a construction contract, the CONTRACTOR shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) provided to the public agency by the Division for distribution to and completion by the CONTRACTOR, in accordance with N.J.A.C. 17:27-7. The CONTRACTOR also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.
 - e) The CONTRACTOR agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.
 - f) The CONTRACTOR and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may

be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

19.02 *Anti-Discrimination (NJSA 10:2-1)*

Every contract for or on behalf of the State or any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the CONTRACTOR agrees that:

- a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this Contract, no CONTRACTOR, nor any person acting on behalf of such CONTRACTOR or Subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, sex, effectual or sexual orientation, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- b. No CONTRACTOR, Subcontractor, nor any person on his behalf shall in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, sex, effectual or sexual orientation;
- c. There may be deducted from the amount payable to the CONTRACTOR by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidate in violation of the provisions of the contract; and
- d. This Contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the CONTRACTOR from the contracting public agency of any prior violation of this section of the contract.

19.03 *Foreign Corporations (NJSA 14A: 13-3)*

1. No foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State. A foreign corporation may be authorized to do in this State any business which may be done lawfully in this State by a domestic corporation, to the extent that it is authorized to do such business if the jurisdiction of its incorporation, but no other business.
2. Without excluding other activities which may not constitute transacting business in this State, a foreign corporation shall not be considered to be transacting

business in this State, for the purposes of this act, by reason of carrying on in this State any one or more of the following activities;

- a. maintaining, defining or otherwise participating in any action or proceeding, whether judicial, administrative, arbitral or otherwise, or effecting the settlement thereof or the settlement of claims or disputes;
 - b. holding meetings of its directors or shareholders;
 - c. maintaining bank accounts or borrowing money, with or without security, even if such borrowings are repeated and continuous transactions and even if such security has a situs in this State;
 - d. maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities.
3. The specification in subsection 14A: 13-3(2) does not establish a standard for activities which may subject a foreign corporation to service of process or taxation in this State.

19.04 *Statement of Ownership (NJS 52:25-24.2)*

No corporation or partnership shall be awarded any contract nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation or said partnership, there is submitted a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own 10% or more of its stock, of any class or of all individual partners in the partnership who own a 10 % or greater interest therein, as the case may be. If one or more such stockholder or partner is itself a corporation or partnership, the stockholders holding 10% or more of that corporation's stock, or the individual partners owning 10% or greater interest in that partnership, as the case may be, shall also be listed. The disclosure shall be continued until all names and addresses of every non-corporate stockholder, and individual partner, exceeding the 10% ownership criteria established in this act, has been listed (see Section 00305).

19.05 *Use of Domestic Materials (NJS 52:33-1 52:33-3)*

Notwithstanding any inconsistent provision of any law, and unless the head of the department, or other public officer charged with the duty by law, shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only domestic materials shall be acquired or used for any public work.

This section shall not apply with respect to domestic materials to be used for any public work, if domestic materials of the class or kind to be used are not mined, produced or manufactured, as the case may be, in the United States in commercial quantities and of a satisfactory quality.

Every contract for the construction, alteration, or repair of any public work in this state shall contain a provision that in the performance of the work the CONTRACTOR and all

Subcontractors shall use only domestic material in the performance of the work; but if the head of the department or other public officer authorized by law to make the contract shall find that in respect to some particular domestic materials it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular material, and a public record made of the findings which justified the exception.

19.06 *Prevailing Wage Rates (NJSA 34:11-56.25)*

The Contractor shall pay not less than the prevailing wage rate to workers employed in the performance of any contract for the project, in accordance with the rate determined by the Commissioner of New Jersey Department of Labor pursuant to N.J.S. A. 34:11-56.25 et seq. OR the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater. The Contractor shall refer to section 19.10 for the requirements of the Davis-Bacon Act.

In accordance with the New Jersey Prevailing Wage Act no worker shall be paid less than such prevailing rates (included in Contract Documents). In the event it is found that any CONTRACTOR covered by said contract paid a rate of wages less than the prevailing wage required to be paid, OWNER may terminate the CONTRACTOR's right to proceed with the contract, or such part of work as to which there has been a failure to pay required wages, and to prosecute the work to completion or otherwise. The CONTRACTOR and his sureties shall be liable to the OWNER for any excess cost occasioned thereby. Nothing in this act shall prohibit the payment of more than the prevailing rate to any worker employed on a public work.

The CONTRACTOR and Subcontractor shall post the prevailing wage rates for each craft and classification involved, as determined by the Commissioner of Labor, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work, or at such place or places as are used by them to pay workmen their wages.

The New Jersey Prevailing Wage Act, NJSA 34:11-56.25 et seq. requires that all public works employers shall submit a certified payroll record to the public body or lessor which contracted for the public work project each payroll period within ten (10) days of the payment of wages. The public body shall receive, file and make available for inspection during normal business hours the certified payroll records.

Attention is directed to the Prevailing Wage Rate List and to the applicable provision of "The New Jersey Prevailing Wage Act" N.J.S.A. 34:11-56.25 et. Seq., governs the prevailing wage rates of wages for workmen who are employed on this Project. The provisions of said Wage Act and Amendment thereto, shall be considered as part of this Contract and made part hereof.

The Bidder by submitting the Proposal represents to the OWNER that bidder is aware of the provision of said Wage Act with relation to prevailing rates of wages for workmen to be employed on this Project.

The Bidder further represents that in the event of any re-determination of such prevailing rates at any time before the execution and delivery of the Contract between the Bidder and the OWNER for the work of construction of the Project, or at any time thereafter, the new rates, if any, will become the applicable minimum rates for work performed

thereafter under said Contract. No increase in the contract price will be claimed by the Bidder and no such increase in the contract price will be claimed by the Bidder and no such increase will be granted by the OWNER as a result of such determination.

Prospective bidders are advised to contact the New Jersey Department of Labor and Industry with respect to questions relating to the Wage Rate Determination.

19.07 *State Treasurer's List of Debarred, Suspended and Disqualified Bidders (NJSA 34: 11)*

The CONTRACTOR, or an officer or partner of the bidder shall not, at the time of the bid, be included on the State Treasurer's List of debarred, suspended, or disqualified bidders. The CONTRACTOR shall immediately notify the OWNER whenever it appears that the CONTRACTOR is on the State Treasurer's List. The CONTRACTOR may be debarred, suspended, or disqualified from contracting with the State and the Department if the CONTRACTOR commits any of the acts listed in NJAC 7:1-5.2. Enclosed with the State Wage Rate Determination is a list of contractors and subcontractors who are debarred from public works pursuant to NJSA 34:11-56.37 and 38, no contract will be awarded or made to the listed CONTRACTOR's or subcontractors.

19.08 *Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (SEDs) (NJAC 7:22-9)*

It is the policy of the PVSC to promote award of contracts to Socially and Economically Disadvantaged (SED) small business enterprises by stipulating specific requirements for involving such businesses in contracting. The failure of the Contractor to demonstrate a good faith effort to achieve the goals set forth herein by utilizing best efforts to implement the SED utilization plan will constitute an event of default of the Agreement. PVSC shall designate a compliance officer who shall be responsible for coordinating SED utilization efforts for the Agreement and for monitoring compliance with the plan. PVSC reserves the right to audit the Contractor's SED records to insure compliance with this provision. Socially and economically disadvantaged businesses definitions and associated terms are defined in the NJAC 7:22-9.2.

The CONTRACTOR is advised that not less than ten (10) percent of the total amount of all contracts for building, materials or services for the project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in Section 637 (a) and 637 (d) of the Small Business Act (15USC, 637 (a) and 637 (d)), and any regulations promulgated thereto.

When soliciting services from subcontractors, the Contractor must include the 10% goal in its Proposals. Contract work cannot commence until the PVSC has approved the Contractor's SED Utilization Plan.

The CONTRACTOR's Plan to meet SED Utilization Requirements shall be submitted by the successful bidder within 30 days of Contract award to the PVSC. To be approvable, the SED Utilization Plan for subcontractors, suppliers and construction, must detail the steps taken or to be taken by the CONTRACTOR to provide for SED utilization for the total fair share percentage established by the Agreement. It must further provide adequate documentation to evidence the CONTRACTOR's efforts to date and planned efforts toward achieving the goal over the duration of the project.

Additional guidance on implementation of SED Requirements is included under NJAC 7:22-9 et seq. as given in the attached. Copies of Form OEO-002, SED Participation Building Phase Quarterly Reporting Form for Contracting Agencies and Contractors; and Form OEO-003, SED Participation Monthly Progress Report are included for CONTRACTOR's use. The CONTRACTOR shall comply with all requirements imposed by the OWNER in order to fulfill the SED Utilization Requirements, as further clarified in PVSC's SED Utilization Plan as given in the attached. (See exhibits 5 through 8 for the aforementioned documents).

19.09. Termination of Loans

Termination of loans by the Department shall be conducted as follows:

1. The Department may terminate a Fund loan in whole or in part for good cause. The term "good cause" shall include but not be limited to:
 - i. Substantial failure to comply with the terms and conditions of the Fund loan agreement;
 - ii. Default by the recipient;
 - iii. A determination that the Fund loan was obtained by fraud;
 - iv. Without good cause therefor, substantial performance of this project work has not occurred;
 - v. Gross abuse or corrupt practices in the administration of the project have occurred; or
 - vi. Fund moneys have been used for non-allowable costs.
2. The Department shall give written notice to the recipient (certified mail, return receipt requested) of its intent to terminate a Fund loan, in whole or in part, at least 30 days prior to the intended date of termination.
3. The Department shall afford the recipient an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (certified mail, return receipt requested), terminate the Fund loan in whole or in part.

(b) Project termination by the recipient shall be subject to the following:

1. A recipient shall not unilaterally terminate the project work for which a Fund loan has been awarded, except for good cause and subject to negotiations and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Department of any complete or partial termination of the project work by the recipient.
2. If the Department determines that there is good cause for the termination of all or any portion of a project for which the Fund loan has been awarded, the Department may enter into a termination agreement or unilaterally terminate the Fund loan effective with the date of cessation of the project

work by the recipient. The determination to terminate the Fund loan shall be solely within the discretion of the Department. If the Department determines not to terminate, the recipient shall remain bound by the terms and conditions of the Fund loan agreement.

3. If the Department determines that a recipient has ceased work on a project without good cause, the Department may unilaterally terminate the Fund loan pursuant to this section.
 - (c) The Department and recipient may enter into a mutual agreement to terminate at any time pursuant to terms which are consistent with this subchapter. The agreement shall establish the effective date of termination of the project and the schedule for repayment of the Fund loan.
 - (d) Upon termination, the recipient may be required to immediately refund or repay to the State the entire amount of the Fund loan moneys received. If the loan is guaranteed by a security/deficiency agreement may have to be brought into effect to ensure the entire repayment of the Fund loan. The Department may, at its discretion, authorize the immediate repayment of a specific portion of the Fund loan and allow the remaining balance to be repaid in accordance with a revised Fund loan repayment schedule.
 - (e) The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of Fund moneys awarded under the Fund loan. The recipient shall make no new commitments without the Department's specific approval thereof. The Department shall make the final determination of the allowability of termination costs.
 - (f) In addition to any termination action, the Department retains the right to pursue other legal remedies as may be available under federal, State and local law as warranted.

19.10 Davis Bacon Act

The CONTRACTOR shall comply with the requirements of the Davis Bacon Act as given in the attached Exhibit 3.

19.11 Construction of Wastewater Treatment Facilities (NJAC 7:14-2)

Chapter 7:14 of NJAC shall have precedence over other potentially contradictory language elsewhere in the contract documents. A copy of Chapter 14 is available from the State of New Jersey and is available for review at the offices of the Passaic Valley Sewerage Commission.

EXHIBIT NO. 1

PREVAILING WAGE RATES

A copy of the Essex County, State and Federal Wage Rates are included in this Exhibit.

The CONTRACTOR is reminded that it is responsible to utilize the current and applicable rates for the work being performed.



SUPPLEMENTAL GENERAL CONDITIONS

THE PARTICULAR PREVAILING WAGE SCHEDULES
INCLUDED IN THIS CONTRACT ARE NOT REPRINTED HERE
DUE TO SIZE.

STATE OF NEW JERSEY

LIST OF CONTRACTORS AND SUBCONTRACTORS THAT NO PUBLIC WORK
CONTRACT MAY BE AWARDED

NO TEXT ON THIS PAGE



State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
PO BOX 389
TRENTON, NEW JERSEY 08625-0389

December 19, 2016

LISTED CONTRACTORS AND SUBCONTRACTORS

PURSUANT TO N.J.S.A 34:11-56.37 AND 34:11-56.38 OF THE PREVAILING WAGE ACT

NO PUBLIC WORKS CONTRACT MAY BE AWARDED TO ANY OF THE FOLLOWING CONTRACTORS AND SUBCONTRACTORS OR TO ANY FIRM, CORPORATION OR PARTNERSHIP IN WHICH THEY HAVE AN INTEREST UNTIL THE EXPIRATION DATE GIVEN.

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
360 Golf, LLC Michael Lenec, Partner Devin Lemere, Partner	300 Mamaroneck Avenue, #733, White Plains, NY 10605 300 Mamaroneck Ave, White Plains, NJ 10605 300 Mamaroneck Ave, # 133, White Plains, NY 10605	06/29/2018
A & H Contracting, Inc.	33 Eastwood Blvd., Manalapan, NJ 07726	05/27/2017
A.V. Construction, Inc. Michael Verduci, President	12 Verduci Dr., Newtown, PA 18940 12 Verduci Drive, Newtown, PA 18940	05/25/2018
Advantage Contracting & Entertainment Services Inc John H. Madara, President	319 Terrace Street, Rahway, NJ 07065 319 Terrace St, Rahway, NJ 07065	05/07/2018
Advantage Sport USA, Inc. Maurice Guariglia, Owner / Officer	1 Tigan Street, Winooski, VT 05404 494 North Barbor Road, Colchester, VT 05446	01/19/2019
All County Pipeline & Site Excavation Inc. Christine Charles, Vice-President Eric Charles, President	164 Ball Ave, Parsippany, NJ 07054 164 Ball Avenue, Parsippany, NJ 07054 164 Ball Avenue, Parsippany, NJ 07054	04/21/2017
All Jersey Fence Co. Charles Viola, President Agostino Ducato, Vice-President	10 Route 46 West, Clifton, NJ 07011 266 Columbus Avenue, Hasbrouck Heights, NJ 07604 223 Spring Valley Road, Paramus, NJ 07652	09/14/2019
American Eagle Contractor, Inc. Agustin Zuniga, President	420 Broadway, Long Branch, NJ 07740 420 Broadway, Long Branch, NJ 07740	08/11/2017
American Welding Services American Welding Services, Inc. Brian O'Shea, Owner	1041 Glassboro Rd D-2, Williamstown, NJ 08094 1041 Glassboro Rd. D-2, Williamstown, NJ 08094	07/09/2017
Anchor Marine of Toms River Lawarence Koos, Owner	1991 Rte-9, Toms River, NJ 08755 1391 White Oak Botton Rd, Tom River, NJ 08755	12/18/2019
Antiveros Construction, Inc. Donnie Antiveros, President Olga Conteras, Vice-President	677 Old Highway 64, Etowah, NC 28729 677 Old Highway 64, Etowah, NC 28729 677 Old Highway 64, Etowah, NC 28729	10/19/2018

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
Apex Tower Services, Inc.	245 Sharp Road, Marlton, NJ 08053	02/09/2019
Richard Pluese, Vice-President	66 E Cedar Avenue, Marlton, NJ 08053	
Area Fuel	207 Butler Ave, Staten Island, NY 10307	02/17/2018
Paul Grillo, Owner	207 Bulter Ave, St. Island, NY	
Paul Grillo, Owner	207 Butlerr Ave, Staten Island, NY 10307	
Arete Development Inc.	20 Industrial Road, Fairfield, NJ 07004	01/04/2019
Arete Development Inc.		
Justin Ettere, Vice-President	52 Brass Castle Road, Washington, NJ 07882	
John Ettere, Owner	1453 Tooz Place, South Plainfield, NJ 07080	
Matthew Ettere, Vice-President	8 Brookside Drive, Warren, NJ 07059	
Jonathan Ettere, President	7 Craig Road, Readington, NJ 08853	
Barzzini Construction	65 Fern St, Browns Mills, NJ 08015	09/15/2017
John Sorrentino, Owner	65 Fern St, Browns Mills, NJ 08015	
Beckett Enterprises, Inc.	P.O. Box 334, Malaga, NJ 08328	01/05/2017
Wesley J. Beckett Jr., President	110 Oak Avenue, Malaga, NJ 08328	
Blue Skies Electric L.L.C.	326 Coles Mill Road, Williamstown, NJ 08094	01/06/2017
Scott Frasca, Manager	326 Coles Mill Road, Williamstown, NJ 08094	
Rachel Frasca, Owner	326 Coles Mill Road, Williamstown, NJ 08094	
Bogert Millwork Company, Inc.	105 Johnson Ave., Hackensack, NJ 07601	06/08/2019
Anthony Yaniero, Vice-President	848 Bogert Road, River Edge, NJ 07661	
Susan Yaniero, Owner	848 Bogert Road, River Edge, NJ 07661	
Brian Patterson Mechanical Contracting, Inc.	5 Cindy Lane, Ocean, NJ 07712	03/29/2018
Brian Patterson, President	11 Arlene Drive, West Long Branch, NJ 07764	
Brothers Landscaping	169 Robertsville Rd., Freehold, NJ 07728	01/05/2018
J.H. Brothers Inc.		
Brad J. Moini, President	101 Buttonwood Lane, Freehold, NJ 07728	
C & E Contracting, Inc.	PO Box 690, Boonton, NJ 07005	12/15/2018
Donald Fleming, President	340 Reservoir Road, Boonton, NJ 07005	
CAM Contractors Inc.	179-15 Route 46 West, Suite 135, Rockaway, NJ 07866	12/06/2019
Michelle Gamache-Caravella, President	179-15 Route 46, Suite 135, Rockaway, NJ 07866	
Joseph Caravella, Manager	179-15 Route 46, Rockaway, NJ 07866	
Cam Flooring Installations LLC	26 Washington Street, Long Branch, NJ 07718	08/31/2019
Jose Fernandes Da Silva, Owner	26 Washington St., Long Branch, NJ 07718	
Camelot Roofing, LLC	1455 St. George Ave., Roselle, NJ 07203	02/17/2018
Juan J. Barquero, Owner	533 South 5th Street, Elizabeth, NJ 07206	
Caslo Drywall Corp.	644 East 2nd St, Unit 2, Plainfield, NJ 07060	04/22/2017
Luis Oliveras, Owner	644 East 2nd St., Plainfield, NJ 07060	
CertaPro Painters of South Jersey LLC	910 Cedar Street, Millville, NJ 08332	02/03/2019
Mark Kahn, Owner	910 Cedar Street, Millville, NJ 08332	
Chanez Landscaping, LLC	PO Box 5646, New Brunswick, NJ 08903	09/23/2017
Noe Chanez, Principal	55 Miller Ave., Somerset, NJ 08873	
Cityline Contracting Inc.	556 Humboldt Street, Brooklyn, NY 11222	08/03/2017
Dorothy Dobiecka, President	556 Humboldt Street, Brooklyn, NY 11222	
Andrzej Citak, Vice-President	556 Humboldt St, Brooklyn, NY 11222	
CJC Builders Corp.	220 Mount Pleasant Ave., Newark, NJ 07104	01/07/2019
Curillo Guaman, Owner	197 Broad Street, Newark, NJ 07104	

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
Cobra Communications & Installations, LLC Giovanny Bustos, Owner	26 Spencer Place, Garfield, NJ 07026 26 Spencer Place, Garfield, NJ 07026	12/10/2017
Conex Construction Corp. Armando Piedade, President	265 Wilson Avenue, Kearny, NJ 07032 265 Wilson Avenue, Kearny, NJ 07032	01/19/2019
Confortini Plumbing & Heating, LLC Andrew Confortini, Vice-President Anthony Confortini, Owner	491 West County Drive, Somerville, NJ 08876 491 West County Drive, Somerville, NJ 08876 41 Bunnvale Road, Clifton, NJ 07830	07/05/2019
Coons Construction, LLC William Coons, Owner	23178 Summer View Circle, Three Springs, PA 17264 23178 Summer View Circle, Three Springs, PA 17264	04/06/2018
CPS Mechanical Contractors, Inc. Margaret Sherman, President	203 Woods Ave, Bergenfield, NJ 07621 203 Woods Avenue, Bergenfield, NJ 07621	12/15/2017
CRC Concrete Raising of South Jersey, Inc. Theresa Frajdenberg, President	110 South Harding Highway, Landisville, NJ 08326 110 South Harding Highway, Landisville, NJ 08326	02/01/2019
Crider Americas Solar LLC Steven Crider, Member Harold Marshall, Jr., Member	6063 FM 535, Cedar Creek, TX 78612 507 Pressler Street, Apt. 2128, Austin, TX 78703 1800 Eva Street, Austin, TX 78704	05/11/2017
Cunhas Construction Inc. Nuno Cunha, Owner	35 Carmen Ct, Floor-1, Newark, NJ 07105 35 Carmen Ct., Newark, NJ 07105	10/22/2017
Dane DeForest Demolition, Inc. Dane DeForest, President	1508 Beaver Dam Road, Point Pleasant, NJ 08742 2406 Herbertsville Road, Point Pleasant, NJ 08742	02/15/2019
DG Construction & Renovations LLC Dean Gallo, Owner Harry Gallo, Secretary	245 Emanuel St., Trenton, NJ 08610 245 Emanuel Street, Trenton, NJ 08610 245 Emanuel Street, Trenton, NJ 08610	04/04/2019
Division Ten Installations, LLC Kevin G. Eib, President	29 Monmouth Road, Monroe Township, NJ 08831 29 Monmouth Road, Monroe Twp., NJ 08831	04/02/2017
DM Fernandes Contracts LLC Hugo Fernandes, Owner	551 North Broad St, Elizabeth, NJ 07208 90 Willow Street, Carteret, NJ 07008	01/27/2018
E & S Enterprises, LLC Helen Henriquez, Owner	P. O. Box 2050, Vineland, NJ 08360 101 South Orchard Road, Vineland, NJ 08360	01/27/2019
East Coast Touch Enterprises LLC Frank Loureier, Vice-President Nelson DeOliveira, President	152 Jackson St., Newark, NJ 07105 152 Jefferson St., Newark, NJ 07105 276 Highland Ave, Kearney, NJ 07032	08/11/2017
Eddy Drywall, LLC Eddy Rodriguez, Member	1100 W. 7th St., Apt. A9, Plainfield, NJ 07060 1100 W. 7th. St., Apt. A9, Plainfield, NJ 07063	05/13/2018
Elevator Medic Corporation Patrick DellAquila, President	55 Brookview Drive, Woodcliff Lake, NJ 07677 55 Brookview Drive, Woodcliff Lake, NJ 07677	02/24/2017
Elite Terrazzo Flooring, Inc. Christopher Picinic, Owner	185 Fifth Ave., Paterson, NJ 07524 164 President Blvd, Washington Township, NJ 07676	10/18/2019
Emanuel Drywall Services, Inc Cesar Garcia, Owner	64 Grandview Ave, North Plainfield, NJ 07060 64 Grandview Ave, North Plainfield, NJ 07060	04/30/2017
Envirocare Enterprises, Inc. Envirocare Enterprises, Inc. Uju A. Obiorah, President Inno Obiorah, Manager	358 Broadway, Suite 202, Newark, NJ 07104 259 West Forest Avenue, Englewood, NJ 07631 658 Rutgers Pl, Paramus, NJ 07652	05/15/2017

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Euro Construction Ireneusz Waluk, Owner	70 Bordendown-Chesterfield, Rd., Chesterfield, NJ 08022 70 Bordentown-Chesterfield, Rd., Chesterfield, NJ 08515	02/24/2017
Everest Masonry Construction, Inc. Rafael Ramos, President	163 E Main Street, Suite 311, Little Falls, NJ 07424 120 Cantello Street, Union City, NJ 07087	11/08/2018
Everest Masonry Constructors, Inc. Mark Rodrigues, President	1 Orient Way, Suite 226, Rutherford, NJ 07070 523 Hamilton Avenue, Kingston, PA 18704	11/08/2018
Felipe Villagomez owner	160 Lincoln Street, Bridgeton, NJ 08302	03/08/2019
Felipe Villagomez, Owner	160 Lincoln Street, Bridgeton, NJ 08302	
Fittin Construction, LLC Sheree Severini-Fittin, Member Thomas Fittin, Owner / Officer	2243 Edgar Rd, Point Pleasant Beach, NJ 08742 2243 Edgar Rd., Point Pleasant Beach, NJ 08742 2243 Edgar Rd, Point Pleasant Beach, NJ 08742	02/23/2019
Five Star Quality Construction Alicirio Jose Santana Pires, Owner	141 Rte. 130 South, Suite 192, Cinnaminson, NJ 08077 141 RT. 130 South, Suite 192, Cinnaminson, NJ 08077	04/22/2017
Frank Montgomery Builder Frank Montgomery, Owner	42 Bryant Rd., Waretown, NJ 08758 42 Bryant Rd., Waretown, NJ 08758	07/10/2017
G.F.I. Siteworks, Inc. G.F.I. Siteworks, Inc. James DiLorenzo, Vice-President Salvatore A Casella III, President	P.O. Box 296, Clarksboro, NJ 08020 440 Mantua Avenue, Paulsboro, NJ 08066 362 Friendship Road, Clarksboro, NJ 08020	02/02/2019
Galindo Const. LLC Gabino Galindo, Owner	1025 E. 23rd St. #1, Paterson, NJ 07513 1025 E. 23rd St. #1, Paterson, NJ 07513	08/06/2018
Garza Contracting LLC John Garza, Owner	768 Chambers Street, Trenton, NJ 08619 768 Chambers St., Trenton, NJ 08611	04/27/2017
Gen II Contracting Co. Inc. Jaimie-Lyn Knight, President	395 A Millstone Road, Clarksburg, NJ 08510 395 Millstone Road, Clarksburg, NJ 08510	11/20/2019
GNV Concrete LLC Vincenzo Iemma, President	2127 Eisenhower Road, Toms River, NJ 08753 2127 Eisenhower Road, Toms River, NJ 08753	06/01/2019
Griffin Sign, Inc. Michelle Angerame, President	464 North Randolph Avenue, Cinnaminson, NJ 08077 12 Pendleton Court, Medford, NJ 08055	03/13/2019
GST Power Service Group Inc. Lauchland Roberts, President	2801 Remington Street, Suite #3, Fort Collins, CO 80525 2801 Remington Street, Suite 3, Fort Collins, CO 80526	05/03/2018
Heritage Hills Estates Frank Carpine, Owner	3730 S. Delsea Dr, Vineland, NJ 08360 100 Liberty Dr, Millville, NJ 08332	01/03/2019
HFC Painting Hugo Canabe, CEO	696 Elm Street, Kearny, NJ 07032 696 Elm St, Kearny, NJ 07032	03/17/2018
HFM Labor Ready LLC HFM Labor Ready LLC Keith Ludwig, Member	459 Rt 38 West, Maple Shade, NJ 08052 459 Rt 38 West, Maple Shade, NJ 08052	01/05/2018
Highway Safety Systems Inc. William J. Doyle, President	200 Pine Road, Hammonton, NJ 08037 200 Pine Rd., Hammonton, NJ 08037	12/16/2017
I.K.E. Electrical Corp. Rebecca Adika, Secretary Angelo Castelli, President Yitzhak Adika, Vice-President	100 W. Forest Avenue, Building E, Englewood, NJ 07631 76 Alpine Dr., Closter, NJ 48 E. Central Blvd., Palisades Park, NJ 07650 76 Alpine Drive, Closter, NJ 07624	07/20/2017
IBS, Inc. Christopher Rymal, Owner	1929 Darby Road, Havertown, PA 19083 1929 Darby Rd., Havertown, PA 19083	05/15/2017

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
Ideal Elevator Services Patrick Dell'Aquila Patrick Dell'Aquila, President	55 Brookview Dr., Woodcliff Lake, NJ 07677 55 Brookview Drive, Woodcliff Lake, NJ 07677	02/24/2017
Install It All. LLC Laurence Koos, Owner	575 Prospect Street, Unit 261 B, Lakewood, NJ 08701 1391 White Oak Bottom Rd., Toms River, NJ 08755	12/18/2018
Interstate Home Service Inc. Interstate Home Service Inc. Maurice Rolando, Owner	165 Heights Avenue, Fair Lawn, NJ 07410 165 Height's Ave., Fair Lawn, NJ 07410	08/16/2018
J & B Plumbing LLC Joseph Battista, Owner	644 Cross Street, Lakewood, NJ 08701 11 Hummingbird Way, Jackson, NJ 08527	05/03/2018
J G Roofing, LLC Manuel Chaguan, Owner	85 Prospect Ave. Apt.1, Irvington, NJ 07111 85 Prospect Ave., Irvington, NJ 07111	04/25/2019
J&D Plumbing & Heating Inc. John J. Benedetti Jr., President	193 Natrona Avenue, Mercerville, NJ 08619 193 Natrona Avenue, Mercerville, NJ 08619	11/01/2018
J. MOTA Construction, LLC J.C. Maintenance & Repair Emanuel Cucco, Owner	1016 Highway 33, Freehold, NJ 07728 6725 13th Avenue, Brooklyn, NY 11219 1435 71st Street, Brooklyn, NY 11228	11/30/2019 03/14/2019
J.D.S Electric, Inc. Joe DeSalvo, Jr., Owner	149 Montross Ave., Rutherford, NJ 07070 149 Montross Ave., Rutherford, NJ 07070	01/06/2018
Jack Mack Commercial Roofing, Inc. Gregorio Soto, Owner	768 Courtlandt St., Perth Amboy, NJ 08861 153 Lewis Street, Perth Amboy, NJ 08861	03/17/2018
Jamali Developers, LLC SUSPENDED PENDING DEBARMENT Hussain Burhanpurwala, Member	238 Fresh Ponds Road, Suite 100, Monroe, NJ 08816 553 Marc Drive, North Brunswick, NJ 08902	SUSPENDED
Jamcon Construction LLC John Schiavo, Managing Member	100 Springdale Road, Cherry Hill, NJ 08003 6 Justa Lane, Cherry Hill, NJ 08003	01/12/2017
JC Builders James Chaney, President	610 County Meadows Rd., Nicholls, GA 31554 610 County Meadows Rd., Nicholls, GA 31554	08/10/2018
JD Scaffold Inc. Randy Garciga, Owner	13353 NE 17th Ave, North Miami, FL 33181 13353 NE 17th Avenue, North Miami, FL 33181	08/24/2017
Jerzee Container Corp. SUSPENDED PENDING DEBARMENT Jon Whelan, Vice-President Sandra Morizzo, Member Thomas Whelan, President Joseph Filoon Jr, Manager	123 Bartlett Avenue, West Creek, NJ 08092 48 8th Avenue, New York, NY 10014 165 Oak Ave, West Creek, NJ 08092 PO Box 155, Spring Lake, NJ 07762 195 Lakeshore Dr, Manahawkin, NJ 08050	SUSPENDED
Joe Antonaccio Electric Joseph Antonaccio, President	167 2nd St., Keyport, NJ 07735 167 2nd St., Keyport, NJ 07735	06/07/2019
Johnson Tree Transplanting LLC Nathan Johnson, Owner Jessica Johnson, Member	1340 LeJack Circle, Forest, VA 24551 5352 Lake Road, Newfield, NJ 08344 5352 Lake Road, Newfield, NJ 08344	07/14/2019
JTG Scaffolding & Hoisting LLC Randy Garciga, Owner	309 West Elizabeth Avenue, Linden, NJ 07036 13353 NE 17th Avenue, Miami, FL 33181	10/22/2017
K & J Drywall Contractor, Inc. Jonny Ayala, Owner	705 Taft Avenue, North Plainfield, NJ 07063 68 Westervelt Avenue, Plainfield, NJ 07060	03/16/2019
K & S Fabrication & Welding, LLC Simon Walcott, Owner	23 North Street, Bergenfield, NJ 07621 43 Fairview Avenue, Bergenfield, NJ 07621	01/12/2018

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
K&K Construction LLC	685 Bergen Blvd., Ridgefield, NJ 07657	06/09/2017
Ki Kuk Kim, Partner	685 Bergen Blvd., Ridgefield, NJ 07657	
Kwang Hee Kim, Partner	685 Bergen Blvd., Ridgefield, NJ 07657	
Kitchen Crafters Plus d/b/a B&B Custom Cabinets	1 Suydam Place, Aberdeen, NJ 07747	05/31/2018
Albert Brisebois, Owner	1 Suydam Place, Aberdeen, NJ 07747	
KS Exteriors, LLC	650 Ohio Ave., Trenton, NJ 08638	03/08/2019
KS Exteriors, LLC	650 Ohio Ave., Trenton, NJ 08638	
Kris Brezinska, Owner	650 Ohio Ave., Trenton, NJ 08638	
L and Y Roofing, LLC	183 Belmont Avenue, Haledon, NJ 07522	03/16/2017
Luis Vargas, Owner	291 Jefferson Street, Paterson, NJ 07522	
Lombardi Enterprises, Inc.	2901 South Clinton Avenue, South Plainfield, NJ 07080	12/09/2017
Alan Lombardi, President	26 Whispering Way, Berkeley Heights, NJ 07922	
Ann Lombardi, Secretary	26 Whispering Way, Berkeley Heights, NJ 07922	
Low Bid, Inc.	125 East Broadway, Suite 507, Long Beach, NY 11561	08/18/2019
George McNulty, President	125 East Broadway, Suite 507, Long Beach, NY 11561	
M.E. Group, LLC	164 Polk St., Apt. 1, Newark, NJ 07105	06/29/2018
Segundo E. Llivicota, Member	164 Polk Street, Apt. #1, Newark, NJ 07105	
Manuel Quito, Member	164 Polk Street, Apt. 1, Newark, NJ 07105	
Ma Na Lu Transportation Corporation	799 Kearny Avenue, Apt #1, Kearny, NJ 07032	06/07/2019
Blanca Segarra, President	799 Kearny Ave., Apt 1, Kearny, NJ 07032	
Mattina Construction LLC	22 Toms River Road, Jackson, NJ 08527	12/14/2017
Vincent Mattina, Owner	22 Toms River Rd, Jackson, NJ 08527	
McArthur Park, Inc./ dba Bleacherman	105 Mill Street, Corinth, NY 12822	11/01/2019
Louis R. McArthur Jr., Owner / Officer	13 Luzerne Place, Hadley, NY 12835	
Metal Fab Atlantic LLC	353 Zion Road, Egg Harbor Township, NJ 08234	01/21/2018
John Dever, Owner	1086 Mays Landing Road, Somers Point, NJ 08234	
Metroplex Products Co. Inc.	377 Deans Rhode Hall Road, Monroe, NJ 08831	01/06/2018
Peter Herring, President	164 South Moetz Drive, Milltown, NJ 08850	
Metropolitan Stone & Tile, LLC	102 Richards Ave, Dover, NJ 07801	09/23/2018
Margaret Farina, Owner	30 Monsisnor Deluca Plaza, Nutley, NJ 07110	
MG Topflight	6 Spruce Meadows Dr., Monroe, NJ 08831	07/28/2017
Ashish Thomas, Owner	6 Spruce Meadows Dr., Monroe, NJ 08831	
Midwest Construction, Inc.	114 Brace Road, Cherry Hill, NJ 08034	07/23/2017
George Antonas, President	114 Brace Road, Cherry Hill, NJ 08034	
Mullen & Sons Contractors, Inc.	PO Box 773, West Caldwell, NJ 07006	02/28/2019
John Mullen, Sr, President	45 Fairfield Place, West Caldwell, NJ 07006	
John Mullen, Jr., Owner	45 Fairfield Place, West Caldwell, NJ 07006	
Natural View Landscapes LLC	513 West Summer Ave, Minotola, NJ 08341	01/05/2017
Zachary Kouhoup, President	5923 Peach St, Mays Landing, NJ 08330	
NDA & Construction, LLC	161 Thomas St, Unit 1, Newark, NJ 07114	12/10/2017
Nester Torres, Owner	161 Thomas St, Unit 1, Newark, NJ 07114	
New Jersey State Flooring, Inc.	109 Greentree Road, Brick, NJ 08724	02/10/2019
Cheryl Apgar, Vice-President	109 Greentree Road, Brick, NJ 08724	
Roy C. Apgar, President	109 Greentree Road, Brick, NJ 08724	

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Niceta Electric Joseph Niceta, Owner	2119 Merritt Drive, Northfield, NJ 08225 2119 Merritt Drive, Northfield, NJ 08225	10/19/2018
NT&P Construction Inc. Nicola Pengue, President	105 White Oak Lane, Old Bridge, NJ 08857 4 Camelot Avenue, Monroe Township, NJ 08831	11/22/2018
Ocean Blue Builders LLC John Riley Jr, Managing Member	711 Carol Avenue, Oakhurst, NJ 07755 140 Harrison Avenue, Fair Haven, NJ 07704	11/05/2017
OCM Construction OCM Construction, LLC William Mitchell, Owner	203 Main Street, #204, Flemington, NJ 08822 22 Greenwood Place, Flemington, NJ 08822	08/11/2017
Octagon Construction Octagon Construction Wojciech Puchajda, Owner	10 Jeanette Street, Carteret, NJ 07008 10 Jeanette St., Carteret, NJ 07008	03/02/2018
Ohana Metal & Iron Works Inc. Erezy Ohana, Owner	60 Miller Road, Montgomery, NY 12549 60 Miller Road, Montgomery, NY 12549	08/05/2017
Old World Construction, Inc. Krzysztof Oprzadek, President Stanislaw Dziuba, Vice-President	P.O Box 35, Pennington, NJ 08534 19 Woodville Rd, Hopewell, NJ 08525 69 West Shore Drive, Pennington, NJ 08534	02/10/2018
OTS-NJ, LLC OTS of New Jersey, LLC James T. O'Connor, Managing Member	21 Traxler Street, Butler, OH 44822 707 Main Street, Avon-by-the-Sea, NJ 07717	07/04/2019
Palazzo Fence Co Troy Palazzo, Owner	96 Taylor Dr, Levittown, PA 19054 96 Taylor Dr, Levittown, PA 19054	06/26/2019
Paul F. Roscitt Electric, Inc. Paul F Roscitt, President	262 Harmon Avenue, Fort Lee, NJ 07024 262 Harmon Avenue, Fort Lee, NJ 07024	11/08/2018
Paul Sexton Paul Sexton, Owner	462 10th Ave., Paterson, NJ 07510 462 10th Ave., Paterson, NJ	07/10/2017
Pax Construction Corp. Antonio Pereira, President Julio Pereira, Vice-President	67 Highway 36, West Long Branch, NJ 07764 159 Locust Avenue, West Long Branch, NJ 07764 304 Crimson Circle, Oakhurst, NJ 07755	10/16/2017
PER Construction LLC Manuel Pereira, Owner	67 State Route 36, Suite #4, West Long Branch, NJ 07764 194 Monmouth Ave., Long Branch, NJ 07740	10/16/2017
Perfection Erectors, LLC Perfection Erectors, LLC Marianne Cammarata, Manager Vincent Frank Cammarata, Owner	349 West Prospect Avenue, Keyport, NJ 07735 349 W. Prospect Ave., Keyport, NJ 07735 349 W. Prospect Avenue, Keyport, NJ 07735	02/23/2019
Perrone Trucking LLC James Perrone, Owner	74 Glen Roy Road East, Fairfield, NJ 07004 74 Glenroy Road East, Fairfield, NJ 07004	10/27/2018
Peter Vincent Peter Vincent, Owner	129 Highland Ave, Jersey City, NJ 07306 129 Highland Ave, Jersey City, NJ 07306	04/26/2018
Petric & Associates, Inc. Ellen Petric, President Steven Petric, Vice-President	1162 Greenpond Road, Newfoundland, NJ 07435 1162 Greenpond Road, Newfoundland, NJ 07435 1162 Greenpond Road, Newfoundland, NJ 07435	06/07/2018
Precise Builders LLC John Domingues, Owner	402 Market St, Newark, NJ 07105 402 Market St, Newark, NJ 07105	05/27/2017
PSM Rojas Construction, LLC Mikey Rojas, Operating Agent	161 E. 16th St, Paterson, NJ 07524 161 East 16th St., Paterson, NJ 07524	12/06/2019

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
R & B Construction Roxanne Lloyd, President	2008 Carmel Road, Millville, NJ 08332 2008 Carmel Road, Millville, NJ 08332	06/10/2018
Real Construction LLC Arkadiusz Chwedczuk, Owner	1984 Whitesville Rd, Toms River, NJ 08757 716 11th Avenue, Toms River, NJ 08757	11/23/2017
Ren Construction Albert Chwedczuk, Owner	1984 Whitesville Road, Toms River, NJ 08755 1984 Whitesville Road, Toms River, NJ 087055	07/09/2017
Resco, LLC Hallmark Electric, LLC David Peckham, Owner	P.O. Box 806, Old Saybrook, CT 06475 15 Elm Street, Old Saybrook, CT 06475	10/21/2018
Retail Store Painting John Thomas, President	202 Karen Drive, Scranton, PA 18505 202 Karen Drive, Scranton, PA 18505	01/12/2018
Riano Brothers, LLC. Atanasia Lazo Gutierrez Luis Riano, President	13 Poppy Ave., Neptune, NJ 07753 13 Poppy Ave., Neptune, 07753	02/25/2018
Ribbles Locksmith & Hardware Evelyn McDermott, Owner	613 15th Ave., Belmar, NJ 07719 613 15th Ave, Belmar, NJ 07719	07/10/2017
Rizzo New York Inc. Rizzo New York Inc. Rizwan Ahmad, President	109-02 Jamaica Avenue, Richmond Hill, NY 11418 9157 97th St, Wood Haven, NY 11421	01/19/2019
Robert M. Mesmer, LLC Robert Mesmer, Managing Member	24 Sand Bridge Rd., Elmer, NJ 08318 24 Sand Bridge Road, Elmer, NJ 08318	12/11/2017
Roncone Construction, L.L.C. Roncone Construction, L.L.C. Leonardo Marques Roncone, Managing Member	275 Chestnut St., Store B #113, Newark, NJ 07114 192 Emmet St., Newark, NJ 07105	02/02/2018
S & S Electric, LLC Al Shan, President	108 Oak Glen Road, Toms River, NJ 08753 108 Oak Glen Road, Toms River, NJ 08753	01/12/2018
Sambe Construction Co., Inc. Yan Girlya, Vice-President Samuel Girlya, Vice-President Ilya Girlya, Vice-President Betya Girlya, President	1650 Hylton Road, Pennsauken, NJ 08110 19 Adam Street, Mount Laurel, NJ 08054 230 Ark Road, Mount Laurel, NJ 08054 27 Tara Drive, Mount Laurel, NJ 08054 230 Ark Road, Mount Laurel, NJ 08054	11/17/2019
Sandora & Spina Contracting Inc. Edward Sandora, President	15 North Branch River Rd., Branchburg, NJ 08876 15 North Branch River Rd., Branchburg, NJ 08876	06/28/2018
SDT Transport LLC Stephen Tripodi, Owner	12 Clifford Rd, Wanaque, NJ 07465 12 Clifford Rd, Wanaque, NJ 07465	08/25/2019
Seminole Construction, L.L.C. SUSPENDED PENDING DEBARMENT Sandra Morizzo, Managing Member Joseph Filoon Jr., Manager	128 Bartlett Ave, West Creek, NJ 08092 165 Oak Ave., West Creek, NJ 08092 195 Lakeshore Dr, Manahawkin, NJ	SUSPENDED
Southern State Contracting Services LLC Joseph F. Gleason Jr., President	51 Pine Dr S., Brick, NJ 08723 51 Pine Dr. S, Brick, NJ 08724	06/26/2019
Squillace Steel Fabricators, LLC Squillace Steel Fabricators, LLC Rachel Squillace, Manager Richard Squillace, President	771 Amsterdam Avenue, Roselle, NJ 07203 771 Amsterdam Avenue, Roselle Park, NJ 07203 771 Amsterdam Avenue, Roselle Park, NJ 07203	05/31/2019
Steven Keares, Inc. Keares Electrical Contractor, Inc. SUSPENDED PENDING DEBARMENT Steven P. Keares, CEO	633 Jeffers Circle, Exton, PA 19341 211 Downing Road, Downingtown, PA 19335	SUSPENDED

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
Steven Trucking Corp	47 Railroad Ave, Netcong, NJ 07857	10/17/2019
Fabian Martinez, President	28 Bowlby Street, Dover, NJ 07801	
Super Stars Construction Inc	58 Steiner Ave, Neptune City, NJ 07753	08/11/2017
Juan Riano, Owner	58 Steiner Ave., Neptune City, NJ 07753	
Superior Environmental Development Corp.	859 Route 130, Unit 117, East Windsor, NJ 08520	09/12/2019
Eric T. McCully, Owner	859 Rt. 130, Unit 117, East Windsor, 08520	
T. Fiore Demolition, Inc.	457 Wilson Avenue, Newark, NJ 07105	04/02/2017
same		
Theodore Fiore, Owner	9 Silver Spring Court, East Hanover, NJ 07936	
TAU Associates Plumbing & Mechanical LLC	91 Graham St., Jersey City, NJ 07307	12/17/2016
Lek Tauthong, Owner	91 Graham St, Jersey City, NJ 07307	
Terra-Tech Construction, Inc.	265 Woodward Rd, Suite A, Manalapan, NJ 07726	03/17/2018
Tania Gaga, Vice-President	121 Diamond Lane, Manalapan, NJ 07726	
Nicole Lucas, President	12 Red Fox Run, Manalapan, NJ 08857	
Testa Corp.	360 Audubon Road, Wakefield, MA 01880	05/27/2017
Steven D. Testa, Owner	6 North Hill Dr., Lynnfield, MA 01940	
The Grace Brothers	311 Colonial Road, Edgewater Park, NJ 08010	01/08/2017
James T. Grace, Owner	14 Surrey Lane, Willingboro, NJ 08046	
Jethro Grace Jr., Owner	311 Colonial Road, Edgewater Park, NJ 08010	
Thomas Clark Fiberglass, LLC	145 Old Halfway Road, Barnegat, NJ 08005	10/22/2017
Thomas Clark, Owner / Officer	145 Old Halfway Rd., Barnegat, NJ 08005	
Timster Trucking Inc.	128 Bartlett Avenue, West Creek, NJ 08092	SUSPENDED
SUSPENDED PENDING DEBARMENT		
Sandra Morizzo, Partner	165 Oak Ave, West Creek,	
Joseph Filoon Jr., President	165 Oak Avenue, West Creek, NJ 08092	
TJB Air Conditioning And Heating	2305 Garry Rd. Suite A, Cinnaminson, NJ 08077	02/28/2019
Timothy Babbitt, Owner	2305 Garry Rd. Suite A, Cinnaminson, NJ 08077	
TJD Construction	138 Stonehenge Dr, Toms River, NJ 08753	02/24/2017
Ted Dobrzanski		
Ted Dobrzanski, CEO	138 Stonehenge Dr, Toms River, NJ 08753	
Todd Cable Construction, LLC	151 Old State Rd., Newport, NY 13416	04/26/2018
Todd E. Warmingham, Owner	P.o. Box 215, Newport, NY 13416	
Top Notch Tree & Landscape, LLC	70 East Allendale Rd., Saddle River, NJ 07458	12/06/2018
James Van Wyckhouse, Owner	46 Tam O Shanter Rd, Mahwah, NJ 07430	
TQM Construction Corporation	21 Patriot Xing, Rockaway, NJ 07866-4826	03/22/2019
Balwant DeVre, President	21 Patriot Crossing, Rockaway, NJ 07866	
Trinity Paving, LLC	245 Clayton Road, Monroeville, NJ 08343-2652	10/20/2017
Michele Doyle, Member	115 Millstone Way, Monroeville, NJ 08343	
Turf Services Express LLC	26 North Broad Street, Medford, NJ 08055	03/26/2018
Sharleen Poppalardo, Managing Member	11 Muirfield Court, Medford, NJ 08055	
Turfscapes LLC	PO Box 950, Williamstown, NJ 08094	08/22/2019
Jeffrey Grize, Owner	3477 S. Blackhorse Pike, Williamstown, NJ 08094	
Turfscapes LLC	PO Box 950, Williamstown, NJ 08094	05/27/2017
Jeffrey Grize, Owner	3477 S. Blackhorse Pike, Williamstown, NJ 08094	
Twin Industries	15 Lewis Street, Eatontown, NJ 07724	04/04/2019
Jeanne Crispino, Vice-President	15 Lewis Street, Eatontown, NJ 07724	

CONTRACTORS AND SUBCONTRACTORS**ADDRESS****EXPIRATION DATE**

Ultimate Roofing, LLC	1013 Grandview Avenue, Union, NJ 07083	12/12/2019
Paige Moriarty, Member	1013 Grandview Avenue, Union, NJ 07083	
Van Peenen Landscape Contractors, Inc.	555 Preakness Avenue,, Suite 210, Totowa, NJ 07512	11/22/2018
Van Peenen Landscape Contractors, Inc.		
Raymond Van Peenen, President	3 Gates Place, Wayne, NJ 07470	
Vercon Building & Maintenance Corp.	11 Arboretum Drive, Jackson, NJ 08527	05/11/2017
Allanur Islambekov, Owner	11 Arboretum Dr., Jackson, NJ 08527	
Victor Construction , Inc	4615 N. Front St, 2nd Floor, Philadelphia, PA 19140	04/22/2017
Tania Felix-Claudio, Owner	4615 N. front St., 2nd Floor, Philadelphia, PA 19140	
Wallmasters Modular Inc.	226 Mutual Avenue, Winchester, KY 40391	07/28/2017
Timothy Morrison, President	2745 SR668N, Junction City, OH 43748	
Warbeck Construction Group LLC	63 Beaver Brook Road, Suite 305, Lincoln Park, NJ 07035	02/28/2019
Jon J Warbeck, President	680 West Pine Brook Road, Lincoln Park, NJ 07035	

SUSPENDED PENDING DEBARMENT:**CONTRACTORS AND SUBCONTRACTORS****ADDRESS****SUSPEND DATE**

Jamali Developers, LLC	238 Fresh Ponds Road, Monroe, NJ 08816	01/11/2016
Hussain Burhanpurwala, Member	553 Marc Drive, North Brunswick, NJ 08902	
Jerzee Container Corp.	123 Bartlett Avenue, West Creek, NJ 08092	09/23/2016
Jon Whelan, Vice-President	48 8th Avenue, New York, NY 10014	
Thomas Whelan, President	PO Box 155, Spring Lake, NJ 07762	
Joseph Filoon Jr, Manager	195 Lakeshore Dr, Manahawkin, NJ 08050	
Sandra Morizzo, Member	165 Oak Ave, West Creek, NJ 08092	
Seminole Construction, L.L.C.	128 Bartlett Ave, West Creek, NJ 08092	09/23/2016
Joseph Filoon Jr., Manager	195 Lakeshore Dr, Manahawkin, NJ	
Sandra Morizzo, Managing Member	165 Oak Ave., West Creek, NJ 08092	
Steven Keares, Inc.	633 Jeffers Circle, Exton, PA 19341	11/17/2016
Steven P. Keares, CEO	211 Downing Road, Downingtown, PA 19335	
Timster Trucking Inc.	128 Bartlett Avenue, West Creek, NJ 08092	09/23/2016
Joseph Filoon Jr., President	165 Oak Avenue, West Creek, NJ 08092	
Sandra Morizzo, Partner	165 Oak Ave, West Creek,	

LIST OF DEBARRED OWNERS/OFFICERS

12/19/2016

<u>Owners/ Officers</u>	<u>Address</u>	<u>Company Name</u>
Yitzhak Adika, Vice-President	76 Alpine Drive, Closter, NJ 07624	I.K.E. Electrical Corp.
Rebecca Adika, Secretary	76 Alpine Dr., Closter, NJ	I.K.E. Electrical Corp.
Rizwan Ahmad, President	9157 97th St, Wood Haven, NY 11421	Rizzo New York Inc.
		Rizzo New York Inc.
		Griffin Sign, Inc.
Michelle Angerame, President	12 Pendleton Court, Medford, NJ 08055	Antiveros Construction, Inc.
Donnie Antiveros, President	677 Old Highway 64, Etowah, NC 28729	Joe Antonaccio Electric
Joseph Antonaccio, President	167 2nd St., Keyport, NJ 07735	Midwest Construction, Inc.
George Antonas, President	114 Brace Road, Cherry Hill, NJ 08034	New Jersey State Flooring, Inc.
Roy C. Apgar, President	109 Greentree Road, Brick, NJ 08724	New Jersey State Flooring, Inc.
Cheryl Apgar, Vice-President	109 Greentree Road, Brick, NJ 08724	K & J Drywall Contractor, Inc.
Jonny Ayala, Owner	68 Westervelt Avenue, Plainfield, NJ 07060	TJB Air Conditioning And Heating
Timothy Babbitt, Owner	2305 Garry Rd. Suite A, Cinnaminson, NJ 08077	Camelot Roofing, LLC
Juan J. Barquero, Owner	533 South 5th Street, Elizabeth, NJ 07206	J & B Plumbing LLC
Joseph Battista, Owner	11 Hummingbird Way, Jackson, NJ 08527	Beckett Enterprises, Inc.
Wesley J. Beckett Jr., President	110 Oak Avenue, Malaga, NJ 08328	J&D Plumbing & Heating Inc.
John J. Benedetti Jr., President	193 Natrona Avenue, Mercerville, NJ 08619	KS Exteriors, LLC
Kris Brezinska, Owner	650 Ohio Ave., Trenton, NJ 08638	KS Exteriors, LLC
		Kitchen Crafters Plus d/b/a B&B Custom Cabinets
Albert Brisebois, Owner	1 Suydam Place, Aberdeen, NJ 07747	Jamali Developers, LLC
Hussain Burhanpurwala, Member	553 Marc Drive, North Brunswick, NJ 08902	SUSPENDED PENDING DEBARMENT
		Cobra Communications & Installations, LLC
Giovanny Bustos, Owner	26 Spencer Place, Garfield, NJ 07026	Perfection Erectors, LLC
Marianne Cammarata, Manager	349 W. Prospect Ave., Keyport, NJ 07735	Perfection Erectors, LLC
		Perfection Erectors, LLC
Vincent Frank Cammarata, Owner	349 W. Prospect Avenue, Keyport, NJ 07735	Perfection Erectors, LLC
		HFC Painting
Hugo Canabe, CEO	696 Elm St, Kearny, NJ 07032	CAM Contractors Inc.
Joseph Caravella, Manager	179-15 Route 46, Rockaway, NJ 07866	Heritage Hills Estates
Frank Carpine, Owner	100 Liberty Dr, Millville, NJ 08332	G.F.I. Siteworks, Inc.
Salvatore A Casella III, President	362 Friendship Road, Clarksboro, NJ 08020	G.F.I. Siteworks, Inc.
		I.K.E. Electrical Corp.
Angelo Castelli, President	48 E. Central Blvd., Palisades Park, NJ 07650	J G Roofing, LLC
Manuel Chaguan, Owner	85 Prospect Ave., Irvington, NJ 07111	JC Builders
James Chaney, President	610 County Meadows Rd., Nicholls, GA 31554	Chanez Landscaping, LLC
Noe Chanez, Principal	55 Miller Ave., Somerset, NJ 08873	All County Pipeline & Site Excavation Inc.
Christine Charles, Vice-President	164 Ball Avenue, Parsippany, NJ 07054	All County Pipeline & Site Excavation Inc.
Eric Charles, President	164 Ball Avenue, Parsippany, NJ 07054	Real Construction LLC
Arkadiusz Chwedczuk, Owner	716 11th Avenue, Toms River, NJ 08757	Ren Construction
Albert Chwedczuk, Owner	1984 Whitesville Road, Toms River, NJ 087055	Cityline Contracting Inc.
Andrzej Citak, Vice-President	556 Humboldt St, Brooklyn, NY 11222	Thomas Clark Fiberglass, LLC
Thomas Clark, Owner / Officer	145 Old Halfway Rd., Barnegat, NJ 08005	Confortini Plumbing & Heating, LLC
Andrew Confortini, Vice-President	491 West County Drive, Somerville, NJ 08876	Confortini Plumbing & Heating, LLC
Anthony Confortini, Owner	41 Bunnvale Road, Clifton, NJ 07830	Antiveros Construction, Inc.
Olga Conteras, Vice-President	677 Old Highway 64, Etowah, NC 28729	Coons Construction, LLC
William Coons, Owner	23178 Summer View Circle, Three Springs, PA 17264	Crider Americas Solar LLC
Steven Crider, Member	507 Pressler Street, Apt. 2128, Austin, TX 78703	Twin Industries
Jeanne Crispino, Vice-President	15 Lewis Street, Eatontown, NJ 07724	J.C. Maintenance & Repair
Emanuel Cucco, Owner	1435 71st Street, Brooklyn, NY 11228	Cunhas Construction Inc.
Nuno Cunha, Owner	35 Carmen Ct., Newark, NJ 07105	Cam Flooring Installations LLC
Jose Fernandes Da Silva, Owner	26 Washington St., Long Branch, NJ 07718	

<u>Owners/ Officers</u>	<u>Address</u>	<u>Company Name</u>
Dane DeForest, President	2406 Herbertsville Road, Point Pleasant, NJ 08742	Dane DeForest Demolition, Inc.
Patrick Dell'Aquila, President	55 Brookview Drive, Woodcliff Lake, NJ 07677	Elevator Medic Corporation
Patrick Dell'Aquila, President	55 Brookview Drive, Woodcliff Lake, NJ 07677	Ideal Elevator Services
Nelson DeOliveira, President	276 Highland Ave, Kearney, NJ 07032	Patrick Dell'Aquila
Joe DeSalvo, Jr., Owner	149 Montross Ave., Rutherford, NJ 07070	East Coast Touch Enterprises LLC
John Dever, Owner	1086 Mays Landing Road, Somers Point, NJ 08234	J.D.S Electric, Inc.
Balwant DeVre, President	21 Patriot Crossing, Rockaway, NJ 07866	Metal Fab Atlantic LLC
James DiLorenzo, Vice-President	440 Mantua Avenue, Paulsboro, NJ 08066	TQM Construction Corporation
Dorothy Dobiecka, President	556 Humboldt Street, Brooklyn, NY 11222	G.F.I. Siteworks, Inc.
Ted Dobrzanski, CEO	138 Stonehenge Dr, Toms River, NJ 08753	G.F.I. Siteworks, Inc.
John Domingues, Owner	402 Market St, Newark, NJ 07105	Cityline Contracting Inc.
Michele Doyle, Member	115 Millstone Way, Monroeville, NJ 08343	TJD Construction
William J. Doyle, President	200 Pine Rd., Hammonton, NJ 08037	Ted Dobrzanski
Agostino Ducato, Vice-President	223 Spring Valley Road, Paramus, NJ 07652	Precise Builders LLC
Stanislaw Dziuba, Vice-President	69 West Shore Drive, Pennington, NJ 08534	Trinity Paving, LLC
Kevin G. Eib, President	29 Monmouth Road, Monroe Twp., NJ 08831	Highway Safety Systems Inc.
Justin Ettere, Vice-President	52 Brass Castle Road, Washington, NJ 07882	All Jersey Fence Co.
John Ettere, Owner	1453 Tooz Place, South Plainfield, NJ 07080	Old World Construction, Inc.
Matthew Ettere, Vice-President	8 Brookside Drive, Warren, NJ 07059	Division Ten Installations, LLC
Jonathan Ettere, President	7 Craig Road, Readington, NJ 08853	Arete Development Inc.
Margaret Farina, Owner	30 Monsignor Deluca Plaza, Nutley, NJ 07110	Arete Development Inc.
Tania Felix-Claudio, Owner	4615 N. front St., 2nd Floor, Philadelphia, PA 19140	Arete Development Inc.
Hugo Fernandes, Owner	90 Willow Street, Carteret, NJ 07008	Arete Development Inc.
Joseph Filoon Jr, Manager	195 Lakeshore Dr, Manahawkin, NJ 08050	Arete Development Inc.
Joseph Filoon Jr., President	165 Oak Avenue, West Creek, NJ 08092	Arete Development Inc.
Joseph Filoon Jr., Manager	195 Lakeshore Dr, Manahawkin, NJ	Arete Development Inc.
Theodore Fiore, Owner	9 Silver Spring Court, East Hanover, NJ 07936	Metropolitan Stone & Tile, LLC
Thomas Fittin, Owner / Officer	2243 Edgar Rd, Point Pleasant Beach, NJ 08742	Victor Construction, Inc
Donald Fleming, President	340 Reservoir Road, Boonton, NJ 07005	DM Fernandes Contracts LLC
Theresa Frajdenberg, President	110 South Harding Highway, Landisville, NJ 08326	Jerzee Container Corp.
Scott Frasca, Manager	326 Coles Mill Road, Williamstown, NJ 08094	SUSPENDED PENDING DEBARMENT
Rachel Frasca, Owner	326 Coles Mill Road, Williamstown, NJ 08094	Timster Trucking Inc.
Tania Gaga, Vice-President	121 Diamond Lane, Manalapan, NJ 07726	SUSPENDED PENDING DEBARMENT
Gabino Galindo, Owner	1025 E. 23rd St. #1, Paterson, NJ 07513	Seminole Construction, L.L.C.
Dean Gallo, Owner	245 Emanuel Street, Trenton, NJ 08610	SUSPENDED PENDING DEBARMENT
Harry Gallo, Secretary	245 Emanuel Street, Trenton, NJ 08610	T. Fiore Demolition, Inc.
Michelle Gamache-Caravella, President	179-15 Route 46, Suite 135, Rockaway, NJ 07866	same
Cesar Garcia, Owner	64 Grandview Ave, North Plainfield, NJ 07060	Fittin Construction, LLC
Randy Garciga, Owner	13353 NE 17th Avenue, Miami, FL 33181	C & E Contracting, Inc.
Randy Garciga, Owner	13353 NE 17th Avenue, North Miami, FL 33181	CRC Concrete Raising of South Jersey, Inc.
John Garza, Owner	768 Chambers St., Trenton, NJ 08611	Blue Skies Electric L.L.C.
Yan Girlya, Vice-President	19 Adam Street, Mount Laurel, NJ 08054	Blue Skies Electric L.L.C.
Ilya Girlya, Vice-President	27 Tara Drive, Mount Laurel, NJ 08054	Terra-Tech Construction, Inc.
		Galindo Const. LLC
		DG Construction & Renovations LLC
		DG Construction & Renovations LLC
		CAM Contractors Inc.
		Emanuel Drywall Services, Inc
		JTG Scaffolding & Hoisting LLC
		JD Scaffold Inc.
		Garza Contracting LLC
		Sambe Construction Co., Inc.
		Sambe Construction Co., Inc.

<u>Owners/ Officers</u>	<u>Address</u>	<u>Company Name</u>
Samuel Girlya, Vice-President	230 Ark Road, Mount Laurel, NJ 08054	Sambe Construction Co., Inc.
Betya Girlya, President	230 Ark Road, Mount Laurel, NJ 08054	Sambe Construction Co., Inc.
Joseph F. Gleason Jr., President	51 Pine Dr. S, Brick, NJ 08724	Southern State Contracting Services LLC
James T. Grace, Owner	14 Surrey Lane, Willingboro, NJ 08046	The Grace Brothers
Jethro Grace Jr., Owner	311 Colonial Road, Edgewater Park, NJ 08010	The Grace Brothers
Paul Grillo, Owner	207 Butler Ave, Staten Island, NY 10307	Area Fuel
Paul Grillo, Owner	207 Bulter Ave, St. Island, NY	Area Fuel
Jeffrey Grize, Owner	3477 S. Blackhorse Pike, Williamstown, NJ 08094	Turfscapes LLC
Curillo Guaman, Owner	197 Broad Street, Newark, NJ 07104	CJC Builders Corp.
Maurice Guariglia, Owner / Officer	494 North Barbor Road, Colchester, VT 05446	Advantage Sport USA, Inc.
Helen Henriquez, Owner	101 South Orachard Road, Vineland, NJ 08360	E & S Enterprises, LLC
Peter Herring, President	164 South Moetz Drive, Milltown, NJ 08850	Metropex Products Co. Inc.
Vincenzo Iemma, President	2127 Eisenhower Road, Toms River, NJ 08753	GNV Concrete LLC
Allanur Islambekov, Owner	11 Arboretum Dr., Jackson, NJ 08527	Vercon Building & Maintenance Corp.
Jessica Johnson, Member	5352 Lake Road, Newfield, NJ 08344	Johnson Tree Transplanting LLC
Nathan Johnson, Owner	5352 Lake Road, Newfield, NJ 08344	Johnson Tree Transplanting LLC
Mark Kahn, Owner	910 Cedar Street, Millville, NJ 08332	CertaPro Painters of South Jersey LLC
Steven P. Keares, CEO	211 Downing Road, Downingtown, PA 19335	Steven Keares, Inc. Keares Electrical Contractor, Inc. SUSPENDED PENDING DEBARMENT
Kwang Hee Kim, Partner	685 Bergen Blvd., Ridgefield, NJ 07657	K&K Construction LLC
Ki Kuk Kim, Partner	685 Bergen Blvd., Ridgefield, NJ 07657	K&K Construction LLC
Jaimie-Lyn Knight, President	395 Millstone Road, Clarksburg, NJ 08510	Gen II Contracting Co. Inc.
Lawrence Koos, Owner	1391 White Oak Bottom Rd, Tom River, NJ 08755	Anchor Marine of Toms River
Laurence Koos, Owner	1391 White Oak Bottom Rd., Toms River, NJ 08755	Install It All. LLC
Zachary Kouhoup, President	5923 Peach St, Mays Landing, NJ 08330	Natural View Landscapes LLC
Devin Lemere, Partner	300 Mamaroneck Ave, # 133, White Plains, NY 10605	360 Golf, LLC
Michael Lenec, Partner	300 Mamaroneck Ave, White Plains, NJ 10605	360 Golf, LLC
Segundo E. Llivicota, Member	164 Polk Street, Apt. #1, Newark, NJ 07105	M.E. Group, LLC
Roxanne Lloyd, President	2008 Carmel Road, Millville, NJ 08332	R & B Construction
Alan Lombardi, President	26 Whispering Way, Berkeley Hights., NJ 07922	Lombardi Enterprises, Inc.
Ann Lombardi, Secretary	26 Whispering Way, Berkeley Hights, NJ 07922	Lombardi Enterprises, Inc.
Frank Loureier, Vice-President	152 Jefferson St., Newark, NJ 07105	East Coast Touch Enterprises LLC
Nicole Lucas, President	12 Red Fox Run, Manalapan, NJ 08857	Terra-Tech Construction, Inc.
Keith Ludwig, Member	459 Rt 38 West, Maple Shade, NJ 08052	HFM Labor Ready LLC HFM Labor Ready LLC
John H. Madara, President	319 Terrace St, Rahway, NJ 07065	Advantage Contracting & Entertainment Services I
Harold Marshall, Jr., Member	1800 Eva Street, Austin, TX 78704	Crider Americas Solar LLC
Fabian Martinez, President	28 Bowlby Street, Dover, NJ 07801	Steven Trucking Corp
Vincent Mattina, Owner	22 Toms River Rd, Jackson, NJ 08527	Mattina Construction LLC
Louis R. McArthur Jr., Owner / Officer	13 Luzerne Place, Hadley, NY 12835	McArthur Park, Inc./ dba Bleacherman
Evelyn McDermott, Owner	613 15th Ave, Belmar, NJ 07719	Ribles Locksmith & Hardware
George McNulty, President	125 East Broadway, Suite 507, Long Beach, NY 11561	Low Bid, Inc.
Robert Mesmer, Managing Member	24 Sand Bridge Road, Elmer, NJ 08318	Robert M. Mesmer, LLC
William Mitchell, Owner	22 Greenwood Place, Flemington, NJ 08822	OCM Construction OCM Construction, LLC
Brad J. Moini, President	101 Buttonwood Lane, Freehold, NJ 07728	Brothers Landscaping J.H. Brothers Inc.
Frank Montgomery, Owner	42 Bryant Rd., Waretown, NJ 08758	Frank Montgomery Builder
Paige Moriarty, Member	1013 Grandview Avenue, Union, NJ 07083	Ultimate Roofing, LLC
Sandra Morizzo, Partner	165 Oak Ave, West Creek,	Timster Trucking Inc. SUSPENDED PENDING DEBARMENT

<u>Owners/ Officers</u>	<u>Address</u>	<u>Company Name</u>
Sandra Morizzo, Member	165 Oak Ave, West Creek, NJ 08092	Jerzee Container Corp.
Sandra Morizzo, Managing Member	165 Oak Ave., West Creek, NJ 08092	SUSPENDED PENDING DEBARMENT Seminole Construction, L.L.C.
Timothy Morrison, President	2745 SR668N, Junction City, OH 43748	SUSPENDED PENDING DEBARMENT Wallmasters Modular Inc.
John Mullen, Jr., Owner	45 Fairfield Place, West Caldwell, NJ 07006	Mullen & Sons Contractors, Inc.
John Mullen, Sr, President	45 Fairfield Place, West Caldwell, NJ 07006	Mullen & Sons Contractors, Inc.
Joseph Niceta, Owner	2119 Merritt Drive, Northfield, NJ 08225	Niceta Electric
Uju A. Obiorah, President	259 West Forest Avenue, Englewood, NJ 07631	Envirocare Enterprises, Inc.
Inno Obiorah, Manager	658 Rutgers Pl, Paramus, NJ 07652	Envirocare Enterprises, Inc.
James T. O'Connor, Managing Member	707 Main Street, Avon-by-the-Sea, NJ 07717	Envirocare Enterprises, Inc.
Erezy Ohana, Owner	60 Miller Road, Montgomery, NY 12549	OTS-NJ, LLC
Luis Oliveras, Owner	644 East 2nd St., Plainfield, NJ 07060	OTS of New Jersey, LLC
Krzysztof Oprzadek, President	19 Woodville Rd, Hopewell, NJ 08525	Ohana Metal & Iron Works Inc.
Brian O'Shea, Owner	1041 Glassboro Rd. D-2, Williamstown, NJ 08094	Caslo Drywall Corp.
Troy Palazzo, Owner	96 Taylor Dr, Levittown, PA 19054	Old World Construction, Inc.
Brian Patterson, President	11 Arlene Drive, West Long Branch, NJ 07764	American Welding Services
David Peckham, Owner	15 Elm Street, Old Saybrook, CT 06475	American Welding Services, Inc.
Nicola Pengue, President	4 Camelot Avenue, Monroe Township, NJ 08831	Palazzo Fence Co
Julio Pereira, Vice-President	304 Crimson Circle, Oakhurst, NJ 07755	Brian Patterson Mechanical Contracting, Inc.
Antonio Pereira, President	159 Locust Avenue, West Long Branch, NJ 07764	Resco, LLC
Manuel Pereira, Owner	194 Monmouth Ave., Long Branch, NJ 07740	Hallmark Electric, LLC
James Perrone, Owner	74 Glenroy Road East, Fairfield, NJ 07004	NT&P Construction Inc.
Ellen Petric, President	1162 Greenpond Road, Newfoundland, NJ 07435	Pax Construction Corp.
Steven Petric, Vice-President	1162 Greenpond Road, Newfoundland, NJ 07435	Pax Construction Corp.
Christopher Picinic, Owner	164 President Blvd, Washington Township, NJ 07676	PER Construction LLC
Armando Piedade, President	265 Wilson Avenue, Kearny, NJ 07032	Perrone Trucking LLC
Alicirio Jose Santana Pires, Owner	141 RT. 130 South, Suite 192, Cinnaminson, NJ 08077	Petric & Associates, Inc.
Richard Pluese, Vice-President	66 E Cedar Avenue, Marlton, NJ 08053	Petric & Associates, Inc.
Sharleen Poppalardo, Managing Member	11 Muirfield Court, Medford, NJ 08055	Elite Terrazzo Flooring, Inc.
Wojciech Puchajda, Owner	10 Jeanette St., Carteret, NJ 07008	Conex Construction Corp.
Manuel Quito, Member	164 Polk Street, Apt. 1, Newark, NJ 07105	Five Star Quality Construction
Rafael Ramos, President	120 Cantello Street, Union City, NJ 07087	Apex Tower Services, Inc.
Luis Riano, President	13 Poppy Ave., Neptune, NJ 07753	Turf Services Express LLC
Juan Riano, Owner	58 Steiner Ave., Neptune City, NJ 07753	Octagon Construction
John Riley Jr, Managing Member	140 Harrison Avenue, Fair Haven, NJ 07704	Octagon Construction
Lauchland Roberts, President	2801 Remington Street, Suite 3, Fort Collins, CO 80526	M.E. Group, LLC
Mark Rodrigues, President	523 Hamilton Avenue, Kingston, PA 18704	Everest Masonry Construction, Inc.
Eddy Rodriguez, Member	1100 W. 7th. St., Apt. A9, Plainfield, NJ 07063	Riano Brothers, LLC.
Mikey Rojas, Operating Agent	161 East 16th St., Paterson, NJ 07524	Atanasia Lazo Gutierrez
Maurice Rolando, Owner	165 Height's Ave., Fair Lawn, NJ 07410	Super Stars Construction Inc
Leonardo Marques Roncone, Managing	192 Emmet St., Newark, NJ 07105	Ocean Blue Builders LLC
Paul F Roscitt, President	262 Harmon Avenue, Fort Lee, NJ 07024	GST Power Service Group Inc.
Christopher Rymal, Owner	1929 Darby Rd., Havertown, PA 19083	Everest Masonry Constructors, Inc.
Edward Sandora, President	15 North Branch River Rd., Branchburg, NJ 08876	Eddy Drywall, LLC
		PSM Rojas Construction, LLC
		Interstate Home Service Inc.
		Interstate Home Service Inc.
		Ronccone Construction, L.L.C.
		Ronccone Construction, L.L.C.
		Paul F. Roscitt Electric, Inc.
		IBS, Inc.
		Sandora & Spina Contracting Inc.

<u>Owners/ Officers</u>	<u>Address</u>	<u>Company Name</u>
John Schiavo, Managing Member	6 Justa Lane, Cherry Hill, NJ 08003	Jamcon Construction LLC
Blanca Segarra, President	799 Kearny Ave., Apt 1, Kearny, NJ 07032	Ma Na Lu Transportation Corporation
Sheree Severini-Fittin, Member	2243 Edgar Rd., Point Pleasant Beach, NJ 08742	Fittin Construction, LLC
Paul Sexton, Owner	462 10th Ave., Paterson, NJ	Paul Sexton
Al Shan, President	108 Oak Glen Road, Toms River, NJ 08753	S & S Electric, LLC
Margaret Sherman, President	203 Woods Avenue, Bergenfield, NJ 07621	CPS Mechanical Contractors, Inc.
John Sorrentino, Owner	65 Fern St, Browns Mills, NJ 08015	Barzzini Construction
Gregorio Soto, Owner	153 Lewis Street, Perth Amboy, NJ 08861	Jack Mack Commercial Roofing, Inc.
Richard Squillace, President	771 Amsterdam Avenue, Roselle Park, NJ 07203	Squillace Steel Fabricators, LLC
Rachel Squillace, Manager	771 Amsterdam Ave., Roselle Park, NJ 07203	Squillace Steel Fabricators, LLC
Eric T. McCully, Owner	859 Rt. 130 , Unit 117, East Windsor, 08520	Squillace Steel Fabricators, LLC
Lek Tauthong, Owner	91 Graham St, Jersey City, NJ 07307	Superior Environmental Development Corp.
Steven D. Testa, Owner	6 North Hill Dr., Lynnfield, MA 01940	TAU Associates Plumbing & Mechanical LLC
John Thomas, President	202 Karen Drive, Scranton, PA 18505	Testa Corp.
Ashish Thomas, Owner	6 Spruce Meadows Dr., Monroe, NJ 08831	Retail Store Painting
Nester Torres, Owner	161 Thomas St, Unit 1, Newark, NJ 07114	MG Topflight
Stephen Tripodi, Owner	12 Clifford Rd, Wanaque, NJ 07465	NDA & Construction, LLC
Raymond Van Peenen, President	3 Gates Place, Wayne, NJ 07470	SDT Transport LLC
James Van Wyckhouse, Owner	46 Tam O Shanter Rd, Mahwah, NJ 07430	Van Peenen Landscape Contractors, Inc.
Luis Vargas, Owner	291 Jefferson Street, Paterson, NJ 07522	Van Peenen Landscape Contractors, Inc.
Michael Verduci, President	12 Verduci Drive, Newtown, PA 18940	Top Notch Tree & Landscape, LLC
Felipe Villagomez, Owner	160 Lincoln Street, Bridgeton, NJ 08302	L and Y Roofing, LLC
Peter Vincent, Owner	129 Highland Ave, Jersey City, NJ 07306	A.V. Construction, Inc.
Charles Viola, President	266 Columbus Avenue, Hasbrouck Heights, NJ 07604	Felipe Villagomez owner
Simon Walcott, Owner	43 Fairview Avenue, Bergenfield, NJ 07621	Peter Vincent
Ireneusz Waluk, Owner	70 Bordentown-Chesterfield, Rd., Chesterfield, NJ 08515	All Jersey Fence Co.
Jon J Warbeck, President	680 West Pine Brook Road, Lincoln Park, NJ 07035	K & S Fabrication & Welding, LLC
Todd E. Warmingham, Owner	P.o. Box 215, Newport, NY 13416	Euro Construction
Thomas Whelan, President	PO Box 155, Spring Lake, NJ 07762	Warbeck Construction Group LLC
Jon Whelan, Vice-President	48 8th Avenue, New York, NY 10014	Todd Cable Construction, LLC
Anthony Yaniero, Vice-President	848 Bogert Road, River Edge, NJ 07661	Jerzee Container Corp.
Susan Yaniero, Owner	848 Bogert Road, River Edge, NJ 07661	SUSPENDE PENDING DEBARMENT
Agustin Zuniga, President	420 Broadway, Long Branch, NJ 07740	Jerzee Container Corp.
		SUSPENDE PENDING DEBARMENT
		Bogert Millwork Company, Inc.
		Bogert Millwork Company, Inc.
		American Eagle Contractor, Inc.

EPA FORM

5720-4

Content Last Revised: Current as of 10/21/2015

CFR Code of Federal Regulations Pertaining to ESA

Title 29 – Labor

Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction

Subpart A - Davis-Bacon and Related Acts Provisions and Procedures

Section Number: 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the

classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing

work in the classification under this contract from the first day on which work is performed in the classification.

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

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

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or

program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) 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 the (write in name of agency). 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 the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

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

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

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

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

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

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

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

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

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier

subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

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

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

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

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards.

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

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section 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 paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) 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 contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

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

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

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-0140
(a)(1)(ii)(C)	1215-0140
(a)(1)(iv)	1215-0140
(a)(3)(i)	1215-0140,
	1215-0017
(a)(3)(ii)(A)	1215-0149
(c)	1215-0140,
	1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

EFFECTIVE DATE NOTE: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

NO TEXT ON THIS PAGE

Attachment 2

Wage Rate Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)

Preamble

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section 1-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 11-3(ii)(A), below and for compliance as described in Section 11-5.

II. Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113- 6) For Subrecipients That Are Not Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the FY2013 Continuing Resolution with respect to subrecipients that are not governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact Julie Milazzo at Milazzo.julie@epa.gov or at 415-972-3687, EPA Grants Management Office for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

Under these terms and conditions, the subrecipient must submit its proposed DB wage determinations to the State recipient for approval prior to Including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2013 Continuing Resolution, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients must obtain proposed wage determinations for specific localities at www.wdol.gov. After the Subrecipient obtains its proposed wage determination, it must submit the wage determination to INSERT STATE CONTACT NAME, EMAIL, and TELEPHONE NUMBER for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official).

(b) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the

subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2013 Continuing Resolution, the following clauses:

(1) Minimum wages.

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

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

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov ..

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics,

including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

{2} The classification is utilized in the area by the construction industry; and

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

{B} If the contractor and the laborers and mechanics to be employed in the classification {if known}, or their representatives, and the subrecipient{s} agree on the classification and wage rate {including the amount designated for fringe benefits where appropriate}, documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient{s} to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

{C} In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the subrecipient{s} do not agree on the proposed classification and wage rate {including the amount designated for fringe benefits, where appropriate}, the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

{iv} If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary

of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

(3) Payrolls and basic records.

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

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR S.S(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required

weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

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

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

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

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

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

(3) Withholding for unpaid wages and liquidated damages. The subrecipient shall upon the request of the EPA Award Official or 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 contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

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

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three

years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

- (a). The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."
- (c). The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d). The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item S(b) and (c) above.
- (e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

Use of the Change Order Form entitled "Contract Modification Proposal and Acceptance"

- When the Loanee wishes to issue a change to the contract, the attached "Contract Modification Proposal and Acceptance" form should be used as a request for proposal. Upon final settlement of the change, this same form is then completed and serves as the contract modification.
- The Loanee in requesting a proposal for a change would execute items 1 through 8 (exclusive of the revised contract price and duration data) and 9 through 12. Pages 1 and 2 of this form are then forwarded to the contractor, specifying scope of work and requesting the contractor's proposal.
- The contractor should execute page 2 of the form. He then submits pages 1 and 2 of the form as his proposal, attaching additional sheets as necessary to provide his detailed breakdown of costs.
- Upon negotiation of a final settlement, the Loanee completes page 1 of the form, and all concerned parties (Contractor, Engineer, Owner) sign this document as the contract modification.
- Page 3 of the form is executed by the Loanee for documentation of the change, and to provide the necessary details for review by the Regulatory Agencies.
- Submit a minimum of one original with raised engineer's seal and one copy. It is suggested that one original be kept for your records.

Detailed Instructions for Executing "Contract Modification Proposal and Acceptance" Form

Item 1. Enter the name of the Loanee.

Item 2. Enter State Project number.

Item 3. Enter the contract number or designation.

Item 4. Enter the number identifying this modification.

Item 5. Enter the name of the Contractor.

Item 6. Enter the project title and location.

Item 7. Requests a proposal for the specified change order work, but does not direct contractor to proceed. The owner or his authorized representative must execute this statement by signature with date and title blocks entered.

Item 8. Provide a clear description of the scope of work for this change. Upon final settlement of the modification costs, enter cost data by line item for unit priced items or by sum; and state total cost of this modification - net increase, decrease or no change in contract price. Enter appropriate information for any change in contract time, including number or calendar days involved. The modification is executed when all appropriate signatures are included.

Items 9 - 12. Same as items 1 - 4.

Item 13. Executed by the contractor, stating net effect of change in appropriate box for money and time. A detailed breakdown must be provided in this item; and appropriate signature of authorized representative of contractor included.

Item 14. Enter the Loanee's name and State Project number.

Item 15. Enter the contract number or designation.

Item 16. Enter number identifying this modification.

Item 17. Enter appropriate financial data.

Item 18. Explain and justify the reasons for this change order.

Item 19. Explain all other impacts resulting from this change with estimate of costs involved. This should include impact on other contractors and the Consulting Engineers.

Item 20. Document that negotiations were held as required by the regulations and explain the events leading to the final settlement in price and time. This statement should include, at a minimum, date and location of negotiations, persons attending, summary of negotiations leading to final price and time settlements, and a statement that the agreed-to price is "fair and reasonable".

1. ISSUING OFFICE	2. PROJECT NO.	3. CONTRACT NO.	4. MODIFICATION NO.
5. TO (CONTRACTOR)		6. PROJECT LOCATION AND DESCRIPTION	
<p>7. A proposal is required for making the hereinafter described change in accordance with specification and drawing revisions cited herein or listed in attachment hereto. Submit your proposal in space indicated on Page 2, attach detailed breakdown of prime and sub-contract costs (See the clause of this contract entitled, "Changes". DO NOT start work under this proposed change until you receive a copy signed by the Contracting Officer or a directive to proceed).</p>			
Date	Type Name and Title		Signature
<p>8. DESCRIPTION OF CHANGE: Pursuant to the clause of this contract covering changes, the contractor shall furnish all labor and material, and all work necessary to accomplish the following described work:</p>			
<p>As a result of the above, the contract price is revised as follows:</p>			
ITEM NO.	ITEM DESCRIPTION	UNIT PRICE	ESTIMATED QUANTITY
		TOTAL COST	
TOTAL COST OF THIS MODIFICATION		\$	
<p>The contract time is hereby: <input type="checkbox"/> increase <input type="checkbox"/> decrease <input type="checkbox"/> or remains the same <input type="checkbox"/> by _____ calendar days as a result of this modification.</p>			
<p>The foregoing modification is hereby accepted:</p>			
CONTRACTOR	OWNER	(NJPE SEAL)	ENGINEER
BY: _____	BY: _____	BY: _____	BY: _____
DATE: _____	DATE: _____	DATE: _____	DATE: _____
APPROVAL:			
STATE OF NEW JERSEY		DATE	

CONTRACT MODIFICATION PROPOSAL AND ACCEPTANCE

9. ISSUING OFFICE	10. PROJECT NO.	11. CONTRACT NO.	12. MODIFICATION NO.
13. CONTRACTOR'S PROPOSAL - CHANGE IN CONTRACT PRICE (Detailed breakdown, attach additional sheets as necessary)			
(Proposed)			
NET INCREASE \$ _____	NET DECREASE \$ _____	CALENDAR DAYS INCREASE _____ DAYS	
DATE:	TYPE NAME AND TITLE:	SIGNATURE:	

CONTRACT MODIFICATION PROPOSAL AND ACCEPTANCE

14. ISSUING OFFICE & PROJECT NO.	15. CONTRACT NO.	16. MODIFICATION NO.
17. ORIGINAL CONTRACT BID PRICE..... \$ _____ TOTAL OF PREVIOUS CHANGE ORDERS..... \$ _____ TOTAL CONTRACT COST INCLUDING CHANGE ORDERS..... \$ _____		
18. NECESSITY FOR CHANGE AND REASON FOR OMISSION FROM PLANS AND SPECIFICATIONS:		
19. OTHER IMPACTS RESULTANT OF THIS CHANGE:		
20. RESUME OF NEGOTIATIONS OR RECOMMENDATIONS (Loanee's Representative):		
DATE:	TYPE NAME AND TITLE OF LOANEE'S REPRESENTATIVE:	SIGNATURE:

NO TEXT ON THIS PAGE

Americans with Disabilities Act of 1990

Title II

Billing Code: 4410-1**Part 35 Nondiscrimination on the Basis of Disability in State and Local Government Services (as amended by the final rule published on September 15, 2010)**

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12134.

Subpart A—General**§ 35.101 Purpose.**

The purpose of this part is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131), which prohibits discrimination on the basis of disability by public entities.

§ 35.102 Application.

- (a) Except as provided in paragraph (b) of this section, this part applies to all services, programs, and activities provided or made available by public entities.
- (b) To the extent that public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the ADA, they are not subject to the requirements of this part.

§ 35.103 Relationship to other laws.

- (a) *Rule of interpretation.* Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 or the regulations issued by Federal agencies pursuant to that title.
- (b) *Other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

§ 35.104 Definitions.

For purposes of this part, the term—

1991 Standards means the requirements set forth in the ADA Standards for Accessible Design, originally published on July 26, 1991, and republished as Appendix D to 28 CFR part 36.

2004 ADAAG means the requirements set forth in appendices B and D to 36 CFR part 1191 (2009).

2010 Standards means the 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG and the requirements contained in § 35.151.

Act means the Americans with Disabilities Act (Pub. L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611).

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids and services includes—

- (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;
- (2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader

software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

- (3) Acquisition or modification of equipment or devices; and
- (4) Other similar services and actions.

Complete complaint means a written statement that contains the complainant's name and address and describes the public entity's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of this part. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Designated agency means the Federal agency designated under subpart G of this part to oversee compliance activities under this part for particular components of State and local governments.

Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a **modification of policies, practices or procedures, or by the provision of auxiliary aids or services as provided in § 35.139.**

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1)

(i) The phrase *physical or mental impairment* means—

- (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;
- (B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(iii) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

- (2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- (3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (4) The phrase *is regarded as having an impairment* means—
 - (i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity as constituting such a limitation;
 - (ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
 - (iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment.
- (5) The term *disability* does not include—
 - (i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not

resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

***Existing facility* means a facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under this part.**

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Historic preservation programs means programs conducted by a public entity that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law.

***Housing at a place of education* means housing operated by or on behalf of an elementary, secondary, undergraduate, or postgraduate school, or other place of education, including dormitories, suites, apartments, or other places of residence.**

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term illegal use of drugs does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term individual with a disability does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use.

Other power-driven mobility device means any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section. This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).

Public entity means—

- (1) Any State or local government;
- (2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
- (3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

***Qualified interpreter* means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.**

***Qualified reader* means a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.**

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794), as

amended.

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Video remote interpreting (VRI) service means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in § 35.160(d).

Wheelchair means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor locomotion. This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207 (c)(2).

§ 35.105 Self-evaluation.

- (a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.
- (b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.
- (c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:
 - (1) A list of the interested persons consulted;
 - (2) A description of areas examined and any problems identified; and
 - (3) A description of any modifications made.
- (d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

§ 35.106 Notice

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 35.107 Designation of responsible employee and adoption of grievance procedures

- (a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including

any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

- (b) *Complaint procedure.* A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

§§ 35.108—35.129 [Reserved]

Subpart B—General Requirements

§ 35.130 General prohibitions against discrimination

- (a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.
- (b)
- (1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—
 - (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
 - (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
 - (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
 - (iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;
 - (v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;
 - (vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
 - (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.
 - (2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.
 - (3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration—
 - (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
 - (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or
 - (iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.
 - (4) A public entity may not, in determining the site or location of a facility, make selections—

- (i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or
 - (ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.
- (5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.
- (6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.
- (7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
- (8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.
- (c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.
- (d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
- (e)
 - (1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.
 - (2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.
- (f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.
- (g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.
- (h) A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.**

§ 35.131 Illegal use of drugs

(a) *General.*

- (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.
- (2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—
 - (i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

- (ii) Is participating in a supervised rehabilitation program; or
- (iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.*

- (1) A public entity shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.
- (2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) *Drug testing.*

- (1) This part does not prohibit a public entity from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.
- (2) Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

§ 35.132 Smoking

This part does not preclude the prohibition of, or the imposition of restrictions on, smoking in transportation covered by this part.

§ 35.133 Maintenance of accessible features

- (a) A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.
- (b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.
- (c) **If the 2010 Standards reduce the technical requirements or the number of required accessible elements below the number required by the 1991 Standards, the technical requirements or the number of accessible elements in a facility subject to this part may be reduced in accordance with the requirements of the 2010 Standards.**

§ 35.134 Retaliation or coercion

- (a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.
- (b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

§ 35.135 Personal devices and services

This part does not require a public entity to provide to individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing.

§ 35.136 Service animals

- (a) **General.** Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.
- (b) **Exceptions.** A public entity may ask an individual with a disability to remove a service animal from the premises if—
 - (1) **The animal is out of control and the animal's handler does not take effective action to control it;**

or

(2) The animal is not housebroken.

- (c) *If an animal is properly excluded.* If a public entity properly excludes a service animal under § 35.136(b), it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.
- (d) *Animal under handler's control.* A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (*e.g.*, voice control, signals, or other effective means).
- (e) *Care or supervision.* A public entity is not responsible for the care or supervision of a service animal.
- (f) *Inquiries.* A public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).
- (g) *Access to areas of a public entity.* Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.
- (h) *Surcharges.* A public entity shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.
- (i) *Miniature horses.*
- (1) *Reasonable modifications.* A public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.
 - (2) *Assessment factors.* In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public entity shall consider—
 - (i) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
 - (ii) Whether the handler has sufficient control of the miniature horse;
 - (iii) Whether the miniature horse is housebroken; and
 - (iv) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.
 - (3) *Other requirements.* Paragraphs 35.136 (c) through (h) of this section, which apply to service animals, shall also apply to miniature horses.

§ 35.137 Mobility devices.

- (a) *Use of wheelchairs and manually-powered mobility aids.* A public entity shall permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.

(b)

- (1) *Use of other power-driven mobility devices.* A public entity shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the public entity can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the public entity has adopted pursuant to § 35.130(h).
- (2) *Assessment factors.* In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under paragraph (b)(1) of this section, a public entity shall consider—
 - (i) The type, size, weight, dimensions, and speed of the device;
 - (ii) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
 - (iii) The facility's design and operational characteristics (*e.g.*, whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);
 - (iv) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
 - (v) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.

(c)

- (1) *Inquiry about disability.* A public entity shall not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.
- (2) *Inquiry into use of other power-driven mobility device.* A public entity may ask a person using an other power-driven mobility device to provide a credible assurance that the mobility device is required because of the person's disability. A public entity that permits the use of an other power-driven mobility device by an individual with a mobility disability shall accept the presentation of a valid, State-issued, disability parking placard or card, or other State-issued proof of disability as a credible assurance that the use of the other power-driven mobility device is for the individual's mobility disability. In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, a public entity shall accept as a credible assurance a verbal representation, not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability. A "valid" disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance's requirements for disability placards or cards.

§ 35.138 Ticketing

(a)

- (1) For the purposes of this section, "accessible seating" is defined as wheelchair spaces and companion seats that comply with sections 221 and 802 of the 2010 Standards along with any other seats required to be offered for sale to the individual with a disability pursuant to paragraph (d) of this section.
- (2) *Ticket sales.* A public entity that sells tickets for a single event or series of events shall modify its policies, practices, or procedures to ensure that individuals with disabilities have an equal opportunity to purchase tickets for accessible seating—
 - (i) During the same hours;
 - (ii) During the same stages of ticket sales, including, but not limited to, pre-sales, promotions, lotteries, wait-lists, and general sales;
 - (iii) Through the same methods of distribution;
 - (iv) In the same types and numbers of ticketing sales outlets, including telephone service, in-

person ticket sales at the facility, or third-party ticketing services, as other patrons; and

(v) Under the same terms and conditions as other tickets sold for the same event or series of events.

(b) *Identification of available accessible seating.* A public entity that sells or distributes tickets for a single event or series of events shall, upon inquiry—

- (1) Inform individuals with disabilities, their companions, and third parties purchasing tickets for accessible seating on behalf of individuals with disabilities of the locations of all unsold or otherwise available accessible seating for any ticketed event or events at the facility;
- (2) Identify and describe the features of available accessible seating in enough detail to reasonably permit an individual with a disability to assess independently whether a given accessible seating location meets his or her accessibility needs; and
- (3) Provide materials, such as seating maps, plans, brochures, pricing charts, or other information, that identify accessible seating and information relevant thereto with the same text or visual representations as other seats, if such materials are provided to the general public.

(c) *Ticket prices.* The price of tickets for accessible seating for a single event or series of events shall not be set higher than the price for other tickets in the same seating section for the same event or series of events. Tickets for accessible seating must be made available at all price levels for every event or series of events. If tickets for accessible seating at a particular price level are not available because of inaccessible features, then the percentage of tickets for accessible seating that should have been available at that price level (determined by the ratio of the total number of tickets at that price level to the total number of tickets in the assembly area) shall be offered for purchase, at that price level, in a nearby or similar accessible location.

(d) *Purchasing multiple tickets.*

- (1) *General.* For each ticket for a wheelchair space purchased by an individual with a disability or a third-party purchasing such a ticket at his or her request, a public entity shall make available for purchase three additional tickets for seats in the same row that are contiguous with the wheelchair space, provided that at the time of purchase there are three such seats available. A public entity is not required to provide more than three contiguous seats for each wheelchair space. Such seats may include wheelchair spaces.
- (2) *Insufficient additional contiguous seats available.* If patrons are allowed to purchase at least four tickets, and there are fewer than three such additional contiguous seat tickets available for purchase, a public entity shall offer the next highest number of such seat tickets available for purchase and shall make up the difference by offering tickets for sale for seats that are as close as possible to the accessible seats.
- (3) *Sales limited to less than four tickets.* If a public entity limits sales of tickets to fewer than four seats per patron, then the public entity is only obligated to offer as many seats to patrons with disabilities, including the ticket for the wheelchair space, as it would offer to patrons without disabilities.
- (4) *Maximum number of tickets patrons may purchase exceeds four.* If patrons are allowed to purchase more than four tickets, a public entity shall allow patrons with disabilities to purchase up to the same number of tickets, including the ticket for the wheelchair space.
- (5) *Group sales.* If a group includes one or more individuals who need to use accessible seating because of a mobility disability or because their disability requires the use of the accessible features that are provided in accessible seating, the group shall be placed in a seating area with accessible seating so that, if possible, the group can sit together. If it is necessary to divide the group, it should be divided so that the individuals in the group who use wheelchairs are not isolated from their group.

(e) *Hold-and-release of tickets for accessible seating.*

(1) *Tickets for accessible seating may be released for sale in certain limited circumstances.* A public entity may release unsold tickets for accessible seating for sale to individuals without disabilities for their own use for a single event or series of events only under the following circumstances—

- (i) When all non-accessible tickets (excluding luxury boxes, club boxes, or suites) have been sold;

- (ii) When all non-accessible tickets in a designated seating area have been sold and the tickets for accessible seating are being released in the same designated area; or
 - (iii) When all non-accessible tickets in a designated price category have been sold and the tickets for accessible seating are being released within the same designated price category.
- (2) *No requirement to release accessible tickets.* Nothing in this paragraph requires a facility to release tickets for accessible seating to individuals without disabilities for their own use.
- (3) *Release of series-of-events tickets on a series-of-events basis.*
 - (i) *Series-of-events tickets sell-out when no ownership rights are attached.* When series-of-events tickets are sold out and a public entity releases and sells accessible seating to individuals without disabilities for a series of events, the public entity shall establish a process that prevents the automatic reassignment of the accessible seating to such ticket holders for future seasons, future years, or future series so that individuals with disabilities who require the features of accessible seating and who become newly eligible to purchase tickets when these series-of-events tickets are available for purchase have an opportunity to do so.
 - (ii) *Series-of-events tickets when ownership rights are attached.* When series-of-events tickets with an ownership right in accessible seating areas are forfeited or otherwise returned to a public entity, the public entity shall make reasonable modifications in its policies, practices, or procedures to afford individuals with mobility disabilities or individuals with disabilities that require the features of accessible seating an opportunity to purchase such tickets in accessible seating areas.
- (f) *Ticket transfer.* Individuals with disabilities who hold tickets for accessible seating shall be permitted to transfer tickets to third parties under the same terms and conditions and to the same extent as other spectators holding the same type of tickets, whether they are for a single event or series of events.
- (g) *Secondary ticket market.*
 - (1) A public entity shall modify its policies, practices, or procedures to ensure that an individual with a disability may use a ticket acquired in the secondary ticket market under the same terms and conditions as other individuals who hold a ticket acquired in the secondary ticket market for the same event or series of events.
 - (2) If an individual with a disability acquires a ticket or series of tickets to an inaccessible seat through the secondary market, a public entity shall make reasonable modifications to its policies, practices, or procedures to allow the individual to exchange his ticket for one to an accessible seat in a comparable location if accessible seating is vacant at the time the individual presents the ticket to the public entity.
- (h) *Prevention of fraud in purchase of tickets for accessible seating.* A public entity may not require proof of disability, including, for example, a doctor's note, before selling tickets for accessible seating.
 - (1) *Single-event tickets.* For the sale of single-event tickets, it is permissible to inquire whether the individual purchasing the tickets for accessible seating has a mobility disability or a disability that requires the use of the accessible features that are provided in accessible seating, or is purchasing the tickets for an individual who has a mobility disability or a disability that requires the use of the accessible features that are provided in the accessible seating.
 - (2) *Series-of-events tickets.* For series-of-events tickets, it is permissible to ask the individual purchasing the tickets for accessible seating to attest in writing that the accessible seating is for a person who has a mobility disability or a disability that requires the use of the accessible features that are provided in the accessible seating.
 - (3) *Investigation of fraud.* A public entity may investigate the potential misuse of accessible seating where there is good cause to believe that such seating has been purchased fraudulently.

§ 35.139 Direct threat.

- (a) This part does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others.

- (b) **In determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.**

Subpart C—Employment

§ 35.140 Employment discrimination prohibited

- (a) No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity.
- (b)
- (1) For purposes of this part, the requirements of title I of the Act, as established by the regulations of the Equal Employment Opportunity Commission in 29 CFR part 1630, apply to employment in any service, program, or activity conducted by a public entity if that public entity is also subject to the jurisdiction of title I.
 - (2) For the purposes of this part, the requirements of section 504 of the Rehabilitation Act of 1973, as established by the regulations of the Department of Justice in 28 CFR part 41, as those requirements pertain to employment, apply to employment in any service, program, or activity conducted by a public entity if that public entity is not also subject to the jurisdiction of title I.

§§ 35.141—35.148 [Reserved]

Subpart D—Program Accessibility

§ 35.149 Discrimination prohibited.

Except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

§ 35.150 Existing facilities

- (a) *General.* A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—
- (1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;
 - (2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or
 - (3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

- (b) *Methods.*

- (1) *General.* A public entity may comply with the requirements of this section through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of § 35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2)

- (i) *Safe harbor.* Elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 Standards or in the Uniform Federal Accessibility Standards (UFAS), Appendix A to 41 CFR part 101–19.6 (July 1, 2002 ed.), 49 FR 31528, app. A (Aug. 7, 1984) are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.

- (ii) The safe harbor provided in § 35.150(b)(2)(i) does not apply to those elements in existing facilities that are subject to supplemental requirements (*i.e.*, elements for which there are neither technical nor scoping specifications in the 1991 Standards). Elements in the 2010 Standards not eligible for the element-by-element safe harbor are identified as follows—

- (A) *Residential facilities dwelling units*, sections 233 and 809.
- (B) *Amusement rides*, sections 234 and 1002; 206.2.9; 216.12.
- (C) *Recreational boating facilities*, sections 235 and 1003; 206.2.10.
- (D) *Exercise machines and equipment*, sections 236 and 1004; 206.2.13.
- (E) *Fishing piers and platforms*, sections 237 and 1005; 206.2.14.
- (F) *Golf facilities*, sections 238 and 1006; 206.2.15.
- (G) *Miniature golf facilities*, sections 239 and 1007; 206.2.16.
- (H) *Play areas*, sections 240 and 1008; 206.2.17.
- (I) *Saunas and steam rooms*, sections 241 and 612.
- (J) *Swimming pools, wading pools, and spas*, sections 242 and 1009.
- (K) *Shooting facilities with firing positions*, sections 243 and 1010.
- (L) *Miscellaneous.*

(1) *Team or player seating*, section 221.2.1.4.

(2) *Accessible route to bowling lanes*, section. 206.2.11.

(3) *Accessible route in court sports facilities*, section 206.2.12.

- (3) *Historic preservation programs.* In meeting the requirements of § 35.150(a) in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include—

- (i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;
- (ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or
- (iii) Adopting other innovative methods.

(c) *Time period for compliance.* Where structural changes in facilities are undertaken to comply with the

obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible.

(d) *Transition plan.*

- (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.
- (2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.
- (3) The plan shall, at a minimum—
 - (i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
 - (ii) Describe in detail the methods that will be used to make the facilities accessible;
 - (iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
 - (iv) Indicate the official responsible for implementation of the plan.
- (4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph (d) shall apply only to those policies and practices that were not included in the previous transition plan.

§ 35.151 New construction and alterations

(a) *Design and construction.*

- (1) Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.
- (2) ***Exception for structural impracticability.***
 - (i) **Full compliance with the requirements of this section is not required where a public entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.**
 - (ii) **If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.**
 - (iii) **If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities, (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.**

(b) *Alterations.*

- (1) Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to

and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

- (2) The path of travel requirements of § 35.151(b)(4) shall apply only to alterations undertaken solely for purposes other than to meet the program accessibility requirements of § 35.150.

(3)

- (i) Alterations to historic properties shall comply, to the maximum extent feasible, with the provisions applicable to historic properties in the design standards specified in § 35.151(c).
- (ii) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of § 35.150.

- (4) *Path of travel.* An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

- (i) *Primary function.* A "primary function" is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public entity using the facility are carried out.

(A) Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, and corridors are not areas containing a primary function. Restrooms are not areas containing a primary function unless the provision of restrooms is a primary purpose of the area, e.g., in highway rest stops.

(B) For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.

- (ii) A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.

(A) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

(B) For the purposes of this section, the term "path of travel" also includes the restrooms, telephones, and drinking fountains serving the altered area.

(C) *Safe harbor.* If a public entity has constructed or altered required elements of a path of travel in accordance with the specifications in either the 1991 Standards or the Uniform Federal Accessibility Standards before March 15, 2012, the public entity is not required to retrofit such elements to reflect incremental changes in the 2010 Standards solely because of an alteration to a primary function area served by that path of travel.

- (iii) *Disproportionality.*

(A) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20 % of the cost of the alteration to the primary function area.

(B) Costs that may be counted as expenditures required to provide an accessible path of travel may include:

(1) Costs associated with providing an accessible entrance and an accessible

route to the altered area, for example, the cost of widening doorways or installing ramps;

- (2) Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;
- (3) Costs associated with providing accessible telephones, such as relocating the telephone to an accessible height, installing amplification devices, or installing a text telephone (TTY); and
- (4) Costs associated with relocating an inaccessible drinking fountain.

(iv) *Duty to provide accessible features in the event of disproportionality.*

- (A) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.
- (B) In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order—

- (1) An accessible entrance;
- (2) An accessible route to the altered area;
- (3) At least one accessible restroom for each sex or a single unisex restroom;
- (4) Accessible telephones;
- (5) Accessible drinking fountains; and
- (6) When possible, additional accessible elements such as parking, storage, and alarms.

(v) *Series of smaller alterations.*

- (A) The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(B)

- (1) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three-year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.
- (2) Only alterations undertaken on or after March 15, 2011 shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations.

(c) *Accessibility standards and compliance date.*

- (1) If physical construction or alterations commence after July 26, 1992, but prior to September 15, 2010, then new construction and alterations subject to this section must comply with either the UFAS or the 1991 Standards except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) of the 1991 Standards shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.
- (2) If physical construction or alterations commence on or after September 15, 2010, and before March 15, 2012, then new construction and alterations subject to this section may comply with one of the following: the 2010 Standards, UFAS, or the 1991 Standards except that the elevator

exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) of the 1991 Standards shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

- (3) If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards.
- (4) For the purposes of this section, ceremonial groundbreaking or razing of structures prior to site preparation do not commence physical construction or alterations.
- (5) *Noncomplying new construction and alterations.*
 - (i) Newly constructed or altered facilities or elements covered by §§ 35.151(a) or (b) that were constructed or altered before March 15, 2012, and that do not comply with the 1991 Standards or with UFAS shall before March 15, 2012, be made accessible in accordance with either the 1991 Standards, UFAS, or the 2010 Standards.
 - (ii) Newly constructed or altered facilities or elements covered by §§ 35.151(a) or (b) that are constructed or altered on or after March 15, 2012, and that do not comply with the 1991 Standards or with UFAS shall, on or after March 15, 2012, be made accessible in accordance with the 2010 Standards.

Appendix to § 35.151(c)

Compliance Date for New Construction or Alterations	Applicable Standards
Before September 15, 2010	1991 Standards or UFAS
On or after September 15, 2010, and before March 15, 2012	1991 Standards, UFAS, or 2010 Standards
On or after March 15, 2012	2010 Standards

- (d) *Scope of coverage.* The 1991 Standards and the 2010 Standards apply to fixed or built-in elements of buildings, structures, site improvements, and pedestrian routes or vehicular ways located on a site. Unless specifically stated otherwise, the advisory notes, appendix notes, and figures contained in the 1991 Standards and the 2010 Standards explain or illustrate the requirements of the rule; they do not establish enforceable requirements.
- (e) *Social service center establishments.* Group homes, halfway houses, shelters, or similar social service center establishments that provide either temporary sleeping accommodations or residential dwelling units that are subject to this section shall comply with the provisions of the 2010 Standards applicable to residential facilities, including, but not limited to, the provisions in sections 233 and 809.
 - (1) In sleeping rooms with more than 25 beds covered by this section, a minimum of 5% of the beds shall have clear floor space complying with section 806.2.3 of the 2010 Standards.
 - (2) Facilities with more than 50 beds covered by this section that provide common use bathing facilities, shall provide at least one roll-in shower with a seat that complies with the relevant provisions of section 608 of the 2010 Standards. Transfer-type showers are not permitted in lieu of a roll-in shower with a seat, and the exceptions in sections 608.3 and 608.4 for residential dwelling units are not permitted. When separate shower facilities are provided for men and for women, at least one roll-in shower shall be provided for each group.
- (f) *Housing at a place of education.* Housing at a place of education that is subject to this section shall comply with the provisions of the 2010 Standards applicable to transient lodging, including, but not limited to, the requirements for transient lodging guest rooms in sections 224 and 806 subject to the following exceptions. For the purposes of the application of this section, the term "sleeping room" is intended to be used interchangeably with the term "guest room" as it is used in the transient lodging standards.
 - (1) Kitchens within housing units containing accessible sleeping rooms with mobility features (including suites and clustered sleeping rooms) or on floors containing accessible sleeping rooms with mobility features shall provide turning spaces that comply with section 809.2.2 of the 2010 Standards and kitchen work surfaces that comply with section 804.3 of the 2010 Standards.
 - (2) Multi-bedroom housing units containing accessible sleeping rooms with mobility features shall have an accessible route throughout the unit in accordance with section 809.2 of the 2010

Standards.

- (3) Apartments or townhouse facilities that are provided by or on behalf of a place of education, which are leased on a year-round basis exclusively to graduate students or faculty, and do not contain any public use or common use areas available for educational programming, are not subject to the transient lodging standards and shall comply with the requirements for residential facilities in sections 233 and 809 of the 2010 Standards.
- (g) *Assembly areas.* Assembly areas subject to this section shall comply with the provisions of the 2010 Standards applicable to assembly areas, including, but not limited to, sections 221 and 802. In addition, assembly areas shall ensure that—
- (1) In stadiums, arenas, and grandstands, wheelchair spaces and companion seats are dispersed to all levels that include seating served by an accessible route;
 - (2) Assembly areas that are required to horizontally disperse wheelchair spaces and companion seats by section 221.2.3.1 of the 2010 Standards and have seating encircling, in whole or in part, a field of play or performance area shall disperse wheelchair spaces and companion seats around that field of play or performance area;
 - (3) Wheelchair spaces and companion seats are not located on (or obstructed by) temporary platforms or other movable structures, except that when an entire seating section is placed on temporary platforms or other movable structures in an area where fixed seating is not provided, in order to increase seating for an event, wheelchair spaces and companion seats may be placed in that section. When wheelchair spaces and companion seats are not required to accommodate persons eligible for those spaces and seats, individual, removable seats may be placed in those spaces and seats;
 - (4) Stadium-style movie theaters shall locate wheelchair spaces and companion seats on a riser or cross-aisle in the stadium section that satisfies at least one of the following criteria—
 - (i) It is located within the rear 60% of the seats provided in an auditorium; or
 - (ii) It is located within the area of an auditorium in which the vertical viewing angles (as measured to the top of the screen) are from the 40th to the 100th percentile of vertical viewing angles for all seats as ranked from the seats in the first row (1st percentile) to seats in the back row (100th percentile).
- (h) *Medical care facilities.* Medical care facilities that are subject to this section shall comply with the provisions of the 2010 Standards applicable to medical care facilities, including, but not limited to, sections 223 and 805. In addition, medical care facilities that do not specialize in the treatment of conditions that affect mobility shall disperse the accessible patient bedrooms required by section 223.2.1 of the 2010 Standards in a manner that is proportionate by type of medical specialty.
- (i) *Curb ramps.*
- (1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.
 - (2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.
- (j) *Facilities with residential dwelling units for sale to individual owners.*
- (1) Residential dwelling units designed and constructed or altered by public entities that will be offered for sale to individuals shall comply with the requirements for residential facilities in the 2010 Standards including sections 233 and 809.
 - (2) The requirements of paragraph (1) also apply to housing programs that are operated by public entities where design and construction of particular residential dwelling units take place only after a specific buyer has been identified. In such programs, the covered entity must provide the units that comply with the requirements for accessible features to those pre-identified buyers with disabilities who have requested such a unit.
- (k) *Detention and correctional facilities.*
- (1) New construction of jails, prisons, and other detention and correctional facilities shall comply with the 2010 Standards except that public entities shall provide accessible mobility features complying with section 807.2 of the 2010 Standards for a minimum of 3%, but no fewer than

one, of the total number of cells in a facility. Cells with mobility features shall be provided in each classification level.

- (2) *Alterations to detention and correctional facilities.* Alterations to jails, prisons, and other detention and correctional facilities shall comply with the 2010 Standards except that public entities shall provide accessible mobility features complying with section 807.2 of the 2010 Standards for a minimum of 3%, but no fewer than one, of the total number of cells being altered until at least 3%, but no fewer than one, of the total number of cells in a facility shall provide mobility features complying with section 807.2. Altered cells with mobility features shall be provided in each classification level. However, when alterations are made to specific cells, detention and correctional facility operators may satisfy their obligation to provide the required number of cells with mobility features by providing the required mobility features in substitute cells (cells other than those where alterations are originally planned), provided that each substitute cell—
- (i) Is located within the same prison site;
 - (ii) Is integrated with other cells to the maximum extent feasible;
 - (iii) Has, at a minimum, equal physical access as the altered cells to areas used by inmates or detainees for visitation, dining, recreation, educational programs, medical services, work programs, religious services, and participation in other programs that the facility offers to inmates or detainees; and,
 - (iv) If it is technically infeasible to locate a substitute cell within the same prison site, a substitute cell must be provided at another prison site within the corrections system.
- (3) With respect to medical and long-term care facilities in jails, prisons, and other detention and correctional facilities, public entities shall apply the 2010 Standards technical and scoping requirements for those facilities irrespective of whether those facilities are licensed.

§ 35.152 Jails, detention and correctional facilities, and community correctional facilities.

(a) *General.* This section applies to public entities that are responsible for the operation or management of adult and juvenile justice jails, detention and correctional facilities, and community correctional facilities, either directly or through contractual, licensing, or other arrangements with public or private entities, in whole or in part, including private correctional facilities.

(b) *Discrimination prohibited.*

- (1) Public entities shall ensure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.
- (2) Public entities shall ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals. Unless it is appropriate to make an exception, a public entity—
 - (i) Shall not place inmates or detainees with disabilities in inappropriate security classifications because no accessible cells or beds are available;
 - (ii) Shall not place inmates or detainees with disabilities in designated medical areas unless they are actually receiving medical care or treatment;
 - (iii) Shall not place inmates or detainees with disabilities in facilities that do not offer the same programs as the facilities where they would otherwise be housed; and
 - (iv) Shall not deprive inmates or detainees with disabilities of visitation with family members by placing them in distant facilities where they would not otherwise be housed.
- (3) Public entities shall implement reasonable policies, including physical modifications to additional cells in accordance with the 2010 Standards, so as to ensure that each inmate with a disability is housed in a cell with the accessible elements necessary to afford the inmate access to safe, appropriate housing.

§§ 35.153—35.159 [Reserved]

Subpart E—Communications

§ 35.160 General.

(a)

- (1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, **and companions with disabilities** are as effective as communications with others.
- (2) **For purposes of this section, "companion" means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate.**

(b)

- (1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, **including applicants, participants, companions, and members of the public**, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.
- (2) **The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.** In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. **In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.**

(c)

- (1) A public entity shall not require an individual with a disability to bring another individual to interpret for him or her.
- (2) A public entity shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except—
 - (i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
 - (ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.
- (3) A public entity shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

(d) *Video remote interpreting (VRI) services.* A public entity that chooses to provide qualified interpreters via VRI services shall ensure that it provides—

- (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
- (2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;
- (3) A clear, audible transmission of voices; and
- (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

§ 35.161 Telecommunications.

- (a) Where a public entity communicates by telephone with applicants and beneficiaries, **text telephones (TTYs)** or

equally effective telecommunications systems shall be used to communicate with individuals **who are deaf or hard of hearing or have speech impairments.**

(b) When a public entity uses an automated-attendant system, including, but not limited to, voice mail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including TTYs and all forms of FCC-approved telecommunications relay system, including Internet-based relay systems.

(c) A public entity shall respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner that it responds to other telephone calls.

§ 35.162 Telephone emergency services

Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems.

§ 35.163 Information and signage

(a) A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(b) A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

§ 35.164 Duties

This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.

§§ 35.165—35.169 [Reserved]

Subpart F—Compliance Procedures

§ 35.170 Complaints

(a) *Who may file.* An individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part.

(b) *Time for filing.* A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency for good cause shown. A complaint is deemed to be filed under this section on the date it is first filed with any Federal agency.

(c) *Where to file.* An individual may file a complaint with any agency that he or she believes to be the appropriate agency designated under subpart G of this part, or with any agency that provides funding to the public entity that is the subject of the complaint, or with the Department of Justice for referral as provided in §35.171(a)(2).

§ 35.171 Acceptance of complaints

(a) *Receipt of complaints.*

(1)

- (i) Any Federal agency that receives a complaint of discrimination on the basis of disability by a public entity shall promptly review the complaint to determine whether it has jurisdiction over the complaint under section 504.
- (ii) If the agency does not have section 504 jurisdiction, it shall promptly determine whether it is the designated agency under subpart G of this part responsible for complaints filed against the public entity.

(2)

- (i) If an agency other than the Department of Justice determines that it does not have section 504 jurisdiction and is not the designated agency, it shall promptly refer the complaint **to the appropriate designated agency, the agency that has section 504 jurisdiction, or the Department of Justice, and so notify the complainant.**
- (ii) When the Department of Justice receives a complaint for which it does not have jurisdiction under section 504 and is not the designated agency, **it may exercise jurisdiction pursuant to § 35.190(e)** or refer the complaint to an agency that does have jurisdiction under section 504 or to the appropriate agency designated in subpart G of this part or, in the case of an employment complaint that is also subject to title I of the Act, to the Equal Employment Opportunity Commission.

(3)

- (i) If the agency that receives a complaint has section 504 jurisdiction, it shall process the complaint according to its procedures for enforcing section 504.
- (ii) If the agency that receives a complaint does not have section 504 jurisdiction, but is the designated agency, it shall process the complaint according to the procedures established by this subpart.

(b) *Employment complaints.*

- (1) If a complaint alleges employment discrimination subject to title I of the Act, and the agency has section 504 jurisdiction, the agency shall follow the procedures issued by the Department of Justice and the Equal Employment Opportunity Commission under section 107(b) of the Act.
- (2) If a complaint alleges employment discrimination subject to title I of the Act, and the designated agency does not have section 504 jurisdiction, the agency shall refer the complaint to the Equal Employment Opportunity Commission for processing under title I of the Act.
- (3) Complaints alleging employment discrimination subject to this part, but not to title I of the Act shall be processed in accordance with the procedures established by this subpart.

(c) *Complete complaints.*

- (1) A designated agency shall accept all complete complaints under this section and shall promptly notify the complainant and the public entity of the receipt and acceptance of the complaint.
- (2) If the designated agency receives a complaint that is not complete, it shall notify the complainant and specify the additional information that is needed to make the complaint a complete complaint. If the complainant fails to complete the complaint, the designated agency shall close the complaint without prejudice.

§ 35.172 Investigations and compliance reviews.

- (a) The designated agency shall investigate complaints for which it is responsible under § 35.171.
- (b) The designated agency may conduct compliance reviews of public entities in order to ascertain whether there has been a failure to comply with the nondiscrimination requirements of this part.
- (c) Where appropriate, the designated agency shall attempt informal resolution of any matter being investigated under this section, and, if resolution is not achieved and a violation is found, issue to the public entity and the complainant, if any, a Letter of Findings that shall include—
 - (1) Findings of fact and conclusions of law;
 - (2) A description of a remedy for each violation found (including compensatory damages where appropriate); and

(3) Notice of the rights and procedures available under paragraph (d) of this section and §§ 35.173 and 35.174.

(d) At any time, the complainant may file a private suit pursuant to section 203 of the Act, 42 U.S.C. 12133, whether or not the designated agency finds a violation.

§ 35.173 Voluntary compliance agreements

- (a) When the designated agency issues a noncompliance Letter of Findings, the designated agency shall—
- (1) Notify the Assistant Attorney General by forwarding a copy of the Letter of Findings to the Assistant Attorney General; and
 - (2) Initiate negotiations with the public entity to secure compliance by voluntary means.
- (b) Where the designated agency is able to secure voluntary compliance, the voluntary compliance agreement shall—
- (1) Be in writing and signed by the parties;
 - (2) Address each cited violation;
 - (3) Specify the corrective or remedial action to be taken, within a stated period of time, to come into compliance;
 - (4) Provide assurance that discrimination will not recur; and
 - (5) Provide for enforcement by the Attorney General.

§ 35.174 Referral.

If the public entity declines to enter into voluntary compliance negotiations or if negotiations are unsuccessful, the designated agency shall refer the matter to the Attorney General with a recommendation for appropriate action.

§ 35.175 Attorney's fees.

In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

§ 35.176 Alternative means of dispute resolution.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

§ 35.177 Effect of unavailability of technical assistance.

A public entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.

§ 35.178 State immunity.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

§§ 35.179—35.189 [Reserved]

Subpart G—Designated Agencies

§ 35.190 Designated Agencies.

- (a) The Assistant Attorney General shall coordinate the compliance activities of Federal agencies with respect to State and local government components, and shall provide policy guidance and interpretations to designated agencies to ensure the consistent and effective implementation of the requirements of this part.
- (b) The Federal agencies listed in paragraph (b)(1)-(8) of this section shall have responsibility for the implementation of subpart F of this part for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas.
 - (1) *Department of Agriculture*: All programs, services, and regulatory activities relating to farming and the raising of livestock, including extension services.
 - (2) *Department of Education*: All programs, services, and regulatory activities relating to the operation of elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.
 - (3) *Department of Health and Human Services*: All programs, services, and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health-related schools, the operation of health care and social service providers and institutions, including "grass-roots" and community services organizations and programs, and preschool and daycare programs.
 - (4) *Department of Housing and Urban Development*: All programs, services, and regulatory activities relating to state and local public housing, and housing assistance and referral.
 - (5) *Department of Interior*: All programs, services, and regulatory activities relating to lands and natural resources, including parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums.
 - (6) *Department of Justice*: All programs, services, and regulatory activities relating to law enforcement, public safety, and the administration of justice, including courts and correctional institutions; commerce and industry, including general economic development, banking and finance, consumer protection, insurance, and small business; planning, development, and regulation (unless assigned to other designated agencies); state and local government support services (e.g., audit, personnel, comptroller, administrative services); all other government functions not assigned to other designated agencies.
 - (7) *Department of Labor*: All programs, services, and regulatory activities relating to labor and the work force.
 - (8) *Department of Transportation*: All programs, services, and regulatory activities relating to transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing.
- (c) Responsibility for the implementation of subpart F of this part for components of State or local governments that exercise responsibilities, regulate, or administer services, programs, or activities relating to functions not assigned to specific designated agencies by paragraph (b) of this section may be assigned to other specific agencies by the Department of Justice.
- (d) If two or more agencies have apparent responsibility over a complaint, the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.
- (e) **When the Department receives a complaint directed to the Attorney General alleging a violation of this part that may fall within the jurisdiction of a designated agency or another Federal agency that may have jurisdiction under section 504, the Department may exercise its discretion to retain the complaint for investigation under this part.**

§§ 35.191—35.999 [Reserved]

NJAC 7:22-10.11
Design Requirements

NJ 7:22 – 10-12
Construction Phase Requirements

NO TEXT ON THIS PAGE

The rule below includes the amendments adopted to this subchapter on January 3, 2006.

Subchapter 9. Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals

7:22-9.1 Scope and purpose

(a) This subchapter establishes procedures for providing opportunities for socially and economically disadvantaged ("SED") contractors and vendors to supply materials and services under State financed construction contracts for environmental infrastructure facilities. To implement the policies established in N.J.S.A. 58:11B-26, 40:11A-41 et seq., and 52:32-17 et seq., this subchapter applies to environmental infrastructure projects receiving financial assistance from the Department and the Trust pursuant to N.J.A.C. 7:22-3, 4 and 6 and 7:22A-6 and 7. Under the provisions of N.J.A.C. 7:22-3, 4 and 6 and 7:22A-6 and 7, the Department and the Trust require recipients of Trust and Fund loans and other assistance to establish such programs for socially and economically disadvantaged small business concerns, to designate a project compliance officer, and to submit to the Department and Trust procurement plans for implementing the SED program. In addition, N.J.A.C. 7:22-3.17(a)24, 4.17(a)24, 6.17(a)24 and 7:22A-2.4(a) provide that a goal of not less than 10 percent be established for the award of contracts to small business concerns owned and controlled by one or more socially and economically disadvantaged individuals. The goal of 10 percent applies to the total amount of all contracts for building, materials and equipment, or services (including planning, design and building related activities) for a construction project. Where a local government unit has a SED participation goal which exceeds 10 percent of the total amount of all contracts, the local government unit must comply with both the Department's rules and the local minority and women-owned business ordinances.

(b) This subchapter also establishes the standards and procedures that will apply to the contracting agencies of grant or loan recipients in the awarding and making of contracts under their SED programs.

7:22-9.2 Definitions

The following words and terms, as used in this subchapter, will have the following meanings unless the content clearly indicates otherwise.

"Building" means the acquisition, erection, alteration, remodeling, improvement or extension of an environmental infrastructure facility.

"Construction" includes, but is not limited to:

1. The preliminary planning to determine the economic and engineering feasibility of environmental infrastructure facilities, the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, design, plans, working drawings, specifications, procedures, and other action necessary for the construction of environmental infrastructure facilities;
2. The building of, or purchase of land for, environmental infrastructure facilities; and
3. The inspection and supervision of the building of environmental infrastructure facilities.

"Contract" means any written agreement with a professional service or construction contractor related to the construction of an environmental infrastructure project.

"Contracting agency" means:

1. The governing body of a local government unit or any department, branch, board, commission, committee, authority, agency or officer of such local government unit possessing the authority to award and make contracts; or

2. The owner(s) or authorized representative(s) of a private entity.

"Contractor" means any party entering into a contract to provide or offering to provide building, materials and equipment, or services to a project sponsor for the construction of environmental infrastructure facilities. This includes, but is not limited to, planning and design, as well as building related services such as engineering, inspection and accounting.

"Contractor's plan" means the SED utilization plan submitted by the contractor to the project sponsor and to the Department establishing subcontracting opportunities that will fulfill the requirements of this subchapter.

"Department" means the New Jersey Department of Environmental Protection and its successors and assigns.

"Environmental infrastructure facilities" means wastewater treatment facilities, stormwater management facilities or water supply facilities.

"Financial agreement" means the legal instrument, including a grant agreement or loan agreement, executed between either the State of New Jersey or the Trust and the project sponsor for the construction of environmental infrastructure facilities.

"Local government unit" means a county, municipality, municipal or county sewerage or utility authority, municipal sewerage district, joint meeting, improvement authority or other political subdivision of the State authorized to construct, operate and maintain wastewater treatment or stormwater management facilities, or a State authority, district water supply commission, county, municipality, municipal or county utilities authority, municipal water district, joint meeting or any other political subdivision of the State authorized pursuant to law to operate or maintain a public water supply system or to construct, rehabilitate, operate or maintain water supply facilities or otherwise provide water for human consumption.

"New Jersey environmental infrastructure financing program" means the program for providing financing to project sponsors pursuant to N.J.A.C. 7:22-3, 4 and 6, and 7:22A-6 and 7.

"Office" means the Office of Equal Opportunity and Public Contract Assistance or other program of the Department of Environmental Protection with the responsibility for administration of this subchapter.

"Private entity" means the owner(s) of a nongovernmental community water system or a nonprofit noncommunity water system.

"Project" means the defined services for the construction of specified operable environmental infrastructure facilities as approved by the Department or the Trust in the project sponsor's financial agreement.

"Project compliance officer" means an officer or employee of the project sponsor who is designated by the project sponsor to monitor and enforce compliance with the affirmative action and SED requirements of the applicable program rules and this subchapter.

"Project plan" means the proposal submitted at the time of application by the project sponsor to the Department establishing the SED utilization plan and its requirements.

"Project sponsor" means any local government unit or private entity that seeks a loan or grant pursuant to N.J.A.C. 7:22-3, 4 and 6 and 7:22A-6 and 7.

"SED utilization plan" means a written document outlining the entire project work, the estimated length of time it will take to complete the project, each significant segment of the project on which SEDs will or may participate, and a description of how SEDs will be contacted.

"Socially and economically disadvantaged small business concern" or "SED" means any small business concern:

1. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; or, in the case of a joint venture, at least 51 percent of the beneficial ownership interests are legitimately held by a SED; and

2. Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals; and

3. Which is a full participation subcontractor in that the SED is responsible for the execution of a distinct element of work and carries out the work responsibility by actually performing, managing and supervising the task involved. Any deviation from this definition will automatically classify the SED as a broker, middleman or passive conduit. These three functions are contrary to the spirit of the Trust Act and will not qualify a SED enterprise for State of New Jersey certification; and

4. Which has been certified pursuant to the New Jersey Uniform Certification Act (N.J.S.A. 52:27H-1 et seq.) or pursuant to the provisions of 49 CFR Part 23 by the New Jersey Commerce and Economic Growth Commission, the New Jersey Department of Transportation, the Port Authority of New York and New Jersey, the New Jersey Transit or other agencies deemed appropriate by the Office, as an eligible minority business or female business.

i. "Socially disadvantaged individuals" means those individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

ii. "Economically disadvantaged individuals" means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

iii. "Socially and economically disadvantaged individuals" shall include women, Black Americans, Hispanic Americans, Native Americans, Asian Americans, and members of other groups, or other individuals, found to be socially and economically disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 USC 637(a)). Black Americans, Hispanic Americans, Native Americans and Asian Americans shall be defined as follows:

(1) "Black American" means a person having origins in any of the black racial groups in Africa;

(2) "Hispanic American" means a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;

(3) "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian Subcontinent, Hawaii, or the Pacific Islands;

(4) "Native American" means a person having origins in any of the original peoples of North America.

"Small business concern" means a business which is independently owned and operated and which is not dominant in its field of operation. A business is independently owned and operated if the management which controls the business is responsible for both its daily and long term operations.

"Subcontract" means an agreement to perform a portion of a contract.

"Subcontractor" means a third party that is engaged by the contractor to perform part of the work under a subcontract.

"10 percent SED utilization," "10 percent goal" and "10 percent" means SED business concern participation, which includes 7 percent for minority-owned SED business concerns and 3 percent for women-owned SED business concerns.

"Trust" means the New Jersey Environmental Infrastructure Trust established pursuant to the Trust Act.

"Trust Act" means the New Jersey Environmental Infrastructure Trust Act (N.J.S.A. 58:11B-1 et seq.), as amended and/or supplemented.

7:22-9.3 SED utilization requirements for projects

(a) A goal of not less than 10 percent (or a higher percentage as may be required by Federal law) of the total amount of all contracts for building, materials and equipment, or services for a project funded by a New Jersey environmental infrastructure facilities financing program must be awarded to SEDs.

(b) The 10 percent SED utilization requirement shall be accomplished by the following:

1. Bids shall be solicited on an unrestricted basis. The bid documents, however, shall include a statement to the effect that the successful bidder must fulfill the SED utilization requirements by subcontracting portions or the work to SEDs; or

2. Contractors also have the option of establishing unrestricted bidding procedures to fulfill the 10 percent SED utilization requirement for the project.

7:22-9.4 Requirement to develop SED Utilization Plan

(a) Each project sponsor shall develop, in consultation with the Office, a plan for achieving its SED utilization requirements (the "project plan"). Development of a plan shall be completed before the Department and, when relevant, the Trust may approve an application pursuant to the applicable program rules

(b) The project plan shall identify those contracts proposed to be bid on an unrestricted basis. For each unrestricted contract, the project plan shall also identify the SED utilization requirements that the successful bidder shall meet.

(c) All contractors, including SED contractors, shall submit their own SED utilization plan ("contractor's plan"), for the aspects of the project covered by the contract, to the project sponsor and to the Office within 30 days of the awarding of a contract. The Contractor's Plan shall contain provisions to meet the specific SED utilization requirements imposed upon the contractor by the project sponsor as well as to meet the general SED utilization requirements for the project pursuant to this subchapter.

(d) If the contractor does not comply with the requirements of the contractor's plan and the project sponsor does not take steps to otherwise comply with N.J.A.C. 7:22-9.3(a), the Department and, in the case of a Trust loan, the Trust, may take any of the actions or combinations thereof specified in N.J.A.C. 7:22-3.40 through 3.44, 7:22-4.40 through 4.44, 7:22-6.40 through 6.44 and 7:22A-1.8 through 1.13.

7:22-9.5 (Reserved)

7:22-9.6 Notice of SED utilization opportunities

(a) All project sponsors, at least 30 days prior to public advertisement for bids, shall notify the agencies specified in N.J.A.C. 7:22-9.13(a)8, of the availability of opportunities for SEDs to provide

services, to bid on unrestricted contracts or subcontracts, or to provide any other necessary purchase or procurement. The notice shall include a description of the type and scope of the services involved.

(b) All notices shall include a statement to the effect that the project or contract is funded in part by New Jersey wastewater treatment financing programs and the successful bidder must comply with all the provisions of N.J.A.C. 7:22-9.1 et seq. for the participation of small business enterprises owned and controlled by socially and economically disadvantaged individuals.

7:22-9.7 Advertisements for SED utilization

(a) All advertisements for bids shall include a statement to the effect that the project or contract is funded in part by New Jersey environmental infrastructure financing programs and the successful bidder must comply with the provisions of N.J.A.C. 7:22-9 for the participation of small business enterprises owned and controlled by socially and economically disadvantaged individuals.

(b) The advertisement for bids shall indicate that:

1. Awards will be made only to socially and economically disadvantaged business concerns that are certified by the New Jersey Commerce, Economic Growth and Tourism Commission, the New Jersey Department of Transportation, the Port Authority of New York and New Jersey, New Jersey Transit or other agencies deemed appropriate by the Office as eligible minority businesses or female businesses; or

2. The invitation to bid is on an unrestricted basis whereby the successful bidder must fulfill the SED utilization requirements. The agencies specified in N.J.A.C. 7:22-9.13(a)8 will have a list of eligible SED firms and shall, upon request, provide them to the project sponsor. The project sponsor shall, during the advertisement phase, provide copies of the list to all contractors on unrestricted contracts.

(c) The advertisement for bids shall be in such newspaper or newspapers and other periodicals identified by the agencies specified in N.J.A.C. 7:22-9.13 as will best give notice thereof to appropriate bidders and shall be sufficiently in advance of the purchase or contract to promote competitive bidding. In no case shall the advertisement for bids be published less than 30 days prior to the date fixed for receiving bids on the purchase or contract.

(d) In the case of a set aside contract, the newspaper or newspapers in which the advertisement for bids appears shall be selected by the contracting agency in consultation with the Office.

(e) If there are no responses to the bid solicitation from SEDs or if the successful bidder's proposal does not meet the SED utilization requirements, the successful bidder shall advertise and continue the search for SED participants for a minimum of 30 days after the contract is awarded. The contract shall include a provision to this effect.

7:22-9.8 (Reserved)

7:22-9.9 (Reserved)

7:22-9.10 Lowest bid resulting in payment of unreasonable price

(a) If the contracting agency determines that the acceptance of the lowest responsible bid will result either in the payment of an unreasonable price or in a contract otherwise unacceptable pursuant to the statutes and rules governing public contracts, the contracting agency shall reject all bids.

(b) Bidders and the office shall be notified of the rejection of all bids, the reasons for the rejection, and the contracting agency's intent to solicit bids for a second time.

(c) If the contracting agency determines a second time that the acceptance of the lowest responsible bid will result either in the payment of an unreasonable price or in a contract otherwise unacceptable pursuant to the statutes and rules governing public contracts, the contracting agency shall reject all bids and notify the Office and, after receipt of the Office's approval, shall amend the project plan accordingly.

(d) Bidders shall be notified of the cancellation, the reasons for the cancellation and the contracting agency's intent to resolicit bids on an unrestricted basis. SEDs may participate in the bidding on an unrestricted basis.

7:22-9.11 Project compliance officer

(a) Each project sponsor shall designate an officer or employee to serve as its project compliance officer.

(b) The project compliance officer shall be responsible for coordinating SED utilization efforts on the project and for monitoring and enforcing compliance with the affirmative action and SED requirements of the applicable program rules.

(c) SED utilization requirements shall be an agenda item at all contract award meetings and, wherever applicable, at preconstruction conference meetings regardless of whether a loan or grant agreement has been executed or not. Each project sponsor shall be responsible for notifying the Office of the time and place of such meetings.

(d) The project compliance officer shall attend all monthly construction progress meetings.

7:22-9.12 Reports

(a) The contracting agency shall submit its planning and design SED utilization report to the Office at the time of filing of its grant/loan application.

(b) Each project compliance officer shall submit the contracting agency's monthly progress reports to the Office. Once all SED contractors have been obtained, submittal of this report will no longer be required.

(c) Each project compliance officer shall submit a periodic report on behalf of the project sponsor to the Office according to a schedule announced by the Office. At a minimum, this construction report shall be submitted quarterly; that is, January, April, July and October. Where appropriate, the Office may approve a variation in the frequency of reporting requirements specified in (b) through (d) of this section. This report shall include the following information:

1. The value of each contract and subcontract awarded to SEDs and the total dollar value and number of contracts and subcontracts awarded to SEDs;
2. The percentage of SED utilization in comparison to the cost of each contract, as well as the total percentage of SED utilization (including set aside contracts) in comparison to overall project costs;
3. The types and sizes of the participating SEDs and the nature of goods and services being provided; and
4. The efforts made to publicize and promote the project sponsor's SED utilization plan.

(d) Contractors shall submit a quarterly construction report to the project sponsor and to the Office. The project compliance officer may be contacted for assistance if needed.

(e) The report forms required by (a) through (d) above shall be obtained from the Office.

(f) The project compliance officer shall submit reports or information in addition to what is required by (a) through (c) above when requested to do so by the Office.

(g) Failure to comply with the reporting requirements of (a) through (d) and (f) above may subject the project sponsor to the remedies for noncompliance with State and Trust loan or grant conditions specified in the applicable program rules.

7:22-9.13 Assessment of compliance

(a) Where the Office determines that a project sponsor has failed or is failing to meet the 10 percent SED utilization requirement, the project sponsor shall, upon the written request of the Office, submit the following:

1. Advertisements;
2. Signed contracts and subcontracts;
3. Documentation of solicitations of bids from SEDs;
4. Copies of Requests for Proposals;
5. Records of telephone quotations;
6. (Reserved);
7. Adequate and timely notice for encouraging SED participation; and
8. Proof that the assistance of State Agencies was solicited, including:

Office of Equal Opportunity and Public Contract Assistance
New Jersey Department of Environmental Protection
PO Box 402
Trenton, New Jersey 08625-0402

Division for the Development of Small Businesses and Women Businesses and Minority
Businesses
New Jersey Commerce and Economic Growth Commission
PO Box 835
1 West State Street
Trenton, New Jersey 08625-0835

(b) Where the project sponsor determines that a contractor has failed or is failing to meet the 10 percent SED utilization requirement, the contractor shall, upon the written request of the project sponsor, submit the documents specified in (a) above.

(c) The Office shall summarize in writing its evaluation of the reason given for noncompliance and the efforts made by the project sponsor or contractor to comply with its plan for achieving the 10 percent SED utilization requirement. The Office shall take into consideration good faith efforts made by the project sponsor or contractor to meet the goal to achieve the ten percent SED utilization requirement. These findings shall be submitted to the Department and, in the case of a Trust loan, to the Trust who, in conjunction with the Office, shall determine the nature and extent of the project sponsor's or contractor's noncompliance.

7:22-9.14 Penalties

Whenever a project sponsor or a contractor has failed to comply with the requirements of this subchapter, including the 10 percent requirement for SED utilization, the Department, or the Department and the Trust, in the case of a Trust loan recipient, may withhold all of the loan or grant money, or a portion thereof, and may take any of the other actions or combinations thereof specified in N.J.A.C. 7:22-3.40 through 3.44, 7:22-4.40 through 4.44, 7:22-6.40 through 6.44 and 7:22A-1.8 through 1.13 which are remedies for noncompliance with any of the conditions of a loan or grant.

7:22-9.15 Administrative hearings

(a) The Department and, in the case of a Trust loan, the Trust, shall make a determination regarding all disputes arising under this subchapter. The project sponsor shall specifically detail in writing the basis for its dispute. The Department and/or the Trust shall produce a decision in writing and mail or otherwise furnish a copy thereof to the project sponsor.

(b) A project sponsor may request an administrative hearing within 20 days of receipt of a decision by the Department and/or the Trust. The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, New Jersey 08625-0402. The request for an administrative hearing shall specify in detail the basis for the appeal. Administrative hearings shall be conducted in accordance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Following receipt of a request for a hearing pursuant to (b) above, the Department and/or the Trust may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

7:22-9.16 Severability

If any of the provisions of this subchapter are found to be invalid, the remainder of the provisions of this subchapter shall not be affected thereby.

This is a courtesy copy of this rule. All of the Department's rules are compiled in Title 7 of the New Jersey Administrative Code. The rule below includes the amendments adopted to this subchapter on January 3, 2006.

(c) A mailing list shall be developed by the Department for each project, for use by the Department to inform the public and other interested parties of its decisions regarding the project. The mailing list shall include elected officials, Federal, State and local government agencies, environmental groups, and other interested groups and individuals appropriate to the planning area for the proposed project.

(d) In addition to the public hearing, the Department may require supplemental measures to inform and solicit comments from the public under the following conditions:

1. Where factors, such as delays in project implementation or errors in cost estimation, result in significant increases in the user cost burden prior to the award of financial assistance, the project sponsor may be required to place a retail or display advertisement in the body of a newspaper of general circulation in the planning area which describes the proposed project and the revised costs, including user cost, and which establishes a comment period of 30 days. A summary of any public comment received during the comment period shall be submitted by the project sponsor to the Department. Based on the response of the public to the advertisement, the Department will determine if further project evaluation is required.

2. Where, as a result of the re-evaluation of the environmental review conducted in accordance with N.J.A.C. 7:22-10.7, the Department determines that significant changes in the project or project impact have occurred, which warrant public input, the Department may determine that a supplemental public advertisement as in (d)1 above or a public hearing as in (b) above is required prior to award of financial assistance.

3. Where notice of the public hearing does not comply with the requirements of (b) above or where significant project issues including costs or impacts were not disclosed, the Department may determine that a supplemental public advertisement as in (d)1 above or a public hearing as in (b) above is required prior to award of financial assistance.

7:22-10.11 Design requirements

(a) The project sponsor shall prepare design plans and specifications which conform to the project alternative selected and approved in planning pursuant to the provisions of N.J.A.C. 7:22-10.4, 10.5 or 10.6 and which include mitigating measures developed during planning and incorporated in the approved planning documentation. In addition, the design plans and specifications shall conform to the minimum standards for each area of concern which is applicable to the proposed project as set forth below. All activities which are a part of the comprehensive environmental infrastructure project(s) for the planning area must conform to the requirements of this section, regardless of the eligibility of individual components of the project.

1. Any design revisions of the project which differ from the project as approved during planning shall be specifically identified.

2. Where any on-going environmental protection measures will be the responsibility of the project sponsor, the project sponsor shall submit a letter prior to loan award specifying that it will adhere to the scope of work approved by the Department.

(b) The contract documents shall be prepared to clearly identify environmental and cultural resources protection measures and shall conform to the following:

1. The format of the contract documents shall consolidate environmental and cultural resource protection/restoration measures in a single section of the design specifications as well as on appropriate sheets of the design plans. The specifications which spell out the environmental and cultural resource protection/restoration measures shall be identified in the specifications as having precedence over other potentially contradictory language contained elsewhere in the design contract documents. The specifications shall clearly state that, in instances where the provisions of a Department-issued permit contradict a provision of the specifications (including those identified in this subchapter), the environmental resources protection and/or restoration and cultural resource mitigation measures identified in the Department-issued permit shall govern.

2. Environmental resources protection and/or restoration measures, and cultural resource mitigation measures should generally include the following subject areas:

- i. General;
- ii. Clearing;
- iii. Erosion and sedimentation control;
- iv. Protection of environmentally critical areas;
- v. Stockpiling and waste disposal;
- vi. Prohibited construction procedures;

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- vii. Dust control;
- viii. Noise control;
- ix. Cultural resources;
- x. Dewatering;
- xi. Restoration;
- xii. Environmental maintenance bond; and
- xiii. Inspection.

3. The method of payment for environmental and cultural resource protection/restoration measures shall be specified in the applicable section of the contract documents. Where restoration and maintenance of environmental quality are necessary outside of the designated construction area or when measures for maintenance of environmental quality are required after the date of completion and acceptance of the environmental infrastructure facilities, the project sponsor shall clearly state the contractor's responsibilities in the specifications. The Department may require the project sponsor to include separate unit bid items for environmental and cultural resource restoration and/or mitigation.

4. Where construction will occur within or adjacent to environmentally critical areas, as approved by the Department, those areas shall be identified on design plans.

(c) Every effort shall be made to prevent and correct problems associated with erosion and sedimentation which could occur during and after project construction. At a minimum, design specifications shall incorporate the following erosion and sedimentation control measures:

1. All erosion and sedimentation control measures shall be in place prior to any grading operations or construction of proposed facilities and shall be maintained until construction is complete and the construction area is stabilized. After restoration is complete, temporary control measures shall be removed and disposed of properly.

2. All erosion and sedimentation control measures shall be constructed and maintained in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey," prepared by the New Jersey State Soil Conservation Committee, 1999, incorporated herein by reference, as amended and supplemented. Copies of the "Standards for Soil Erosion and Sedimentation Control in New Jersey" are available for a fee from the New Jersey Department of Agriculture, Soil Conservation Committee, or from the office of any of the 16 local conservation districts.

3. Disturbed areas that will be exposed in excess of 10 days shall be temporarily seeded and/or mulched, until proper weather conditions exist for establishment of permanent vegetative cover.

(d) Site and access clearing must be confined to approved construction areas. Protection of existing vegetation must be practiced wherever possible. At a minimum, the project sponsor shall include provisions in the contract documents which conform to the following:

1. Temporary and permanent easement widths must be reduced to the minimum feasible for the proposed construction. Unless specifically approved by the Department, permanent access roads must not be more than eight feet wide and there shall be no permanent access roads in environmentally critical areas. Access roads may be paved only where absolutely necessary, as determined by the Department.

2. Only those portions of the site which are absolutely necessary and essential for construction shall be cleared. Whenever possible, excavation shall include the removal and storage of topsoil from the site for future use. The length of time of ground disturbance shall be reduced to the minimum practicable, especially in environmentally critical areas. Ground disturbance shall be avoided until immediately preceding construction to minimize exposure of soils.

3. Trees and shrubs within construction easements, which are not required to be removed to permit construction, shall be protected to the drip line with appropriate protection measures such as snow fencing or batter boards. Trees and shrubs whose removal is necessary to facilitate construction shall either be replanted at the same location or replaced with nursery stock of the same kind. Trees of greater than 12 inches in diameter should be preserved whenever possible by implementing slight shifts in alignment or tunneling under tree roots. Specimen trees, as identified in "New Jersey's Big Trees" (1998) published by the Department's Division of Parks and Forestry listing specimen trees in the State, shall be preserved.

4. Except in heavily wooded areas, the plans shall designate trees and shrubs which are to be protected as well as trees and shrubs which are to be removed. In addition, plans shall provide details which depict methods of protection to the drip line.

5. In heavily wooded areas, every effort shall be made to avoid the destruction of common native trees and shrubs so as not to unduly disturb the ecological balance or environmental quality of the area. Trees of 12 inch

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diameter or greater should be preserved whenever possible and protected to the drip line. Where practical, common native trees and shrubs, of one through three inch caliper, which must be cleared from the construction area shall be stockpiled for use in restoration. Straggling roots shall be pruned. Trees which must be pruned to facilitate construction shall be cut cleanly and painted with tree paint. If a tree not intended to be removed is damaged, the wood shall be repaired according to common nursery practice and painted with tree paint.

(e) Restoration measures to be identified and designated on the environmental plans and specifications include the following: ground preparation, topsoiling, fertilizing, liming, reseeding, and replanting/replacement of trees and shrubs with native species. The aim of restoration is to restore the disturbed area to a condition as nearly equal to pre-disturbance condition as possible. The environmental specifications shall set forth the procedure for accomplishing these restoration measures. The plans shall include the location of various types of restoration and shall include details depicting typical methods to accomplish restoration. The provisions shall include the following, when applicable:

1. Final restoration shall be undertaken as soon as an area is no longer needed for construction, stockpiling or access. Excavated material unsuitable for backfill as set forth at N.J.A.C. 7:14-2.13 and considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be removed from the construction site and disposed of at a sanitary landfill approved and licensed by the Department. Excess excavated material which is not considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be graded or removed in accordance with (1)3 below. When access roads are no longer needed, road fill shall be removed and the access area shall be restored to pre-disturbance conditions. Care should be taken to avoid damage to adjacent vegetation and to prevent the formation of depressions that would serve as mosquito pools.

2. Topsoil shall be replaced with adequate amounts of topsoil material to restore the disturbed area to its original, pre-disturbance grade and depth of topsoil.

3. Rates and types of fertilization, liming, and seeding shall be as recommended by the local Soil Conservation District based on soil tests and local conditions. Seed mixtures shall be selected that are best suited for the particular site conditions. Seed selection shall provide for a quickly germinating initial growth, to prevent erosion, and for a secondary growth that will survive without continuing maintenance. Mulching shall occur immediately after seeding, and in no case shall more than five days elapse between seeding and mulching.

4. In wooded areas, for a 50-foot wide construction easement, generally 10 trees should be planted for every 100 feet of length of the easement. More trees would be required in wider easements or densely wooded areas. Plans shall include a restoration schedule specifying the quantity, common and botanic names, sizes, and spacing of trees to be planted and the type of seed mixtures to be used from station to station. Trees to be replaced should be trees native to New Jersey suitable for the particular site and generally should conform to the list of trees found in the "Standards for Soil Erosion and Sediment Control in New Jersey," prepared by the New Jersey State Soil Conservation Committee, 1999, incorporated herein by reference, as amended and supplemented.

5. In landscaped areas, environmental features shall be replaced or restored to pre-disturbance condition or better. This includes sodding, replacement of trees and shrubs, fences, drives, and other landscape features in kind.

(f) A listing of prohibited construction procedures shall be incorporated into the specifications. These procedures include, but are not limited to, the following:

1. Dumping of spoil material into any stream corridor, any wetlands, any vernal habitats, any surface waters, any sites listed or eligible for listing on the New Jersey or National Registers of Historic Places, or at unspecified locations;

2. Indiscriminate, arbitrary or capricious operation of equipment in any stream corridors, wetlands, vernal habitats, or surface waters;

3. Pumping of silt-laden water from trenches or other excavations into any surface waters, stream corridors, wetlands or vernal habitats;

4. Damaging vegetation adjacent to or outside of the access road or the right-of-way;

5. Disposal of trees, brush and other debris in any stream corridors, wetlands, vernal habitats, surface waters or at unspecified locations;

6. Permanent or unspecified alteration of the flow line of any stream;

7. Open burning of project debris;

8. Use of calcium chloride, petroleum products, or other chemicals for dust control;

9. Use of asphaltic mulch binder; and

10. Any unpermitted discharge of sewage.

(g) Construction in wetlands shall conform to the requirements of the New Jersey Freshwater Wetlands

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Protection Act, N.J.S.A. 13:9B-1 et seq., and N.J.A.C. 7:7A.

(h) Stream crossings shall conform to the requirements of the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and N.J.A.C. 7:13.

(i) Slopes exceeding 15 percent require special treatment. Specifications shall call for measures such as water diversion berms, sodding, or the use of jute or excelsior blankets. Hay bales shall be placed at the base of the slope prior to ground disturbance. Steep slopes that have been disturbed, if not sodded, shall be seeded and mulched immediately after construction is complete. Slope boards or other measures necessary to prevent slumping of the disturbed slope shall be incorporated, where appropriate.

(j) If there is the possibility of encountering acid-producing deposits in the course of construction, as identified during the planning process, special requirements and conditions will apply and shall be incorporated in the specifications as follows:

1. In vegetated areas, the top two feet of soil shall be stripped and stockpiled separately from the material to be excavated. A soils specialist, to be provided by the project sponsor, shall monitor the stripping operation. If any acid-producing deposits are identified, this material and any contaminated soil shall be disposed of on the same day. The presence of acid-producing deposits is detected by the use of the following tests:

i. Determining the pH of the soil when suspended in 0.5 Molar calcium chloride solution (of neutral pH). A pH value below 3.0 indicates presence of ferrous sulfate and presence of acid-producing deposits is strongly suspected.

ii. Test for sulfate by adding a drop of 10 percent barium chloride solution to a water extract of the material. If voluminous flocks of barium sulfate form immediately the presence of acid-producing deposits is strongly suspected.

2. The disposal site shall be approved by the Department. Any soil of this type disposed of shall be covered with a minimum of two feet of cover to prevent rapid oxidation and subsequent acid formation.

3. In both vegetated and paved areas, when acid-producing deposits are encountered, as determined by the soil specialist, excavated trench material shall be returned to the trench as follows:

i. Lower material first, followed by upper material.

ii. The top one to two inches of soil on which the deeper soil was stockpiled shall be scraped and placed below a depth of two feet.

iii. For pipeline construction, the quantity of material to be displaced by bedding and pipe, as well as soil scraped from the stockpile area, shall be subtracted from the deeper, excavated material and this quantity of deeper material removed to an approved disposal site and covered as described in (e)3 above.

iv. After backfilling the deeper soil, one ton of limestone per 2,000 square feet shall be spread over the deeper soil in the trench. This liming requirement is applicable in areas of well drained, nonsaturated soils, as determined by the soil specialist.

v. In vegetated areas, the top two feet of soil, stockpiled for this purpose, shall then be replaced. If the top two feet of soil was also contaminated, clean backfill material similar to the native topsoil shall be used in place of the contaminated material.

4. The excavated acid-producing deposits shall not be exposed for a period longer than eight hours. When acid-producing deposits are encountered, the trench opened in any construction day shall be backfilled and the areas cleaned up by the close of the day. Where this is impracticable, such as in the construction of pumping stations and treatment plants, exposed acid-producing deposits shall be covered with limestone screenings at a rate of 100 tons per acre and then covered with six inches of compacted soil within one week of exposure or before the exposed soil drops to pH 3, whichever occurs first. The pH shall be monitored daily under this procedure.

5. Temporary restoration of vegetated areas shall consist of mulching and shall be put in place at the end of each day's construction. Permanent restoration of the area shall begin as soon as construction is complete and after the results of incubation tests, where necessary, are available.

6. Prior to restoring vegetated areas, the soil specialist shall perform pH tests on the in-situ soil after the construction is completed. If the pH is below 4, intensive liming shall be required in order to make the soil suitable for plant survival.

7. Lime requirement tests shall be performed by the soil specialist to determine the lime application rates. This will require an incubation test in which the sample is oxidized for a period of six weeks, as follows:

i. The sample shall be air dried and ground so that the whole sample passes a 0.5 millimeter sieve.

ii. The lime requirement to reach pH 6.5 shall be determined initially, and again at two week intervals for six weeks, using standard soil testing techniques.

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iii. The total lime requirement determined by this method can be extrapolated to the area under consideration.

8. A minimum of 30 tons of limestone per acre or the amount of lime required according to the incubation test result shall be applied prior to seeding and planting where the pH is less than 4. Where the pH is greater than 4, liming and fertilizing requirements set out in the planting and environmental specifications shall apply.

9. The spreading and mixing of the subsoil and any topsoil contaminated with acid-producing deposits around the site and beyond the site is prohibited. Areas used for stockpiling acid-producing deposits shall be minimized. Equipment used for excavation and backfilling shall be cleaned, to the extent practicable, at the end of each day's operation and the soil removed shall be placed in the trench below a depth of two feet. No construction shall take place during significant rainstorms or while the area is saturated to avoid smearing or spreading of the acid-producing deposits over the area.

(k) When dewatering will occur and a dewatering permit is not required, the contractor shall monitor for adverse effects to structures or wells due to dewatering and shall be responsible to remedy same to the satisfaction of the Department. Discharges from dewatering activities which contain silt are subject to the following controls:

1. All discharges from dewatering activities to surface waters, wetlands, vernal habitats, or storm sewers shall be free of sediment. Care shall be taken not to damage or kill vegetation by excessive watering or by damaging silt accumulation in the discharge area. If discharges are sediment laden, techniques shall be employed to remove sediment prior to discharge. A sedimentation basin shall be constructed and used as specified, where necessary, to protect vegetation and to achieve environmental objectives.

2. Sewer inlets within construction areas shall be provided with perimeter hay bales or other appropriate siltation control measures.

(l) Contract requirements with regard to the location and control of stockpile, storage and disposal areas whether provided by the project sponsor or the contractor, must conform to the following:

1. Only environmentally suitable stockpile sites may be used for the purposes of staging or storing materials, equipment and suitable trench backfill material. Environmentally suitable sites must be level, and devoid of mature stands of natural vegetation. Drainage facilities and features, wetlands, vernal habitats, and stream corridors are not environmentally suitable sites.

2. The boundary of the stockpile area shall be clearly marked by hay bales, silt fencing or another appropriate method. Where fill is to be stored in excess of 10 days, a suitable means of protecting excavated material from wind and water erosion shall be employed. Erosion control methods may include one or more of the following: mulching, sprinkling, silt fencing, haybaling and stone covering.

3. Excess excavated material which is not considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be graded on-site only to the extent needed to achieve preconstruction grade, unless otherwise specifically approved by the Department. The project sponsor shall ensure that the contractor removes the remainder from the site and disposes of it at a site approved by the project sponsor in accordance with the following:

i. Disposal sites selected by the contractor shall be evaluated and approved by the project sponsor prior to their use. Disposal sites may also be selected by the project sponsor. The project sponsor shall conduct periodic inspection of disposal sites to ensure compliance with the requirements of this subsection during the off-site disposal operation.

ii. The disposal of excess excavated material in wetlands, vernal habitats, stream corridors and floodplains is strictly prohibited, even if the permission of the property owner is obtained. The contractor shall be responsible to remove any fill improperly placed by the contractor at the contractor's expense and restore the area impacted.

iii. If excess excavated material is placed on private property, a hold harmless release in favor of the project sponsor and the Department shall be obtained from the property owner; and

iv. Prior to approval of a site for excess excavated material disposal, where the site exceeds 5,000 square feet, the project sponsor shall obtain, or shall ensure that the contractor or property owner has obtained, the appropriate certification of the soil erosion and sediment control plan in accordance with the State's standards for soil conservation (N.J.S.A. 4:24-1 et seq., also referred to as Chapter 251). Where the site is less than 5,000 square feet, the project sponsor shall advise the property owner of the need for erosion and sediment control and obtain a statement that the property owner accepts complete responsibility for implementation of appropriate methods to prevent erosion and sedimentation.

(m) In order to control dust, as often as required during each working day, and particularly prior to the conclusion of each working day, areas under immediate construction (including access roads and other areas

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affected thereby) shall be swept and wet down with water sufficiently to lay dust. In addition, these areas shall be wet down during nonworking hours (including weekends) as often as required to keep the dust under control. The use of calcium chloride or petroleum products or other chemicals for dust control is prohibited.

(n) In order to limit noise impacts in the vicinity of sensitive receptors, construction operations and activities shall be limited as follows: Monday through Friday between the hours of 7:00 A.M. and 6:00 P.M. unless variances to these times are granted in times of emergency. No driving, pulling, or other operations entailing the use of vibratory hammers or compactors shall be permitted, other than between the hours of 8:00 A.M. and 5:00 P.M. The number of machines in operation at a given time shall be limited to the minimum practicable. All engine generators or pumps must have mufflers and be enclosed within a temporary structure.

(o) Provisions regarding the contractor's responsibility for cultural resource protection shall be included in contract documents that provide for the following:

1. If a cultural resource is encountered during the course of construction, the contractor is directed to halt all construction activities in that area. The contractor shall immediately contact the project sponsor who shall contact the Department. The Department will determine and require initiation of the appropriate actions in conformance with N.J.A.C. 7:22-10.8.

2. The contractor shall not dispose of excess excavated material at, stockpile construction materials at, or obtain borrow material from, properties which are listed or eligible for listing on the New Jersey or National Registers of Historic Places.

(p) The project sponsor shall require that the contractor supply an environmental maintenance bond in the amount of \$25,000 or 50 percent of the price bid for the materials needed to fulfill the environmental specifications, whichever is greater. The environmental maintenance bond shall provide that the contractor shall remedy, without cost, any defects which result from faulty workmanship or from failure to comply with the specifications and which develop during the period of one year from the expiration of the performance bond required pursuant to N.J.S.A. 40A:11-22.

(q) The project sponsor shall obtain photographs of existing conditions prior to the start of site and access clearing and construction. At a minimum, one eight inch by 10 inch color glossy print photograph shall be obtained for each 100 feet of the construction area. Special attention shall be given to environmentally critical areas and areas outside of the public right-of-way. Photographs shall be labeled by station so that upon completion of the construction, or during construction if necessary, subsequent photographs can be taken from the same control points. The project sponsor shall file copies of the above photographs with the Department. As a supplement to the required photographs, video documentation may be submitted to the Department, and is encouraged as a way of documenting site conditions.

7:22-10.12 Construction phase requirements

(a) The project sponsor must employ one, or more if warranted by the scope of the project, environmental inspector(s) to ensure that the requirements of the specifications relating to environmental and cultural resource protection and restoration are effectively carried out. Individuals designated as environmental inspectors by the project sponsor must possess, at a minimum, the education/experience qualifications of an Environmental Specialist employed with the Department. The Department will also conduct environmental inspections to oversee the conduct of the protection/restoration measures. Responsibilities of the project sponsor's environmental inspector(s) include the following:

1. Daily inspections of active work areas and periodic inspection of maintenance or restoration areas sufficient to ensure performance of protection measures in accordance with contract documents.

2. The maintenance of a daily job diary in which they shall record the progress of the work and of any problems encountered. The environmental inspectors shall notify the contractor in writing immediately upon noticing that environmental specifications are not being met.

3. At frequent intervals during construction, the recipient, the resident engineer, the environmental inspectors and the Department inspectors shall meet to review progress and to resolve difficulties that might result in unnecessary delays in the work. The Department shall notify the recipient if deficiencies are not immediately corrected. The recipient shall then direct compliance with environmental requirements.

(b) After award of a contract and before construction commences, a pre-construction conference shall be held. The recipient, the resident engineer, the environmental inspectors, the Department inspectors and the contractor should reach general agreement upon procedures to be followed to comply with the plans and .

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specifications intended to provide environmental and cultural resource protection and restoration that have been approved by the Department.

(c) A final inspection shall be required following completion of all construction and restoration work encompassed by each contract. The final inspection shall be conducted as follows:

1. Upon completion of all construction and restoration work of each contract of a project, the recipient shall submit a letter to the Department stating that the project (or contract) is ready for final inspection. No final inspection can be scheduled until formal notification is received.

2. The final inspection shall be a joint inspection with the recipient and/or the resident engineer, the environmental inspector, the contractor and representatives from the Department in attendance.

(d) The Department shall make periodic determinations and, following the final inspection, make a final determination regarding the adequacy of the contractor's performance of the specifications relative to environmental and cultural resource protection and restoration. If the performance is not acceptable, this finding and the procedures and schedules needed to effect acceptable performance will be conveyed in writing to the project sponsor. Failure of the project sponsor to comply with the Department's requirements may subject the project sponsor to the noncompliance provisions of N.J.A.C. 7:22-3.40, 4.40 and 6.40 and N.J.A.C. 7:22A-1.8.

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**OFFICE OF EQUAL OPPORTUNITY
AND
PUBLIC CONTRACT ASSISTANCE**

**MUNICIPAL FINANCE
AND
CONSTRUCTION ELEMENT**

**SED PARTICIPATION
BUILDING PHASE
QUARTERLY REPORTING FORM
FOR
CONTRACTING AGENCIES & CONTRACTORS**

(OEO-002)

New Jersey Department of Environmental Protection

OEO-002

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REPORTING REQUIREMENTS ON SOCIALLY AND ECONOMICALLY DISADVANTAGED (SED) BUSINESS UTILIZATION

These instructions apply to reporting on the utilization of Socially and Economically Disadvantaged Businesses (MBEs/WBEs/SEDs) under the New Jersey Department of Environmental Protection and the New Jersey Environmental Infrastructure Financing Programs. They are intended to provide guidance to Project Sponsors and Contractors in filling out the Building Phase (SED) Utilization Form. The reporting requirements apply to all Contracting Agencies and Contractors pursuing New Jersey Financing Assistance through programs administered by the New Jersey Department of Environmental Protection and the New Jersey Environmental Infrastructure Trust pursuant to N.J.A.C. 7:22-3.; N.J.A.C. 7:22-4.; N.J.A.C. 7:22-6; N.J.A.C. 7:22A-6; N.J.A.C. 7:22-7.

Each Project Sponsor and Contractor must submit this building SED Report (Form OEO-002) quarterly on MBE/WBE utilization for each contract for which a Project Sponsor or its Contractor(s) awards a subagreement. The form must be submitted to the New Jersey Department of Environmental Protection (NJDEP), Office of Equal Opportunity, Public Contract Assistance within 15 days following the close of each fiscal year quarter (i.e., January 15, April 15, July 15, and October 15).

INSTRUCTIONS FOR FILLING OUT SED UTILIZATION REPORT

1. Read instructions carefully before completing form, and refer to N.J.A.C. 7:22-9.1 et seq. for further guidance.
- 2a. The name and address of Project Sponsor participating in the grant/loan programs for environmental infrastructure facilities.
- 2b. Name of the Project Compliance Officer responsible for submitting periodic reports.
3. Name and address of party contracting directly with the Project Sponsor.
4. Self-explanatory.
- 5a. The grant/loan project number for the agreement between the State of New Jersey and the Project Sponsor.
- 5b. The grant/loan project number for the contract between the Project Sponsor and its contractor(s).
6. Include brief description of project.
7. Self-explanatory.
- 8a. The county in which the Project Sponsor is located.
- 8b. The municipality in which the Project Sponsor is located.
9. The date of the agreement between the State of New Jersey and the Project Sponsor.
- 10a. The date of agreement between the Project Sponsor and the contractor.
- 10b. Self-explanatory.
11. Indicate MBE and WBE goals based upon project plan for SED utilization developed in consultation with the Office. These goals may vary depending upon local law. Where a Project Sponsor has a SED participation goal which exceeds ten percent, the Project Sponsor's goal shall take precedence.
12. Enter the name, address and telephone number of each SED participating in the building phase as a subcontractor under agreement with the construction management firm or the Project Sponsor. Check applicable MBE or WBE status of each listed SED. Explain type of service rendered and list the total dollar amount of the subcontract. Each entry must be accompanied by a copy of the signed subcontract.

Restricted - Bids may be solicited on a restricted basis by setting aside a contract for building, materials and equipment, or services which is designated as a contract for which bids are invited and accepted only from SEDs.

Unrestricted - Bids may be solicited on an unrestricted basis and not designated for a set-aside contract, but the contract document shall include a statement to the effect that the successful bidder must fulfill the SED utilization requirements.

13. See instructions for Item 12. This section is designated for SEDs participating in the building phase of a project as a subcontractor under agreement with building contractor(s).
14. Person signing must be the designated Project Compliance Officer of the Project Sponsor. The contractor(s) or the authorized representative of the contractor(s).
15. Additional comments or explanations. Refer to the specific item number on the form, if applicable.

OEO-002

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
NEW JERSEY MUNICIPAL FINANCE & CONSTRUCTION ELEMENT
OFFICE OF EQUAL OPPORTUNITY & PUBLIC CONTRACT ASSISTANCE

CONSTRUCTION REPORT

SOCIALLY AND ECONOMICALLY DISADVANTAGED (SED) BUSINESS UTILIZATION

1. *Read Instructions Before Completing Form.*

- 2a. Project Sponsor

Name

Address

- 2b. Project Compliance Officer

3. Contractor

Name

Address

4. Financing Program (check applicable program(s))

☐ a. Wastewater Treatment Fund ☐ b. Wastewater Treatment Trust ☐ c. Pinelands Infrastructure Trust
☐ d. Stormwater Management ☐ e. Water Supply

- 5a. Project Number

5b. Contract Number

6. Project
Name

7. Contract Amount \$

- 8a. County

8b. Municipality

9. Date of Grant/Loan Agreement _____

10a. Date of Contract Award _____ 10b. Duration of Contract: Mo. _____ Days _____

11. STATE GOAL OR OTHER STANDARDS (IF ANY)

Contracting Agency=s Requirement

	<u>DOLLAR AMOUNT</u>	<u>PERCENTAGE OF CONTRACT AMOUNT</u>
MBE	\$ _____	_____ %
WBE	\$ _____	_____ %
TOTAL SED	\$ _____	_____ %

12. A/E and Other Professional Service Subcontracts Awarded During the Building Phase

Name, Address and Telephone No. WBE	MBE/	Type of Service Rendered	Amount	Number	Dollar	Subcontract	Subcontract	Date of	Type of
					Amount		(R/U)	Subcontract	Award*
1. _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____	_____	_____
6. _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____	_____	_____

* Restricted/Unrestricted

13. Other Subcontract Awards Made Under the Building Phase

Name, Address and Telephone No. WBE	MBE/	Type of Service Rendered	Amount	Dollar	Subcontract (R/U)	Subcontract	Date of Subcontract	Type of Award*
1. _____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____	_____
6. _____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____	_____

* Restricted/Unrestricted

(Signature of Project Compliance Officer)

(Signature of Contractor)

(Title)

(Title)

(Date)

(Date)

15. Space Provided for Additional Comments or Explanations

**OFFICE OF EQUAL OPPORTUNITY
AND
PUBLIC CONTRACT ASSISTANCE**

**MUNICIPAL FINANCE
AND
CONSTRUCTION ELEMENT**

SED PARTICIPATION

MONTHLY PROGRESS REPORT
(OEO-003)

New Jersey Department of Environmental Protection

NO TEXT ON THIS PAGE

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
SED UTILIZATION IN ENVIRONMENTAL INFRASTRUCTURE FINANCING
PROGRAM**

MONTHLY PROGRESS REPORT

Contractor _____

Project Number _____

Project Name _____

Contract Amount _____

Report Month/Year _____

The following information is required in order to assist the Project Compliance Officer and the New Jersey Department of Environmental Protection in monitoring the SED (small business enterprises owned and controlled by socially and economically disadvantaged individuals) Utilization progress and activity in the Environmental Infrastructure Financing Program. Each contractor shall respond to each of the listed items. Whenever evidence of completion of each item is available, copies of itemized documents are to be submitted to the Project Compliance Officer.

Over the past month has any action on any item taken place? Please explain each.

- | | | |
|--|-----------|----------|
| 1. Copies of Solicitation to SED=s | _____ Yes | _____ No |
| 2. Advertisement of bidding or procurement opportunities | _____ Yes | _____ No |
| 3. Evidence of negotiation with SEDs | _____ Yes | _____ No |
| 4. Copies of telephone quotes/negotiations | _____ Yes | _____ No |
| 5. Copies of signed subagreements | _____ Yes | _____ No |
| 6. Have any subcontracts been awarded in the past month | _____ Yes | _____ No |

Please provide an explanation for Questions 1 through 6.

Signature of Contractor

Date

Signature of Project Compliance Officer

Date

Passaic Valley Sewerage Commission (PVSC)

Socially and Economically Disadvantaged Utilization Plan

Introduction

It is the policy of the PVSC to promote award of contracts to Socially and Economically Disadvantaged (SED) small business enterprises by stipulating specific requirements for involving such businesses in contracting. The failure of the Contractor to demonstrate a good faith effort to achieve the goals set forth herein by utilizing best efforts to implement the SED utilization plan will constitute an event of default of the Agreement. PVSC shall designate a compliance officer who shall be responsible for coordinating SED utilization efforts for the Agreement and for monitoring compliance with the plan. PVSC reserves the right to audit the Contractor's SED records to insure compliance with this provision. Socially and economically disadvantaged businesses definitions and associated terms are defined in the NJAC 7:22-9.2.

SED's Scope and Purpose

The goal is established at 10% SED (combined MBE/WBE) participation. Fulfillment of the goal can be achieved through lower tier agreements with SEDs for services, supplies or construction necessary to complete the project. The Contractor must endeavor to meet the goal specified in the previous paragraph by taking and documenting the following affirmative steps to ensure that the SED businesses are used as sources of services, supplies or construction whenever possible by:

1. Placing SEDs on solicitation lists.
2. Assuring SED solicitation whenever they are potential sources.
3. Encouraging SED participation through the division of total requirements, when economically feasible, into smaller tasks or quantities.
4. Encouraging SED participation through the establishment of delivery schedules, where the work requirement permits.
5. Using the services and assistance of the Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and the N.J. Department of Commerce and Economic Development, Division of Development for Businesses and Women and Minority Businesses.

When soliciting services from subcontractors, the Contractor must include the 10% goal in its Proposals. Contract work cannot commence until the PVSC has approved the Contractor's SED Utilization Plan.

Definitions

Definitions are incorporated herein by reference and can be found at N.J.A.C 7:22-9.2.

In-House Procedures

The Project Compliance Officer, or his designee, shall be responsible for coordinating SED utilization efforts on the project, for monitoring and enforcing compliance with the affirmative action and the SED requirement.

SED utilization requirements shall be an agenda item at all contract award meetings and, wherever applicable, at preconstruction conference meetings regardless of whether a loan or grant agreement has been executed or not. Each project sponsor shall be responsible for notifying the Office of the time and place of such meetings.

The project compliance officer, or his designee, shall attend all monthly construction progress meetings.

State of New Jersey SED Certification Requirement

Any SED firm proposed by the Contractor must be certified by a certifying agency in the State of New Jersey or be certifiable and pending certification, as verified by PVSC, in order to qualify toward the firm's fair share goals. Other certifications may be deemed acceptable, as approved by PVSC on a case by case basis.

For information purposes only, the State of New Jersey Department of Commerce and Economic Development Division of Development and Small Business and Women Minority Businesses Set Aside and Certification office maintains a state wide Certification Directory containing a list of SEDs who are accepted as such by the State of New Jersey and who might be interested in becoming suppliers or subcontractors for this contract.

SED Utilization Plan Requirements

Thirty (30) days after Notice of Award, the contractor must submit an approvable SED Utilization Plan to the PVSC. To be approvable, the SED Utilization Plan for subcontractors, suppliers and construction, must detail the steps taken or be taken by the Contractor to provide for SED utilization for the total fair share percentage established by the Agreement. It must further provide documentation to evidence the Contractor's efforts to date and planned efforts toward achieving the goal.

SED Utilization Plan Revisions

If a SED supply, service, or subcontract in the approved plan will not be procured, the Contractor must amend the plan. The Contractor must demonstrate a good faith effort to comply with the fair share percentage established in the Agreement by submitting documentation outlining the SED affirmative steps taken and the reasons for not engaging the SED. The Contractor must further revise the SED plan to detail the additional steps to be taken to reach the SED participation goal set forth herein as part of the required SED Utilization Plan Revision.

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N.J.A.C. 7:14

WATER POLLUTION CONTROL ACT

Statutory authority: N.J.S.A. 13:1B-3 et seq., 13:1D-1 et seq., 13:1E-1 et seq., 58:10-23.11 et seq., 58:10A-1 et seq., 58:11-49 et seq., 58:11A-1 et seq. and 58:12A-1 et seq.

Date last amended: October 5, 2010

For regulatory history and effective dates, see the New Jersey Administrative Code

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SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES

7:14-2.1 Construction procedures

The Department shall require and adhere to the procedures identified in this subchapter. Actions or procedures by owners, permittees, consultants, contractors, or other persons affected by this subchapter which are not in accordance with this subchapter shall not be acceptable to the Department. Where applicable, the Department may grant a waiver from any requirement of this subchapter upon presentation of written justification by the owner, permittee, consultant or contractor.

7:14-2.2 Record drawings; collector sewers, interceptor sewers and force mains

(a) The owner shall be responsible for the preparation of all record drawings required for sewer lines. This responsibility may be delegated to the owner's representative with adequate compensation for this service.

(b) This responsibility shall not be delegated or transferred to the contractor. The contractor shall assist the owner/engineer, by providing record information, when requested, during the progress of the work.

7:14-2.3 Permits

(a) Federal, State, county and municipal permits required as a result of the construction activity within the delineated site shall be obtained by the owner and associated fees shall be paid by the owner. In addition, permits required for construction activities on railroad properties shall be obtained by the owner.

(b) Exceptions to this section shall be a permit to use explosives for rock excavation and such other permits which by law are required to be obtained by the contractor.

(c) The owner shall make every reasonable effort to identify permits and fees and costs required as a result of the construction activity in effect 60 days prior to the receipt of construction bids. This responsibility may be delegated to the owner's engineer with adequate compensation for this service. The engineer shall be held harmless from any pen-

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ality or action resulting from the failure to obtain a permit where every reasonable effort has been made by the engineer to obtain such permits. Conditions made a part of any permit shall be imposed upon the contractor as described in the contract or bid documents. Additional costs associated with a permit resulting from the construction activity which is beyond that stipulated in the contract shall be the responsibility of the contractor.

(d) Whenever necessary or appropriate the contractor shall assist the owner in the acquisition of permits.

(e) The Department may intercede and assist in the resolution of any problems resulting from the acquisition of any permits.

7:14-2.4 Easements/rights-of-way

An interruption of construction or an extension of contract time may be a basis for a claim by a contractor for additional cost when such interruption or extension is caused by the owner's inability to obtain an easement/right-of-way. Claims shall include any reasonable cost incurred by the contractor and shall be reviewed and approved by the owner prior to submission to the Department. The Department may approve all, any portion, or deny the cost for eligibility for projects funded under the Grant Program.

7:14-2.5 Field layout (baseline and monuments)

The owner shall be responsible to establish and confirm field controls prior to start of construction. The contractor shall not be liable to check the accuracy of field controls (baseline and monuments) for sewer pipe installation. However, the contractor's layout must be based on a minimum of two field control points. Whenever the contractor detects an error in the field controls during pipe installation, the contractor shall immediately notify the owner and the owner's engineer of such error with sufficient documentation. The contractor shall be held responsible for all corrective measures and associated costs for failure to notify the owner of such error.

7:14-2.6 Engineer design activities: plan scale and plan updating

(a) On occasion, projects do not go to construction within a reasonable time after the bid advertisement. During this period, utilities may be relocated or installed, as well as other changes which can take place that are unknown to the contractor. Because of this, problems can take place during construction and result in numerous change orders and increases in the cost of the project.

(b) The horizontal scale for construction plans for sewerage facilities shall not be less than one inch equals 100 feet. A larger horizontal scale shall be used where appropriate to show sufficient detail to construct the project. The vertical scale for construction plans for sewerage facilities shall be not less than one inch equals 10 feet. Based upon the best information available, the location of underground utilities and support structures for overhead utilities shall be shown on the plans.

(c) Construction plans for sewerage facilities shall be updated whenever the bid advertisement date exceeds one year after approval by the responsible State or Federal regulatory agency. The engineer shall receive adequate compensation for updating plans and specifications. All such revisions shall be noted and dated on the plans prior to bid.

7:14-2.7 Construction, overhead and profit factors for Extra Work compensation

(a) The contractor is entitled to all identifiable direct job costs associated with Extra Work excluding subcontractor's costs. For Extra Work not in excess of \$ 10,000 the contractors may add up to 10 percent overhead factor to their identifiable direct job costs, but excluding the cost of any subcontracting, plus up to a 10 percent profit factor to their identifiable direct costs plus overhead amount.

(b) As general policy, these overhead and profit factors may be accepted by owners as reasonable in lieu of requiring the submission of additional supporting data. However, the owner must reserve its right to review any cost or profit element on a case-by-case basis, where the submission for overhead and profit is in excess of the 10 percent overhead and 10 percent profit indicated above.

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(c) Cost increase in subcontracted work may be similarly handled and a prime contractor may add up to 10 percent to the total cost (including overhead and profit factors) incurred by the subcontractor. In such cases, the same reservations for rights shall apply.

(d) For Extra Work in the amount of \$ 10,000 to \$ 100,000, the above factors may be included initially for equitable adjustments but will be subject to negotiation, cost and pricing data, and owner review requirements. Federally funded projects will be governed by Federal regulations.

7:14-2.8 Payments to contractors

(a) At least 20 days before each monthly progress payment falls due for approval (but not more often than once per month), the contractor will submit to the engineer a partial payment estimate filled out and signed by the contractor covering the work performed during the period covered by the partial payment estimate and supported by such data as the engineer may reasonably require. Where any specific item(s) in the partial payment estimate is in dispute, the engineer may delete those costs from the estimate and approve the acceptable portion of the payment request. Payment requested for stored materials and/or equipment shall be subject to the following conditions being met or satisfied:

1. The materials and/or equipment shall be received in a condition satisfactory for incorporation in the work.
2. The materials and/or equipment shall be stored in such manner that they will not be damaged due to weather, construction operations or any other cause.
3. An invoice from the supplier shall be furnished for each item on which payment is requested.
4. The contractor shall furnish written proof from the supplier of 90 percent payment for the materials and/or equipment no later than 30 days after receipt of payment for same from the owner. The owner shall have the right to deduct from the next payment estimate an amount equal to the payment for said material and/or equipment if reasonable and adequate proof is not submitted.

(b) The contractor warrants and guarantees that title to all work, materials, and equipment covered by an Application for Payment, whether incorporated in the project or not, will pass to the owner upon the receipt of such payment by the contractor free and clear of all lien, claims, security interests or encumbrances (except 10 percent retention which may be withheld from suppliers and subcontractors to guarantee completion and performance). The engineer will after receipt of each partial payment estimate either indicate in writing his approval of payment and present the partial payment estimate to the owner, or return the partial payment estimate to the contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the contractor may make the necessary corrections and resubmit the partial payment estimate. The owner shall review the partial payment estimate at its next regularly scheduled meeting and, if approved, payment shall be made available to the contractor within five days. The owner shall retain not more than two percent of the amount of each payment claimed. In accordance with EPA regulations, prime contractors are also required to make prompt payment to subcontractors and suppliers for eligible construction, material, and equipment costs. Generally, payments of all valid subcontractor and supplier requests for payment should be satisfied prior to the next succeeding request for progress payment by the prime contractor.

(c) When the work is substantially complete (Operational or Beneficial Occupancy), the withheld amount shall be further reduced below two percent but not less than twice the current market value of the work yet to be completed. On completion and acceptance of a part of the work on which the price is stated separately in the Contract Documents, payment shall be made in full including retained percentages, less authorized deductions. The contractor or owner may request assistance and guidance from the Department on disputes regarding retainage.

(d) "Substantial completion" as used in the context of this section shall mean satisfactory completion of major portions of the contract work, including inspection and testing, so that the facility may be turned over to the owner for its intended use or occupancy. The engineer shall certify the date of substantial completion and that date shall establish the beginning date of the warranty/guarantee period unless a prior date has been established.

7:14-2.9 Mobilization: unit price contracts for sewer construction

(a) Mobilization shall consist of the cost of initiating the contract. Payment for mobilization will be made at the lump sum price bid for this item in the proposal, which price shall include the cost of initiating the contract. The provisions for payment for the item mobilization supersede any provisions elsewhere in the specifications for including the costs of

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these initial services and facilities in the prices bid for the various items scheduled in the proposal. The lump sum price bid for mobilization shall be payable to the contractor whenever he shall have completed 10 percent of the work of the contract. For the purposes of this item, 10 percent of the work shall be considered completed when the total of payments earned, exclusive of the amount bid for this item, shown on the monthly certificates of the approximate quantities of work done, shall exceed 10 percent of the total price bid for the contract.

(b) The lump sum price bid for mobilization is limited to the following maximum amounts:

From More Than	To and Including	Original Contract Amount (including Mobilization) Maximum Amount for Item of Mobilization
\$ 0	\$ 100,000	\$ 3,000
100,000	500,000	15,000
500,000	1,000,000	30,000
1,000,000	2,000,000	60,000
2,000,000	3,000,000	90,000
3,000,000	4,000,000	120,000
4,000,000	5,000,000	125,000
5,000,000	6,000,000	150,000
6,000,000	7,000,000	175,000
7,000,000	10,000,000	200,000
10,000,000	—	2.5% of Amount Bid

7:14-2.10 Bid items for sewer pipe installation

(a) This section establishes bid items which shall be included in unit price contracts for sewer pipe installation where applicable.

Description	Unit of Measure
1. Test Pits	Cubic Yard
2. Stone Foundation (bedding)	Cubic Yard
3. Select Material (below and above pipe grade)	Cubic Yard
4. Rock Excavation (including removal and disposal of boulders)	Cubic Yard
5. Wood Sheeting (install and remove where shown on plans)	Square Feet or 1000 Board Feet
6. Wood Sheeting (left in place where shown on plans)	Square Feet or 1000 Board Feet
7. Steel Sheeting (install and remove where shown on plans)	Square Feet or Tons
8. Steel Sheeting (left in place where shown on plans)	Square Feet or Tons
9. Permanent Pavement Gravel	Square Yard
10. Pavement	
i. Municipal:	
(1) Temporary which shall be removed (where applicable)	Square Yard
(2) Base	Square Yard
(3) Top	Square Yard
ii. County:	
(1) Temporary which shall be removed (where applicable)	Square Yard
(2) Base	Square Yard
(3) Top	Square Yard
iii. State:	
(1) Temporary which shall be removed (where applicable)	Square Yard

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	(2)	Base		Square Yard
	(3)	Top		Square Yard
11.	Testing		Linear Feet	
12.	Concrete Cradle or Encasement (to be identified where applicable)		Cubic Yard	

7:14-2.11 Reasonable minimum unit prices

(a) This section establishes reasonable minimum unit prices for indeterminate items, where applicable, for sewer pipe installation. Indeterminate items are those items which may be anticipated and for which quantities cannot be determined.

(b) The reasonable minimum unit prices are to be established by the owner/engineer for the following items:

1. Stone Foundation;
2. Select Material;
3. Concrete Cradle or Encasement--Nonreinforced;
4. Concrete Cradle or Encasement--Reinforced;
5. Test Pits;
6. Rock Excavation;
7. Wood Sheeting (install and remove)--square feet or 1000 board feet;
8. Wood Sheeting (left in place)--square feet or 1000 board feet;
9. Steel Sheeting (install and remove)--square feet or tons;
10. Steel Sheeting (left in place)--square feet or tons.

7:14-2.12 Payment widths, trench backfill and roadway paving for Federally funded sewer projects

(a) This section establishes eligible payment widths for select fill used for trench backfill and roadway pavement for federally funded sewer projects.

(b) Select trench backfill payment width:

1. Select trench backfill will be eligible for grant funding when the excavated material is totally or partially unacceptable for reuse as trench backfill. When the unacceptable material must be replaced with approved select backfill in a trench with a depth of 10 feet or less from the top of the pipe, the eligible payment width shall be Bd as shown below. For trenches of a greater depth the maximum eligible payment width shall be Bd plus H for the depth of unsuitable material as measured at the time of excavation.

2. When trench width is less than Bd plus H, the actual width shall control the payment.

3. Bd equals Maximum trench width (measured at the top of the pipe) allowed by the engineer for the type and strength class of pipe being installed.

4. The owner/engineer must make every effort to minimize the use of select fill. Marginal backfill material (material which is not acceptable for use in the pipe envelope or as a subbase for roadways) will be limited to the midzone of the trench. The midzone is defined as that portion of the trench beginning two feet above the top of the pipe, after compaction of the pipe envelope, to a point two feet below the final road or easement elevation. The owner/engineer must make all final decisions concerning the above.

(c) Paving:

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1. Maximum eligible payment width shall be the disturbed width plus two feet. In no case shall the maximum eligible payment width be greater than Bd plus H ;



2. Maximum Eligible Pay Width equals Bd plus H ;

3. Special considerations:

i. Pavement replacement shall, in all instances, be "like kind" replacement except where the replacement of the original thickness of roadway material will not yield a structurally stable surface over the disturbed trench area, or where the requirements of the responsible governmental jurisdiction specify roadway materials other than the original disturbed pavement. In these instances, the engineer should specify the minimum thickness necessary to obtain a structurally sound surface or to comply with established local, county or State road opening permit requirements. Such requirements shall be contained in the contract documents.

ii. Roadways where the original total pavement thickness is less than two inches and the pavement cannot be boxed and maintained during construction, will be eligible for "like kind" replacement outside of the eligible trench pavement width.

iii. Any deviation from the above should be submitted during the design phase (Step II) for approval if possible. In all instances, approvals must be obtained prior to soliciting bids.

iv. Reducing the pavement thickness specified by the engineer and spreading it across a wider area of the street will not be approved unless extenuating circumstances justify the need to pave a wider area. These situations will be considered on a case by case basis and must be submitted as a Change Order and receive approval prior to implementing such a change.

(d) Application of this section is mandatory for all Federal Grants awarded to projects, pursuant to the provisions of the Federal Clean Water Act (33 U.S.C. §§ 1251 et seq.) as amended, before October 1, 1998. For all Federal Grants awarded after October 1, 1998, the allowable costs shall be determined in accordance with the applicable provisions of the Financial Assistance Programs for Environmental Infrastructure Facilities rules at N.J.A.C. 7:22-5, Determination of Allowable Costs: Fund and Trust.

7:14-2.13 Excavation material unacceptable or conditionally acceptable for reuse as trench backfill

(a) The following trench excavation materials are unacceptable as trench backfill:

1. Any excavation materials that will cause damage to the piping systems;
2. Any excavation material that cannot be compacted or consolidated to yield the desired density as specified in the contract specifications;
3. Trees, stumps and foreign material.

(b) The following excavation materials are conditionally acceptable as trench backfill only if provided for in the contract specifications and the trench is located in a right-of-way, an easement, a roadway or an unimproved area:

1. Clay, organics and silt determined to be suitable in accordance with soil tests required by the owner/engineer.
2. Hard materials, such as blacktop, concrete, stone and rock.
 - i. The hard materials shall only be placed in the midzone of the trench beginning two feet above the top of the pipe, after compaction of the pipe envelope, to a point two feet below the final road or ground surface.
 - ii. Placement of the hard materials shall not create a potential hazard to the pipe or create voids that will cause adverse settlement.
 - iii. The maximum overall size of any piece of hard material shall be 12 inches.

THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

(c) The Department may require that all trench backfill material not conforming to this subsection and contract specifications be removed and spoiled to a spoil site approved by the Department in accordance with the requirements of N.J.A.C. 7:26-1, for solid or hazardous wastes.

7:14-2.14 Construction equipment costs compensation for extra work

(a) The contractor is entitled to all identifiable direct job equipment costs associated with extra work. The compensable cost for construction equipment shall be based upon the most current costs established in "Rental Rates for Construction Equipment" and "Rental Rates for Older Construction Equipment" (Blue Book), Dataquest Incorporated, A.C. Nielsen Company, San Jose, CA, 1983.

(b) Overhead and profits factors allowed in N.J.A.C. 7:14-2.7, shall only be applied to the rates charged for rental equipment used by the contractor for extra work.

7:14-2.15 Substantial and final completion of pipe projects; contractor's guarantees

(a) The contractor shall notify the owner/engineer in writing when the contract work is substantially complete as defined by N.J.A.C. 7:14-2.8(d). Within a reasonable time, the owner/engineer shall inspect the work.

(b) If the owner/engineer considers the work to be substantially complete, and before the Certificate of Substantial Completion is issued, the contractor shall:

1. Submit a construction schedule for the remaining work to be completed, and
2. Warrant and guarantee, for a period of one year or for a period as otherwise specified, from the date of Substantial Completion, that the completed work is free from defects due to faulty materials, equipment or workmanship. The Performance Bond shall remain in effect through the guarantee period.

(c) If the owner/engineer does not consider the work to be substantially complete, the engineer shall notify the contractor in writing, listing the items to be completed or corrected.

1. The contractor shall correct or complete items identified in writing within a reasonable time as specified in the contract documents, including repairs of any damage resulting from such defects to other work completed under the contract.

2. If the contractor fails to make such corrections within a reasonable time as specified in the contract documents, the owner may do so and charge the costs incurred, including direct and indirect costs, to the contractor.

(e) Before the Contractor has received notification of substantial completion, the owner/engineer may submit a request to the contractor to use a functional portion of the work if:

1. Such use does not significantly interfere with construction on any portion of remaining work to be completed, and
2. The conditions of such use shall be identified in the Certificate of Substantial Completion when issued by the owner/engineer.

(f) Final completion shall be that point at which the contract is completed, defective work corrected and clean up work accomplished. Unless a Certificate of Substantial Completion has been issued, the guarantee period shall begin upon certification of final completion by the engineer.

Subchapters 3 through 7. (RESERVED)

2A:44-143. Additional bond for payment of claims for labor, material, etc.; waiver, surety's obligation

2A:44-143. a. (1) When public buildings or other public works or improvements are about to be constructed, erected, altered or repaired under contract, at the expense of the State or any contracting unit, as defined in section 2 of P.L.1971, c.198 (C.40A:11-2), or school district, the board, officer or agent contracting on behalf of the State, contracting unit or school district, shall require delivery of the payment and performance bond issued in accordance with N.J.S.2A:44-147 and otherwise, as provided for by law, with an obligation for the performance of the contract and for the payment by the contractor for all labor performed or materials, provisions, provender or other supplies, teams, fuels, oils, implements or machinery used or consumed in, upon, for or about the construction, erection, alteration or repair of such buildings, works or improvements provided by subcontractors or material suppliers in contract with the contractor, or subcontractors or material suppliers in contract with a subcontractor to the contractor, which class of persons shall be the beneficiaries of the payment and performance bond. The board, officer or agent shall also require that all payment and performance bonds be issued by a surety which meets the following standards:

(a) The surety shall have the minimum surplus and capital stock or net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued; and

(b) With respect to all payment and performance bonds in the amount of \$850,000 or more, (i) if the amount of the bond is at least \$850,000 but not more than \$3.5 million, the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. 9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570, except that if the surety has been operational for a period in excess of five years, the surety shall be deemed to meet the requirements of this subsubparagraph if it is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and (ii) if the amount of the bond is more than \$3.5 million, then the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. 9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570 and, if the surety has been operational for a period in excess of five years, shall be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). A surety subject to the provisions of subsubparagraph (ii) of this subparagraph which does not hold a certificate of authority issued by the United States Secretary of the Treasury shall be exempt from the requirement to hold such a certificate if the surety meets an equivalent set of standards developed by the Commissioner of Insurance through regulation which at least equal, and may exceed, the general criteria required for issuance of a certificate of authority by the United States Secretary of the Treasury pursuant to 31 U.S.C. 9305. A surety company seeking such an exemption shall, not later than the 180th day following the effective date of P.L.1995, c.384, certify to the appropriate contracting unit that it meets that equivalent set of standards set forth by the commissioner as promulgated.

(2) When such contract is to be performed at the expense of the State and is entered into by the Director of the Division of Building and Construction or State departments designated by the Director of the Division of Building and Construction, the director or the State departments may: (a) establish for that contract the amount of the bond at any percentage, not exceeding 100%, of the amount bid, based upon the director's or department's assessment of the risk presented to the State by the type of contract, and other relevant factors, and (b) waive the bond requirement of this section entirely if the contract is for a sum not exceeding \$200,000.

(3) When such a contract is to be performed at the expense of a contracting unit or school district, the board, officer or agent contracting on behalf of the contracting unit or school district may: (a) establish for that contract the amount of the bond at any percentage, not exceeding 100%, of the amount bid, based upon the board's, officer's or agent's assessment of the risk presented to the contracting unit or school district by the type of contract and other relevant factors, and (b) waive the bond requirement of this section entirely if the contract is for a sum not exceeding \$100,000.

b. A surety's obligation shall not extend to any claim for damages based upon alleged negligence that resulted in personal injury, wrongful death, or damage to real or personal property, and no bond shall in any way be construed as a liability insurance policy. Nothing herein shall relieve the surety's obligation to guarantee the contractor's performance of all conditions of the contract, including the maintenance of liability insurance if and as required by the contract. Only the obligee named on the bond, and any subcontractor performing labor or any subcontractor or materialman providing materials for the construction, erection, alteration or repair of the public building, work or improvement for which the bond is required pursuant to this section, shall have any claim against the surety under the bond.

c. A board, officer or agent contracting on behalf of the State, contracting unit or school district shall not accept more than one payment and performance bond to cover a single construction contract. The board, officer or agent may accept a single bond executed by more than one surety to cover a single construction contract only if the combined underwriting limitations of all the named sureties, as set forth in the most current annual revision of United States Treasury Circular 570, or as determined by the Commissioner of Insurance pursuant to R.S.17:18-9, meet or exceed the amount of the contract to be performed.

d. A board, officer or agent contracting on behalf of the State, contracting unit or school district shall not accept a payment or performance bond unless there is attached thereto a Surety Disclosure Statement and Certification to which each surety executing the bond shall have subscribed. This statement and certification shall be complete in all respects and duly acknowledged according to law, and shall have substantially the following form:

SURETY DISCLOSURE STATEMENT AND CERTIFICATION

....., surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety meets the applicable capital and surplus requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital (where applicable) and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amount(s) as of the calendar year ended December 31, (most recent calendar year for which capital and surplus amounts are available), which amounts have been certified as indicated by certified public accountants (indicating separately for each surety that surety's capital and surplus amounts, together with the name and address of the firm of certified public accounts that shall have certified those amounts):

.....
.....
.....
(3) (a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C. 9305, the underwriting limitation established therein and the date as of which that limitation was effective is as follows (indicating for each such surety that surety's underwriting limitation and the effective date thereof):

.....
.....
.....
(b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the United States Secretary of the Treasury, the underwriting limitation of that surety as established pursuant to R.S.17:18-9 as of (date on which such limitation was so established) is as follows (indicating for each such surety that surety's underwriting limitation and the date on which that limitation was established):

.....
.....
.....
(4) The amount of the bond to which this statement and certification is attached is \$
(5) If, by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in items (3)(a) or (3)(b) above, or both, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of that reinsurer's participation in the contract is as follows:.....

.....

.....

.....; and

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L.1993, c.243 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE

(to be completed by an authorized certifying agent

for each surety on the bond)

I (name of agent), as (title of agent) for
(name of surety), a corporation/mutual insurance company/other (indicating type of business
organization) (circle one) domiciled in (state of domicile), DO HEREBY CERTIFY that,
to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that,
if any of those statements are false, this bond is VOIDABLE.

.....
(Signature of certifying agent)

.....
(Printed name of certifying agent)

.....
(Title of certifying agent)

L.1951 (1st SS), c.344; amended 1979, c.408; 1989, c.316; 1991, c.454; 1995, c.38, s.2; 1995, c.384,
s.1; 1996, c.81, s.2.

**2A:44-144. Sureties on and amount of bond; condition for payment of claims; bond deposited,
held for use of interested parties**

2A:44-144. The bond required by this article shall be executed by the contractor with such sureties
in accordance with N.J.S.2A:44-147 as shall be approved by the board, officer or agent acting on behalf
of the State, contracting unit or school district, in an amount equal to 100 per cent of the contract price.
The payment bond shall be conditioned for the payment by the contractor of all indebtedness which may
accrue to any person, firm or corporation designated as a "beneficiary" pursuant to N.J.S.2A:44-143, in an
amount not exceeding the sum specified in the bond, on account of any labor performed or materials,
provisions, provender or other supplies, or teams, fuels, oils, implements or machinery used or consumed
in, upon, for or about the construction, erection, alteration or repair of the public building or public work
or improvement.

The payment bond shall be deposited with and be held by the board, officer or agent acting on behalf
of the State, contracting unit or school district, for the use of any beneficiary thereof.

L.1951 (1st SS), c.344; amended 1995, c.384, s.2; 1996, c.81, s.3.

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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of Civil Engineers

**National Society of
Professional Engineers**
Professional Engineers in Private Practice

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

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

B. *Intent of Certain Terms or Adjectives:*

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

C. *Day:*

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

D. *Defective:*

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

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

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of

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

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

3.02 *Reference Standards*

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

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

B. Resolving Discrepancies:

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

3.04 Amending and Supplementing Contract Documents

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

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

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

3.06 *Electronic Data*

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

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

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the

Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

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

4.02 *Subsurface and Physical Conditions*

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

- 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
- 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

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

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

4.03 *Differing Subsurface or Physical Conditions*

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

- 1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
- 2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

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

C. *Possible Price and Times Adjustments:*

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

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

4.04 *Underground Facilities*

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

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

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price

or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by

Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 - 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:

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

5.05 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property

insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

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

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery

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

5.08 *Receipt and Application of Insurance Proceeds*

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

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

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

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

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

6.02 *Labor; Working Hours*

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

6.03 *Services, Materials, and Equipment*

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

6.04 *Progress Schedule*

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

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and

- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or

other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

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

6.08 *Permits*

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

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all

court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

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

6.11 Use of Site and Other Areas

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

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

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

- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor

shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B. that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

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

1. *Shop Drawings:*

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

2. *Samples:*

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

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

C. *Submittal Procedures:*

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

Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

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

6.18 Continuing the Work

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

6.19 Contractor's General Warranty and Guarantee

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

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

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor,

Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Contractor prior to starting any such other work; and
 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

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

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

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

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

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

8.12 *Compliance with Safety Program*

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

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

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

9.02 *Visits to Site*

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

and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

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

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

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

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

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

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

9.07 *Determinations for Unit Price Work*

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

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

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

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

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

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

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

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

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The

opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on

Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

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

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

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

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
2. there is no corresponding adjustment with respect to any other item of Work; and
3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
 1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the

control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.

- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute

resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and

equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05: Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the

Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or

- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

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

D. Reduction in Payment:

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or

- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

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

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities

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

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

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. Application for Payment:

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Engineer's Review of Application and Acceptance:

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

C. Payment Becomes Due:

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

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

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

15.02 *Owner May Terminate for Cause*

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

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

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

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
 - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 - 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

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

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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