



“Protecting Public Health and the Environment”

CONTRACT No. B074

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

CONTRACT AND SPECIFICATIONS

FOR

**WITCO PROPERTY CONTRACTOR STAGING AREA
PROJECT**

JUNE 2017

 Date: 7/7/17
GABRIELLE MOORE, P.E.
N.J. Professional Engineer - Lic. No. 24GE04613800

PASSAIC VALLEY SEWERAGE COMMISSION

**ADDENDUM NO. 3
TO
CONTRACT DOCUMENTS**

FOR

**WITCO PROPERTY CONTRACTOR STAGING AREA
PROJECT
CONTRACT NO. B074**

AUGUST 2017

PVSC CONTRACT NO. B074
WITCO PROPERTY CONTRACTOR STAGING AREA
ADDENDUM No. 3
Dated: August 7, 2017

The following interpretations, changes or additions to the Contract Drawings and Specifications shall be an integral part of the above referenced project and must be taken into account in rendering any proposal for this work. Each BIDDER shall acknowledge this Addendum by number on the Proposal Form. Failure to refer to each and all addenda may constitute reason for disqualification of the bid.

This addendum, which consists of 1 page, 0 attachments as follows:

DRAWINGS

1. Dwg 00 E-601 – Electrical Schedules I
 - a. Add the following to the Conduit and Wire Schedule: “[PU-2] 2-2”C, 4-3/0 AWG, 2-2 AWG(G).”

CONTRACTOR’S QUESTIONS

1. QUESTION: Can you please ask the engineer to confirm/clarify the configuration of the PU-2 feeder as shown on the one line drawings E-003 and it is not shown on the cable schedules E-601.

ANSWER: See revision to Dwg 00 E-601 above.

PVSC CONTRACT NO. B074
WITCO PROPERTY CONTRACTOR STAGING AREA
ADDENDUM No. 2
Dated: August 3, 2017

The following interpretations, changes or additions to the Contract Drawings and Specifications shall be an integral part of the above referenced project and must be taken into account in rendering any proposal for this work. Each BIDDER shall acknowledge this Addendum by number on the Proposal Form. Failure to refer to each and all addenda may constitute reason for disqualification of the bid.

This addendum, which consists of 7 pages, 1 attachment as follows:

SPECIFICATIONS

1. Section 00010 – Invitation to Bid

- a. Page 00010 -1, first paragraph, delete fourth sentence “Sealed Bid Proposals shall be received by PVSC’s (address above) on August 10, 2017 until 10:00 in the morning, prevailing time for public opening and reading,” and replace with the following:
“Sealed Bid Proposals shall be received by PVSC’s (address above) on August 17, 2017 until 10:00 in the morning, prevailing time for public opening and reading.”

2. Section 00300 – Bid Form

- a. Delete section 00300 in its entirety and replace with Attachment A.

3. Section 01025 – Measurement and Payment

- a. Delete section 1.03 in its entirety and replace with the following:

“1.03 ALLOWANCE FOR TELECOMMUNICATIONS CONNECTIONS
(Allowance on a Time and Materials basis) (Bid Item No. 3)

A. Measurement and Payment

1. Measurement for the Allowance for the PVSC and Windstream telecommunication connections and necessary equipment as specified shall be on an as needed basis as determined by the Owner.
2. Payment for the work shall be made at a price agreed upon by the Owner and shall provide full compensation for the design, installation, and testing of the PVSC and Windstream telecommunications systems, as well as the Windstream utility charges for providing telecommunications service to the offices designated for contractor use, as required to complete the work as necessary.

- a. The Allowance as specified is intended to provide for completing the design and furnishing all labor, material, equipment and incidentals required of the Contractor in order to facilitate the installation and testing of the PVSC and Windstream telecommunication systems, complete.
 - b. The Allowance as specified is intended to provide for charges by the Windstream telecommunications utility for coordination, engineering time, and utility-supplied equipment required for the completion of the project.
- 3. Written authorization by the OWNER for utilization of any part of the allowances for any such work shall be required.”
- 4. Section 01010 – Summary of Work
 - a. Page 01010-2, section 1.02.C, Item 11, delete in its entirety and replace with the following: “Item 11 Provide two (2) 4 cubic yard dumpsters – one for waste and one for recyclables.”
 - b. Page 01010-2, section 1.02.C, add the following: “Item 17 Provide professional engineering design services as indicated in the contract documents, including, but not limited to, stability of the stacked containers, all stairs and platforms and associated foundations/footings, connections to container structures/cabling for earth anchor system, and the container communication networks.”

DRAWINGS

- 1. Dwg 99 E-504 – Electrical Details IV
 - a. Delete Note 1 in its entirety and replace with the following: “Contractor shall provide, install, terminate, and test fiber from existing guard shack to communication equipment at Electrical Enclosure EE-1 for PVSC communication network and from EE-1 to containers. The Owner shall connect the system into their network. Contractor shall coordinate location and installation at guard shack with Owner.”
 - b. Delete Note 2 in its entirety and replace with the following: “The Cisco switch purchases must be approved by Owner MIS Department.”
 - c. Delete Note 5 in its entirety and replace with the following: “The Contractor shall coordinate with Windstream to provide telecommunication systems to containers with Contractor communications. All service fees for connection shall be paid by allowance.”
 - d. Delete Note 6 in its entirety and replace with the following: “Contractor shall provide, install, terminate, and test fiber from antenna on Dehumidification Building No. 4 to

equipment at Electrical Enclosure EE-1 for Contractor communication network and from EE-1 to containers as indicated.”

CONTRACTOR'S QUESTIONS

1. QUESTION: The excavation for duct banks and various foundations will generate excess soil. This excess soil is likely to be Historic Fill that contains various low levels of contaminants, or perhaps residues from the past industrial use of the Witco Site. Please clarify how this potentially contaminated ID27 soil is to be stockpiled, managed and possibly disposed off-site by the Contractor. For example, does the PVSC have a Soil Management Program that provides for the stockpiling of excess soil that is generated by excavations performed at the PVSC Site? Please clarify.

ANSWER: Excess soil will remain on site. The OWNER will give the Contractor direction on where to place any excess soil.

2. QUESTION: Please clarify the scope of work that is to be covered in the two Lump Sum Allowances for Bid Items #2 and #3. How will these two pay items be used during the contract, and what will be the extent of the Contractor's involvement with these two Scopes of Work.

ANSWER: See Specification Section 01025 – Measurement and Payment, section 1.02 and revised section 1.03 included as part of this addendum.

3. QUESTION: During the Pre-Bid Meeting there was a discussion about the need for the Contractor to provide two different Communications Systems for the Staging Area. However, the Communications Systems work is not included as one of the sixteen items that are identified in the Scope of Work that is provided in Section 01010 – Summary of Work. The only reference to the Communications System in the Summary of Work Section 01010 is under Item #15, which is the Bid Allowance that covers the communications service. Therefore, based on the information provided in the Summary of Work we had assumed that the Bid Allowance of \$50,000 for Bid Item #3 was intended to cover all of the necessary communications system costs. However, since this interpretation now appears to be incorrect, please revise the Summary of Work Section 01010 to clarify the communications scope of work that is to be included in the Lump Sum Bid Item #1 and to clarify what communications scope is to be included in the Allowance Bid Item #3.

ANSWER: See revised Specification Section 01025, section 1.03.A. made part of this addendum. Bid Item #3 is to cover all work related to the PVSC and Windstream communications systems. Refer to electrical drawings (specifically Drawing 99 E-504) and the “Drawings” section of this addendum for details of work related to the new communication systems.

4. QUESTION: As a follow-up to the above question on the Communications Systems, the electrical drawings only provide a layout for the power conduits. The electrical drawings do not provide a layout for any underground communications conduits. However, based on the

notes provided on Electrical Drawing #99 E-504 it appears that fiber optic cables are to be routed from the existing Guard Shack and from the existing Dehumidification Building to Enclosure EE-1, and then from EE-1 to all of the Container Offices. To clarify this intention, we recommend that new notes be provided on Site Plan Drawings C-101 & C-102 to identify the location of the existing Dehumidification Building and to call attention to the need to run Communication Conduits from the Dehumidification Building and from the Guard Shack to EE-1.

ANSWER: Refer to electrical drawings (specifically Drawing 99 E-504) and the "Drawings" section of this addendum for details of work related to the new communication systems. The existing Dehumidification Building No. 4 is located in the northwest corner of the enlarged plan shown on Dwg 00 C-102.

5. QUESTION: Currently, the drawings do not provide a typical underground ductbank section that shows both power conduits and communications conduits in a common trench. Please provide a typical ductbank section on Drawing 99 E-502 that provides this information, and specifically indicate whether or not the power conduits are to be separated from the communication conduits. Typically, we see a minimum of a 12" wide separation between the power and communications conduits in underground ductbanks.

ANSWER: Only power conduits are currently shown on the contract drawings. Details associated with the communications conduit routing/installation shall be provided by the Contractor as part of its communication systems design.

6. QUESTION: Notes on Electrical Drawing #99 E-504 indicate that the Fiber Optic ductbank from the existing Dehumidification Building to EE-1 and from the Guard Shack to EE-1 are to include 2 x 2" PVC Conduits (one is a spare). Please clarify, for bidding purposes, the size and number of PVC Conduits that will be needed to distribute the Fiber Optic Cables from EE-1 to the Container Offices.

ANSWER: All work associated with the design and installation of the PVSC and Windstream telecommunications systems has been included in the allowance under Bid Item #3. See revisions to section 1.03 of Specification Section 01025 – Measurement and Payment included as part of this addendum.

7. QUESTION: Note #7 on Electrical Drawing #99 E-504 states that the Contractor shall design the Container Communication Network, hire a NJ Professional Engineer, perform calculations, and meet the needs of PVSC and Windstream requirements. Since the bidders do not have an opportunity during the bidding phase to determine all of these various design inputs and parameter on their own, we request that the basic Communication System design parameters be provided to the bidders by adding some new notes to Drawing #99-504. For example (for bidding purposes) we request that the size and type of fiber optic cables be provided for both Communications Systems, along with specifications for other minimum required types of devices, panelboards, etc.

ANSWER: All work associated with the design and installation of the PVSC and Windstream telecommunications systems has been included in the allowance under Bid Item #3. See revisions to section 1.03 of Specification Section 01025 – Measurement and Payment included as part of this addendum.

8. QUESTION: There appears to be a fair amount of professional engineering and design services that will need to be provided by the Contractor to perform tasks such as: to ensure the stability of the Container Offices & Restrooms, as well as the Stairs and Platforms, to design the earth anchor hold-down devices, to design the foundations that will support the legs of the platforms, and to design the Communications Systems. However, the Summary of Work Section 01010 does not call attention to the need for the Contractor to provide these professional engineering design services. Therefore, we request that an additional scope item be added to the current list of sixteen scope items in the Summary of Work Section 01010 to specifically call attention to the need for the Contractor to provide these various professional engineering and design services.

ANSWER: See revisions to the Specification Section 01010 – Summary of Work included in the “Specifications” section of this addendum.

9. QUESTION: Please confirm our interpretation that the quantities of Temporary Fence, Dense Graded Aggregate and Precast Barrier Curb that are identified in the Summary of Work Section 01010 are for informational purposes only, and that the bidders are to perform their own take-offs to use as the basis of their Lump Sum Bid Proposal.

ANSWER: Quantities indicated in Specification Section 01010 are for informational purposes only. Bidders to perform and utilize their own quantity takeoffs as a basis for their respective bids.

10. QUESTION: With regard to the placement of the Dense Graded Aggregate (DGA) throughout the staging area, please confirm our interpretation that the intent is to place the DGA on top of the existing gravel, without the need to perform any excavation or undercutting, and that the finished surface of the DGA will be roughly flush with the existing pavement access road.

ANSWER: Excavation or undercutting of existing gravel at site is not required for the areas to receive screened gravel. Contractor to assume that 6-inches of screened gravel will be installed, where indicated on the drawings, to supplement existing gravel at site to obtain uniform thickness.

Some excavation of existing gravel may be required in the areas of the containers/electrical equipment areas to obtain the proposed grade elevations specified on the contract drawings. New DGA is to be installed, where indicated on the contract drawings, to supplement existing gravel at site and obtain proposed grade elevations.

11. QUESTION: Will a grading plan be provided?

ANSWER: A grading plan will not be provided.

12. QUESTION: From Reading specifications are we to assume that the gravel surface area shown on C-101 will get Geo fabric and 6" DGA placed over the entire area?

ANSWER: Areas where containers and electrical equipment will be installed shall be supplemented with DGA. The remaining areas shall be supplemented with screened gravel. Geotextile fabric is not required for any of these areas.

13. QUESTION: Will a manufacturer/vendor be specified for the 1 x 2 handholes?

ANSWER: A manufacturer/vendor will not be provided. Handholes to meet the requirements specified in Specification Section 16402.

14. QUESTION: Is the concrete ductbank thermal concrete? Any color added?

ANSWER: Thermal concrete is not required. No color to be added.

15. QUESTION: Will the temporary facilities be part of this contract? If so, how close is existing power and existing water?

ANSWER: There is no existing water or power service at the site. Contractor is to provide its own means of temporary power (ie. electrical generators, etc). Refer to Specification Section 01750 for DPCC requirements when temporary fuel tanks are used onsite. There is an existing fire hydrant located just east of Dehumidification Building No. 4 that may be utilized as a water source. Contractor to provide its own hoses/appurtenances, etc to connect to this water source.

16. QUESTION: Note 1 on sheet C-101 – are these dumpsters only for our project? The specification call out a rental 4 cy dumpster. If rented, how long is contract?

ANSWER: Dumpsters are to be purchased for the staging area.

17. QUESTION: Does the concrete jersey barriers have to be new?

ANSWER: Yes, concrete barriers to be new.

18. QUESTION: Are the post for temporary fence driven in earth or on standees?

ANSWER: Posts for temporary fence to be set in cinder blocks/concrete bases at grade level per Note 1, Dwg 00 C-101.

19. QUESTION: The plans call for a fiber optic cable between the following locations; however, they don't specify fiber type, I don't see a conduit connection between EE-1 and the Guard Shack and can't find the Dehumidification building.

EE-1 to Guard Shack

EE-1 to Dehumidification Building Antenna

ANSWER: All work associated with the design and installation of the PVSC and Windstream telecommunications systems has been included in the allowance under Bid Item #3. The existing Dehumidification Building No. 4 is located in the northwest corner of the enlarged plan shown on Dwg 00 C-102.

SECTION 00300

BID FORM

To: PASSAIC VALLEY SEWERAGE COMMISSION:

Bid Submitted For: CONTRACT NO. B074 WITCO PROPERTY CONTRACTOR STAGING
AREA 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 the total estimated bid price, which shall include the lump sum bid price and allowance.

A BID ON CONTRACT NO. B074

WITCO PROPERTY CONTRACTOR STAGING AREA PROJECT

ITEM	QUANTITY	LUMP SUM OR UNIT PRICE WRITTEN IN WORDS	BID PRICE WRITTEN IN FIGURES	
			Dollars	Cents
1	LUMP SUM	WITCO PROPERTY CONTRACTOR STAGING AREA Lump Sum (Must be written in words) FOR _____ Dollars Cents		
2	ALLOWANCE	ALLOWANCE FOR PSEG UTILITY CONNECTION FOR <u>ONE HUNDRED FIFTY THOUSAND</u> Dollars Cents	\$150,000	00
3	ALLOWANCE	ALLOWANCE FOR TELECOMMUNICATIONS CONNECTIONS FOR <u>ONE HUNDRED FIFTY THOUSAND</u> Dollars Cents	\$150,000	00
4	ALLOWANCE	ALLOWANCE FOR ADDITIONAL AUTHORIZED WORK FOR <u>TWO HUNDRED FIFTY THOUSAND</u> Dollars Cents	\$250,000	00

TOTAL BID PRICE (Sum of Item No. 1 through No. 4) (in Figures) \$ _____

Amount Written:

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

The “**Allowance Items**” are intended to provide for work that may later be determined to be necessary for the completion of the project but is not covered in the bid specifications. Written authorization by the OWNER for utilization of any part of the allowances for any such work shall be required.

PASSAIC VALLEY SEWERAGE COMMISSION

**ADDENDUM NO. 1
TO
CONTRACT DOCUMENTS**

FOR

**WITCO PROPERTY CONTRACTOR STAGING AREA
PROJECT
CONTRACT NO. B074**

July 2017

AECOM+HDR
A JOINT VENTURE

Gabrielle Moore, P.E.
Reg. Prof. Engr. New Jersey No. GE 46138

PVSC CONTRACT NO. B074
WITCO PROPERTY CONTRACTOR STAGING AREA
ADDENDUM No. 1
Dated: July 26, 2017

The following interpretations, changes or additions to the Contract Drawings and Specifications shall be an integral part of the above referenced project and must be taken into account in rendering any proposal for this work. Each BIDDER shall acknowledge this Addendum by number on the Proposal Form. Failure to refer to each and all addenda may constitute reason for disqualification of the bid.

This addendum, which consists of 1 pages, 2 attachments as follows:

SPECIFICATIONS

1. Section 00010 – Invitation to Bid
 - a. Page 00010 -1, fifth paragraph, delete “Contact is Mr. Steven Biuso, Program Manager (973-817-5744),” and replace with the following: “Contact is Mr. Steven Biuso, Program Manager (973-817-5744 or Steve.Biuso@aecom.com).”
2. Section 00300 – Bid Form
 - a. Delete section 00300 in its entirety and replace with Attachment A.
3. Section 00500 – Contract Agreement
 - a. Delete section 00500 in its entirety and replace with Attachment B.

PASSAIC VALLEY SEWERAGE COMMISSION

**ADDENDUM NO. 1
TO
CONTRACT DOCUMENTS**

FOR

**WITCO PROPERTY CONTRACTOR STAGING AREA PROJECT
CONTRACT NO. B074**

**ATTACHMENT A
SECTION 00300 – BID FORM**

AECOM+HDR
A JOINT VENTURE

SECTION 00300

BID FORM

To: PASSAIC VALLEY SEWERAGE COMMISSION:

Bid Submitted For: CONTRACT NO. B074 WITCO PROPERTY CONTRACTOR STAGING
AREA 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 the total estimated bid price, which shall include the lump sum bid price and allowance.

A BID ON CONTRACT NO. B074

WITCO PROPERTY CONTRACTOR STAGING AREA PROJECT

ITEM	QUANTITY	LUMP SUM OR UNIT PRICE WRITTEN IN WORDS	BID PRICE WRITTEN IN FIGURES	
			Dollars	Cents
1	LUMP SUM	WITCO PROPERTY CONTRACTOR STAGING AREA Lump Sum (Must be written in words) FOR _____ Dollars _____ Cents		
2	ALLOWANCE	ALLOWANCE FOR PSEG UTILITY CONNECTION FOR _____ ONE HUNDRED FIFTY THOUSAND Dollars _____ Cents	\$150,000	00
3	ALLOWANCE	ALLOWANCE FOR EXTERNAL TELECOMMUNICATIONS CONNECTION FOR _____ FIFTY THOUSAND Dollars _____ Cents	\$50,000	00
4	ALLOWANCE	ALLOWANCE FOR ADDITIONAL AUTHORIZED WORK FOR _____ ONE HUNDRED THOUSAND Dollars _____ Cents	\$100,000	00

TOTAL BID PRICE (Sum of Item No. 1 through No. 4) (in Figures) \$ _____

Amount Written:

_____ Dollars and _____ Cents

The "Allowance Items" are intended to provide for work that may later be determined to be necessary for the completion of the project but is not covered in the bid specifications. Written authorization by the OWNER for utilization of any part of the allowances for any such work shall be required.

Contract B074

00300-6

7/26/2017

PASSAIC VALLEY SEWERAGE COMMISSION

**ADDENDUM NO. 1
TO
CONTRACT DOCUMENTS**

FOR

**WITCO PROPERTY CONTRACTOR STAGING AREA PROJECT
CONTRACT NO. B074**

ATTACHMENT B

SECTION 00500 – CONTRACT AGREEMENT

AECOM+HDR
A JOINT VENTURE

PVSC CONTRACT NO. B074
WITCO PROPERTY CONTRACTOR STAGING AREA
ADDENDUM No. 2
Dated: August 3, 2017

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This addendum, which consists of 7 pages, 1 attachment as follows:

SPECIFICATIONS

1. Section 00010 – Invitation to Bid

- a. Page 00010 -1, first paragraph, delete fourth sentence “Sealed Bid Proposals shall be received by PVSC’s (address above) on August 10, 2017 until 10:00 in the morning, prevailing time for public opening and reading,” and replace with the following:
“Sealed Bid Proposals shall be received by PVSC’s (address above) on August 17, 2017 until 10:00 in the morning, prevailing time for public opening and reading.”

2. Section 00300 – Bid Form

- a. Delete section 00300 in its entirety and replace with Attachment A.

3. Section 01025 – Measurement and Payment

- a. Delete section 1.03 in its entirety and replace with the following:

“1.03 ALLOWANCE FOR TELECOMMUNICATIONS CONNECTIONS
(Allowance on a Time and Materials basis) (Bid Item No. 3)

A. Measurement and Payment

- 1. Measurement for the Allowance for the PVSC and Windstream telecommunication connections and necessary equipment as specified shall be on an as needed basis as determined by the Owner.
- 2. Payment for the work shall be made at a price agreed upon by the Owner and shall provide full compensation for the design, installation, and testing of the PVSC and Windstream telecommunications systems, as well as the Windstream utility charges for providing telecommunications service to the offices designated for contractor use, as required to complete the work as necessary.

- a. The Allowance as specified is intended to provide for completing the design and furnishing all labor, material, equipment and incidentals required of the Contractor in order to facilitate the installation and testing of the PVSC and Windstream telecommunication systems, complete.
 - b. The Allowance as specified is intended to provide for charges by the Windstream telecommunications utility for coordination, engineering time, and utility-supplied equipment required for the completion of the project.
3. Written authorization by the OWNER for utilization of any part of the allowances for any such work shall be required.”
4. Section 01010 – Summary of Work
 - a. Page 01010-2, section 1.02.C, Item 11, delete in its entirety and replace with the following: “Item 11 Provide two (2) 4 cubic yard dumpsters – one for waste and one for recyclables.”
 - b. Page 01010-2, section 1.02.C, add the following: “Item 17 Provide professional engineering design services as indicated in the contract documents, including, but not limited to, stability of the stacked containers, all stairs and platforms and associated foundations/footings, connections to container structures/cabling for earth anchor system, and the container communication networks.”

DRAWINGS

1. Dwg 99 E-504 – Electrical Details IV
 - a. Delete Note 1 in its entirety and replace with the following: “Contractor shall provide, install, terminate, and test fiber from existing guard shack to communication equipment at Electrical Enclosure EE-1 for PVSC communication network and from EE-1 to containers. The Owner shall connect the system into their network. Contractor shall coordinate location and installation at guard shack with Owner.”
 - b. Delete Note 2 in its entirety and replace with the following: “The Cisco switch purchases must be approved by Owner MIS Department.”
 - c. Delete Note 5 in its entirety and replace with the following: “The Contractor shall coordinate with Windstream to provide telecommunication systems to containers with Contractor communications. All service fees for connection shall be paid by allowance.”
 - d. Delete Note 6 in its entirety and replace with the following: “Contractor shall provide, install, terminate, and test fiber from antenna on Dehumidification Building No. 4 to

equipment at Electrical Enclosure EE-1 for Contractor communication network and from EE-1 to containers as indicated.”

CONTRACTOR’S QUESTIONS

1. QUESTION: The excavation for duct banks and various foundations will generate excess soil. This excess soil is likely to be Historic Fill that contains various low levels of contaminants, or perhaps residues from the past industrial use of the Witco Site. Please clarify how this potentially contaminated ID27 soil is to be stockpiled, managed and possibly disposed off-site by the Contractor. For example, does the PVSC have a Soil Management Program that provides for the stockpiling of excess soil that is generated by excavations performed at the PVSC Site? Please clarify.

ANSWER: Excess soil will remain on site. The OWNER will give the Contractor direction on where to place any excess soil.

2. QUESTION: Please clarify the scope of work that is to be covered in the two Lump Sum Allowances for Bid Items #2 and #3. How will these two pay items be used during the contract, and what will be the extent of the Contractor’s involvement with these two Scopes of Work.

ANSWER: See Specification Section 01025 – Measurement and Payment, section 1.02 and revised section 1.03 included as part of this addendum.

3. QUESTION: During the Pre-Bid Meeting there was a discussion about the need for the Contractor to provide two different Communications Systems for the Staging Area. However, the Communications Systems work is not included as one of the sixteen items that are identified in the Scope of Work that is provided in Section 01010 – Summary of Work. The only reference to the Communications System in the Summary of Work Section 01010 is under Item #15, which is the Bid Allowance that covers the communications service. Therefore, based on the information provided in the Summary of Work we had assumed that the Bid Allowance of \$50,000 for Bid Item #3 was intended to cover all of the necessary communications system costs. However, since this interpretation now appears to be incorrect, please revise the Summary of Work Section 01010 to clarify the communications scope of work that is to be included in the Lump Sum Bid Item #1 and to clarify what communications scope is to be included in the Allowance Bid Item #3.

ANSWER: See revised Specification Section 01025, section 1.03.A. made part of this addendum. Bid Item #3 is to cover all work related to the PVSC and Windstream communications systems. Refer to electrical drawings (specifically Drawing 99 E-504) and the “Drawings” section of this addendum for details of work related to the new communication systems.

4. QUESTION: As a follow-up to the above question on the Communications Systems, the electrical drawings only provide a layout for the power conduits. The electrical drawings do not provide a layout for any underground communications conduits. However, based on the

notes provided on Electrical Drawing #99 E-504 it appears that fiber optic cables are to be routed from the existing Guard Shack and from the existing Dehumidification Building to Enclosure EE-1, and then from EE-1 to all of the Container Offices. To clarify this intention, we recommend that new notes be provided on Site Plan Drawings C-101 & C-102 to identify the location of the existing Dehumidification Building and to call attention to the need to run Communication Conduits from the Dehumidification Building and from the Guard Shack to EE-1.

ANSWER: Refer to electrical drawings (specifically Drawing 99 E-504) and the "Drawings" section of this addendum for details of work related to the new communication systems. The existing Dehumidification Building No. 4 is located in the northwest corner of the enlarged plan shown on Dwg 00 C-102.

5. QUESTION: Currently, the drawings do not provide a typical underground ductbank section that shows both power conduits and communications conduits in a common trench. Please provide a typical ductbank section on Drawing 99 E-502 that provides this information, and specifically indicate whether or not the power conduits are to be separated from the communication conduits. Typically, we see a minimum of a 12" wide separation between the power and communications conduits in underground ductbanks.

ANSWER: Only power conduits are currently shown on the contract drawings. Details associated with the communications conduit routing/installation shall be provided by the Contractor as part of its communication systems design.

6. QUESTION: Notes on Electrical Drawing #99 E-504 indicate that the Fiber Optic ductbank from the existing Dehumidification Building to EE-1 and from the Guard Shack to EE-1 are to include 2 x 2" PVC Conduits (one is a spare). Please clarify, for bidding purposes, the size and number of PVC Conduits that will be needed to distribute the Fiber Optic Cables from EE-1 to the Container Offices.

ANSWER: All work associated with the design and installation of the PVSC and Windstream telecommunications systems has been included in the allowance under Bid Item #3. See revisions to section 1.03 of Specification Section 01025 – Measurement and Payment included as part of this addendum.

7. QUESTION: Note #7 on Electrical Drawing #99 E-504 states that the Contractor shall design the Container Communication Network, hire a NJ Professional Engineer, perform calculations, and meet the needs of PVSC and Windstream requirements. Since the bidders do not have an opportunity during the bidding phase to determine all of these various design inputs and parameter on their own, we request that the basic Communication System design parameters be provided to the bidders by adding some new notes to Drawing #99-504. For example (for bidding purposes) we request that the size and type of fiber optic cables be provided for both Communications Systems, along with specifications for other minimum required types of devices, panelboards, etc.

ANSWER: All work associated with the design and installation of the PVSC and Windstream telecommunications systems has been included in the allowance under Bid Item #3. See revisions to section 1.03 of Specification Section 01025 – Measurement and Payment included as part of this addendum.

8. QUESTION: There appears to be a fair amount of professional engineering and design services that will need to be provided by the Contractor to perform tasks such as: to ensure the stability of the Container Offices & Restrooms, as well as the Stairs and Platforms, to design the earth anchor hold-down devices, to design the foundations that will support the legs of the platforms, and to design the Communications Systems. However, the Summary of Work Section 01010 does not call attention to the need for the Contractor to provide these professional engineering design services. Therefore, we request that an additional scope item be added to the current list of sixteen scope items in the Summary of Work Section 01010 to specifically call attention to the need for the Contractor to provide these various professional engineering and design services.

ANSWER: See revisions to the Specification Section 01010 – Summary of Work included in the “Specifications” section of this addendum.

9. QUESTION: Please confirm our interpretation that the quantities of Temporary Fence, Dense Graded Aggregate and Precast Barrier Curb that are identified in the Summary of Work Section 01010 are for informational purposes only, and that the bidders are to perform their own take-offs to use as the basis of their Lump Sum Bid Proposal.

ANSWER: Quantities indicated in Specification Section 01010 are for informational purposes only. Bidders to perform and utilize their own quantity takeoffs as a basis for their respective bids.

10. QUESTION: With regard to the placement of the Dense Graded Aggregate (DGA) throughout the staging area, please confirm our interpretation that the intent is to place the DGA on top of the existing gravel, without the need to perform any excavation or undercutting, and that the finished surface of the DGA will be roughly flush with the existing pavement access road.

ANSWER: Excavation or undercutting of existing gravel at site is not required for the areas to receive screened gravel. Contractor to assume that 6-inches of screened gravel will be installed, where indicated on the drawings, to supplement existing gravel at site to obtain uniform thickness.

Some excavation of existing gravel may be required in the areas of the containers/electrical equipment areas to obtain the proposed grade elevations specified on the contract drawings. New DGA is to be installed, where indicated on the contract drawings, to supplement existing gravel at site and obtain proposed grade elevations.

11. QUESTION: Will a grading plan be provided?

ANSWER: A grading plan will not be provided.

12. QUESTION: From Reading specifications are we to assume that the gravel surface area shown on C-101 will get Geo fabric and 6" DGA placed over the entire area?

ANSWER: Areas where containers and electrical equipment will be installed shall be supplemented with DGA. The remaining areas shall be supplemented with screened gravel. Geotextile fabric is not required for any of these areas.

13. QUESTION: Will a manufacturer/vendor be specified for the 1 x 2 handholes?

ANSWER: A manufacturer/vendor will not be provided. Handholes to meet the requirements specified in Specification Section 16402.

14. QUESTION: Is the concrete ductbank thermal concrete? Any color added?

ANSWER: Thermal concrete is not required. No color to be added.

15. QUESTION: Will the temporary facilities be part of this contract? If so, how close is existing power and existing water?

ANSWER: There is no existing water or power service at the site. Contractor is to provide its own means of temporary power (ie. electrical generators, etc). Refer to Specification Section 01750 for DPCC requirements when temporary fuel tanks are used onsite. There is an existing fire hydrant located just east of Dehumidification Building No. 4 that may be utilized as a water source. Contractor to provide its own hoses/appurtenances, etc to connect to this water source.

16. QUESTION: Note 1 on sheet C-101 – are these dumpsters only for our project? The specification call out a rental 4 cy dumpster. If rented, how long is contract?

ANSWER: Dumpsters are to be purchased for the staging area.

17. QUESTION: Does the concrete jersey barriers have to be new?

ANSWER: Yes, concrete barriers to be new.

18. QUESTION: Are the post for temporary fence driven in earth or on standees?

ANSWER: Posts for temporary fence to be set in cinder blocks/concrete bases at grade level per Note 1, Dwg 00 C-101.

19. QUESTION: The plans call for a fiber optic cable between the following locations; however, they don't specify fiber type, I don't see a conduit connection between EE-1 and the Guard Shack and can't find the Dehumidification building.

PVSC CONTRACT NO. BO74
WITCO PROPERTY CONTRACTOR STAGING AREA
ADDENDUM No. 3
Dated: August 7, 2017

The following interpretations, changes or additions to the Contract Drawings and Specifications shall be an integral part of the above referenced project and must be taken into account in rendering any proposal for this work. Each BIDDER shall acknowledge this Addendum by number on the Proposal Form. Failure to refer to each and all addenda may constitute reason for disqualification of the bid.

This addendum, which consists of 1 page, 0 attachments as follows:

DRAWINGS

1. Dwg 00 E-601 – Electrical Schedules I
 - a. Add the following to the Conduit and Wire Schedule: “[PU-2] 2-2”C, 4-3/0 AWG, 2-2 AWG(G).”

CONTRACTOR'S QUESTIONS

1. QUESTION: Can you please ask the engineer to confirm/clarify the configuration of the PU-2 feeder as shown on the one line drawings E-003 and it is not shown on the cable schedules E-601.

ANSWER: See revision to Dwg 00 E-601 above.

PASSAIC VALLEY SEWERAGE COMMISSION
NEWARK, NEW JERSEY

WITCO PROPERTY CONTRACTOR STAGING AREA PROJECT

CONTRACT NO. B074

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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. B074

WITCO PROPERTY CONTRACTOR STAGING AREA 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 _____, 2017 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 as pursuant to Local Public Contract Law when it has sound documented business reasons which are in the best interest of PVSC and the project. 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 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. B074 includes furnishing all labor, materials, supplies, equipment and other facilities required by the Contract Documents for the completion of PVSC's Witco Property Contractor Staging Area located within the City of Newark, Essex County. Work includes, but not limited to, installation of pre-fabricated, office containers; restroom containers; exterior stairs, platforms, and handrails; parking lot fencing; container tie-down systems; and electrical improvements, including a 480VAC, 3 phase, 3 wire, 1600 amps switchboard, step-down transformers, and site lighting; complete.

A pre-bid meeting and tour of the Project Area will be held on _____, 2017. The meeting will take place at PVSC's OEM Main Conference Room, second floor, Operations Engineering & Maintenance (OEM) Building, 600 Wilson Avenue, Newark NJ. Bidders are strongly recommended to attend the pre-bid meeting.

Copies of the Bidding Documents will be available at the office of the PROGRAM MANAGER, 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. Steven Biuso, Program Manager (973-817-5744). 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 also be available for examination at the Office of the Program Manager 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 and Workforce Development pursuant to the Public Works Contractor Registration Act, P.L. 1999, c238. A copy of the Bidder's registration certificate may be provided with each bid. Certificate must be submitted prior to award of the Contract.

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 PROGRAM MANAGER'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:11-24).

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 set forth in the Contract Documents.

1.08 Damages

Provisions for damages are set forth in the Contract Documents.

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, and the project. 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 words 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.

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, 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 and Workforce Development.

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 and Workforce Development 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 or Subcontract will be subject to regulations contained in 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, and Debarment and Suspension,.

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. 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.

1.32 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

- A. Failure to submit items 2, 3, 4, 7, 9, 10, 13, and 15 below is a mandatory cause for the bid to be rejected (N.J.S.A. 40A:11-23.2). Failure to submit items 1, 5, 6, 11, and 12 below may be cause for the Bid to be rejected (N.J.S.A. 40A:11-23.1).**

<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. B074 WITCO PROPERTY CONTRACTOR STAGING
AREA 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 the total estimated bid price, which shall include the lump sum bid price and allowance.

A BID ON CONTRACT NO. B074

WITCO PROPERTY CONTRACTOR STAGING AREA PROJECT

ITEM	QUANTITY	LUMP SUM OR UNIT PRICE WRITTEN IN WORDS	BID PRICE WRITTEN IN FIGURES	
			Dollars	Cents
1	LUMP SUM	WITCO PROPERTY CONTRACTOR STAGING AREA Lump Sum (Must be written in words) FOR _____ Dollars Cents		
2	ALLOWANCE	ALLOWANCE FOR PSEG UTILITY CONNECTION FOR <u>ONE HUNDRED FIFTY THOUSAND</u> Dollars Cents	\$150,000	00
3	ALLOWANCE	ALLOWANCE FOR EXTERNAL TELECOMMUNICATIONS CONNECTION FOR <u>FIFTY THOUSAND</u> Dollars Cents	\$50,000	00
4	ALLOWANCE	ALLOWANCE FOR ADDITIONAL AUTHORIZED WORK FOR <u>TWO HUNDRED THOUSAND</u> Dollars Cents	\$100,000	00

TOTAL BID PRICE (Sum of Item No. 1 through No. 4) (in Figures) \$_____

Amount Written:

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

The “**Allowance Items**” are intended to provide for work that may later be determined to be necessary for the completion of the project but is not covered in the bid specifications. Written authorization by the OWNER for utilization of any part of the allowances for any such work shall be required.

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. B074 – WITCO PROPERTY CONTRACTOR STAGING AREA 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. B074 – WITCO PROPERTY CONTRACTOR STAGING AREA 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 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:
\$ _____

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)

BIDDER'S AFFIDAVIT

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
(OWNERSHIP DISCLOSURE CERTIFICATION)
N.J.S.A. 52:25-24.2 (P.L. 1977, c.33, as amended by P.L. 2016, c.43)

**This Statement Shall Be Included with
All Bid and Proposal Submissions**

Name of Business: _____

Address of Business: _____

Name of person completing this form: _____

N.J.S.A. 52:25-24.2:

"No corporation, partnership, or limited liability company 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, unless prior to the receipt of the bid or proposal, or accompanying the bid or proposal of said corporation, said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be.

If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

To comply with this section, a bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest."

The Attorney General has advised that the provisions of N.J.S.A. 52:25-24.2, which refer to corporations and partnerships apply to limited partnerships, limited liability partnerships, and Subchapter S corporations.

This Ownership Disclosure Certification form shall be completed, signed and notarized.

Failure of the bidder/proposer to submit the required information is cause for automatic rejection of the bid or proposal

Part I

Check the box that represents the type of business organization:

- ☐ Sole Proprietorship (skip Parts II and III, sign and notarize at the end)
- ☐ Non-Profit Corporation (skip Parts II and III, sign and notarize at the end)
- ☐ Partnership ☐ Limited Partnership ☐ Limited Liability Partnership
- ☐ Limited Liability Company
- ☐ For-profit Corporation (including Subchapters C and S or Professional Corporation)
- ☐ Other (be specific): _____

Part II

- ☐ I certify that the list below contains the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be.

OR

- ☐ I certify that no one stockholder in the corporation owns 10 percent or more of its stock, of any class, or no individual partner in the partnership owns a 10 percent or greater interest therein, or that no member in the limited liability company owns a 10 percent or greater interest therein, as the case may be.

Sign and notarize the form below, and, if necessary, complete the list below. (Please attach additional sheets if more space is needed):

Name: _____ Name: _____

Address: _____ Address: _____

Name: _____ Name: _____

Address: _____

Address: _____

Name: _____

Name: _____

Address: _____

Address: _____

Name: _____

Name: _____

Address: _____

Address: _____

Name: _____

Name: _____

Address: _____

Address: _____

Name: _____

Name: _____

Address: _____

Address: _____

Name: _____

Name: _____

Address: _____

Address: _____

Part III - Any Direct or Indirect Parent Entity Which is Publicly Traded:

“To comply with this section, a bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest.”

- ☐ Pages attached with name and address of each publicly traded entity as well as the name and address of each person that holds a 10 percent or greater beneficial interest.

OR

- ☐ Submit here the links to the Websites (URLs) containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent.

AND

- ☐ Submit here the relevant page numbers of the filings containing the information on each person holding a 10 percent or greater beneficial interest.

Subscribed and sworn before me this ____ day of

(Affiant)

_____, 20____.

(Notary Public)

(Print name of affiant and title if applicable)

My Commission expires:

(Corporate Seal if a Corporation)

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. B074 – WITCO PROPERTY CONTRACTOR STAGING
AREA 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

SECTION 00307

ACKNOWLEDGEMENT OF RECEIPT OF CHANGES TO BID DOCUMENTS FORM

PASSAIC VALLEY SEWERAGE COMMISSION

WITCO PROPERTY CONTRACTOR STAGING AREA PROJECT	B074
(Name of Construction Project)	(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

Name

Telephone

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.

WORK CATEGORY	NAME	ADDRESS
Plumbing and Gas Fitting and all kindred work		
Steam Power Plants, Steam and Hot Water Heating and Ventilating Apparatus and all kindred work		
Electrical Work		
Structural Steel and Ornamental Iron Work		

(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

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 -

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/Offeror 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: _____

SECTION 00500

CONTRACT NO. B074
PASSAIC VALLEY SEWERAGE COMMISSION
600 WILSON AVENUE
NEWARK, NEW JERSEY 07105

CONTRACT AGREEMENT

WITCO PROPERTY CONTRACTOR STAGING AREA 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 PROGRAM MANAGER, AECOM HDR Joint Venture, 600 WILSON AVENUE, NEWARK, 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 330 consecutive calendar days from the day of the CONTRACTOR's receipt of the written Notice to Proceed.

The CONTRACTOR shall complete work under this Contract as shown in the following Schedule:

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)
330	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.

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.
- 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. B074 -WITCO PROPERTY CONTRACTOR STAGING AREA 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, as 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

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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A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

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

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

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.

SECTION 00800

SUPPLEMENTAL 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	00800-5
4	Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions; Reference Points	00800-5
5	Bonds and Insurance.....	00800-6
6	CONTRACTOR's Responsibilities.....	00800-9
7	Other Work at the Site	00800-13
8	OWNER's Responsibilities.....	00800-14
9	ENGINEER's Status During Construction	00800-14
10	Change in the Work; Claims	00800-15
11	Cost of Work; Allowances; Unit Price Work.....	00800-15
12	Change of Contract Price; Change of Contract Times	00800-16
13	Tests and Inspections; Correction, Removal or Acceptance of Defective Work	00800-16
14	Payments to CONTRACTOR and Completion.....	00800-17
15	Suspension of Work and Termination	00800-21
16	Dispute Resolution	00800-22
17	Miscellaneous.....	00800-23

Additional Articles

18	Liquidated Damages	00800-23
19	Federal and State Government Provisions	00800-24
19.01	Affirmative Action Requirements	
19.02	Anti-Discrimination (N.J.S.A. 10:2-1)	
19.03	Foreign Corporations (N.J.S.A. 14A:13-3)	
19.04	Statement of Ownership (N.J.S.A. 52:24-24.2)	
19.05	Use of Domestic Materials (N.J.S.A. 52:33-1 to 52:33-3)	
19.06	Prevailing Wage Rates (N.J.S.A. 34:11 - 56:25)	
19.07	State Treasurer's List of Debarred, Suspended and Disqualified Bidders (N.J.S.A. 34:11)	
19.08	Davis Bacon Act	
19.09	Construction of Wastewater Treatment Facilities (N.J.A.C. 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	N.J.A.C. 7:14-2
5	N.J.S.A. 2A:44-143, 144
6	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.”

4.05 *Reference Points*

Part A: Add the following after “provide” in the first line:

“, if available,”

Add the following paragraphs:

- “B. ENGINEER may check the lines, elevations, reference marks, batter boards, etc., set by CONTRACTOR, and CONTRACTOR shall correct any errors disclosed by such check. Such a check shall not be considered as approval of CONTRACTOR’s work and shall not relieve CONTRACTOR of the responsibility for accurate construction of the entire Work. CONTRACTOR shall furnish personnel to assist ENGINEER in checking lines and grades.”
- “C. No separate payment will be made to the CONTRACTOR for the cost of establishing lines and grades or for the cost of assisting the ENGINEER in checking of such work or for the delay in checking such work, but the cost thereof shall be included in the prices bid for the various items.”

4.06 Hazardous Environmental Condition at Site.

- G. Omit in its entirety and substitute the following: “Owner, in its sole discretion, shall have the right to dispose of the contamination, either on its own or through an independent Contractor, or negotiate a Change Order with the Contractor.

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.”

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.

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 N.J.S.A. 52:32-17. The regulations, which are more specifically set forth in N.J.A.C. 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. N.J.A.C. 12:100-9 – Work in Confined Space

2. N.J.A.C. 12:100-11 – Control of Hazardous Energy
(Electrical energy lockout and other energy sources such as steam, air, liquids)
3. N.J.A.C. 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, N.J.S.A. 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 N.J.S.A. 40A:11-16.3, unless the CONTRACTOR makes the deposits referred to in N.J.S.A. 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 N.J.S.A. 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 N.J.A.C. 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 CONTRATOR. 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 N.J.S.A. 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. To the extent applicable, pursuant to N.J.S.A. 2A:30A-2(f), disputes regarding whether a party has failed to make payments required pursuant to N.J.S.A. 2A:30A-2 may be submitted to a process of Alternative Dispute Resolution ("ADR"). ADR permitted by this section shall not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts. In any civil action brought to collect payments pursuant to this section, the action shall be conducted inside of this State and the prevailing party shall be awarded reasonable costs an attorney fees.

Pending final decision of a subject dispute, the Contractor shall proceed diligently with the performance of the contract in accordance with the instructions and decisions of PVSC.

Any dispute pursuant to this provision shall, in the first instance, be decided by PVSC or its authorized representative. PVSC's decision pursuant to this provision shall be final and conclusive unless Contractor demands that the dispute be submitted to ADR in writing within thirty (30) days of the decision of PVSC or its authorized representative.

If PVSC and the Contractor agree on a single individual selection, there will be one arbitrator. If no agreement is reached within thirty (30) days after demand for ADR there will be three arbitrators, one named in writing by PVSC and a second named by the Contractor within thirty (30) days after demand for alternate dispute resolution, and a third chosen by the two who were appointed. The single arbitrator's decision will be binding; if there are three arbitrators, the decision of any two of them will be binding. No one will act as an

arbitrator who is in any way financially interested in the work or in the business affairs of either PVSC or the Contractor.”

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:

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.

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.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, 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.

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.

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 Dept. of LWD, Construction EEO Monitoring Program 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 Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, 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 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:
 - a) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, 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;
 - b) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
 - c)) 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;
 - d) 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;
 - e) 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;

- f) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
 - 1) The contractor or subcontractor shall interview the referred minority or women worker.
 - 2) 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 Dept. of LWD, Construction EEO Monitoring Program. 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.
 - 3) 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 (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
 - 4) 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 Dept. of LWD, Construction EEO Monitoring Program.
 - g) 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 Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program 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 targeted 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.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA 201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, 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.

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.

- D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program 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 Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code (N.J.A.C. 17:27)**.

19.02 *Anti-Discrimination (N.J.S.A. 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 (N.J.S.A. 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, arbitative 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 (N.J.S.A. 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 (N.J.S.A. 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 materials 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 (N.J.S.A. 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, N.J.S.A. 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 wagers 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 (N.J.S.A. 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 N.J.A.C. 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 N.J.S.A. 34:11-56.37 and 38, no contract will be awarded or made to the listed CONTRACTOR's or subcontractors.

19.08 Davis Bacon Act

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

19.09 Construction of Wastewater Treatment Facilities (N.J.A.C. 7:14-2)

Chapter 7:14 of N.J.A.C. 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.

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

EXHIBIT NO. 2

LIST OF DEBARRED CONTRACTORS AND SUBCONTRACTORS



State of New Jersey

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

May 11, 2017

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
Ackerson Contracting Inc. Denise Ackerson, President	182 Van Dyke Road, Hopewell, NJ 08525 182 Van Dyke Road, Hopewell, NJ 08525	03/05/2020
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 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
Apex Tower Services, Inc. Richard Pluese, Vice-President	245 Sharp Road, Marlton, NJ 08053 66 E Cedar Avenue, Marlton, NJ 08053	02/09/2019

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
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	
Aztech Management, Inc.	86 Christopher Street, Montclair, NJ 07042	11/17/2019
Aztech Management, Inc.		
Constantine Vivian, President	86 Christopher Street, Montclair, NJ 07042	
Barzzini Construction	65 Fern St, Browns Mills, NJ 08015	09/15/2017
John Sorrentino, Owner	65 Fern St, Browns Mills, NJ 08015	
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	
Build Rite LLC	16 Darlington Drive, Wayne, NJ 07470	01/17/2020
Louis Pacelli, Manager	16 Darlington Drive, Wayne, NJ 07470	
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	
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	
Cobra Communications & Installations, LLC	26 Spencer Place, Garfield, NJ 07026	12/10/2017
Giovanny Bustos, Owner	26 Spencer Place, Garfield, NJ 07026	
Conex Construction Corp.	265 Wilson Avenue, Kearny, NJ 07032	01/19/2019
Armando Piedade, President	265 Wilson Avenue, Kearny, NJ 07032	

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
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
Cougar Power and Electric, LLC Kevin F. Mandel, Owner	126 Fountain Avenue, Piscataway, NJ 08854 186 Sunshine Drive, Piscataway, NJ 08854	01/05/2020
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
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
DAS Industrial, LLC DAS Industrial Limited Liability Company Vincent Manganiello, Managing Member	41 Pine Street, Rockaway, NJ 07866 2 Perona Road, Andover, NJ 07821	01/08/2020
DCI Signs & Awnings Inc. Danny Castillo, President	110 Riverside Avenue, Newark, NJ 07104 645 Bancroft Road, Brick, NJ 08724	04/10/2020
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
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
Elite Demolition, LLC Stephen DiFilippi, Owner	120 Springbrook Trail, Sparta, NJ 07871 120 Springbrook Trail, Sparta, NJ 07871	04/10/2020
Elite Terrazzo Flooring, Inc. Christopher Picinic, Owner	185 Fifth Ave., Paterson, NJ 07524 164 President Blvd, Washington Township, NJ 07676	10/18/2019
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
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 Rodriguez, President	1 Orient Way, Suite 226, Rutherford, NJ 07070 523 Hamilton Avenue, Kingston, PA 18704	11/08/2018
Felipe Villagomez owner Felipe Villagomez, Owner	160 Lincoln Street, Bridgeton, NJ 08302 160 Lincoln Street, Bridgeton, NJ 08302	03/08/2019

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
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
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
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
Harold Arenberg Inc. Jeffrey Arenberg, President Daniel Arenberg, Vice-President	1711 Route 9 North, Swainton, NJ 08210 741 Dias Creek Road, Cape May Court House, NJ 08210 1711 Route 9 North, Swainton, NJ 08210	12/29/2019
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
High Mountain Construction, Inc.	296 Oakwood Avenue, North Haledon, NJ 07508	04/09/2020
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
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

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
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	1016 Highway 33, Freehold, NJ 07728	11/30/2019
J.C. Maintenance & Repair Emanuel Cucco, Owner	6725 13th Avenue, Brooklyn, NY 11219 1435 71st Street, Brooklyn, NY 11228	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
J.H. Reid General Contractor James H. Reid, CEO Eric H. Reid, President	3230 Hamilton Boulevard, South Plainfield, NJ 07080 180 Whippoorwill Valley, Road, Atlantic Highlands, NJ 07716 5 Gary Ford Dr., Middletown, NJ 07748	01/31/2020
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
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
K&K Construction LLC Ki Kuk Kim, Partner Kwang Hee Kim, Partner	685 Bergen Blvd., Ridgefield, NJ 07657 685 Bergen Blvd., Ridgefield, NJ 07657 685 Bergen Blvd., Ridgefield, NJ 07657	06/09/2017
Kitchen Crafters Plus d/b/a B&B Custom Cabinets Albert Brisebois, Owner	1 Suydam Place, Aberdeen, NJ 07747 1 Suydam Place, Aberdeen, NJ 07747	05/31/2018
KS Exteriors, LLC KS Exteriors, LLC Kris Brezinska, Owner	650 Ohio Ave., Trenton, NJ 08638 650 Ohio Ave., Trenton, NJ 08638	03/08/2019
Lombardi Enterprises, Inc. Alan Lombardi, President Ann Lombardi, Secretary	2901 South Clinton Avenue, South Plainfield, NJ 07080 26 Whispering Way, Berkeley Hights., NJ 07922 26 Whispering Way, Berkeley Hights., NJ 07922	12/09/2017

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
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	
Matos Construction, LLC	77 Williamson Court, Bridgewater, NJ 08807	01/12/2020
Wagner Matos		
Nimali Matos, Owner	77 Williamson Court, Bridgewater, NJ 08807	
Wagner Matos, Owner	77 Williamson Court, Bridgewater, NJ 08807	
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	
MNC General Contracting Inc.	PO Box 503, Oakhurst, NJ 07755	01/02/2020
Maria Abreu, President	14 Charleston Court, Little Egg Harbor, NJ 08087	
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	
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
Roy C. Apgar, President	109 Greentree Road, Brick, NJ 08724	
Cheryl Apgar, Vice-President	109 Greentree Road, Brick, NJ 08724	
Niceta Electric	2119 Merritt Drive, Northfield, NJ 08225	10/19/2018
Joseph Niceta, Owner	2119 Merritt Drive, Northfield, NJ 08225	
NT&P Construction Inc.	105 White Oak Lane, Old Bridge, NJ 08857	11/22/2018
Nicola Pengue, President	4 Camelot Avenue, Monroe Township, NJ 08831	
Ocean Blue Builders LLC	711 Carol Avenue, Oakhurst, NJ 07755	11/05/2017
John Riley Jr, Managing Member	140 Harrison Avenue, Fair Haven, NJ 07704	
OCM Construction	203 Main Street, #204, Flemington, NJ 08822	08/11/2017
OCM Construction, LLC		
William Mitchell, Owner	22 Greenwood Place, Flemington, NJ 08822	
Octagon Construction	10 Jeanette Street, Carteret, NJ 07008	03/02/2018
Octagon Construction		
Wojciech Puchajda, Owner	10 Jeanette St., Carteret, NJ 07008	

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
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. Krzystof 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
Quality Plus Builders, Inc. Gerry G. Smith, President Laurie M. Smith, Vice-President	P.O. Box 1040, Weirsdale, FL 32195 16320 SE 162nd Ct., Weirsdale, FL 32195 16320 SE 162nd Ct., Weirsdale, FL 32195	01/26/2020
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
Remcon Enterprises LLC Joshua Jackson, President Jon (debarred 700059) Warbeck (2/28/19), Vice-Presid	25 Pine Street, Suite 9, Rockaway, NJ 07866 4 Lynn Dr., Andover, NJ 07821 680 Pine Brook Road, Lincoln Park, NJ 07035	02/12/2020
Ren Construction Albert Chwedczuk, Owner	1984 Whitesville Road, Toms River, NJ 08755 1984 Whitesville Road, Toms River, NJ 087055	07/09/2017

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
Resco, LLC	P.O. Box 806, Old Saybrook, CT 06475	10/21/2018
Hallmark Electric, LLC		
David Peckham, Owner	15 Elm Street, Old Saybrook, CT 06475	
Retail Store Painting	202 Karen Drive, Scranton, PA 18505	01/12/2018
John Thomas, President	202 Karen Drive, Scranton, PA 18505	
Riano Brothers, LLC.	13 Poppy Ave., Neptune, NJ 07753	02/25/2018
Atanasia Lazo Gutierrez		
Luis Riano, President	13 Poppy Ave., Neptune, 07753	
Ribles Locksmith & Hardware	613 15th Ave., Belmar, NJ 07719	07/10/2017
Evelyn McDermott, Owner	613 15th Ave, Belmar, NJ 07719	
Rizzo New York Inc.	109-02 Jamaica Avenue, Richmond Hill, NY 11418	01/19/2019
Rizzo New York Inc.		
Rizwan Ahmad, President	9157 97th St, Wood Haven, NY 11421	
Robert M. Mesmer, LLC	24 Sand Bridge Rd., Elmer, NJ 08318	12/11/2017
Robert Mesmer, Managing Member	24 Sand Bridge Road, Elmer, NJ 08318	
Roncone Construction, L.L.C.	275 Chestnut St., Store B #113, Newark, NJ 07114	02/02/2018
Roncone Construction, L.L.C.		
Leonardo Marques Roncone, Managing Member	192 Emmet St., Newark, NJ 07105	
S & S Electric, LLC	108 Oak Glen Road, Toms River, NJ 08753	01/12/2018
Al Shan, President	108 Oak Glen Road, Toms River, NJ 08753	
Sandora & Spina Contracting Inc.	15 North Branch River Rd., Branchburg, NJ 08876	06/28/2018
Edward Sandora, President	15 North Branch River Rd., Branchburg, NJ 08876	
SDT Transport LLC	12 Clifford Rd, Wanaque, NJ 07465	08/25/2019
Stephen Tripodi, Owner	12 Clifford Rd, Wanaque, NJ 07465	
Seminole Construction, L.L.C.	128 Bartlett Ave, West Creek, NJ 08092	SUSPENDED
SUSPENDED PENDING DEBARMENT		
Sandra Morizzo, Managing Member	165 Oak Ave., West Creek, NJ 08092	
Joseph Filoon Jr., Manager	195 Lakeshore Dr, Manahawkin, NJ	
Southern State Contracting Services LLC	51 Pine Dr S., Brick, NJ 08723	06/26/2019
Joseph F. Gleason Jr., President	51 Pine Dr. S, Brick, NJ 08724	
Squillace Steel Fabricators, LLC	771 Amsterdam Avenue, Roselle, NJ 07203	05/31/2019
Squillace Steel Fabricators, LLC		
Rachel Squillace, Manager	771 Amsterdam Ave., Roselle Park, NJ 07203	
Richard Squillace, President	771 Amsterdam Avenue, Roselle Park, NJ 07203	
Steven Keares, Inc.	633 Jeffers Circle, Exton, PA 19341	02/02/2020
Keares Electrical Contractor, Inc.		
Steven P. Keares, CEO	211 Downing Road, Downingtown, PA 19335	
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	
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	

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
Thomas Clark Fiberglass, LLC Thomas Clark, Owner / Officer	145 Old Halfway Road, Barnegat, NJ 08005 145 Old Halfway Rd., Barnegat, NJ 08005	10/22/2017
Timster Trucking Inc. SUSPENDED PENDING DEBARMENT Sandra Morizzo, Partner Joseph Filoon Jr., President	128 Bartlett Avenue, West Creek, NJ 08092 165 Oak Ave, West Creek, 165 Oak Avenue, West Creek, NJ 08092	SUSPENDED
TJB Air Conditioning And Heating Timothy Babbitt, Owner	2305 Garry Rd. Suite A, Cinnaminson, NJ 08077 2305 Garry Rd. Suite A, Cinnaminson, NJ 08077	02/28/2019
Todd Cable Construction, LLC Todd E. Warmingham, Owner	151 Old State Rd., Newport, NY 13416 P.o. Box 215, Newport, NY 13416	04/26/2018
Top Notch Tree & Landscape, LLC James Van Wyckhouse, Owner	70 East Allendale Rd., Saddle River, NJ 07458 46 Tam O Shanter Rd, Mahwah, NJ 07430	12/06/2018
TQM Construction Corporation Balwant DeVre, President	21 Patriot Xing, Rockaway, NJ 07866-4826 21 Patriot Crossing, Rockaway, NJ 07866	03/22/2019
Trinity Paving, LLC Michele Doyle, Member	245 Clayton Road, Monroeville, NJ 08343-2652 115 Millstone Way, Monroeville, NJ 08343	10/20/2017
Turf Services Express LLC Sharleen Poppalardo, Managing Member	26 North Broad Street, Medford, NJ 08055 11 Muirfield Court, Medford, NJ 08055	03/26/2018
Turfscapes LLC Jeffrey Grize, Owner	PO Box 950, Williamstown, NJ 08094 3477 S. Blackhorse Pike, Williamstown, NJ 08094	08/22/2019
Turfscapes LLC Jeffrey Grize, Owner	PO Box 950, Williamstown, NJ 08094 3477 S. Blackhorse Pike, Williamstown, NJ 08094	05/27/2017
Twin Industries Jeanne Crispino, Vice-President	15 Lewis Street, Eatontown, NJ 07724 15 Lewis Street, Eatontown, NJ 07724	04/04/2019
Ultimate Roofing, LLC Paige Moriarty, Member	1013 Grandview Avenue, Union, NJ 07083 1013 Grandview Avenue, Union, NJ 07083	12/12/2019
Unique Contractors Unique Contractors Juan Garro, Owner	3606 Academy Road, Philadelphia, PA 19154 3606 Academy Road, Philadelphia, PA 19154	01/11/2020
Van Peenen Landscape Contractors, Inc. Van Peenen Landscape Contractors, Inc. Raymond Van Peenen, President	555 Preakness Avenue,, Suite 210, Totowa, NJ 07512 3 Gates Place, Wayne, NJ 07470	11/22/2018
Wallmasters Modular Inc. Timothy Morrison, President	226 Mutual Avenue, Winchester, KY 40391 2745 SR668N, Junction City, OH 43748	07/28/2017
Warbeck Construction Group LLC Jon J Warbeck, President	63 Beaver Brook Road, Suite 305, Lincoln Park, NJ 07035 680 West Pine Brook Road, Lincoln Park, NJ 07035	02/28/2019
Weather Tight Foam Insulation, Inc. Mohamed A. Abdou, Owner / Officer Tariq Adma, Owner / Officer	1156 Livingston Avenue, North Brunswick, NJ 08902 1156 Livingston Avenue, N. Brunswick, NJ 08902 222 Sanford Street, New Brunswick, NJ 08901	04/10/2020

SUSPENDED PENDING DEBARMENT:

<u>CONTRACTORS AND SUBCONTRACTORS</u>	<u>ADDRESS</u>	<u>SUSPEND DATE</u>
Jamali Developers, LLC Hussain Burhanpurwala, Member	238 Fresh Ponds Road, Monroe, NJ 08816 553 Marc Drive, North Brunswick, NJ 08902	01/11/2016
Jerzee Container Corp. Jon Whelan, Vice-President Thomas Whelan, President Joseph Filoon Jr, Manager Sandra Morizzo, Member	123 Bartlett Avenue, West Creek, NJ 08092 48 8th Avenue, New York, NY 10014 PO Box 155, Spring Lake, NJ 07762 195 Lakeshore Dr, Manahawkin, NJ 08050 165 Oak Ave, West Creek, NJ 08092	09/23/2016
Seminole Construction, L.L.C. Joseph Filoon Jr., Manager Sandra Morizzo, Managing Member	128 Bartlett Ave, West Creek, NJ 08092 195 Lakeshore Dr, Manahawkin, NJ 165 Oak Ave., West Creek, NJ 08092	09/23/2016
Timster Trucking Inc. Joseph Filoon Jr., President Sandra Morizzo, Partner	128 Bartlett Avenue, West Creek, NJ 08092 165 Oak Avenue, West Creek, NJ 08092 165 Oak Ave, West Creek,	09/23/2016

LIST OF DEBARRED OWNERS/OFFICERS

5/11/2017

Owners/ Officers**Address****Company Name**

Mohamed A. Abdou, Owner / Officer	1156 Livingston Avenue, N. Brunswick, NJ 08902	Weather Tight Foam Insulation, Inc.
Maria Abreu, President	14 Charleston Court, Little Egg Harbor, NJ 08087	MNC General Contracting Inc.
Denise Ackerson, President	182 Van Dyke Road, Hopewell, NJ 08525	Ackerson Contracting Inc.
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.
Tariq Adma, Owner / Officer	222 Sanford Street, New Brunswick, NJ 08901	Weather Tight Foam Insulation, Inc.
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	Harold Arenberg Inc.
Daniel Arenberg, Vice-President	1711 Route 9 North, Swainton, NJ 08210	Harold Arenberg Inc.
Jeffrey Arenberg, President	741 Dias Creek Road, Cape May Court House, NJ 08210	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	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	DCI Signs & Awnings Inc.
Danny Castillo, President	645 Bancroft Road, Brick, NJ 08724	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	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	Twin Industries
Jeanne Crispino, Vice-President	15 Lewis Street, Eatontown, NJ 07724	

Owners/ Officers**Address****Company Name**

Emanuel Cucco, Owner	1435 71st Street, Brooklyn, NY 11228	J.C. Maintenance & Repair
Nuno Cunha, Owner	35 Carmen Ct., Newark, NJ 07105	Cunhas Construction Inc.
Jose Fernandes Da Silva, Owner	26 Washington St., Long Branch, NJ 07718	Cam Flooring Installations LLC
Dane DeForest, President	2406 Herbertsville Road, Point Pleasant, NJ 08742	Dane DeForest Demolition, Inc.
Nelson DeOliveira, President	276 Highland Ave, Kearney, NJ 07032	East Coast Touch Enterprises LLC
Joe DeSalvo, Jr., Owner	149 Montross Ave., Rutherford, NJ 07070	J.D.S Electric, Inc.
John Dever, Owner	1086 Mays Landing Road, Somers Point, NJ 08234	Metal Fab Atlantic LLC
Balwant DeVre, President	21 Patriot Crossing, Rockaway, NJ 07866	TQM Construction Corporation
Stephen DiFilippi, Owner	120 Springbrook Trail, Sparta, NJ 07871	Elite Demolition, LLC
James DiLorenzo, Vice-President	440 Mantua Avenue, Paulsboro, NJ 08066	G.F.I. Siteworks, Inc.
		G.F.I. Siteworks, Inc.
		Cityline Contracting Inc.
Dorothy Dobiecka, President	556 Humboldt Street, Brooklyn, NY 11222	Precise Builders LLC
John Domingues, Owner	402 Market St, Newark, NJ 07105	Trinity Paving, LLC
Michele Doyle, Member	115 Millstone Way, Monroeville, NJ 08343	Highway Safety Systems Inc.
William J. Doyle, President	200 Pine Rd., Hammonton, NJ 08037	All Jersey Fence Co.
Agostino Ducato, Vice-President	223 Spring Valley Road, Paramus, NJ 07652	Old World Construction, Inc.
Stanislaw Dziuba, Vice-President	69 West Shore Drive, Pennington, NJ 08534	Arete Development Inc.
Justin Ettere, Vice-President	52 Brass Castle Road, Washington, NJ 07882	Arete Development Inc.
		Arete Development Inc.
John Ettere, Owner	1453 Tooz Place, South Plainfield, NJ 07080	Arete Development Inc.
		Arete Development Inc.
Matthew Ettere, Vice-President	8 Brookside Drive, Warren, NJ 07059	Arete Development Inc.
		Arete Development Inc.
Jonathan Ettere, President	7 Craig Road, Readington, NJ 08853	Arete Development Inc.
		Arete Development Inc.
Margaret Farina, Owner	30 Monsisnor Deluca Plaza, Nutley, NJ 07110	Metropolitan Stone & Tile, LLC
Hugo Fernandes, Owner	90 Willow Street, Carteret, NJ 07008	DM Fernandes Contracts LLC
Joseph Filoon Jr, Manager	195 Lakeshore Dr, Manahawkin, NJ 08050	Jerzee Container Corp.
		SUSPENDED PENDING DEBARMENT
Joseph Filoon Jr., President	165 Oak Avenue, West Creek, NJ 08092	Timster Trucking Inc.
		SUSPENDED PENDING DEBARMENT
Joseph Filoon Jr., Manager	195 Lakeshore Dr, Manahawkin, NJ	Seminole Construction, L.L.C.
		.
		SUSPENDED PENDING DEBARMENT
Thomas Fittin, Owner / Officer	2243 Edgar Rd, Point Pleasant Beach, NJ 08742	Fittin Construction, LLC
Donald Fleming, President	340 Reservoir Road, Boonton, NJ 07005	C & E Contracting, Inc.
Theresa Frajdenberg, President	110 South Harding Highway, Landisville, NJ 08326	CRC Concrete Raising of South Jersey, Inc.
Tania Gaga, Vice-President	121 Diamond Lane, Manalapan, NJ 07726	Terra-Tech Construction, Inc.
Gabino Galindo, Owner	1025 E. 23rd St. #1, Paterson, NJ 07513	Galindo Const. LLC
Dean Gallo, Owner	245 Emanuel Street, Trenton, NJ 08610	DG Construction & Renovations LLC
Harry Gallo, Secretary	245 Emanuel Street, Trenton, NJ 08610	DG Construction & Renovations LLC
Michelle Gamache-Caravella, President	179-15 Route 46, Suite 135, Rockaway, NJ 07866	CAM Contractors Inc.
Randy Garciga, Owner	13353 NE 17th Avenue, Miami, FL 33181	JTG Scaffolding & Hoisting LLC
Randy Garciga, Owner	13353 NE 17th Avenue, North Miami, FL 33181	JD Scaffold Inc.
Juan Garro, Owner	3606 Academy Road, Philadelphia, PA 19154	Unique Contractors
		Unique Contractors
Joseph F. Gleason Jr., President	51 Pine Dr. S, Brick, NJ 08724	Southern State Contracting Services LLC
Paul Grillo, Owner	207 Butlerr 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 Orchard Road, Vineland, NJ 08360	E & S Enterprises, LLC
Peter Herring, President	164 South Moetz Drive, Milltown, NJ 08850	Metroplex Products Co. Inc.

Owners/ Officers**Address****Company Name**

Vincenzo Iemma, President	2127 Eisenhower Road, Toms River, NJ 08753	GNV Concrete LLC
Joshua Jackson, President	4 Lynn Dr., Andover, NJ 07821	Remcon Enterprises LLC
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.
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.
Lawarence Koos, Owner	1391 White Oak Botton 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
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 Whispeiring 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
Kevin F. Mandel, Owner	186 Sunshine Drive, Piscataway, NJ 08854	Cougar Power and Electric, LLC
Vincent Manganiello, Managing Member	2 Perona Road, Andover, NJ 07821	DAS Industrial, LLC DAS Industrial Limited Liability Company
Fabian Martinez, President	28 Bowlby Street, Dover, NJ 07801	Steven Trucking Corp
Nimali Matos, Owner	77 Williamson Court, Bridgewater, NJ 08807	Matos Construction, LLC Wagner Matos
Wagner Matos, Owner	77 Williamson Court, Bridgewater, NJ 08807	Matos Construction, LLC Wagner Matos
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.
Sandra Morizzo, Member	165 Oak Ave, West Creek, NJ 08092	SUSPENDED PENDING DEBARMENT 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. Envirocare Enterprises, Inc.

<u>Owners/ Officers</u>	<u>Address</u>	<u>Company Name</u>
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
Krzystof Oprzadek, President	19 Woodville Rd, Hopewell, NJ 08525	OTS of New Jersey, LLC
Brian O'Shea, Owner	1041 Glassboro Rd. D-2, Williamstown, NJ 08094	Ohana Metal & Iron Works Inc.
Louis Pacelli, Manager	16 Darlington Drive, Wayne, NJ 07470	Old World Construction, Inc.
Troy Palazzo, Owner	96 Taylor Dr, Levittown, PA 19054	American Welding Services
Brian Patterson, President	11 Arlene Drive, West Long Branch, NJ 07764	American Welding Services, Inc.
David Peckham, Owner	15 Elm Street, Old Saybrook, CT 06475	Build Rite LLC
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
Richard Pluese, Vice-President	66 E Cedar Avenue, Marlton, NJ 08053	Petric & Associates, Inc.
Sharleen Poppalardo, Managing Member	11 Muirfield Court, Medford, NJ 08055	Petric & Associates, Inc.
Wojciech Puchajda, Owner	10 Jeanette St., Carteret, NJ 07008	Elite Terrazzo Flooring, Inc.
Manuel Quito, Member	164 Polk Street, Apt. 1, Newark, NJ 07105	Conex Construction Corp.
Rafael Ramos, President	120 Cantello Street, Union City, NJ 07087	Apex Tower Services, Inc.
James H. Reid, CEO	180 Whippoorwill Valley, Road, Atlantic Highlands, NJ 07716	Turf Services Express LLC
Eric H. Reid, President	5 Gary Ford Dr., Middletown, NJ 07748	Octagon Construction
Luis Riano, President	13 Poppy Ave., Neptune, NJ 07753	Octagon Construction
Juan Riano, Owner	58 Steiner Ave., Neptune City, NJ 07753	M.E. Group, LLC
John Riley Jr, Managing Member	140 Harrison Avenue, Fair Haven, NJ 07704	Everest Masonry Construction, Inc.
Lauchland Roberts, President	2801 Remington Street, Suite 3, Fort Collins, CO 80526	J.H. Reid General Contractor
Mark Rodrigues, President	523 Hamilton Avenue, Kingston, PA 18704	J.H. Reid General Contractor
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
Blanca Segarra, President	799 Kearny Ave., Apt 1, Kearny, NJ 07032	PSM Rojas Construction, LLC
Sheree Severini-Fittin, Member	2243 Edgar Rd., Point Pleasant Beach, NJ 08742	Interstate Home Service Inc.
Paul Sexton, Owner	462 10th Ave., Paterson, NJ	Interstate Home Service Inc.
Al Shan, President	108 Oak Glen Road, Toms River, NJ 08753	Ronccone Construction, L.L.C.
Margaret Sherman, President	203 Woods Avenue, Bergenfield, NJ 07621	Ronccone Construction, L.L.C.
Gerry G. Smith, President	16320 SE 162nd Ct., Weirsdale, FL 32195	Paul F. Roscitt Electric, Inc.
Laurie M. Smith, Vice-President	16320 SE 162nd Ct., Weirsdale, FL 32195	IBS, Inc.
John Sorrentino, Owner	65 Fern St, Browns Mills, NJ 08015	Sandora & Spina Contracting Inc.
Gregorio Soto, Owner	153 Lewis Street, Perth Amboy, NJ 08861	Ma Na Lu Transportation Corporation
		Fittin Construction, LLC
		Paul Sexton
		S & S Electric, LLC
		CPS Mechanical Contractors, Inc.
		Quality Plus Builders, Inc.
		Quality Plus Builders, Inc.
		Barzzini Construction
		Jack Mack Commercial Roofing, Inc.

Owners/ Officers**Address****Company Name**

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
Steven D. Testa, Owner	6 North Hill Dr., Lynnfield, MA 01940	Squillace Steel Fabricators, LLC
John Thomas, President	202 Karen Drive, Scranton, PA 18505	Superior Environmental Development Corp.
Ashish Thomas, Owner	6 Spruce Meadows Dr., Monroe, NJ 08831	Testa Corp.
Nester Torres, Owner	161 Thomas St, Unit 1, Newark, NJ 07114	Retail Store Painting
Stephen Tripodi, Owner	12 Clifford Rd, Wanaque, NJ 07465	MG Topflight
Raymond Van Peenen, President	3 Gates Place, Wayne, NJ 07470	NDA & Construction, LLC
James Van Wyckhouse, Owner	46 Tam O Shanter Rd, Mahwah, NJ 07430	SDT Transport LLC
Michael Verduci, President	12 Verduci Drive, Newtown, PA 18940	Van Peenen Landscape Contractors, Inc.
Felipe Villagomez, Owner	160 Lincoln Street, Bridgeton, NJ 08302	Van Peenen Landscape Contractors, Inc.
Peter Vincent, Owner	129 Highland Ave, Jersey City, NJ 07306	Top Notch Tree & Landscape, LLC
Charles Viola, President	266 Columbus Avenue, Hasbrouck Heights, NJ 07604	A.V. Construction, Inc.
Constantine Vivian, President	86 Christopher Street, Montclair, NJ 07042	Felipe Villagomez owner
Simon Walcott, Owner	43 Fairview Avenue, Bergenfield, NJ 07621	Peter Vincent
Jon J Warbeck, President	680 West Pine Brook Road, Lincoln Park, NJ 07035	All Jersey Fence Co.
Jon (debarred 700059) Warbeck (2/28/19),	680 Pine Brook Road, Lincoln Park, NJ 07035	Aztech Management, Inc.
Todd E. Warmingham, Owner	P.o. Box 215, Newport, NY 13416	Aztech Management, Inc.
Thomas Whelan, President	PO Box 155, Spring Lake, NJ 07762	K & S Fabrication & Welding, LLC
Jon Whelan, Vice-President	48 8th Avenue, New York, NY 10014	Warbeck Construction Group LLC
Anthony Yaniero, Vice-President	848 Bogert Road, River Edge, NJ 07661	Remcon Enterprises LLC
Susan Yaniero, Owner	848 Bogert Road, River Edge, NJ 07661	Todd Cable Construction, LLC
Agustin Zuniga, President	420 Broadway, Long Branch, NJ 07740	Jerzee Container Corp. SUSPENDED PENDING DEBARMENT
		Jerzee Container Corp. SUSPENDED PENDING DEBARMENT
		Bogert Millwork Company, Inc.
		Bogert Millwork Company, Inc.
		American Eagle Contractor, Inc.

EXHIBIT NO. 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**

Content Last Revised: **Current as of 8/26/2016**

CFR **Code of Federal Regulations Pertaining to ESA**

Title 29 – **Labor** Chapter I

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.

§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 \$25 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; 81 FR 43450, July 1, 2016]

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

ATTACHMENT 6

Wage Rate Requirements Under FY 2013 Full-Year Continuing Appropriation

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 I-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, 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 II-3(ii)(A)**, and for compliance as described in **Section II-5**.

I. Requirements for Subrecipients that are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2012 Full-Year Continuing Appropriation with respect to State recipients and **subrecipients that are 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.** The recipient or subrecipient may also obtain additional guidance from DOL's web site at **<http://www.dol.gov/esa/whd/recovery/>**

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

Under the FY 2012 Full-Year Continuing Appropriation, 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 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 weekly 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.

(b) 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 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 2012 Full-Year Continuing Appropriation, **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 request, 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 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 DB 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 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 subrecipient, that is, the entity that receives the subgrant 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 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the 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 (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for

the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

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

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

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the 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. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, 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 thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

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

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

EXHIBIT NO. 4

N.J.A.C. 7:14-2

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-

alty 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

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:

Original Contract Amount (including Mobilization)		
From More Than	To and Including	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

	(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:

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 B_d plus H ;



2. Maximum Eligible Pay Width equals B_d 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.

(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)

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.1 Authority and purpose

(a) The purpose of this subchapter is to establish a civil administrative penalty policy governing the uniform assessment of civil administrative penalties. This subchapter shall also govern the Department's assessment of civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., including violation on any rule or regulation, water quality standard, effluent limitation, administrative order or permit issued pursuant to the Water Pollution Control Act, and for violations of the Act Concerning Pretreatment of Industrial Wastewater, N.J.S.A. 58:11-64 et seq., and N.J.S.A. 58:10A-21 et seq. (also known as the New Jersey Underground Storage of Hazardous Substances Act). In addition, this subchapter shall govern the Department's administrative assessment of costs pursuant to N.J.S.A. 58:10A-10d(1)(c). This subchapter shall also govern the procedure for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

(b) The Department may assess a civil administrative penalty of not more than \$ 50,000 for each violation of each provision of either the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, or not more than \$ 100,000 for a violation of both statutes.

(c) Each day during which a violation as set forth in (b) above continues shall constitute an additional, separate and distinct violation.

(d) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall affect the availability of any other enforcement provision provided for by N.J.S.A. 58:10A-10, or any other statute, in connection with the violation for which the assessment is levied.

(e) This subchapter, as amended effective May 17, 1999 shall apply to all violations which occur on or after May 17, 1999.

(f) This subchapter also establishes a civil administrative penalty policy governing the uniform assessment of civil administrative penalties by delegated local agencies as authorized pursuant to N.J.S.A. 58:10A-10.5. Nothing in this subchapter shall be construed to authorize a delegated local agency to take any action beyond the scope of its authority under N.J.S.A. 58:10A-10.5 through 10.10. Except as provided in this subsection, in connection with actions taken by a delegated local agency pursuant to N.J.S.A. 58:10A-10.5, all references in this subchapter to the Department shall be deemed to refer to the delegated local agency; the delegated local agency shall comply with all requirements which this subchapter imposes upon the Department, and may take all actions which this subchapter states that the Department may take, except that delegated local agencies shall not be subject to the requirement, at N.J.A.C. 7:14-8.4(a), that an adjudicatory hearing request be submitted to the Department's Office of Legal Affairs with a copy to the Department's enforcement bureau. A person requesting an adjudicatory hearing to contest an administrative order, notice of civil administrative penalty assessment, or notice of civil administrative cost assessment issued by a delegated local agency shall submit the request to the delegated local agency.

7:14-8.2 Definitions

As used in this subchapter, the following words and terms shall, in addition to those provided in N.J.A.C. 7:14A-1.2, have the following meanings unless the context clearly indicates otherwise.

"Any rules issued pursuant to the Water Pollution Control Act" means, but is not limited to, the following rules:

Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A;

Stormwater Management, N.J.A.C. 7:8;

Water Pollution Control, N.J.A.C. 7:9;

Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A;

Safe Drinking Water Act, N.J.A.C. 7:10;

Flood Hazard Area Control, N.J.A.C. 7:13;

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Water Pollution Control Act, N.J.A.C. 7:14;

Pollution Discharge Elimination System, N.J.A.C. 7:14A;

Statewide Water Quality Management Planning, N.J.A.C. 7:15; and

Regulations Governing the Certification of Laboratories and Environmental Measurements, N.J.A.C. 7:18; and

Sewage Infrastructure Improvement Act Grants, N.J.A.C. 7:22A.

"Bypass" means the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works.

"Delegated local agency" means a local agency with an industrial pretreatment program approved by the Department.

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of this State, onto land or into wells from which it might flow or drain into such waters, or into waters or onto lands outside the jurisdiction of the State which pollutant enters the waters of this State, and shall include the release of any pollutant into a municipal treatment works. A leak into a secondary containment system which does not involve a release into the waters or lands of this State is not a "discharge" for purposes of applying the rules under this chapter to violations of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:11-49 et seq., and the rules promulgated pursuant thereto, N.J.A.C. 7:14B.

"Discharge Monitoring Report" or "DMR" means the EPA's uniform national form, as amended, for the reporting of self-monitoring results by permittees, and includes Baseline Reports.

"Effluent limitation" means any restriction on quantities, quality, discharge rates and concentration of chemical, physical, thermal, biological, radiological, and any other constituents of pollutants established by permit, or impose as an interim enforcement limit pursuant to an administrative order, including an administrative consent order.

"Federal Act" means the Clean Water Act or the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.) including all subsequent supplements and amendments.

"Grace period" means the period of time afforded under N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law, for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation.

"Groundwater remedial action" means the removal or abatement of one or more pollutants in a groundwater source.

"Hazardous pollutant" means:

1. Any toxic pollutant;
2. Any hazardous substance as defined pursuant to section 3 of P.L. 1976, c.141 (N.J.S.A. 58:10-23.11b);
3. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, Pub.L. 92-516 (7 U.S.C. § 136 et seq.);
4. Any substance the use or manufacture of which is prohibited under the Federal Toxic Substances Control Act, Pub.L. 94-469 (15 U.S.C. § 2601 et seq.);
5. Any substance identified as a known carcinogen by the International Agency for Research on Cancer; or
6. Any hazardous waste as designated pursuant to section 3 of P.L. 1981, c.279 (N.J.S.A. 13:1E-51) or the "Resource Conservation and Recovery Act," Pub. L.94-580 (42 U.S.C. § 6901 et seq.).

"Indirect discharge" means any discharge, excluding any discharges by municipal collection systems, into any domestic treatment works.

"Indirect user" means an entity with an indirect discharge.

"Industrial pretreatment program" or "IPP" means a program designed to regulate the introduction of pollutants into a local agency's treatment works from any nondomestic source.

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"Inhibition concentration" means that concentration of effluent which produces the specified inhibition effect in a chronic whole effluent toxicity test. An IC25 is the concentration of effluent which produces an inhibition of 25 percent for the monitored effect as compared to the control.

"Lawful entry" means an entry by the Commissioner into any building, place, or premise pursuant to N.J.S.A. 13:1D, 58:10A and as otherwise provided by law, ordinance, regulation, order, permit or agreement.

"LC50" means the median lethal concentration of a toxic substance, expressed as a statistical estimate of the concentration that kills 50 percent of the test organisms under specified test conditions, based on the results of an acute bioassay.

"Local agency" means a political subdivision of the State, or an agency or instrumentality thereof, that owns or operates a municipal treatment works.

"Major facility" means:

1. For industrial facilities, any facility which scores 80 or more points on the NJPDES permit rating work sheet using the USEPA rating criteria. A facility with less than the required score of 80 may still be classified as a Major facility by the Regional Administrator or the Department. In those situations, the Department shall state the reasons for doing so; and

2. For municipal facilities, any POTW with a design flow of 1.0 million gallons per day or greater.

"Monitoring report form" means the standard Department form, including any subsequent additions, revisions or modifications, for the reporting of data pursuant to certain DGW permits.

"Municipal treatment works" means the treatment works of any municipality, county, or State agency or any agency or subdivision created by one or more municipal, county, or State governments and the treatment works of any public utility as defined in N.J.S.A. 48:2-13.

"No observed adverse effect concentration" or "NOAEC" means the lowest concentration at which the organisms are adversely affected as compared to the control determined using hypothesis testing technique.

"NOEC" or "no observable effect concentration" means the maximum effluent concentration which results in no observable effect for the evaluated end-point. The NOEC is usually determined as the next lower tested concentration than the concentration which results in the lowest observable effect as compared to the controls. For discharge permits where the limitation is expressed as an NOEC, the results shall be reported as the calculated IC25 and shall be considered equivalent to the observed NOEC.

"No measurable acute toxicity" or "NMAT" means a type of water quality based acute whole effluent toxicity limit imposed in accordance with N.J.A.C. 7:9B-4.6(c)5i(2), which requires that no mortality occurs in any acute toxicity test concentration, including 100 percent effluent, above normal background mortality levels for the test organism population. The normal background mortality level is the acceptable level of control mortality for a valid test specific in N.J.A.C. 7:18-6.6(v).

"Permit" means an authorization, license, or equivalent control document issued by the Department or a delegated local agency to implement the requirements of the State Act and the related statutes specified in N.J.A.C. 7:14-8.1 even where any or all the conditions of the permit have been stayed. Permit does not include any permit which has not yet been the subject of final agency action, such as a "draft permit." Permit includes a letter of agreement entered into between a delegated local agency and a user of its municipal treatment works, setting effluent limitations and other conditions on the user of the agency's municipal treatment works. Permit also includes a general permit and a permit-by-rule.

"Permitted groundwater remedial action" means the removal or abatement of one or more pollutants in a groundwater source pursuant to a permit.

"Person" means an individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State and any state, Federal or interstate agency or an agent or employee thereof. "Person" shall also include any responsible corporate official for the purpose of enforcement action under Section 10 of the State Act.

"Pollutant" means any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, medical wastes, radioactive substance (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. §§ 2011 et seq.)), thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, agricultural, and construction waste or runoff, or other residue discharged directly or indirectly to the land, ground waters or surface waters of the State or to a DTW. "Pollutant" includes both hazardous and nonhazardous pollutants.

"Schedule of compliance" or "compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with water quality standards, an effluent limitation or other limitation, prohibition or standard.

"Serious violation" means an exceedance, at a discharge point source, of an effluent limitation, except color, set forth in a permit, administrative order, or administrative consent agreement, including interim enforcement limits, as follows:

1. For effluent limitations for pollutants that are measured by concentration or mass, except for whole effluent toxicity;

i. Violations of an effluent limitation that is expressed as a monthly average:

(1) By 20 percent or more for a hazardous pollutant; and

(2) By 40 percent or more for a nonhazardous pollutant;

ii. Violations of an effluent limitation that is expressed as a daily maximum or daily minimum without a monthly average:

(1) By 20 percent or more of the average of all of the daily maximum or minimum values for a hazardous pollutant; and

(2) By 40 percent or more of the average of all of the daily maximum or minimum values for a nonhazardous pollutant; and

2. For effluent limitations for whole effluent toxicity as follows:

i. For any violation of an LC50, NOAEC, IC<25> or a NOEC limit when, upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

Whole Effluent Toxicity Limit (% Effluent)	Difference (% Effluent)
greater than or equal to 80 and less than or equal to 100	greater than or equal to 20
greater than or equal to 50 and less than 80	greater than or equal to 15
greater than 10 and less than 50	greater than or equal to 10
less than or equal to 10	greater than or equal to 9

ii. Any violation of a No Measurable Acute Toxicity (NMAT) limit with greater than or equal to 50 percent mortality in any test concentration, including 100% effluent.

3. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by at least 40 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring.

For example: Assuming that a permittee's effluent limitation range for pH is 6.0 to 9.0, the midpoint would be 7.5.

If five separate readings of pH during a given day were 4.3, 5.8, 6.5, 6.0 and 6.5, the reading of 4.3 would be a serious violation as follows:

For example: Using the same information as above.

Forty percent of 7.5 is 3; therefore, if the greatest violation of a pH effluent range for any calendar day has a pH of 4.5 or less or a pH of 10.5 or greater, the violation would be a "serious violation."

4. Notwithstanding the above, the Department may utilize, on a case-by-case basis, a more stringent factor of exceedance to determine a serious violation if the Department states the specific reasons therefore, which may include the potential for harm to human health or the environment.

"Significant noncomplier" or "SNC" means any person, except a local agency for an exceedance of an effluent limitation for flow, who commits any of the violations described below, unless the Department uses, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier and the Department states the specific reasons therefor, which may include the potential for harm to human health or the environment. Violations which cause a person to become or remain an SNC include:

1. A serious violation for the same pollutant, at the same discharge point source, in any two months of any consecutive six month period;

2. Exceedance of an effluent limitation expressed as a monthly average, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

3. If there is not an effluent limitation for a particular pollutant expressed as a monthly average, exceedance of the monthly average of the daily maximums for the effluent limitation, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

4. Any exceedance of an effluent limitation for pH by any amount, excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring, at the same discharge point source in any four months of any consecutive six month period; or

5. Failure to submit a completed discharge monitoring report in any two months of any consecutive six month period.

"Sludge Quality Assurance Report" or "SQAR" means the standard Department form, including any subsequent additions, revisions or modifications, for the reporting of sludge quality and quantity.

"State Act" means the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Toxic pollutant" or "toxic substances" means any pollutant identified pursuant to the Federal Act or any pollutant or combination of pollutants, including disease causing agents, which after discharge and upon exposure ingestion, inhalation, or assimilation into any organism, either directly or indirectly by ingestion through food chains, may, on the basis of information available to the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring. Toxic pollutants shall include but not be limited to, those pollutants identified pursuant to Section 307 of the Federal Act or Section 4 of the State Act, or in the case of "sludge use or disposal practices," any pollutant identified pursuant to Section 405(d) of the Federal Act.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or a flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. "Upset" also includes noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Department or a delegated local agency.

"Violator" means any person against whom the Department or delegated local agency asserts a violation of the State Act or any rules issued pursuant to the State Act.

"Whole effluent toxicity" or "WET" means the aggregate toxic effect of an effluent measured by a toxicity test.

7:14-8.3 Procedures for assessment, payment and settlement of civil administrative penalties, and affirmative defenses

(a) To assess a civil administrative penalty or any other costs allowed under the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, and the Water Supply and Wastewater Operators' Licensing Act, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment shall:

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1. Identify the section of the statute, rule, water quality standards, effluent limitation, administrative order or permit violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed and give notice of other allowable costs to be sought; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:14-8.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case, or when a Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:14-8.4, a Notice of Civil Administrative Penalty Assessment becomes a Final Order and is deemed received on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;

2. If the Department denies the hearing request, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt of notice of such denial; or

3. If the Department conducts an adjudicatory hearing, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of a Final Order in a contested case.

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey, as follows:

1. Interest shall accrue on the amount of the civil administrative penalty due and owing beginning on the 30th day after the date on which the penalty was due and owing and continuing until the civil administrative penalty is paid in full with interest if:

- i. A violator does not pay a civil administrative penalty imposed pursuant to a final order; or
- ii. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department; and

2. Interest, at the rate set forth in (c)1 above, shall accrue on the unpaid amount of a civil administrative penalty which is contested as a contested case under N.J.S.A. 52:14B-1 et seq., or appealed to the Appellate Division of the Superior Court, and upheld in full or in part, from the date the violator posted financial assurance under N.J.A.C. 7:14-8.4(a)9 or, in the case of a local agency, from the date the Department receives a local agency's hearing request, until the violator pays in full the civil administrative penalty and all interest accrued thereon.

(d) A civil administrative penalty and any allowable cost imposed pursuant to a final order shall constitute a debt of the violator or discharger. The Department may docket the penalty with the clerk of the Superior Court. The penalty, as docketed, shall have the same standing as any judgment docketed pursuant to N.J.S.A. 2A:16-1, except that:

1. No lien shall attach to the property of a local agency; and
2. No lien shall attach to the real property of a violator if the violator posts a refundable bond or other security with the Commissioner pursuant to an appeal of a final order to the Appellate Division of the Superior Court.

(e) The Department may settle any civil administrative penalty assessed pursuant to this subchapter according to the factors identified in (f) below as follows:

1. In cases where the violator is a local agency which violates an administrative consent order, the Department may settle a civil administrative penalty as follows:

- i. The Department may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and

- ii. The Department may not reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation;

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2. Except as provided in (e)1 above, in the case of a violator who is a local agency which violates something other than an administrative consent order and then enters into an administrative consent order with the Department, which requires the local agency to take prescribed measures to comply with its permit, the Department shall have full discretion to settle the amount of the civil administrative penalty assessed or due for violations occurring during a period up to 24 months preceding the effective date of the administrative consent order, except that the Department shall neither:

- i. Reduce the amount of the civil administrative penalty less than the minimum amount, if applicable, prescribed in N.J.A.C. 7:14-8.5(a) or 8.9(e); nor
- ii. Reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation.

3. In the case of all other violators:

- i. The Department may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and
- ii. The Department may not reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation.

(f) In settling a civil administrative penalty, the Department may consider the following:

1. Mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;
2. The implementation by the violator of pollution prevention and/or abatement measures in addition to those minimally required by applicable statute or rule;
3. The implementation by the violator of measures to clean up, reverse or repair environmental damage previously caused by the violation;
4. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and/or a notice of civil administrative penalty assessment and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or
5. Any other terms or conditions acceptable to the Department.

(g) In its discretion, the Department may enter into an agreement with a violator, in which the Department agrees to accept payment of a civil administrative penalty in installments over time. Such an agreement shall be in writing. The Department shall not enter into any such agreement if payment in full is due more than 90 days after execution of the agreement unless:

1. The violator is a local agency; or
2. The violator posts financial assurance with the Department upon execution of the agreement pursuant to one of the financial assurance mechanisms in Appendix A or in another form the Department individually approves in writing for this purpose. The financial assurance shall be in an amount that the Department reasonably determines will tend to ensure good faith compliance with the agreement. In determining the amount, the Department may consider any or all of the following factors:
 - i. The amount of the penalty;
 - ii. The amount and frequency of the installment payments due under the agreement;
 - iii. The duration of the agreement;
 - iv. Other remedies, aside from drawing upon the financial assurance, that the Department may exercise under the agreement if an installment payment is not timely made or if some other requirement of the agreement is not satisfied, and the extent to which such other remedies will tend to ensure compliance with the agreement;
 - v. The violator's history of compliance, including without limitation its history of compliance with other schedules for the payment of penalties assessed by the Department;
 - vi. Expenditures that the violator has made or has agreed to make for purposes of pollution control and/or pollution prevention; and

vii. Other specific circumstances of the violator relating to the tendency of the financial assurance to ensure compliance with the agreement or indicating the extent to which financial assurance is necessary to ensure compliance with the agreement.

(h) Any violator that is not a local agency which enters into an administrative consent order with the Department that includes a compliance schedule shall post financial assurance in the full amount of the cost of fully complying with all of the terms and conditions imposed by the Department pursuant to one of the financial assurance mechanisms in Appendix A, incorporated herein by reference, or in another form the Department individually approves in writing for this purpose.

(i) Except as provided in (i)1 below, a violator may be entitled to an affirmative defense to liability for a violation of an effluent limitation occurring as a result of an upset, an anticipated or unanticipated bypass, a testing or laboratory error, or a permitted groundwater remedial action, only if, in the determination of the Department, the violator has satisfied the provisions of this section.

1. A violator shall not be entitled to an affirmative defense based on an alleged upset, an anticipated or unanticipated bypass, a testing or laboratory error to the extent that the violation is caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation or maintenance.

2. A violator shall be entitled to an affirmative defense only if, in the determination of the Department, the violator satisfies the following:

i. The violation occurred as a result of an upset, an anticipated or unanticipated bypass, a testing or laboratory error, or a permitted groundwater remedial action;

ii. The violator complied with all of the requirements in N.J.A.C. 7:14A-6.10;

iii. In the case of a permitted groundwater remedial action, the violation is a first violation of that permit limitation and the violation could not reasonably have been anticipated by the permittee. No such affirmative defense shall be granted by the Department if:

(1) The violation was the result of a negligent act or omission of the permittee;

(2) The equipment used in the remedial action had not been properly maintained or was not being properly operated at the time of the violation and the failure to properly maintain or operate the equipment was the proximate cause of the exceedance;

(3) The permittee fails to provide timely notice and information as required by law rule or regulation to the Department;

(4) The permittee failed to take immediate measures, upon first becoming aware of the violation, to terminate the violation and to abate any adverse consequences therefrom; or

(5) The permittee fails to file with the Department a remedial action protocol setting forth the procedure to be followed to prevent a recurrence of the exceedance;

iv. A violator asserting a testing or laboratory error as an affirmative defense shall also have the burden to demonstrate that a violation involving the exceedance of an effluent limitation was the result of unanticipated test interferences, sample contamination, analytical defects, or procedural deficiencies in sampling or other similar circumstances beyond the violator's control;

v. In the case of an upset or unanticipated bypass, the violator complied with any remedial measures required by the Department; and

vi. In the case of an anticipated bypass, the violator obtained prior written approval from the Department and complied with all conditions of the approval, including any remedial measures required by the Department.

3. If the Department determines that a violator is entitled to an affirmative defense for an exceedance of an effluent limitation caused by an upset, an anticipated or unanticipated bypass, a testing or laboratory error or a permitted groundwater remedial action, the Department shall not consider the exceedance a violation and shall not assess a civil administrative penalty.

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4. If the Department determines that a violator is not entitled to an affirmative defense for an exceedance of an effluent limitation caused by an upset, an anticipated or unanticipated bypass, a testing or laboratory error, or a permitted groundwater remedial action, the Department shall consider the exceedance a violation.

7:14-8.3A Public comment on interim enforcement limits

(a) The procedures for soliciting public comment on proposed interim enforcement limits in administrative consent orders are provided in this section.

1. The violator shall provide notice of proposed interim enforcement limits to be established in its administrative consent order and an opportunity for the public, for at least 30 days from the publication of the notice, to comment on the proposal.

2. The violator shall submit to the Department a proposed plan to provide the public notice required in (b) through (d) below.

3. Upon the violator's receipt of the Department's written approval of the violator's plan to provide public notice, the violator shall provide the public notice as approved by the Department.

4. The violator shall provide the public notice in accordance with (b) and (c) below.

(b) The violator shall provide the following public notice of the proposed interim enforcement limits:

1. At least three days prior to publication of the public notice required in (b)2 below, the violator shall mail a copy of the public notice and the draft administrative consent order or other document which includes the proposed interim enforcement limits to:

i. The mayor or chief executive officer and governing body of the municipality and county in which the violations occurred; and

ii. Any other interested persons the Department identifies.

2. The violator shall publish the public notice in a daily or weekly newspaper within the area affected by the facility which is the subject of the interim enforcement limits.

(c) The violator shall include the following in the public notice:

1. The name and address of the violator upon which the Department will impose the interim enforcement limits;

2. The beginning and ending dates of the public comment period;

3. A description of the nature of the violations necessitating the interim enforcement limits;

4. A summary of the terms and conditions of the legal document in which the interim enforcement limits is contained;

5. The name of the contact person within the Department to contact for more information;

6. The requirement that anyone submitting written comments on the proposed interim enforcement limits shall submit copies of the written comments to both the Department and the violator; and

7. The name and address of the person for the Department and the violator to whom members of the public may submit written comments.

(d) If the Department decides to hold a public meeting on the proposed interim enforcement limits:

1. The violator shall also include in the public notice:

i. The date, time and place of the public meeting; and

ii. A brief description of the nature and purpose of the public meeting, including the applicable rules and procedures;

2. The violator shall publish notice of the public meeting not more than 30 days and not less than 15 days prior to the public meeting;

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3. The Department shall hold the public meeting in the municipality in which the violations necessitating the interim enforcement limits occurred;

4. The violator shall attend and participate in the public meeting at the Department's request; and

5. The violator shall, with the prior written approval of the Department, make all necessary arrangements for scheduling and holding the public meeting, including, but not limited to:

i. Scheduling of the meeting room;

ii. Arranging for a court stenographer to record the statements at the public meeting; and

iii. Payment of all costs of the public meeting, including, but not limited to, hearing room costs, security, stenographer, transcript, and the Department's cost associated with the public meeting.

(e) The violator shall submit to the Department proof of publication prior to the Department issuing an administrative order or executing the administrative consent order which includes interim enforcement limits.

(f) After receiving the comments, but before executing an administrative order or an administrative consent order which includes the interim enforcement limits, the Department will:

1. Evaluate each of the comments received;

2. Respond to the comments received; and

3. Notify each person who submitted written comments of the main provisions of the administrative order or administrative consent order and the final interim enforcement limits and a copy of the Department's responses to the comments.

7:14-8.4 Procedures to request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment or a notice of civil administrative cost assessment; procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment, or a notice of civil administrative cost assessment issued by the Department pursuant to the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, or the Water Supply and Wastewater Operators' Licensing Act, the violator shall submit the original request in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, New Jersey 08625-0402 and a copy of the request to the enforcement bureau which issued the enforcement document. Any written request shall include the following information:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The date the violator received the enforcement document being contested;

3. A copy of the enforcement document and a list of all issues being appealed;

4. The violator's defenses to each of the findings of fact stated in short and plain terms;

5. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

6. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

7. An estimate of the time required for the hearing (in days and/or hours);

8. A request, if necessary, for a barrier-free hearing location for physically disabled persons;

9. Proof of compliance with all of the requirements in N.J.A.C. 7:14A-6.10 if the violator intends to:

i. Raise an affirmative defense to liability for a civil administrative penalty pursuant to N.J.A.C. 7:14-8.5(a) or 8.16(a) for the violation of an effluent limitation on the basis that a violation of an effluent limitation occurred as a result of an upset, an approved anticipated bypass or unanticipated bypass, a testing laboratory error, or a permitted groundwater remedial action; and

ii. To request that the Department determine through an administrative hearing whether or not it agrees with the violator's allegations concerning the matter; and

10. For a notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:14-8.9(e), the following as applicable:

i. Documentation of compliance with the requirements in N.J.A.C. 7:14-8.9(e) that the violator notify the Department in writing, within 30 days after the date the violator was required to submit the information to the Department, of extenuating circumstances that prevented timely submission of a complete discharge monitoring report;

ii. Documentation of the violator's correction of the violation by submitting the omitted information within 10 days after the violator's receipt of the notice of the omission; a violator's failure to comply with the notice requirements in N.J.A.C. 7:14-8.9(e) will be a waiver of the violator's right to correct the violation within the required 10-day period and thus avert liability; or

iii. Documentation that the violator complied with N.J.A.C. 7:14-8.9(e) 3, if the violator intends to contest a civil administrative penalty assessed pursuant to N.J.A.C. 7:14-8.9(e) based on the existence of extenuating circumstances beyond the violator's control; if the violator fails to submit the required information within this 30-day period, the violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so; and

11. A statement as to whether the violator agrees to the Department's holding the request for 90 days prior to referral to the Office of Administrative Law for purposes of allowing time to negotiate a settlement of the dispute as provided by N.J.A.C. 1:1-8.1(b).

(b) The Department shall deny the hearing request if the Department does not receive a complete hearing request pursuant to (a) above within 20 days after receipt by the violator of the Notice of a Civil Administrative Penalty Assessment, the Administrative Order, or Notice of Civil Administrative Cost Assessment being challenged. A violator's failure to notify the Department in writing, within the 30 days allotted under (a)10i above, of the existence of extenuating circumstances which prevented timely submission of a complete discharge monitoring report, shall be grounds for the Department to deny any hearing request on a notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:14-8.9(e).

(c) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with 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.

7:14-8.4A Grace period applicability; procedures

(a) Each violation identified in the tables at N.J.A.C. 7:14-8.18 by an "M" in the Type of Violation column and for which the conditions at (c) below are satisfied, is a minor violation, and is subject to a grace period, the length of which is indicated in the column with the heading Grace Period.

(b) Each violation identified in the tables at N.J.A.C. 7:14-8.18 by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) The Department or a local government agency shall provide a grace period for any violation identified as minor under this section, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency;

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3. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;

4. In the case of a violation that does not involve a permit, the person responsible for the violation has not been notified in a previous enforcement action by the Department or local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period; and

5. In the case of any violation, the person responsible for the violation has not been identified by the Department or local government agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible;

(d) For a violation determined to be minor under (c) above, the following provisions apply:

1. The Department or local government agency shall issue a notice of violation to the person responsible for the minor violation that:

i. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (d)3 below, that compliance has been achieved within the specified grace period, the Department or local government agency shall not impose a penalty for the violation.

3. The person responsible for a violation shall submit to the Department or local government agency, before the end of the specified grace period, written information certified to be true and signed by the person responsible for the minor violation, detailing the corrective action taken or compliance achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing, be certified to be true and signed by the person responsible for the minor violation, and received by the Department or local government agency no later than one week before the end of the specified grace period. The request shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. The Department or local government agency may, at its discretion, approve in writing an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department or local government agency may consider the following:

i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;

ii. Whether the delay has been caused by circumstances beyond the control of the violator;

iii. Whether the delay will pose a risk to the public health, safety and natural resources; and

iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department or local government agency that the violation has been corrected and compliance achieved within the specified grace period or within the approved extension, if any, the Department or local government agency may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date the notice of violation under (d)1 above was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

7:14-8.5 Civil administrative penalty determination

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$ 50,000 for each violation of each provision of the Water Pollution Control Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto. The Department shall assess a minimum mandatory civil administrative penalty for violations which occur after June 30, 1991 in an amount:

1. Not less than \$ 5,000 for each violation that causes a violator to be, or continue to be, a significant noncomplier; or
2. Not less than \$ 1,000 for each serious violation.

(b) Each violation of any provision of the Water Pollution Control Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto, shall constitute an additional, separate and distinct violation. In addition, the unpermitted discharge of each separate pollutant shall constitute an additional, separate and distinct violation. If a violator establishes, to the satisfaction of the Department, that a single operational occurrence has resulted in the simultaneous violation of more than one effluent limit, the Department may consider, for purposes of calculating the mandatory civil administrative penalties to be assessed pursuant to (a) above, the violation of interrelated effluent limits to be a single violation.

(c) Each day during which a violation as set forth in (b) above continues shall constitute an additional, separate and distinct violation.

(d) Unless the Department assesses a civil administrative penalty pursuant to N.J.A.C. 7:14-8.6 through N.J.A.C. 7:14-8.12, the Department shall assess a civil administrative penalty for violations described in this section as described in (e) below, including any applicable grace period in accordance with N.J.A.C. 7:14-8.18.

(e) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the civil administrative penalty range within the matrix in (f) below by:
 - i. Determining the seriousness of the violation pursuant to (g) below; and
 - ii. Determining the conduct of the violator pursuant to (h) below.
2. The civil administrative penalty shall be at the midpoint of the range within the matrix in (f) below, unless adjusted pursuant to (i) below.

(f) The matrix of ranges of civil administrative penalties is as follows:

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	\$ 40,000- \$ 50,000	\$ 30,000- \$ 40,000	\$ 15,000- \$ 25,000
	Moderate	\$ 30,000- \$ 40,000	\$ 10,000- \$ 20,000	\$ 3,000- \$ 7,000
	Minor	\$ 15,000- \$ 25,000	\$ 3,000-\$ 7,000	\$ 1,000- \$ 2,500

(g) The Department shall determine the seriousness of the violation as major, moderate or minor as set forth in (g)1 through 3 below.

1. Major shall include:

i. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

- (1) By more than 50 percent for a hazardous pollutant; or
- (2) By more than 100 percent for a nonhazardous pollutant;

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ii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by more than 50% of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring; and

iii. Any other violation not included in (g)1i or ii above which either:

(1) Has caused or has the potential to cause serious harm to human health or the environment; or

(2) Seriously deviates from the requirements of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or violates any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

iv. Any violation which seriously deviates from a requirement of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any violation of any rule, water quality standard, effluent limitation, administrative order or permit now or hereafter issued pursuant thereto; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

2. Moderate shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii below, which has caused or has the potential to cause substantial harm to human health or the environment;

ii. Any violation of an effluent limitation which is measured by concentration or mass of any discharge exceeding the effluent limitation as follows:

(1) By 20 to 50 percent for a hazardous pollutant; or

(2) By 40 to 100 percent for a nonhazardous pollutant;

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by at least 40 percent but no more than 50 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring; or

iv. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii above, which substantially deviates from the requirements of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, or any violation of any rule, water quality standard, effluent limitation, administrative order or permit now or hereafter issued pursuant thereto; substantial deviation shall include, but not be limited to, those violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement.

3. Minor shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)3ii or iii below, not included in (g)1 or 2 above; or

ii. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) By less than 20 percent for a hazardous pollutant; or

(2) By less than 40 percent for a nonhazardous pollutant; or

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by less than 40 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring.

(h) The Department shall determine the conduct of the violator as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate shall include any unintentional but foreseeable act or omission by the violator; or

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3. Minor shall include any other conduct not included in (h)1 or 2 above.

(i) The Department may, in its discretion, move from the midpoint of the range to an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the violation(s);
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;
6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and
8. Other specific circumstances of the violator or violation.

7:14-8.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, record, or other document required to be submitted or maintained, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Each day, from the day of submittal by the violator of the false or inaccurate information to the Department to the day of receipt by the Department of a written correction by the violator shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the midpoint of the following ranges except as adjusted pursuant to (d) below:

1. For each intentional, deliberate, purposeful knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to \$ 50,000 per act or omission;
2. For each other violation not identified pursuant to (c)1 above for which the violator does not correct the violation within 10 days after becoming aware of the violation, the civil administrative penalty shall be in an amount up to \$ 30,000; and
3. For each other violation not identified pursuant to (c)1 above for which the violator corrects the violation within 10 days after becoming aware of the violation, the civil administrative penalty shall be in an amount up to \$ 1,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the violations;
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;

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6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and

8. Other specific circumstances of the violator or violation.

(e) Except as set forth in Table 1 or Table 2 at N.J.A.C. 7:14-8.18, a violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative.

(b) Each day, from the initial day of failure by the violator to allow immediate lawful entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit or prohibit immediate lawful entry and inspection, shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section at the midpoint of the following ranges except as adjusted pursuant to (d) below:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which an administrative order or permit exists under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, the civil administrative penalty shall be in an amount up to \$ 50,000; and

2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be in an amount up to \$ 8,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and severity of the violations;

3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;

4. The deterrent effect of the penalty;

5. The cooperation of the violator in correcting the violation, remedying the damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and

8. Other specific circumstances of the violator or violation.

(e) A violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.8 Civil administrative penalty for conducting unapproved activities

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who approves, endorses, allows construction or operation to commence or proceed, builds, modifies, installs, replaces, expands or operates a facility or treatment works, as defined by N.J.A.C. 7:14A, without the proper authorization or in violation of any rule, administrative order, sewer connection ban, or permit issued or imposed pursuant to the Water Pollution Control Act.

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(b) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on the seriousness of the violation and conduct of the violator based on the following:

1. For any unauthorized approval, endorsement or allowance to commence or proceed to build, modify, install, replace, expand or operate a facility or treatment works, the civil administrative penalty shall be in an amount determined as follows: civil administrative penalty = (seriousness) x (conduct) x (\$ 1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons per day) indicated in the permit application for that facility or project, or if there is no permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3; and

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(2) 0.75 for any other conduct.

iii. Each approval, endorsement or allowance to commence or proceed shall be considered an additional, separate and distinct violation;

2. For building, installation, modification, replacement or expansion of a facility or treatment works without the required Department approval, the civil administrative penalty shall be in an amount determined as follows: civil administrative penalty = (seriousness) x (conduct) x (\$ 1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons per day) as determined from the permit application for that facility or project, or if there is no permit application or if the design flow is not indicated on the permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3.

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(2) 0.75 for any other conduct.

iii. Each day or part thereof that the construction of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

3. For the operation of any facility or treatment works, the civil administrative penalty shall be in an amount equal to, at the sole discretion of the Department, either:

i. Twice the total penalty for the illegal building, installation, modification, replacement or expansion of a facility or treatment works calculated pursuant to (b)2 above; or

ii. Equal to the product of the following equation: civil administrative penalty = (seriousness) x (conduct) x (\$ 1.00)

(1) The seriousness factor shall be equal to the total design flow (in gallons per day) as determined from the permit application for that facility or project, or if there is no permit application or if the design flow is not indicated on the permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3.

(2) The conduct factor shall be either:

(A) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(B) 0.75 for any other conduct.

(3) Each day or part thereof that the operation of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

(c) A violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.9 Civil administrative penalty for failure to properly conduct monitoring or sampling under the Water Pollution Control Act

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to carry out monitoring or sampling activities or to submit discharge monitoring reports, baseline monitoring reports,

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monitoring report forms or sludge quality assurance reports required by the Water Pollution Control Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Each violation, including each parameter that is required to be monitored, sampled and reported and that is not monitored, sampled and reported, is an additional, separate and distinct violation. Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(c) Except as provided in (e) below, the Department shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the midpoint of the following ranges except as adjusted pursuant to (d) below:

1. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to \$ 50,000;

2. For any unintentional but foreseeable act or omission by the violator, the civil administrative penalty shall be in amount up to \$ 40,000; or

3. For any other violations the civil administrative penalty shall be in an amount up to \$ 20,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and severity of the violation(s);

3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;

4. The deterrent effect of the penalty;

5. The cooperation of the violator in correcting the violation remedying the damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and

8. Other specific circumstances of the violator or violation.

(e) For any person's failure to submit a complete discharge monitoring report, the Department shall assess a minimum mandatory civil administrative penalty of not less than \$ 100.00 for each effluent parameter omitted on a discharge monitoring report, nor greater than \$ 50,000 per month for any one discharge monitoring report, for any discharge monitoring report required to be submitted after June 30, 1991.

1. The civil administrative penalty assessed pursuant to (e) above shall begin to accrue on the fifth day after the date on which the discharge monitoring report was due and shall continue to accrue at least for 30 days if the violation is not corrected.

2. The Department may continue to assess civil administrative penalties for the failure to submit a complete discharge monitoring report beyond the 30-day period referenced in (e)1 above until the violation is corrected.

3. To contest a civil administrative penalty assessed pursuant to this section, a violator shall submit evidence of extenuating circumstances beyond the control of the permittee, including circumstances that prevented timely submission of a complete discharge monitoring report, or portion thereof, within 30 days after the date on which the effluent parameter information was required to be submitted to the Department. If the violator fails to submit the required information within this 30-day period, the violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so.

4. A violator will not be subject to a civil administrative penalty for the inadvertent omission of one or more effluent parameters in a discharge monitoring report if both of the following conditions are met:

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i. The violator submits the omitted information to the Department within 10 days after receipt by the violator of notice of the omission; and

ii. The violator demonstrates to the satisfaction of the Department that the violation for which the Department assessed the civil administrative penalty was due to an inadvertent omission by the violator of one or more effluent parameters.

(f) A violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.10 Civil administrative penalty for failure to pay a fee

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to pay a fee when due pursuant to the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act.

(b) Each day a fee is not paid after it is due shall constitute an additional, separate and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on an amount equal to the unpaid fee, up to a maximum of \$ 50,000 per violation.

(d) A violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.11 (Reserved)

7:14-8.12 Civil administrative penalty for violation of whole effluent toxicity limitations

(a) The Department may assess a civil administrative penalty for violations of whole effluent toxicity limitations expressed as median Lethal Concentration (LC50), a No Observed Adverse Effect Concentration (NOAEC), a No Observable Effect Concentration (NOEC), an Inhibition Concentration (IC25) or No Measurable Acute Toxicity (NMAT) pursuant to this section.

(b) Each violation of a whole effluent toxicity limitation shall constitute an additional, separate and distinct violation.

(c) To assess a civil administrative penalty pursuant to this section the Department shall identify the civil administrative penalty range pursuant to (d) or (e) below.

(d) The Department shall determine the range for the civil administrative penalty for violations of whole effluent toxicity limitations expressed as median Lethal Concentration (LC50), a No Observed Adverse Effect Concentration (NOAEC), a No Observable Effect Concentration (NOEC), or an Inhibition Concentration (IC25) described in this section as follows, except as adjusted pursuant to (f) below:

1. For any violation of an LC50, a NOEC or an IC25 limit included in the following table, the civil administrative penalty shall be in an amount up to \$ 50,000, when upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

Whole Effluent Toxicity Limit (% Effluent)	Difference (% Effluent)
greater than or equal to 80 and less than or equal to 100	greater than or equal to 20
greater than or equal to 50 and less than 80	greater than or equal to 15
greater than 10 and less than 50	greater than or equal to 10
less than or equal to 10	greater than or equal to 9

2. For any other violation of an LC50, a NOEC or IC25 limit the civil administrative penalty shall be in an amount up to \$ 40,000.

(e) The Department shall assess a civil administrative penalty for violations of whole effluent toxicity limitations expressed as No Measurable Acute Toxicity (NMAT) or No Observed Adverse Effect Concentration (NOAEC) based

on the extent of the violator's exceedance of the whole effluent toxicity limitation at the midpoint of the following ranges except as adjusted pursuant to (f) below:

1. For any violation of a NMAT or NOAEC limit with greater than or equal to 50 percent mortality in any test concentration, including 100 percent effluent, the civil administrative penalty shall be in an amount up to \$ 50,000;

2. For any other violation of a NMAT or NOAEC limit the civil administrative penalty shall be in an amount up to \$ 40,000.

(f) The Department may, in its discretion, adjust the amount determined pursuant to (d) or (e) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the violation(s);
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying the damage caused by the violation and ensuring that the violation does not reoccur;
6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and
8. Other specific circumstances of the violator or violation.

(g) A violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.13 Civil administrative penalty for economic benefit

(a) When the Department determines that the violator has gained an economic benefit from a violation, the Department shall, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as part of a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance, with the requirements of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Economic benefit shall include:

1. The amount of savings realized from avoided capital or noncapital costs resulting from the violation;
2. The return earned or that may be earned on the amount of the avoided costs;
3. Any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and
4. Any other benefits resulting from the violation.

(c) The Department shall consider the following factors in determining economic benefit:

1. The amount of capital investments required, and whether they are one-time or recurring;
2. The amount of one-time nondepreciable expenditures;
3. The amount of annual expenses;
4. The useful life of capital;
5. Applicable tax, inflation and discount rates;
6. The amount of low interest financing, the low interest rate, and the corporate debt rate; and

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7. Any other factors relevant to economic benefit.

(d) If the total economic benefit was derived from more than one violation, the total economic benefit amount may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$ 50,000 per violation.

7:14-8.14 Civil administrative penalty for failing to comply with an information request or administrative subpoena, and the destruction of records

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to completely respond to an information request or administrative subpoena, or destroys records relating to a discharge to surface water within five years of the discharge, or to a discharge to ground water at any time without the prior written permission of the Department.

(b) Each day that the violator does not fully respond to any item in an information request or administrative subpoena and each item in an information request or administrative subpoena that is not fully responded to shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for each failure to completely respond to an information request or administrative subpoena in an amount up to \$ 50,000 based on the following factors:

1. The substantive responsiveness of the violator's response to the information request or administrative subpoena;
2. Number of items in the information request or administrative subpoena which the violator attempted to respond to;
3. Number of items in the information request or administrative subpoena which the violator did not respond to;
4. The timeliness of the violator's response; and
5. Any other relevant factors.

(d) The Department shall assess a civil administrative penalty for the destruction of records in violation of P.L. 1990, c. 28, section 15, based on the conduct of the violator at the midpoint of the following ranges:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to \$ 50,000; and
2. For each other violation not identified pursuant to (d)1 above the civil administrative penalty shall be in the amount up to \$ 30,000.

(e) Except as set forth in Table 1 or Table 2 at N.J.A.C. 7:14-8.18, a violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.15 (Reserved)

7:14-8.16 Civil administrative penalty determination for indirect dischargers

(a) The Department may assess a civil administrative penalty against any indirect discharger of not more than \$ 50,000, for each violation of each provision of the Water Pollution Control Act and for each violation of any rule, pretreatment standard, effluent limitation, administrative order or permit issued pursuant thereto. The Department shall assess a minimum mandatory civil administrative penalty in an amount:

1. Not less than \$ 1,000 for each serious violation as defined under N.J.A.C. 7:14-8.2; and
2. Not less than \$ 5,000 for each violation that causes a violator to be, or continue to be, a significant noncomplier as defined under N.J.A.C. 7:14-8.2.

(b) Each violation of any provision of the Water Pollution Control Act or any rule, pretreatment standard, effluent limitation, administrative order or permit issued by the Department, shall constitute an additional, separate and distinct violation. In addition, the unpermitted discharge of each separate pollutant shall constitute an additional, separate and distinct violation.

(c) Each day during which a violation as set forth in (b) above continues shall constitute an additional, separate and distinct violation.

(d) Unless the Department assesses a civil administrative penalty as set forth in N.J.A.C. 7:14-8.6 through 7:14-8.12, the Department may assess a civil administrative penalty for violations described in this section as described in (e) below, including any applicable grace period in accordance with N.J.A.C. 7:14-8.18.

(e) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the penalty range within the matrix in (f) below by:

i. Determining the seriousness of the violation pursuant to (g) below; and

ii. Determining the conduct of the violator pursuant to (h) below; and

2. Assess the penalty at the midpoint of the range within the matrix in (f) below, unless adjusted pursuant to (i) below.

(f) The matrix of ranges of penalties is as follows:

SERIOUSNESS				
CONDUCT	Major	Major \$ 10,000- \$ 50,000	Moderate \$ 5,000- \$ 25,000	Minor \$ 2,000- \$ 13,000
	Moderate	\$ 5,000- \$ 10,000	\$ 2,500- \$ 5,000	\$ 500- \$ 3,000
	Minor	\$ 500- \$ 7,500	\$ 500- \$ 2,500	\$ 250- \$ 1,250

(g) The Department shall determine the seriousness of the violation as major, moderate or minor as set forth in (g)1 through 3 below.

1. Major shall include:

i. Any violation of any effluent limitation that is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) By more than 50 percent for a hazardous pollutant;

(2) By more than 100 percent for a non-hazardous pollutant; or

(3) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment; or

ii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by more than 50 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES/SIU issued permit with continuous pH monitoring; or

iii. Any other violation not included in (g)1i or ii above which either:

(1) Has caused or has the potential to cause serious harm to human health or the environment; or

(2) Seriously deviates from the requirements of the Water Pollution Control Act or of any rule, pretreatment standards, effluent limitation, administrative order or permit issued pursuant thereto; serious deviation shall include, but not be limited to, those violations that are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

2. Moderate shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii below, which has caused or has the potential to cause substantial harm to human health or the environment;

ii. Any violation of an effluent limitation which is measured by concentration or mass of any discharge exceeding the effluent limitation as follows:

(1) By 20 to 50 percent for a hazardous pollutant; or

(2) By 40 to 100 percent for a non-hazardous pollutant;

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by at least 40 percent but no more than 50 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES/SIU issued permit with continuous pH monitoring; or

iv. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii above, which substantially deviates from the requirements of the Water Pollution Control Act or of any rule, pretreatment standards, effluent limitation, administrative order or permit issued pursuant thereto; substantial deviation shall include, but not be limited to, violations that are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement.

3. Minor shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)3ii or iii below, not included in (g)1 or 2 above;

ii. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) By less than 20 percent for a hazardous pollutant; or

(2) By less than 40 percent for a non-hazardous pollutant; or

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by less than 40 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES/SIU issued permit with continuous pH monitoring.

(h) The Department shall determine the conduct of the violator as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate shall include any unintentional but foreseeable act or omission by the violator; or

3. Minor shall include any other conduct not included in (h)1 or 2 above.

(i) The Department may move from the midpoint of the range, to an amount not greater than the maximum amount nor less than the minimum amount in the range, on the basis of the following factors:

1. The compliance history of the violator;

i. No violations of the same effluent limitation and discharge point at all in the two years immediately preceding the pending violation shall result in a reduction equal to 25 percent of the midpoint.

ii. No serious or fewer than four lesser violations of the same effluent limitation and discharge point in the two years immediately preceding the pending violation shall result in a reduction equal to 10 percent reduction of the midpoint.

iii. One isolated serious violation or four or more lesser violations of the same effluent limitation and discharge point in the two years immediately preceding the date of the pending violation shall result in an increase equal to 10 percent of the midpoint.

iv. Any violation(s) which caused a person to become or remain in significant noncompliance or two or more isolated serious violations where such violations are of the same effluent limitation and discharge point in the two years immediately preceding the date of the pending violation shall result in a 25 percent increase from the midpoint;

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2. Where the nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of violation from the Department;

3. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;

4. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and

5. Other specific circumstances of the violator or violation.

7:14-8.17 Enforcement actions for failure to implement an approved industrial pretreatment program

(a) The Department may assess a civil administrative penalty against any delegated local agency pursuant to this section for each violator who fails to implement its approved industrial pretreatment program as required by the Federal Act, the State Act, or the Water Pollution Control Act, and for violations of any rule, administrative order, or permit issued pursuant thereto.

(b) Each violation of any provision of the Federal Act, the State Act, the Water Pollution Control Act, or any rule, administrative order, or permit issued pursuant thereto, shall constitute an additional, separate and distinct violation.

(c) The Department may assess a civil administrative penalty for violations described in this section at the midpoint of the following ranges except as adjusted pursuant to (e) below:

1. For failure to implement any of the following pretreatment program requirements, the civil administrative penalty shall be in an amount up to \$ 10,000:

i. Give public notice to indirect users which meet or have met the significant non-compliance criteria as defined by 40 CFR Part 403.8(f)(2)(vii);

ii. Ensure public participation and notification;

iii. Perform RCRA notification pursuant to 40 CFR Part 403; or

iv. Submit required major program modifications.

2. For failure to implement any of the following pretreatment program requirements, the civil administrative penalty shall be in an amount up to \$ 20,000:

i. Identify and locate indirect users;

ii. Perform data management and recordkeeping;

iii. Sample the treatment works as required by the conditions of the IPP; or

iv. Submit a "40 CFR Part 403" annual report, and/or the "CWEA" annual report pursuant to N.J.S.A. 58:10A-14.2 and/or the grace period annual report pursuant to N.J.A.C. 7:14A-19.6(g) and (h).

3. For failure to implement any of the following pretreatment program requirements, the civil administrative penalty shall be in an amount up to \$ 50,000:

i. Inspect indirect users;

ii. Issue a permit to those facilities required to receive such a document;

iii. Sample indirect users;

iv. Initiate, prosecute or settle enforcement actions in accordance with this subchapter and an approved enforcement response plan and the pretreatment program as approved, including any subsequent amendments thereto;

v. Develop and enforce local discharge limitations;

vi. Review reports and identify violations; or

vii. Secure and maintain program resources.

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(d) The Department may assess a civil administrative penalty in accordance with (c) above at any time. The assessment shall be based on the Department's evaluation of the delegated local agency's pretreatment program requirements. Furthermore, the Department may require a delegated local agency to adequately respond to findings based on an inspection conducted by the Department, the Department's review of the delegated local agency's 40 CFR Part 403 annual report, or the IPP on-site audit conducted by the Department.

(e) The Department may adjust the amount determined pursuant to (c) above to assess a civil administrative penalty from the midpoint of the range to an amount not greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;
2. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;
3. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
4. Other specific circumstances of the violator or violation.

(f) When the Department determines that the violator has gained an economic benefit from a violation, the Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as part of a civil administrative penalty, under (c) above, the economic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance.

(g) If the Department determines that a delegated local agency has failed to assess mandatory minimum penalties in accordance with this subchapter or the Water Pollution Control Act, it shall take enforcement action against the delegated local agency, including, but not limited to, issuance of a notice of violation, issuance of an order, assessment of penalties and injunctive relief to compel compliance.

7:14-8.18 Tables of minor and non-minor violations; grace periods

(a) Tables 1 and 2 below identify particular violations of the Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, and the Underground Storage Tanks rules, N.J.A.C. 7:14B, as minor or non-minor for purposes of a grace period, and identify the duration of the grace period for minor violations. The descriptions of the violations set forth in the tables in this section are provided for informational purposes only. In the event that there is a conflict between a violation description in the tables and the rule to which the violation description corresponds, the rule shall govern.

(b) The Department may assess a civil administrative penalty for a violation of the Water Pollution Control Act, the Act Concerning Pretreatment of Industrial Wastewater, the New Jersey Underground Storage of Hazardous Substances Act, and/or for a violation of any rule, consent agreement or administrative order adopted or issued pursuant thereto, that is not listed in Tables 1 and 2, or in N.J.A.C. 7:14-8.6 through 8.10, 8.12, 8.14, or 8.17, according to the following:

1. The Department shall determine whether the violation is a minor violation and subject to a grace period or whether the violation is non-minor and not subject to a grace period as follows:

i. If, pursuant to (c) below, the violation is comparable to a violation listed in Tables 1 and 2 and the comparable violation in Tables 1 and 2 is minor, then the violation under this section is also minor, provided the criteria at N.J.A.C. 7:14-8.4A(c) are also met. The minor violation shall be subject to the grace period set forth in Tables 1 and 2 for the comparable violation, and the penalty shall be assessed in accordance with N.J.A.C. 7:14-8.5 or 8.16;

ii. If the violation is not comparable to a violation listed in Tables 1 and 2, or in N.J.A.C. 7:14-8.6 through 8.10, 8.12, 8.14, or 8.17 and the violation meets all of the criteria at (b)1ii(1) through (3) below as well as the criteria at N.J.A.C. 7:14-8.4A(c), then the violation under this section is minor. The minor violation shall be subject to a grace period of 30 days, and the penalty shall be assessed in accordance with N.J.A.C. 7:14-8.5 or 8.16.

(1) The violation poses minimal risk to the public health, safety and natural resources;

(2) The violation does not materially and substantially undermine or impair the goals of the regulatory program; and

(3) The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department;

iii. If, pursuant to (c) below, the violation is comparable to a violation listed in Tables 1 and 2, or in N.J.A.C. 7:14-8.6 through 8.10, 8.12, 8.14, or 8.17, and the comparable violation in Tables 1 and 2, or in N.J.A.C. 7:14-8.6 through 8.10, 8.12, 8.14, or 8.17 is non-minor, then the violation under this section is also non-minor and the penalty shall be assessed in accordance with N.J.A.C. 7:14-8.5 through 8.10, 8.12, 8.14, 8.16, or 8.17.

iv. If the violation is not comparable to a violation listed in Tables 1 and 2, or in N.J.A.C. 7:14-8.6 through 8.10, 8.12, 8.14, or 8.17 and the violation does not meet the requirements of N.J.A.C. 7:14-8.4A(c), and does not meet the criteria of (b)1ii(1) through (3) above, the violation is non-minor and the penalty shall be assessed in accordance with N.J.A.C. 7:14-8.5 or 8.16.

(c) Comparability of a violation under (b) above with a violation listed in Tables 1 and 2, or in N.J.A.C. 7:14-8.6 through 8.10, 8.12, 8.14, or 8.17 is based upon the nature of the violation (for example, a violation of recordkeeping, permit limitation, or monitoring).

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-2.1(d)	Discharging any pollutant except in conformity with a valid NJPDES permit issued by the Department, unless specifically exempted by N.J.A.C. 7:14A.	NM	
7:14A-2.1(e)	Building, installing, modifying, or operating any facility for the collection, treatment, or discharge of any pollutant, except in conformance with the TWA requirements contained in N.J.A.C. 7:14A-22 and 23.	NM	
7:14A-2.11(a)	Failure of a person, upon receipt of written notice from the Department, to provide information regarding a discharge or potential discharge when the Department has reason to believe that a person has, or ay have, information relevant to a discharge or potential discharge of a pollutant.	NM	
7:14A-2.11(c)	Failure to provide information requested in the form and manner prescribed by the Department.	M	30 days
7:14A-2.11(d)	Failure of person receiving a request for information made pursuant to 7:14A-2.11(a) to comply with the requirements of 7:14A-2.11(d) 1, 2 and 3.	NM	
7:14A-2.11(d)	Failure of person receiving a subpoena issued pursuant to N.J.A.C. 7:14A-2.10 to comply with the requirements of N.J.A.C. 7:14A-2.11(d)1, 2 and 3.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-2.11(e)1	Failure to allow an authorized representative of the Department to enter upon a person's premises for the purposes of inspection, sampling, copying or photographing.	NM	
7:14A-2.11(e)2	Failure to allow an authorized representative of the Department to have access to and copy any records that must be kept under the conditions of a NJPDES permit.	NM	
7:14A-2.11(e)3	Failure to allow an authorized representative of the Department to inspect any facilities, equipment, practices or operations regulated or required under a NJPDES permit.	NM	
7:14A-2.11(e)4	Failure to allow an authorized representative of the Department to sample or monitor any substance or parameter at any location.	NM	
7:14A-2.11(f)	Failure of permittee to submit relevant facts previously omitted in a permit application, or request for authorization or submit corrected information for a permit application, request for authorization or any report within 10 days of becoming aware of the correct information.	M	30 days
7:14A-2.13(a)	Failure to obtain a permit for any discharge from an animal feeding operation that meets the criteria for a concentrated animal feeding operation or is required to obtain a permit under N.J.A.C. 7:14A-2.13(d).	NM	
7:14A-2.14(a)	Failure to obtain a permit for any discharge from an animal production facility that meets the criteria for an animal production facility or is required to obtain a permit under N.J.A.C. 7:14A-2.14(d).	NM	
7:14A-3.1(a)3	Failure of NJPDES permittee/applicant to submit payment within 30 days of assessment	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation of the permit fee.	Type of Violation	Grace Period
7:14A-3.1(j)	Failure to submit to the soil conservation district the applicable fee with each request for authorization submitted under NJPDES Permit No. NJ0088323 (referred to as the category 5G3 "construction activity" stormwater general permit), except as provided in N.J.A.C. 7:14A-3.1(j)1.	NM	
7:14A-3.1(j)1	Failure to submit to the Department the applicable fee for any project that the New Jersey Department of Transportation (NJDOT) is constructing or proposes to construct for which a stormwater discharge is regulated under NJPDES Permit No. NJ0088323.	NM	
7:14A-4.2(c)	Failure of an operating entity to obtain a NJPDES permit when a facility or activity is owned by one or more persons.	NM	
7:14A-4.2(e)3	Failure of person to file an application for renewal or a request for authorization under a general permit at least 180 calendar days prior to the expiration of the existing permit.	NM	
7:14A-4.5(b)	Failure of an applicant with an individual NJPDES permit for an existing discharge or activity to submit a complete renewal application in accordance with N.J.A.C. 7:14A-2.7, and when the Department determines additional water quality information is necessary, to submit water quality studies as provided in N.J.A.C. 7:14A-2.12(a).	NM	
7:14A-4.8(a)	Failure of existing concentrated animal feeding operation to provide in its application the information required under N.J.A.C. 7:14A-4.8(a)1 through 3.	M	30 days
7:14A-4.8(b)	Failure of existing concentrated aquatic animal production facility to provide in its application the information required under N.J.A.C. 7:14A-4.8(b)1 through 5.	M	30 days

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-4.9(a)	Failure to have permit application, request for authorization, reports other than DMRs, and other requested information signed by a person described in N.J.A.C. 7:14A-4.9(a)1 through 4.	M	30 days
7:14A-4.9(c)	Failure to submit a new authorization satisfying the requirements of N.J.A.C. 7:14A-4.9(b) prior to or together with any reports, information or applications signed by an authorized representative.	M	30 days
7:14A-4.9(d)	Failure of person signing a report required by permits, other than DMRs, and other information requested by the Department, to make the certification in N.J.A.C. 7:14A-4.9(d).	M	30 days
7:14A-6.2(a)	Failure to comply with any general conditions applicable to all NJPDES permits specified in N.J.A.C. 7:14A-6.2(a) excluding N.J.A.C. 7:14-6.2(a)6, 7, 8, 9 and 10.	NM	
7:14A-6.2(a)9	Failure of a permittee with discharges that flow through an outfall pipe, unless such outfall pipe is completely and continuously submerged, or is not assigned a Discharge Serial Number (DSN), to notify the Department that a tag to mark the location of the pipe has been or will be installed on the pipe by the effective date of the permit, or by May 5, 1998, whichever is sooner.	M	30 days
7:14A-6.2(a)9	Failure of a permittee with discharges that flow through an outfall pipe, unless such outfall pipe is completely and continuously submerged, to provide an outfall tag which meets the requirements specified in N.J.A.C. 7:14A-6.2(a)9i and ii.	M	30 days
7:14A-6.2(a)14	Failure of a permittee to furnish to the Department, within a reasonable timeframe specified by the Department, any information that the Department may request to determine whether cause exists	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation for issuing, modifying, revoking and reissuing, or revoking a discharge permit, or to determine compliance with a NJPDES permit; or to provide copies of records required to be kept by the permit.	Type of Violation	Grace Period
7:14A-6.4	Failure to comply with a schedule of compliance in a permit, including interim deadlines for progress or reports of progress towards compliance with the State and Federal Acts and all other applicable authority for N.J.A.C. 7:14A.	NM	
7:14A-6.5(a)1	Failure to take samples and measurements representative of the monitored activity.	NM	
7:14A-6.5(a)2	Failure of permittee to perform all analyses in accordance with the analytical test procedures specified in 40 CFR 136, 40 CFR 503 or other test procedures specified in the permit.	NM	
7:14A-6.5(a)2	Failure of a permittee to indicate a suitable analytical procedure and provide the Department with literature references or a detailed description of the procedure when no approved test procedure is available.	M	30 days
7:14A-6.5(b)1	Failure to properly install, use, and maintain monitoring equipment and use proper monitoring methods.	NM	
7:14A-6.5(b)2	Failure to properly monitor a discharge in accordance with the monitoring type, interval and frequency as specified in the permit.	NM	
7:14A-6.5(b)4	Failure to monitor in accordance with the edition of the Department's "Field Sampling Procedures Manual" applicable at the time of sampling, or an alternate method approved by the Department.	NM	
7:14A-6.5(d)1	Failure of a permittee to automatically adjust its effluent monitoring and reporting frequency to monthly when required by N.J.A.C. 7:14A-6.5(d)1i or ii.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-6.5(d)3	Failure of a permittee to continue this monthly schedule until the permittee has submitted six consecutive monthly Discharge Monitoring Reports that show compliance with the particular serious violation parameter at the particular discharge point.	NM	
7:14A-6.6	Failure to comply with record keeping requirements.	NM	
7:14A-6.7(a)	Failure to comply with written notice requirements for planned physical alterations or additions to a permitted facility that meet the criteria in N.J.A.C. 7:14A-6.7(b).	NM	
7:14A-6.8(a)	Failure of permittee to report monitoring results on the DMR and/or the Baseline Reports (BR) or other monitoring report forms required by the permit or the Department at the intervals specified in the permit.	NM	
7:14A-6.8(b)	Failure of permittee with effluent limits expressed as daily maxima or minima without a monthly average for a particular parameter to report the average of all daily maxima or minima values obtained during the reporting month.	NM	
7:14A-6.8(c)	Failure of permittee to automatically adjust its reporting frequency to monthly.	NM	
7:14A-6.8(e)	Failure of permittee to include in any calculation and report on the form specified by the Department if a permittee monitors any pollutant more frequently than required by the permit in accordance with the permit requirements for sample type, location, and analysis.	NM	
7:14A-6.8(f)	Failure to utilize an arithmetic mean for calculations for all limitations that require averaging of measurements, unless otherwise specified in the permit by the Department.	M	30 days
7:14A-6.8(g)	Failure of the permittee to submit with	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	the report the level of production that actually occurred during the reporting month and the limitations, standards, or prohibitions applicable to that level of production when subject to limitations based on a measure of production.		
7:14A-6.8(h)	Failure of the permittee to report all instances of noncompliance not reported under N.J.A.C. 7:14A-6.10 at the time DMRs are submitted.	NM	
7:14A-6.8(h)	Failure of the permittee to submit reports that contain the information required in the written submission listed in N.J.A.C. 7:14A-6.10(e), if not already submitted to the Department.	NM	
7:14A-6.8(i)	Failure of SIUs, DSW major industrial facilities, DGWs, and DSW local agencies, other than those discharging only stormwater or non-contact cooling water, required to submit DMRs to the Department to submit the required reporting forms to the Department on a monthly basis when sampling is required on a monthly basis for one or more parameters.	NM	
7:14A-6.9	Failure to comply with DMR and BR signature and certification requirements.	NM	
7:14A-6.10(c)	Failure of permittee to submit noncompliance report information within two hours of commencement of a discharge, or of the permittee becoming aware of a discharge for the situations listed in N.J.A.C. 7:14A-6.10(a)1i through iv, 2 and 3.	NM	
7:14A-6.10(d)	Failure of permittee to submit noncompliance report information within 24 hours of commencement of a discharge, or of the permittee becoming aware of a discharge for the situations listed in N.J.A.C. 7:14A-6.10(a)1v and 3.	NM	
7:14A-6.10(e) and 7:14A-6.10(f)	Failure to comply with written submission requirements for noncompliance reporting.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-6.10(i)	Failure to comply with written report requirements for serious violations.	NM	
7:14A-6.10(j)	Failure of permittee to comply with reporting requirements on instances of noncompliance not reported under N.J.A.C. 7:14A-6.10 at the time DMRs are regularly submitted.	NM	
7:14A-6.12(a)	Failure of permittee to, at all times, maintain in good working order and operate the treatment works and facilities which are installed or used by the permittee to achieve compliance with the terms and conditions of the discharge permit.	NM	
7:14A-6.12(b)	Failure of a permittee who operates a treatment works to satisfy the licensing requirements of the "Water Supply and Wastewater Operators Licensing Act."	M	60 days
7:14A-6.12(c)	Failure to comply with operation and maintenance manual requirements for treatment works, including related appurtenances and collection system.	NM	
7:14A-6.12(d)	Failure to comply with emergency plan requirements.	NM	
7:14A-6.12(e)	Failure of a municipality or sewerage authority to properly operate and maintain a treatment works when that entity is not a permittee, but owns and operates a treatment works used only for the collection or transportation of domestic sewage.	NM	
7:14A-6.15(a)	Failure of a permittee to comply with land-based sludge management criteria and conform with the requirements for the management of residuals and grit and screenings pursuant to the requirements in N.J.A.C. 7:14A-6.15(a)1 through 5.	NM	
7:14A-7.2(b)	Failure to obtain a discharge to ground water permit prior to discharge except as otherwise provided in N.J.A.C. 7:14A-7.4 and 7.5.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-7.3(a)	Failure to comply with all requirements of N.J.A.C. 7:14A-7, except those persons listed in N.J.A.C. 7:14A-7.3(c), (d), and (e), and 7:14A-7.4.	NM	
7:14A-7.3(b)	Failure of persons responsible for the activities, pollution sources, or regulated units listed at N.J.A.C. 7:14A-7.3(b)1 through 7 to comply with the requirements of N.J.A.C. 7:14A-7.	NM	
7:14A-7.6	Failure to comply with the Ground Water Protection Plan requirements.	NM	
7:14A-7.7	Failure to comply with the Ground Water Sampling Procedures and Statistical Analysis requirements.	NM	
7:14A-7.8	Failure to comply with any measures specified in a NJPDES permit to address any contravention of the ground water quality standards.	NM	
7:14A-8.3	Failure to obtain a permit-by-rule or individual UIC permit prior to construction of any well or any underground injection required to have a permit (including, where applicable, a well permit) under N.J.A.C. 7:14A-8.	NM	
7:14A-8.4	Failure to comply with any Department prescribed requirement necessary to control or prevent the movement of fluids into underground sources of drinking water.	NM	
7:14A-8.5(a), (b) and (c)	Failure to submit required inventory information within 90 days of Department notice for a permit-by-rule.	M	30 days
7:14A-8.5(h)	Failure to cease injection pursuant to this N.J.A.C. 7:14A-8.5.	NM	
7:14A-8.7(a)	Operation of a Class IV injection well and/or injection of hazardous or radioactive wastes via Class I injection wells without Department authorization.	NM	
7:14A-8.7(c)	Failure to abandon and close any injection	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	well that is injecting, or has ever injected, hazardous wastes (including Class IV and Class I injection wells) in compliance with all applicable Department regulations for remediation of contaminated sites, including the Procedures for Department Oversight of the Remediation of Contaminated Sites (N.J.A.C. 7:26C).		
7:14A-8.9(a)1, 2, and 6	Failure to comply with any Additional Condition Applicable to Class I, II, III and V UIC Permits incorporated in an UIC permit.	M	30 days
7:14A-8.9(a)3, 4 and 5	Failure to report any condition that may endanger or cause fluid to migrate to a potable supply well or underground source of drinking water in accordance with the prescribed time frames.	NM	
7:14A-8.11	Failure to comply with any of the requirements for corrective or preventative action.	NM	
7:14A-8.12	Failure to comply with the Specific Operating Criteria and Construction Standards.	NM	
7:14A-8.13	Failure to comply with the Specific Operating Criteria and Construction Standards Applicable to Class I Wells.	NM	
7:14A-8.14	Failure to comply with the Specific Operating Criteria and Construction Standards Applicable to Class II Wells.	NM	
7:14A-8.15	Failure to comply with the Specific Operating Criteria and Construction Standards Applicable to Class III Wells.	NM	
7:14A-8.16	Failure to comply with the Specific Operating Criteria and Construction Standards Applicable to Class V Wells.	NM	
7:14A-8.17	Failure to submit information required by Additional Requirements for Application for Individual UIC Permits.	M	30 days
7:14A-8.18	Failure to comply with the Specific	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation Operating Criteria and Construction Standards applicable to permit-by-rule authorization for underground injection and seepage pits.	Type of Violation	Grace Period
7:14A-9.2	Failure to apply for a NJPDES permit to conduct ground water monitoring.	NM	
7:14A-9.3	Failure to meet the ground water monitoring system performance standards.	NM	
7:14A-9.4	Failure to meet the General Ground Water Monitoring Well requirements except for N.J.A.C. 7:14A-9.4(a)5.	NM	
7:14A-9.4(a)5	Failure to permanently mark both the elevation of the top of the well casing or the number assigned or approved by the Department on the well casing.	M	30 days
7:14A-9.5	Failure to comply with the Ground Water Monitoring Program requirements for Sanitary Landfills.	NM	
7:14A-9.7	Failure to comply with the Leak Detection Monitoring Program requirements.	NM	
7:14A-9.8	Failure to comply with the Assessment Monitoring Program requirements.	NM	
7:14A-9.9	Failure to comply with the Assessment of Corrective Measures requirements.	NM	
7:14A-9.10	Failure to comply with the Selection of Remedy requirements.	NM	
7:14A-9.11	Failure to comply with the Implement and Corrective Action Program requirements.	NM	
7:14A-11.3	Failure of existing manufacturing, commercial, mining, and silviculture dischargers and research facilities that discharge to surface water to comply with additional reporting notification requirements.	NM	
7:14A-12.2(a)	Failure of a direct discharges to surface water from publicly or privately owned domestic treatment works to comply with	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation the effluent quality standards set forth in N.J.A.C. 7:14A-12.2(b) through (f).	Type of Violation	Grace Period
7:14A-12.4(a)	Failure of a direct discharge to surface water for which (BOD5 or CBOD5) water quality based effluent limitations based upon water quality studies acceptable to the Department have not been developed, but are required under N.J.A.C. 7:9B-1.5 or 1.6, to comply with the minimum treatment requirements for BOD5 specified in N.J.A.C. 7:14A-12.4(b).	NM	
7:14A-12.5(a)	Failure to comply with continuous year round disinfection standards set forth in N.J.A.C. 7:14A-12.5(b) prior to discharge into surface waters a wastewater that could contain pathogenic organisms such as fecal coliform and/or enterococci organisms.	NM	
7:14A-12.8(a)	Failure of an indirect user to comply with any local agency standards for non-petroleum based oil and grease.	NM	
7:14A-12.8(c)	Failure of a direct discharger to surface waters to limit the oil and grease effluent content as specified in N.J.A.C. 7:14A-12.8.	NM	
7:14A-12.8(d)	Failure of an indirect user discharging petroleum based oil and grease to meet the petroleum hydrocarbon effluent standards set forth in N.J.A.C. 7:14A-12.8.	NM	
7:14A-12.11(d)	Failure to comply with the chemical specific toxic pollutant effluent standards set forth in N.J.A.C. 7:14A-12 Appendix B for a discharge to surface water from a site remediation project.	NM	
7:14A-12.11(e)	Failure to comply with the chemical specific toxic pollutant effluent standards set forth in N.J.A.C. 7:14A-12 Appendix C for a new source, new discharge or expanded direct discharge to surface water.	NM	
7:14A-16.2(a)	Failure of a permittee to provide due notice to the Department in accordance with N.J.A.C. 7:14-16.2(b) or (d) when	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	transferring a NJPDES permit to any person.		
7:14A-19.2(c)	Failure of a local agency, or combination of treatment works operated by the same local agency, required to establish an IPP pursuant to N.J.A.C. 7:14A-19.2(a) or (b) to develop and submit an IPP in accordance with the requirements of 40 CFR Part 403 and the requirements of N.J.A.C. 7:14A-19.	NM	
7:14A-19.3(b)1	Failure of a local agency, including those not required by N.J.A.C. 7:14A-19.2(a) and (b), to submit a copy of the local sewer use ordinance to the Department.	M	30 days
7:14A-19.3(b)2i	Failure of a delegated local agency to update its inventory of indirect users.	NM	
7:14A-19.3(b)2ii	Failure of a non-delegated local agency to submit a report annually listing all indirect users that meet the indirect user definition.	M	30 days
7:14A-19.3(b)3	Failure of a local agency to develop local limits or demonstrate that such limits are not necessary in accordance with N.J.A.C. 7:14A-19.7.	NM	
7:14A-19.3(b)4	Failure of a local agency to deposit 10 percent of the amount of penalties collected into the Wastewater Treatment Operators' Training Account.	M	60 days
7:14A-19.3(c)1	Failure of delegated local agency to notify indirect users of the responsibilities required in the DLA's rules and regulations or sewer use ordinance.	M	30 days
7:14A-19.3(c)2	Failure of delegated local agency to issue an IPP permit to its indirect users.	NM	
7:14A-19.3(c)3	Failure of delegated local agency to perform compliance monitoring and inspections of indirect users.	M	30 days
7:14A-19.3(c)4	Failure of delegated local agency to review and respond to violations of an IPP permit or the sewer use ordinance/rules and	M	30 days

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation regulations, within 60 days of receipt of the compliance information generated by indirect users or the DLA.	Type of Violation	Grace Period
7:14A-19.3(c)5	Failure of delegated local agency to take enforcement actions based upon indirect users' noncompliance.	M	30 days
7:14A-19.3(c)6	Failure of delegated local agency to develop and maintain a data management system which includes an indirect user inventory, characterization of the nature of indirect user discharges, compliance status, permit status, and enforcement actions.	M	90 days
7:14A-19.3(c)7	Failure of delegated local agency to sample its treatment works and sludges.	NM	
7:14A-19.3(c)9	Failure of delegated local agency to notify its significant indirect users (SIUs) in writing, in accordance with 40 CFR 403.8(f)(2)(iii), of the SIUs' obligation to comply with applicable requirements under Subtitles C and D of the Resource Conservation and Recovery Act (RCRA).	M	30 days
7:14A-19.3(c)10	Failure of delegated local agency to secure and maintain sufficient resources and qualified personnel, in accordance with 40 CFR 403.8(f)(3), to carry out the program implementation procedures.	NM	
7:14A-19.3(d)	Failure of a local agency to comply with the requirements of the Grace Period Law by establishing type or category of minor violation and time period to correct the violation as noted in its rules and regulations or sewer use ordinance.	NM	
7:14A-19.4(a)	Failure of a delegated local agency to develop and implement an enforcement response plan in accordance with N.J.A.C. 7:14A-19.4.	NM	
7:14A-19.4(c)	Failure of a delegated local agency to include an enforcement response plan within the rules and regulations or sewer use	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation ordinance of a delegated local agency.	Type of Violation	Grace Period
7:14A-19.4(d)	Failure of a delegated local agency to include or incorporate by reference in its enforcement response plan all mandatory penalties, settlement restrictions, uniform penalty policies, grace period provisions and other requirements applicable to the Department in accordance with N.J.A.C. 7:14-8.1(f), including, without limitation, the civil administrative penalty determination procedure specified in N.J.A.C. 7:14-8.16.	NM	
7:14A-19.5	Failure of a delegated local agency to include in its sewer use ordinance or rules and regulations the enforcement and penalty provisions and procedural and substantive requirements set forth in N.J.A.C. 7:14A-19.5.	M	90 days
7:14A-19.6(a)	Failure of a delegated local agency to comply with the additional requirements for delegated local agencies as set forth in N.J.A.C. 7:14A-19.6.	M	60 days
7:14A-19.6(b)	Failure of a delegated local agency to inspect any permittee that meets the significant noncomplier definition within 60 days of receipt of the discharge monitoring report or self-monitoring report that initially results in the permittee's being identified as a significant noncomplier.	NM	
7:14A-19.6(c)	Failure of a delegated local agency to submit a Clean Water Enforcement Act annual report to the Department by February 1.	NM	
7:14A-19.6(d)	Failure of a delegated local agency to submit additional information outlined in N.J.A.C. 7:14A-19.6.	NM	
7:14A-19.6(e)	Failure of a delegated local agency to submit the information required in N.J.A.C. 7:14A-19.6(c) and (d) on forms provided by the Department.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-19.6(f)	Failure of a delegated local agency to submit a 40 CFR Part 403 annual report that describes its pretreatment program activities.	M	30 days
7:14A-19.6(g)	Failure of a delegated local agency to submit a grace period annual report to the Department by March 1.	M	30 days
7:14A-19.6(h)	Failure of a delegated local agency to submit the information required in N.J.A.C. 7:14A-19.6(g) on forms provided by the Department.	NM	
7:14A-19.7(a)	Failure of a local agency to perform a headworks analysis in order to develop local limits or demonstrate that local limits are not necessary.	NM	
7:14A-19.7(b)	Failure of a delegated local agencies to submit a work plan to include the parameters to be sampled, the sampling locations within the treatment plant and the collection system, and a schematic diagram of the treatment plant showing sampling locations.	M	60 days
7:14A-19.7(c)	Failure of a delegated local agency, when proposing and adopting local limits, to comply with the public notice and hearing requirements.	M	90 days
7:14A-19.7(d)	Failure of a delegated local agency to submit a written technical evaluation to revise local limits.	NM	
7:14A-19.7(e)	Failure of a delegated local agency to submit an acceptable written technical evaluation that includes all the information outlined in N.J.A.C. 7:14A-19.7.	M	60 days
7:14A-19.8(a)	Failure of a delegated local agency to issue an IPP permit.	NM	
7:14A-19.8(b)	Failure of a delegated local agency to include the requirements outlined in N.J.A.C. 7:14A-19.8 in each IPP permit.	NM	
7:14A-19.8(c)	Failure of a delegated local agency to	M	90 days

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation comply with public notice and hearing requirements.	Type of Violation	Grace Period
7:14A-19.8(d)	Failure of a delegated local agency to include in its sewer use ordinance or rules and regulations outlined in N.J.A.C. 7:14A-19.8.	NM	
7:14A-19.9(a)	Failure of a delegated local agency to provide written notice to the Department regarding each substantial and non-substantial IPP modification, as defined under 40 CFR 403.18.	NM	
7:14A-19.9(b)	Failure of a delegated local agency to provide a statement of the basis for the modification, and a copy of the elements of the IPP to be modified for a non-substantial modifications request.	M	30 days
7:14A-19.9(c)	Failure of a delegated local agency to provide the items outlined in N.J.A.C. 7:14A-19.9(c)1 through 4 for a substantial IPP modification request.	M	60 days
7:14A-19.10(a)	Failure of delegated local agency to comply with public notice and public hearing requirements for a request for substantial modification of an industrial pretreatment program.	M	90 days
7:14A-19.10(b)	Failure of delegated local agency to provide public notice identifying those indirect users that meet the significant noncompliance criteria under 40 CFR 403.8(f)(2)(vii).	M	30 days
7:14A-19.10(c)	Failure of delegated local agency to allow the public to comment on a proposed administrative consent order prior to final adoption, if the administrative consent order would establish interim enforcement limits that would relax effluent limitations established in a permit or a prior administrative order.	M	90 days
7:14A-19.10(d)	Failure of delegated local agency to hold a public hearing on the proposed administrative order or administrative	M	90 days

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation consent order prior to final adoption.	Type of Violation	Grace Period
7:14A-19.10(e)	Failure of delegated local agency to provide public notice and a public hearing for any proposed new indirect user IPP permit, proposed renewed indirect user IPP permit, proposed revocation of an indirect user IPP permit, or proposed major modification to any existing indirect user IPP permit.	M	90 days
7:14A-20.7(b)	Failure to comply with any general requirement and management practice for the land application of residuals.	NM	
7:14A-20.7(c)	Failure to meet the applicable requirements and pollutant limits in 40 CFR 503.13(a) and (b).	NM	
7:14A-20.7(d)	Failure to meet the operational standards for pathogen and vector attraction reduction pursuant to 40 CFR 503.15(a) and (c).	NM	
7:14A-20.7(e)	Failure to remove foreign material from the residual prior to application.	NM	
7:14A-20.7(f)1	Failure to meet Class B pathogen reduction requirements pursuant to 40 CFR 503.32(b) and one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(10) for land application of domestic septage.	NM	
7:14A-20.7(f)2	Failure to land apply domestic septage at a whole residual application rate that is equal or less than the agronomic rate in accordance with N.J.A.C. 7:14A-20.7(g).	NM	
7:14A-20.7(f)3	Failure to screen domestic septage through a number 4 mesh screen to remove foreign material.	NM	
7:14A-20.7(f)4	Failure to certify domestic septage as being from domestic sources only, having been analyzed pursuant to N.J.A.C. 7:14A-20.7(a)1, and satisfying the pollutant limits in 40 CFR 503.13(a) and (b).	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-20.7(f)5	Failure to land apply domestic septage in accordance with one of the land application programs described at N.J.A.C. 7:14A-20.7(h).	NM	
7:14A-20.7(g)	Failure to comply with whole residual application rate requirements.	NM	
7:14A-20.7(h)	Failure to conform to one of the allowable programs based on the level of quality, pathogen reduction and vector attraction reduction achieved for residuals applied to the land.	NM	
7:14A-20.7(i)	Failure to comply with the frequency of pollutant monitoring, pathogen density requirements and vector attraction reduction requirements in accordance with the frequency specified in 40 CFR 503.16(a) or N.J.A.C. 7:14A-20.7, as applicable.	NM	
7:14A-20.7(j)	Failure to comply with record keeping requirements of 40 CFR 503.17(9a) and N.J.A.C. 7:14A-20.7.	NM	
7:14A-20.7(k)	Failure to comply with the reporting requirements of N.J.A.C. 7:14A-20.7.	NM	
7:14A-20.7(l)	Failure of an out-of-State generator that transports residual into the State to be land applied to comply with all applicable requirements for the land application of residuals pursuant to N.J.A.C. 7:14A and the notice requirements in N.J.A.C. 7:14A-20.7.	NM	
7:14A-20.8(a)	Storage of sewage sludge for more than six months on the land.	NM	
7:14A-20.8(b)	Failure of an owner and/or operator of a sewage sludge surface disposal site to submit a surface disposal site closure plan in accordance with the requirements of N.J.A.C. 7:14A-20.8(d).	M	60 days
7:14A-20.8(c)	Failure of the operating entity for a closed surface disposal site to comply with required management practices.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-20.11(a)	Failure of the person who prepares residual to ensure that all residual accepted for processing is compatible with the applicable residual quality limitations.	NM	
7:14A-20.11(b)	Failure to comply with provisions for accepting residual that does not meet the residual quality limitations, when the residual is to be blended with other residual and the final residual applied to the land.	NM	
7:14A-21.2(a)1	Discharging by an indirect user into a local agency's treatment works waste that is prohibited under 40 CFR Part 403.5.	NM	
7:14A-21.2(a)2	Discharging by an indirect user into a local agency's treatment works waste above the State pretreatment standards for petroleum hydrocarbons.	NM	
7:14A-21.2(a)3	Discharging by an indirect user into a local agency's treatment works waste above a local limit developed by the local agency.	NM	
7:14A-21.3(b)	Failure of an indirect user subject to a categorical pretreatment standard to submit to the control authority a baseline report.	NM	
7:14A-21.3(c)	Failure of an indirect user to comply with a categorical pretreatment standard.	NM	
7:14A-21.3(d)	Failure of an indirect user to comply with a compliance schedule for meeting categorical pretreatment standard.	NM	
7:14A-21.3(e)	Failure of an indirect user to submit to the control authority within 90 days a compliance report.	NM	
7:14A-21.3(f)	Failure of an indirect user to submit to the control authority periodic compliance reports.	NM	
7:14A-21.3(g)1	Failure of an indirect user or control	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation authority to submit an acceptable compliance report including the information outlined in N.J.A.C. 7:14A-21.3.	Type of Violation	Grace Period
7:14A-21.3(g)2	Failure of an indirect user to notify the control authority within 24 hours of becoming aware of the violation of pretreatment standard.	NM	
7:14A-21.3(g)3	Failure of an indirect user or control authority to conduct acceptable sampling and analysis required for compliance reporting.	NM	
7:14A-21.3(g)4	Failure of an indirect user or control authority to conduct analysis in accordance with procedures contained in 40 CFR Part 136, as amended, or with any other test procedures approved by the Department.	NM	
7:14A-21.3(g)5	Failure of an indirect user to include in its compliance report the results of monitoring that was performed more frequently than required by the control authority.	NM	
7:14A-21.3(i)	Failure of indirect user to notify the local agency, the USEPA Regional Waste Management Division Director, and the Department's Division of Solid and Hazardous Waste in writing of any discharge into the local agency's treatment works of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261.	NM	
7:14A-21.3(j)	Failure of indirect user to notify the local agency in advance of any substantial change in the volume or character of pollutants in its discharge.	NM	
7:14A-21.4(a)6	Failure of indirect user to notify the control authority that production level will significantly change within the next calendar month.	NM	
7:14A-21.4(b)	Dilution of a discharge, by an indirect user without authorization, as a partial	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement.	Type of Violation	Grace Period
7:14A-21.4(c)	Failure of an indirect user to comply with the alternative categorical daily maximum and monthly average or consecutive sampling day limits fixed by the control authority, in the indirect user's permit.	NM	
7:14A-21.6(a)	Failure to prohibit a bypass that caused pretreatment standards to be violated, and was not essential maintenance to ensure efficient operation.	NM	
7:14A-21.6(b)	Failure of an indirect user to give prior notice of a bypass to the control authority.	NM	
7:14A-21.6(c)	Bypass by an indirect user, which bypass did not meet the conditions of N.J.A.C. 7:14A-21.6.	NM	
7:14A-21.7	Failure of indirect user to obtain an IPP permit from that delegated local agency.	NM	
7:14A-21.8	Failure of an indirect user to obtain an individual NJPDES-SIU permit from the Department.	NM	
7:14A-22.2(i)	Permitting, approving or otherwise allowing the installation, modification or operation of any facility or activity that violates the terms, conditions and requirements of this subchapter.	NM	
7:14A-22.3(a)1	Building, installing, modifying, or operating any treatment works including, but not limited to, sewer extensions, sewer interceptors, domestic and industrial wastewater treatment systems, holding tanks, equalization tanks and wastewater treatment and recycling systems, except in conformance with a valid treatment works approval from the Department.	NM	
7:14A-22.3(a)2	Building, installing, modifying or	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	operating any sewer line, pumping station or force main that serves more than two buildings or will convey 8,000 gallons per day or more of flow to a treatment works, except in conformance with a valid treatment works approval from the Department.		
7:14A-22.3(a)3	Building, installing, operating or modifying any residuals treatment units, including, but not limited to, facilities for composting, heat drying, thickening, digestion, air drying, thermal reduction, dewatering and storage of sludge except in conformance with a valid treatment works approval from the Department.	NM	
7:14A-22.3(a)4	Building, installing, operating or modifying any domestic or industrial treatment works that discharges directly to the surface water or ground water of the State, with the exception of individual subsurface disposal systems exempted pursuant to N.J.A.C. 7:14A-22.4(a)3 except in conformance with a valid treatment works approval from the Department.	NM	
7:14A-22.3(a)5	Building, installing, operating or modifying any industrial treatment works located in any area of the State where the Department is the control authority (non-delegated area) for an industrial pre-treatment program pursuant to 40 CFR 403 and N.J.A.C. 7:14A-19, except in conformance with a valid treatment works approval from the Department.	NM	
7:14A-22.5(b)	Construction, installation, modification or operation of a treatment works in a manner inconsistent with the terms and conditions of the Department's approval.	NM	
7:14A-22.5(f)	Failure of an applicant and any owner or operator of a treatment works to provide notice of the terms and conditions of any existing treatment works approval to a prospective purchaser of the treatment works.	M	30 days

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-22.5(j)	Failure to construct a treatment works in a manner consistent with the provisions of the appropriate wastewater management plan.	NM	
7:14A-22.5(k)	Failure to comply with emergency approval requirements.	NM	
7:14A-22.8	Failure to comply with the requirements for construction, installation, or modification of a treatment works- Stage II.	NM	
7:14A-22.9(c)	Failure to file a dry/construct only treatment works approval with the appropriate county clerk or failure to keep it filed with the deed of record until a treatment works approval for operation (Stage III) has been issued.	M	30 days
7:14A-22.10(b)	Operation of a "construct and operate" treatment works approval prior to completion of the project, inspection and approval of the facilities by the licensed professional engineer overseeing the construction, approval by the local municipality or sewerage authority, and submission to the Department of Form WQM005.	NM	
7:14A-22.10(c)	Operation of a stage II (construct only) treatment works prior to issuance of a stage III treatment works approval.	NM	
7:14A-22.15(e)	Failure of the owner of the affected collection system to submit an engineer's report meeting the requirements of N.J.A.C. 7:14A-23.5.	M	60 days
7:14A-22.16(a)	Failure of the participating municipalities and/or sewerage authorities to submit a program containing the items specified in N.J.A.C. 7:14A-22.16(a) to be implemented in order to prevent an overloading of its facility or a violation of its NJPDES permit.	NM	
7:14A-22.16(a)	Failure to implement any requirements of a capacity assurance program.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-22.16(d)	Failure to give public notice of the capacity assurance program in a manner designed to inform local residents, developers, local planning board and other affected persons.	M	90 days
7:14A-22.17(a)	Failure to impose a sewer connection ban in accordance with this N.J.A.C. 7:14A-22, when any one of the events in N.J.A.C. 7:14A-22.17(a)1 through 4 occurs.	NM	
7:14A-22.18	Failure to comply with the procedure for the imposition of a sewer connection ban.	NM	
7:14A-22.19(a)	Failure to adopt exemption criteria at least as stringent as those included in N.J.A.C. 7:14A-22.	NM	
7:14A-22.19(b)	Granting an exemption to any person who subsequently proceeds with a proposed project, without first obtaining all necessary approvals, and thereby increases or creates a self-imposed hardship.	NM	
7:14A-22.21(a)	Failure of a sewerage authority or municipality imposing a sewer connection ban to provide an applicant for an exemption with the documents specified in N.J.A.C. 7:14A-22.21(a).	M	30 days
7:14A-22.22(a)	Granting of a sewer ban exemption for a project that does not meet the required criteria.	NM	
7:14A-22.23	Failure of a sewerage authority or municipality to comply with the delegation requirements for the sewer ban exemption program.	NM	
7:14A-23	Failure to comply with specific criteria and standards set forth in this section for the construction and operation of any treatment works for the collection, conveyance or treatment of domestic or industrial wastes.	NM	
7:14A-24.4(a)	Failure of an operating entity for a stormwater DSW or DGW identified under N.J.A.C. 7:14A-24.4(a)1 through 8 that	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	does not have an effective NJPDES permit authorizing its stormwater discharges to submit a request for authorization for a general NJPDES permit, or an application for an individual NJPDES permit, in accordance with the deadlines in N.J.A.C. 7:14A-24.4(a)1 through 8.		
7:14A-24.7(a)	Failure of an operating entities for stormwater discharges associated with industrial activity or small construction activity (from point or nonpoint sources), and for industrial or commercial stormwater DSW (from point or nonpoint sources) identified under N.J.A.C. 7:14A-24.2(a)1 or 7, to apply for an individual NJPDES DSW permit or request authorization under a final stormwater general NJPDES DSW permit in accordance with the deadlines in N.J.A.C. 7:14A-24.4.	NM	
7:14A-24.7(a)	Failure of an operating entity that is required or seeks to obtain an individual DSW permit to submit an individual permit application in accordance with the requirements of N.J.A.C. 7:14A-4 as modified and supplemented by N.J.A.C. 7:14A-24.7 and N.J.A.C. 7:14A-24.8.	NM	
7:14A-24.7(c)	Failure of an operating entity for stormwater DSW (from point or nonpoint sources) that are identified under N.J.A.C. 7:14A-24.2(a)1 or (a)7, but that are not from industrial or commercial facilities or from small MS4s, to apply for an individual NJPDES DSW permit or request authorization under a final stormwater general NJPDES DSW permit in accordance with the deadlines in N.J.A.C. 7:14A-24.4(a)4.	NM	
7:14A-24.9(a)1	Failure of the permittee of a small municipal separate storm sewer systems subject to N.J.A.C. 7:14A-25.6 or 25.8 to comply with the requirements for evaluation, recordkeeping, and reporting in N.J.A.C. 7:14A-25.6(j) or 25.8(i).	NM	
7:14A-24.9(a)2i	Failure of a permittee for stormwater	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	discharges associated with industrial activity or small construction activity to conduct an annual inspection of the facility.		
7:14A-24.9(a)2ii	Failure of a permittee to prepare a report summarizing the result of the annual inspection conducted under N.J.A.C. 7:14A-24.9(a)2i.	M	30 days
7:14A-24.9(a)2ii	Failure to submit an annual certification that the facility is in compliance with its stormwater pollution prevention plan and the permit.	M	30 days
7:14A-24.9(a)2ii	Failure to identify any incidents of non-compliance in the certification and identify, in the report, the steps being taken to remedy the non-compliance and to prevent such incidents from recurring.	NM	
7:14A-24.9(a)2ii	Failure of the permittee to maintain the inspection report and certification for a period of at least five years from the date of the report.	NM	
7:14A-24.9(a)2iii	Failure to submit an inspection report and certification signed by a person described in N.J.A.C. 7:14A-4.9.	M	30 days
7:14A-24.9(a)2iv	Failure of a permittee that is not required to submit monitoring reports at least annually pursuant to this subsection to report to the Department at least annually all instances of non-compliance not reported under N.J.A.C. 7:14A-6.7, 6.8 and 6.10.	NM	
7:14A-24.9(b)	Failure of the operating entity for a large or medium municipal separate storm sewer system to include in its annual report a summary of data, including monitoring data, that is accumulated throughout the reporting year, in accordance with N.J.A.C. 7:14A-25.10(b) and 40 C.F.R. 122.42(c).	M	60 days
7:14A-25.2(a)1	Failure of the operator of a small MS4 in a Tier A municipality to obtain a NJPDES	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation permit for stormwater discharges.	Type of Violation	Grace Period
7:14A-25.2(a)2	Failure of the operating entity of an MS4 in a public complex located entirely or partially in a Tier A municipality, or in a municipality that receives a waiver under N.J.A.C. 7:14A-25.2(d), to obtain a NJPDES permit for stormwater discharges, if the owner or operator is a county, State interstate, or Federal agency.	NM	
7:14A-25.2(a)3	Failure of an operating entity of an MS4 at a highway or other thoroughfare to obtain a NJPDES permit for stormwater discharges, if the owner or operator is a county, State interstate, or Federal agency.	NM	
7:14A-25.2(a)4	Failure of an operating entity of a special designation under N.J.A.C. 7:14A-25.2(a)4 to obtain a NJPDES permit for stormwater discharges.	NM	
7:14A-25.2(b)	Failure of a municipality that is assigned to Tier B under N.J.A.C. 7:14A-25.3(a)2, and that operates a small MS4 that discharges to surface water or groundwater, to apply for the Tier B Municipal Stormwater Permit under N.J.A.C. 7:14A-25.8.	NM	
7:14A-25.4(a)1	Failure to apply for a permit within 180 days after receipt of notice from the Department that a municipality has been reassigned from Tier B to Tier A, or that a special designation has been made under N.J.A.C. 7:14A-25.2(a)4, unless the Department approves a later date.	M	30 days
7:14A-25.4(a)3	Failure of an entity planning to continue discharging from a small MS4 after the expiration date of its NJPDES permit for that discharge to comply with N.J.A.C. 7:14A-4.2(e)3.	NM	
7:14A-25.5(a)	Failure of an operating entity that is required under N.J.A.C. 7:14A-25.2(a) to apply for a NJPDES permit for stormwater discharges from small MS4s to submit a request for authorization (RFA) under a general NJPDES permit in accordance with	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation N.J.A.C. 7:14A-25.5(a)1, or an application for an individual NJPDES permit under N.J.A.C. 7:14A-25.9.	Type of Violation	Grace Period
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TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14B-2.1(a)	Failure to register a regulated underground storage tank.	NM	
7:14B-2.1(c)	Using a regulated underground storage tank without a valid Registration Certificate.	NM	
7:14B-2.1(d)	Failure to register regulated underground storage tanks systems 30 days prior to use.	NM	
7:14B-2.1(e)	Failure to register a regulated underground storage tank removed on or after September 3, 1986 for the period between September 3, 1986 and the date of removal.	NM	
7:14B-2.1(f)	Failure to register a regulated underground storage tank system before closure activities are begun.	NM	
7:14B-2.2(a)	Failure to file the required registration and certification information on the New Jersey Underground Storage Tank Facility Certification Questionnaire.	NM	
7:14B-2.2(b)	Failure to complete and submit the required registration and certification forms to the Department.	NM	
7:14B-2.2(c)	Failure to complete the New Jersey Underground Storage Tank Facility Certification Questionnaire prior to expiration of the facility's Registration Certificate.	NM	
7:14B-2.2(d)	Failure to supply the information required	NM	

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation in N.J.A.C. 7:14B-2.2(d) during initial registration.	Type of Violation	Grace Period
7:14B-2.2(e)	Failure to supply registration information during the Certificate renewal.	NM	
7:14B-2.2(f)	Failure supply information in accordance with N.J.A.C. 7:14B-2.2(f) if any change in status to the underground storage tank system has been made since the initial registration.	NM	
7:14B-2.4(a)	Failure to submit a Facility Certification Questionnaire reflecting changes to a facility or its ownership as per N.J.A.C. 7:14B-2.4(b), within 30 days after a modification.	M	30 days
7:14B-2.4(c)	Failure to submit a Facility Certification Questionnaire within seven calendar days following closure of a tank system.	M	30 days
7:14B-2.6(a)	Failure to display or make available during the inspection the UST Registration Certificate.	NM	
7:14B-2.7(e)	Failure to cease use of a regulated tank system upon receipt of a Notice from the Department denying or revoking a registration.	NM	
7:14B-4.1(a)1	Failure of a tank installed on or after September 4, 1990 to be properly designed and constructed and have corrosion protection.	NM	
7:14B-4.1(a)2	Failure to properly install, construct and/or operate the corrosion protection system for piping.	NM	
7:14B-4.1(a)3i	Failure to have spill prevention equipment when the transfer hose is detached from the fill pipe.	NM	
7:14B-4.1(a)3ii	Failure to have an overfill device on the tank.	NM	
7:14B-4.1(b)	Failure to provide secondary containment to new underground storage tank systems	NM	

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	installed within a wellhead protection area.		
7:14B-4.2(b)	Failure of a steel tank to have corrosion protection.	NM	
7:14B-4.2(c)	Failure of steel piping to have cathodic protection.	NM	
7:14B-4.2(d)	Failure to have spill prevention equipment on the tank system.	NM	
7:14B-4.2(d)	Failure to have an overfill device on the tank.	NM	
7:14B-5.1(a)	Failure to ensure no spillage or overflow occurs or failure to constantly monitor the transfer operation.	NM	
7:14B-5.1(b)	Failure to use the specified transfer procedures.	NM	
7:14B-5.1(c)	Failure of the owner and/or operator to report, investigate and remediate any spills and overfills in accordance with N.J.A.C. 7:14B-8.	NM	
7:14B-5.1(d)	Failure to ensure proper operation of spill containment equipment.	NM	
7:14B-5.2(a)1	Failure to have a cathodic protection system continuously operational.	NM	
7:14B-5.2(a)2	Failure to test the cathodic protection system within six months of installation and/or every three years thereafter.	NM	
7:14B-5.2(a)3	Failure to inspect the impressed current cathodic protection system every 60 days to ensure the system is on and operating properly.	NM	
7:14B-5.2(a)4	Failure to maintain records of the operation of the corrosion protection system, including all required inspections and tests.	NM	
7:14B-5.4	Failure to obtain a permit from the Department and/or make repairs in	NM	

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation accordance with N.J.A.C. 7:14B-5.4.	Type of Violation	Grace Period
7:14B-5.4(a)5	Failure to test a within six months following the repair of a cathodic protection system.	NM	
7:14B-5.5(a)	Failure to prepare a complete Release Response Plan.	M	30 days
7:14B-5.5(b)	Failure to make the Release Response Plan available for on site inspection.	M	30 days
7:14B-5.6(a) and 5.6(b)	Failure to maintain records of installation (installation checklist), site and remedial investigations, release detection results, tank system repairs, operation of corrosion protection and design of the corrosion protection.	NM	
7:14B-5.7(a)1	Failed to allow the Department to enter upon any property or place of business where an underground storage tank is or might be located or in which monitoring equipment or records required by N.J.A.C. 7:14B are kept, for purposes of inspection, sampling, copying or photographing.	NM	
7:14B-5.8	Failure of owner and/or operator to properly mark the fill ports.	M	30 days
7:14B-5.9(a)	Introduction of a hazardous substance into an underground storage tank that is known or suspected to be leaking or discharging.	NM	
7:14B-5.9(b)	Introduction of a hazardous substance into an underground storage tank that is not properly registered.	NM	
7:14B-6.1(a)	Failure to provide release detection methods that are able to detect a release from any portion of the tank system (tank and piping).	NM	
7:14B-6.2(a)1	Failure to perform appropriate release detection monitoring of the tank.	NM	
7:14B-6.2(a)2	Failure to appropriately monitor the piping.	NM	

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14B-6.2(b)1 and 2	Failed to provide release detection for tanks and piping as required pursuant to N.J.A.C. 7:14B-16.2.	NM	
7:14B-6.3(a)	Failure to provide release detection that meets the requirements of N.J.A.C. 7:14B-6.3(a)2 at new or existing non-petroleum hazardous substance tank systems.	NM	
7:14B-6.4	Failure to properly monitor a tank located within a well head protection area. (Existing tanks [installed before 9-4-90] must monitor monthly; new tanks [installed on or after 9-4-90] must be secondarily contained with interstitial monitoring).	NM	
7:14B-6.5(a)1ii	Failure to take and record daily inventory readings to the nearest 1/8th inch.	M	30 days
7:14B-6.5(a)1vi	Failure to conduct measurement of any water level in the bottom of the tank to the nearest 1/8th of an inch at least once per month.	M	30 days
7:14B-6.6(a)1	Failure to annually test line leak detectors.	M	30 days
7:14B-6.7(a)	Failure to maintain written monitoring instructions.	M	30 days
7:14B-6.7(b)	Failure to keep the written monitoring procedure at the underground storage tank facility and make it available for inspection.	M	30 days
7:14B-6.7(c)	Failure to maintain written documentation of the performance claims of the Release Detection Monitoring System.	M	30 days
7:14B-6.7(d)	Failure to maintain records of all calibration, maintenance and repair of all Release Detection equipment.	M	30 days
7:14B-6.7(e)	Failure to maintain a summary of the results of monitoring of the underground storage tank system and maintenance checks	NM	

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation of the release detection equipment.	Type of Violation	Grace Period
7:14B-6.7(f)	Failure to maintain records of all environmental sampling, tank system testing and monitoring, and monthly inventory reconciliations.	NM	
7:14B-6.7(i)	Failure to maintain on site a certification from a Subsurface Evaluator and/or required documentation from the manufacturer.	M	30 days
7:14B-15.1(b)	Failure to maintain financial assurance for federally regulated underground storage tank systems per 40 CFR Part H.	NM	
7:14B-15.1(c)	Failure to maintain financial assurance, per 40 CFR Part H with the exclusions noted at N.J.A.C. 7:14B-15.3(c), for underground storage tank systems not covered by N.J.A.C. 7:14B-15.1(b), in the amounts listed at N.J.A.C. 7:14B-15.2.	NM	
7:14B-15.1(h)	Failure to identify the financial assurance mechanism used on the Facility Certification Questionnaire; failure to maintain evidence of financial assurance on site and at the owner/operator's place of business; failure to submit evidence of financial assurance to the Department upon request.	M	30 days
7:14B-15.1(i)	Failure of the financial institution to notify the Department in writing within 30 days of the cancellation or expiration of any form of financial assurance.	NM	
7:14B-15.2(a)	Failure to maintain financial responsibility assurance in the required per-occurrence amounts.	NM	
7:14B-15.2(b)	Failure to maintain financial responsibility assurance in the required annual aggregate amounts.	NM	
7:14B-15.2(c)	Failure to maintain financial responsibility assurance in the required annual aggregate or per-occurrence amounts when acquiring or installing additional	NM	

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	underground storage tanks.		
7:14B-15.2(d)	Failure to submit an amended Facility Certification Questionnaire to the Department to demonstrate any adjusted amount of financial responsibility assurance due to acquiring or installing additional underground storage tanks.	M	30 days
7:14B-15.3(b)	Failure to maintain financial assurance for federally regulated underground storage tank systems per 40 CFR Part H.	NM	
7:14B-15.3(c)	Failure to maintain financial assurance, per 40 CFR Part H with the exclusions of surety bond, State required mechanisms, State fund or local government guarantee, for State regulated underground storage tank systems not covered by N.J.A.C. 7:14B-15.3(b), in the amounts listed at N.J.A.C. 7:14B-15.2.	NM	

7:14-8.19 Severability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end, the provisions of the subchapter are declared to be severable.

APPENDIX A

WORDING OF FINANCIAL ASSURANCE DOCUMENTS

LETTER OF CREDIT

A letter of credit required by N.J.A.C. 7:14-8.3(h) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Irrevocable Letter of Credit

New Jersey Department of Environmental Protection
PO Box 422

Trenton, New Jersey 08625-0422

ATTN: Administrator, Water Compliance and Enforcement

RE: [Name of Violator]

Adjudicatory Hearing Request

Dear Sir or Madam:

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.

We hereby establish our irrevocable standby Letter of Credit No. _____ in the favor of the New Jersey Department of Environmental Protection, at the request and for the account of [violator's name and address of facility at which violation occurred] up to the aggregate amount of [in words] U.S. dollars _____, available upon presentation by the New Jersey Department of Environmental Protection of (1) a sight draft, bearing reference to this irrevocable standby Letter of Credit No. _____, and (2) a signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

This Letter of Credit is effective as of [insert month, day, and year] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for period of at least one (1) year on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both NJDEP's Administrator, Water Compliance and Enforcement, PO Box 422, Trenton, New Jersey 08625-0422, and [name and address of violator] by certified mail that we have decided not to extend this Letter of Credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both NJDEP and [name and address of violator], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of violator] or in accordance with your instructions.

We certify that the wording of this Letter of Credit is identical to the wording specified in N.J.A.C. 7:14-8 Appendix A, as such regulations were constituted on [the date shown immediately below].

[Name of issuing institution] shall not cancel this Letter of Credit on the basis of a request from [name violator] until [name of issuing institution] has received written authorization from NJDEP.

This irrevocable standby Letter of Credit is subject to [insert either "the most recent edition of the 'Uniform Customs and Practice for Documentary Credits,' published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any other document, instrument or agreement referred to herein, except for the sight draft and your signed statement referred to herein. Any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such sight draft and signed statement.

Very truly yours,
[Name of Issuing Institution]
[Signature and Title of Official]
[Printed Name of Official]
[Date]"

SURETY BOND

A surety bond guaranteeing payment into a trust fund required by N.J.A.C. 7:14-8.3(h) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Financial Guarantee Bond

RE: ADJUDICATORY HEARING REQUEST
NAME OF VIOLATOR _____
ADDRESS OF FACILITY AT WHICH VIOLATION
OCCURRED _____

Date bond executed: _____

Effective date: _____

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.

Principal: [Legal name and business address of violator]

Type of organization [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: _____

[Insert name of violator, location of facility at which the violation occurred, including street address, lot and block number, municipality and county, and the financial assurance guaranteed by this bond]

Total penal sum of bond: _____

Surety bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection, hereinafter NJDEP, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, the Principal is required to provide financial assurance in the full amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date] pursuant to N.J.A.C. 7:14-8.3(h), and

WHEREAS, the Principal shall establish a standby trust fund as required by N.J.A.C. 7:14-3(h), when a surety bond is used to provide a mechanism for access by NJDEP to assure in the amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date] pursuant to N.J.A.C. 7:14-8.3(h);

NOW, THEREFORE, the conditions of this obligation are such that if the Principal pays the full amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date], then this obligation shall be null and void, otherwise, it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to pay the civil administrative penalty when due and owing. Upon notification by the NJDEP that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the violator into the standby trust fund as directed by the NJDEP.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of the penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEP Administrator, Water Compliance and Enforcement, PO Box 422, Trenton, N.J. 08625; provided, however, the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth below.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording required in N.J.A.C. 7:14-8 Appendix A as constituted on the date the bond was established.

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.

Principal _____

[Signature(s)] _____

Date _____

[Name(s)] _____

[Title(s)] _____

[Corporate seal] _____

[Name and address] _____

State of incorporation: _____

Liability limit: _____

[Signature(s)] _____

Date _____

[Name(s) and title(s)] _____

[Corporate seal] _____

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: _____

STANDBY TRUST AGREEMENT

A Standby Trust Agreement required by N.J.A.C. 7:14-8.3(h) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Standby Trust Agreement

RE: ADMINISTRATIVE CONSENT ORDER

NAME OF VIOLATOR _____

ADDRESS OF FACILITY AT WHICH VIOLATION
OCCURRED _____

This Standby Trust Agreement, hereinafter "Agreement", entered into as of [date] by and between [name and address of the violator], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of" or "a national bank"], hereinafter "Trustee".

WHEREAS, the Grantor is required to provide financial assurance in the full amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date] pursuant to N.J.A.C. 7:14-8.3(h), and

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions

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.

As used in this Agreement:

(a) The term Grantor means the violator who is entering into the administrative consent order with the NJDEP as referenced above, and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Site or Facility at which the Violation(s) referenced in the Administrative Consent Order and Amount of Financial Assurance

This Agreement pertains to the site or facility at which the violation(s) referenced in the Administrative Consent Order and in the full amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date] which is included herein as Attachment A.

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEP. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment of Any Penalty Administrative Consent Order

The Trustee shall make payment from the Fund as the NJDEP Commissioner, or his designee, shall direct, in writing, to provide for the payment of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date]. In addition, the Trustee shall refund the Grantor such amounts the NJDEP specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management

At such time as the corpus of the Fund is funded with more than one dollar, the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEP as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the site or facility at which the violation(s) occurred or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

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 Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

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.

Section 12. Trustee Compensation

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Successor Grantor

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEP with the names and addresses of any and all successors and assigns along with a notarized acknowledgement from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor of NJDEP hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 16. Amendment of Agreement

This agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

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.

Section 19. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management officials, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

DATE: _____ [NAME OF GRANTOR]
By: _____
TITLE: _____

DATE: _____ [NAME OF TRUSTEE]
BY: _____
TITLE: _____

[Grantor shall attach Attachments A and B.]

FULLY FUNDED TRUST

A fully funded trust required by N.J.A.C. 7:14-8.3(h) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Trust Agreement

RE: ADMINISTRATIVE CONSENT ORDER
NAME OF VIOLATOR _____
ADDRESS OF FACILITY AT WHICH VIOLATION
OCCURRED _____

This Fully Funded Trust, hereinafter "Agreement", entered into as of [date] by and between [name and address of the violator], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of" or "a national bank"], hereinafter "Trustee".

WHEREAS, the Grantor is required to provide financial assurance in the full amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date] pursuant to N.J.A.C. 7:14-8.3(h), and

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the violator who is entering into the administrative consent order with the NJDEP as referenced above, and any successors or assigns of the Grantor.

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.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Site or Facility at which the Violation(s)
referenced in the Administrative Consent Order Occurred and Amount
of Financial Assurance

This Agreement pertains to the site or facility at which the violation(s) referenced in the Administrative Consent Order occurred and in the full amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date] which is included herein as Attachment A.

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEP. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment of Any Penalty Administrative Consent Order

The Trustee shall make payment from the Fund as the NJDEP Commissioner, or his designee, shall direct, in writing, to provide for the payment of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date]. In addition, the Trustee shall refund the Grantor such amounts the NJDEP specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management

At such time as the corpus of the Fund is funded, the Trustee shall invest and reinvest principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEP as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the site or facility at which the violation(s) occurred or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

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.

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation

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 Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Successor Grantor

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEP with the names and addresses of any and all successors and assigns along with a notarized acknowledgment from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEP hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 16. Amendment of Agreement

This agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event that the Grantor fails to provide such defense.

Section 19. Choice of Law

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.

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management officials, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

DATE: _____ [NAME OF GRANTOR]
BY: _____
TITLE: _____

DATE: _____ [NAME OF TRUSTEE]
BY: _____
TITLE: _____

[Grantor shall attach Attachments A and B.]

CERTIFICATION OF ACKNOWLEDGMENT

A certification of acknowledgement required by N.J.A.C. 7:14-8.3(h) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATION OF ACKNOWLEDGMENT

(Grantor & Trustee)

ADMINISTRATIVE CONSENT ORDER DATED [date]

NAME OF VIOLATOR _____

ADDRESS OF VIOLATOR _____

ADDRESS OF SITE OR FACILITY AT WHICH VIOLATION OCCURRED

Amount of Financial Guarantee \$ _____

Type of Financial Assurance Posted _____

State of _____

County of _____

On this [date], before me personally came [name of the violator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of the corporation; that the seal affixed to such instru-

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.

ments is such corporate seal; that is so affixed by order of the Board of Directors of the corporation, and that she/he signed her/his name thereto by like other.

[Signature of Notary Public]

APPENDIX A-1

(RESERVED)

APPENDIX A-2

(RESERVED)

APPENDIX A-3

(RESERVED)

APPENDIX A-4

(RESERVED)

APPENDIX A-5

(RESERVED)

APPENDIX B

(RESERVED)

APPENDIX B-1

(RESERVED)

APPENDIX B-2

(RESERVED)

APPENDIX B-3

POLLUTANTS THAT ARE INHIBITORY TO BIOLOGICAL TREATMENT PROCESSES

CAS No.

INORGANIC

POLLUTANTS

14213979	Borate (Boron)
7440473	Chromium
7439965	Manganese
7440622	Vanadium

ORGANIC POLLUTANTS

107186	Allyl alcohol
57067	Allyl isothiocyanate
141435	2-Aminoethanol (mono ethanolamine)
538283	Benzyl thiuronium chloride
4170303	Crotonaldehyde

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97234	Dichlorophen
591355	3,5-dichlorophenol
138896	Dimethylparanitrosoaniline
86566	N,N-dimethyl-1-naphthylamine
593851	Guanidine carbonate
124094	Hexamethylenediamine
148243	8-hydroxyquinoline
556616	Methyl isothiocyanate
867447	Methyl thiuronium sulphate
107197	Propargyl alcohol
83341	Skatole
128041	Sodium dimethyl dithiocarbamate
137428	Sodium methyl dithiocarbamate
137268	Tetramethyl thiuram disulphide
97745	Tetramethyl thiuram monosulphide
79196	Thiosemicarbazide

APPENDIX C

(RESERVED)

APPENDIX D

(RESERVED)

EXHIBIT NO. 5

N.J.S.A. 2A:44-143, 144

(UPDATED THROUGH P.L. 2010, ch. 18, and JR 16 of P.L.2009)

TITLE 2A ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE

2A:44-143. Additional bond for payment of claims for labor, material, etc.; waiver, surety's obligation

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.

EXHIBIT NO. 6

LIST OF DRAWINGS

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

WITCO PROPERTY CONTRACTOR STAGING AREA PROJECT

CONTRACT NO. B074

Index of Drawings

<u>Sheet No.</u>	<u>No.</u>	<u>Total</u>	<u>Title</u>
00 G-001	1	20	Cover Sheet
00 C-101	2	20	Site Plan
00 C-102	3	20	Enlarged Plan of Container Area
99 C-501	4	20	Details I
99 C-502	5	20	Details II
99 S-501	6	20	Details
00 E-001	7	20	Legend, Abbreviations, and General Notes
00 E-002	8	20	Electrical Site Plan
00 E-003	9	20	Electrical Single Line Diagram
00 E-004	10	20	Electrical Site Systems Plan I
00 E-005	11	20	Electrical Site Systems Plan II
00 E-006	12	20	Electrical Site Systems Plan III
00 E-007	13	20	Electrical Site Grounding Plan
00 E-601	14	20	Electrical Riser Diagram
00 E-602	15	20	Electrical Schedules I
00 E-603	16	20	Electrical Schedules II
99 E-501	17	20	Electrical Details I
99 E-502	18	20	Electrical Details II
99 E-503	19	20	Electrical Details III
99 E-504	20	20	Electrical Details IV

SECTION 01010

SUMMARY OF WORK

PART 1 GENERAL

1.01 LOCATION OF WORK

- A. The Passaic Valley Sewerage Commission (PVSC) intends on installing temporary office and restroom containers under Contract B074. This facility is situated in the City of Newark, Essex County on the Witco property, south of the sludge handling facilities of the PVSC WWTP and east of Doremus Avenue.
- B. The work of this Contract is located at Passaic Valley Sewerage Commission, Wastewater Treatment Plant located at 600 Wilson Avenue in the City of Newark, Essex County, New Jersey. The Contractor Staging area is east of Doremus Avenue and South of the PVSC Sludge Handling Facilities.

1.02 SCOPE OF WORK

- A. The PVSC Wastewater Treatment Plant will be the location of multiple construction contracts in the near future. A contractor staging area is being constructed in order to accommodate the necessary staff.
- B. Furnish all labor, materials, equipment and incidentals required to complete the Witco Property Contractor Staging Area in its entirety as shown on the Drawings and as specified herein.
- C. The Work includes, but is not necessarily limited to, the following work:
 - Item 1 Item 1 covers the General Conditions as set forth in the specifications Section 00700 of the Contract Documents.
 - Item 2 Provide and install sixteen (16) 40-foot stackable steel office containers and six (6) 20-foot stackable steel office containers. The containers are to be “stacked” in pairs. Containers to include HVAC equipment, lighting, etc. Upper level containers to be provided with exterior steel stairs, platforms, and handrails.
 - Item 3 Provide and install a 480VAC, 3 phase, 3 wire, 1600 amps switchboard and step down transformers to service each container, as well as all other electrical equipment as shown on the drawings.
 - Item 4 Remove existing electrical pole.
 - Item 5 Provide and install approximately 460 linear feet of jersey barriers to protect the container complex and delineate the parking areas.
 - Item 6 Provide and install approximately 400 linear feet of temporary 4 foot high chain link fencing to delineate parking areas. Provide and install 6 foot fence around electrical equipment as indicated on the drawings.
 - Item 7 Provide and install four (4) 20-foot bathroom containers with exterior steel stairs,

platforms, and handrails.

Item 8 Provide furniture, supplies, and accessories for office containers as specified.

Item 9 Provide tie down earth anchors for all containers to prevent floatation. Anchor length and tensile strength to be as indicated on the drawings.

Item 10 Provide and install exterior lighting for the parking and container areas.

Item 11 Provide two (2) rental 4-cubic yard dumpsters – one for waste and one for recyclables.

Item 12 Provide and install fourteen (14) double sided and twelve (12) single sided warning signs, as indicated on the drawings.

Item 13 Provide and install up to 2,600 cubic yards of dense-graded aggregate as necessary to provide proper foundation for containers, and as needed to keep parking areas and walkways free of mud.

Item 14 Provide and install site lighting.

Item 15 Design, provide and install of Secondary Containment system for the transformer to be provided by PSEG.

Item 15 Allowance for PSEG service including fees, coordination and equipment related to providing electrical service for the staging area (ALLOWANCE BID ITEM)

Item 15 Allowance for telecommunications service including fees, coordination and equipment related to providing data service for the staging area (ALLOWANCE BID ITEM)

Item 16 Allowance for Unforeseen Contingencies. (ALLOWANCE BID ITEM)

1.03 WORK SEQUENCE

- A. Contractor shall accommodate Owner's occupancy during the construction period and ensure completion of the Work in the Contract Time. Completion dates shall be in accordance with the approved construction schedule submitted by the Contractor.

1.04 CONTRACTOR'S USE OF PREMISES

- A. Contractor may store material necessary to complete the Work at PVSC Wastewater Treatment Plant site and shall limit the use of the premises to allow for Owner occupancy and use.
- B. Coordinate use of premises with Owner or Engineer.
- C. Contractor shall assume full responsibility for security of all his/her and his/her subcontractors' materials and equipment stored on the site.
- D. If directed by the Owner or Engineer, move any stored items, which interfere with operations of Owner or other contractors.

- E. Obtain and pay for use of additional storage or work areas if needed to perform the Work.

1.05 OWNER OCCUPANCY

- A. Owner will occupy premises during performance of the work to conduct his/her normal operations. Coordinate all construction operations with Owner or Engineer to minimize conflict and to facilitate Owner usage.

END OF SECTION

SECTION 01025

MEASUREMENT AND PAYMENT

PART 1: GENERAL

1.01 SCOPE OF WORK

- A. The Work shall include furnishing all labor, materials, equipment and incidentals required to complete the work specified herein and shown on the Contract Drawings and all addenda. The Bid Proposal for this Contract is a combination of lump sum costs, unit prices and allowance items.

1.02 WITCO PROPERTY CONTRACTOR STAGING AREA (Bid Item No. 1)

A. Measurement and Payment

1. Measurement for the Witco Property Contractor Staging Area will be on a lump sum basis.
2. Mobilization shall be included as part of the lump sum for this bid item. Refer to Specification Section 01360 (Schedule of Values) for additional information.
3. Payment for the work shall be made at the lump sum price bid on the Bid Form and shall provide full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified in Division 1 to 16 and as shown on the Drawings. Payment shall be complete compensation for mobilization, installation of the office and restroom containers and associated stairs and furniture, site lighting, electrical equipment, fencing, demobilization, and other components required for completion of the work. Payment shall also be full compensation for any other work which is not specified or shown but which is required to complete the work as shown on the Drawings and as specified herein.

1.03 ALLOWANCE FOR PSEG UTILITY CONNECTION (Allowance on a Time and Materials basis) (Bid Item No. 2)

A. Measurement and Payment

1. Measurement for the Allowance for the PSE&G utility connection as specified shall be on an as needed basis as determined by the Owner..
2. Payment for the work shall be made at a price agreed upon by the Owner and shall provide full compensation for electrical utility charges for extension of the Electric Utility distribution system to point of services termination and meters, as required to complete the work as necessary.
 - a. The Allowance as specified is intended to provide for charges by PSE&G for coordination, engineering time and PSE&G supplied equipment required for the completion of the project but is not covered in the contract documents.
 - b. The Allowance as specified is intended to provide for furnishing all labor, material,

equipment and incidentals required of the Contractor in order to facilitate the extension of the Electric Utility Distribution system to point of service termination required for completion of the project but that is not included in the contract documents. This includes, but is not limited to, installation of additional conduit for PSEG service or assistance with new power pole installation, etc., not shown on the contract drawings.

3. Written authorization by the OWNER for utilization of any part of the allowances for any such work shall be required.

1.03 ALLOWANCE FOR EXTERNAL TELECOMMUNICATIONS CONNECTION (Allowance on a Time and Materials basis) (Bid Item No. 3)

A. Measurement and Payment

1. Measurement for the Allowance for the external telecommunication connection and necessary equipment as specified shall be on an as needed basis as determined by the Owner.
2. Payment for the work shall be made at a price agreed upon by the Owner and shall provide full compensation for telecommunications utility charges for providing external telecommunications service to the offices designated for contractor use, as required to complete the work as necessary.
 - a. The Allowance as specified is intended to provide for charges by the telecommunications utility for coordination, engineering time and utility supplied equipment required for the completion of the project but is not covered in the contract documents.
 - b. The Allowance as specified is intended to provide for furnishing all labor, material, equipment and incidentals required of the Contractor in order to facilitate the installation of the telecommunication system required for completion of the project but is not included in the contract documents. This includes, but is not limited to, installation of additional conduit and wiring for telecommunications systems, etc., not shown on the contract drawings.
3. Written authorization by the OWNER for utilization of any part of the allowances for any such work shall be required.

1.05 ADDITIONAL AUTHORIZED WORK (Allowance on a Time and Materials basis) (Bid Item No. 4):

A. Measurement and Payment

1. Measurement for the Allowance for Additional Authorized Work shall be on an as needed basis as determined by the OWNER.
2. Payment for the work shall be made at a price agreed upon by the Owner and shall provide full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as necessary. The Allowance for Additional Authorized Work is intended to provide for work that may later be determined to be necessary for the completion of the project but is not covered in the other bid items. Written authorization by the OWNER for utilization of any part of the allowances for any such work shall be required.

1.06 EXTRA WORK

- A. Extra work, if any, will be performed in accordance with Articles 10, 11 and 12 of the General Conditions of the Contract and will be paid for in accordance with the provisions of those Articles.

PART 2: PRODUCTS (NOT USED)

PART 3: EXECUTION (NOT USED)

END OF SECTION

SECTION 01046

CONTROL OF WORK

PART 1: GENERAL

1.01 CONSTRUCTION EQUIPMENT

- A. Furnish equipment that will be efficient, appropriate and large enough to secure a satisfactory quality of work and a rate of progress that will insure the completion of the work within the Contract Time. If at any time it appears to the Engineer to be inefficient, inappropriate or insufficient for securing the quality of work required or for producing the rate of progress aforesaid, he/she may order the Contractor to increase the efficiency, change the character or increase the plant equipment and the Contractor shall conform to such order. Failure of the Engineer to give such order shall in no way relieve the Contractor of his/her obligations to secure the quality of the work and rate of progress required.

1.02 PIPE LOCATIONS

- A. Pipe locations shall be located substantially as indicated on the Drawings, but the Engineer reserves the right to make such modifications in locations as may be found desirable to avoid interference with existing structures or for other reasons. Where fittings are noted on the Drawings, such notation is for the Contractor's convenience and does not relieve him/her from laying and jointing different or additional items where required.

1.03 CARE AND PROTECTION OF PROPERTY

- A. The Contractor shall be responsible for the preservation of all public and private property and shall use every precaution necessary to prevent damage thereto. If any direct or indirect damage is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work on the part of the Contractor, such property shall be restored by the Contractor, at his/her expense, to a condition similar or equal to that existing before the damage was done, or he/she shall make good the damage in other manner acceptable to the Engineer.

1.04 PROTECTION AND RELOCATION OF EXISTING STRUCTURES AND UTILITIES

- A. The Contractor shall assume full responsibility for the protection of all buildings, structures, and utilities, public or private, including signs, services to buildings, utilities, gas pipes, water pipes, hydrants, sewers, drains and electric and telephone cables, whether or not they are shown on the Drawings. The Contractor shall carefully support and protect all such structures and utilities from injury of any kind. Any damage resulting from the Contractor's operations shall be repaired by him/her at his/her expense.
- B. Protection and temporary removal and replacement of existing utilities and structures as described in this Section shall be a part of the work under the Contract and all costs in connection therewith shall be included in the Price Bid in the Bid Form.
- C. If, in the opinion of the Engineer, permanent relocation of a utility, other than those indicated on the Drawings, is required, he/she may direct the Contractor, in writing, to perform the work. Work so ordered will be paid for at the Contract unit prices, if applicable, or as extra work under Article 6 of the General Conditions. If relocation of a privately owned utility is required, the Owner will notify

the Utility to perform the work as expeditiously as possible. The Contractor shall fully cooperate with the Owner and Utility and shall have no claim for delay due to such relocation.

1.05 CLEANUP AND DISPOSAL OF EXCESS MATERIAL

- A. During the course of the work, the Contractor shall keep the site of his/her operations in as clean and neat a condition as is possible. He/she shall dispose of all residues resulting from the construction work and, at the conclusion of the work, he/she shall remove and haul away any surplus excavation, broken pavement, lumber, equipment, temporary structures and any other refuse remaining from the construction operations and shall leave the entire site of the work in a neat and orderly condition.
- B. In order to prevent environmental pollution arising from the construction activities related to the performance of this Contract, the Contractor and his/her subcontractors shall comply with all applicable Federal, State and local laws and regulations concerning waste material disposal, as well as the specific requirements stated in this Section and elsewhere in the Specifications.

END OF SECTION

SECTION 01110

ENVIRONMENTAL PROTECTION PROCEDURES

PART 1: GENERAL

1.01 SCOPE OF WORK

- A. Furnish all labor, materials and equipment and perform all work required for the prevention of environmental pollution in conformance with applicable laws and regulations, during and as the result of construction operations under this Contract. For the purpose of this Specification, environmental pollution is defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to man; or degrade the utility of the environment for aesthetic and/or recreational purposes; or violate any applicable environmental regulation.
- B. The control of environmental pollution requires consideration of air, water and land, and involves management of noise and solid waste, as well as other pollutants.
- C. Schedule and conduct all work in a manner that will minimize the erosion of soils in the area of the work. Provide erosion control measures such as diversion channels, sedimentation or filtration systems, berms, staked hay bales, seeding, mulching or other special surface treatments as are required to prevent silting and muddying of streams, rivers, impoundments, lakes, etc. All erosion control measures shall be in place in an area prior to any construction activity in that area.
- D. This Specification is intended to ensure that construction is achieved with a minimum of disturbance to the existing ecological balance between a water resource and its surroundings. These are general guidelines. It is the Contractor's responsibility to determine the specific construction techniques to meet these guidelines.
- E. All phases of sedimentation and erosion control shall conform to the requirements outlined in the Standards for Soil Erosion and Sediment Control in New Jersey, latest edition including Addenda.

1.02 APPLICABLE REGULATIONS

- A. Comply with all applicable Federal, State and local laws and regulations concerning environmental pollution control and abatement.

1.03 NOTIFICATIONS

- A. The Engineer will notify the Contractor in writing of any non-compliance with the foregoing provisions or of any environmentally objectionable acts and corrective action to be taken. State or local agencies responsible for verification of certain aspects of the environmental protection requirements shall notify the Contractor in writing, through the Engineer, of any non-compliance with State or local requirements. The Contractor shall, after receipt of such notice from the Engineer or from the regulatory agency through the Engineer, immediately take corrective action. Such notice, when delivered to the Contractor or his authorized representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Owner may issue an order stopping all or

part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time or for excess costs or damages by the Contractor unless it is later determined that the Contractor was in compliance.

1.04 IMPLEMENTATION

- A. Prior to commencement of the work, meet with the Engineer to develop mutual understandings relative to compliance with this provision and administration of the environmental pollution control program.
- B. Remove temporary environmental control features, when approved by the Engineer, and incorporate permanent control features into the project at the earliest practicable time.

PART 2: PRODUCTS - (NONE THIS SECTION)

PART 3: EXECUTION

3.01 ENVIRONMENTAL AND CULTURAL RESOURCE PROTECTION/RESTORATION

- A. These specifications which spell out the environmental and cultural resource protection/restoration shall have precedence over other potentially contradictory language contained elsewhere in the design Contract Documents. [In instances where the provisions of a New Jersey Department of Environmental Protection-issued permit contradict a provision of the specifications (including those identified in Environmental Assessment Requirements for State Assisted Environmental Infrastructure Facilities, N.J.A.C. 7:22-10), the environmental resources protection and/or restoration and cultural resource mitigation measures identified in the Department-issued permit shall govern.]
- B. All activities which are 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.

3.02 EROSION AND SEDIMENT CONTROL

- A. 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, erosion and sediment control measures shall conform to the following:
 - 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 current "Standards for Soil Erosion and Sediment Control in New Jersey." prepared by the New Jersey State Soil Conservation Committee.
 - 3. Disturbed areas that will be exposed in excess of 14 days shall be temporarily seeded and/or mulched until proper weather conditions exist for establishment of a permanent vegetative cover.

3.03 SITE AND ACCESS CLEARING

- A. Site and access clearing must be confined to approved construction areas. Protection of existing vegetation must be practiced wherever possible. At a minimum, site access and clearing measures shall 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 Owner, 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 Owner.
 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. 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 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.
- B. 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.

3.04 RESTORATION MEASURES

- A. The aim of restoration is to restore the disturbed area to a condition as nearly equal to pre-disturbance condition as possible. At a minimum, restoration measures shall conform to the following:

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 New Jersey Department of Environmental Protection.
2. 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 N.J.A.C. 7:22-10.11(1)3. When access roads are no longer needed, road fill shall be removed and the access area shall be restored to pre-disturbance conditions.
3. Care should be taken to avoid damage to adjacent vegetation and to prevent the formation of depressions that would serve as mosquito pools.
4. 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.
5. 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.
6. 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 current "Standards for Soil Erosion and Sediment Control in New Jersey," prepared by the New Jersey State Soil Conservation Committee, incorporated herein by reference, as amended and supplemented.
7. 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.

3.05 PROHIBITED CONSTRUCTION PROCEDURES

A. Prohibited construction 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, 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; and
9. Use of asphaltic mulch binders; and
10. Any unpermitted discharge of sewage.

3.06 WETLANDS

- A. Construction in wetlands shall conform to requirements of the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et. seq., and N.J.A.C. 7:7A; requirements imposed through applicable permits and, at a minimum, the following:
 1. Before excavation is initiated in the wetlands, a line of hay bales or other siltation control barriers shall be staked in place along the edges of the construction area and shall remain in place until restoration is complete. In addition, marsh mats shall be used for heavy construction equipment.
 2. Topsoil shall be stripped and soil layers replaced in the excavated area in the same order that they were removed. Final grade shall match the elevation prior to disturbance.
 3. The cleared easement shall be re-vegetated with a mix and density of species 'similar to that which was removed. Material for vegetation can be preserved from the areas cleared and replanted or provided from nursery stock.
 4. Anti-seep collars shall be installed as needed in the trench to avoid draining the wetland.
 5. Coastal wetland areas disturbed during the construction shall be restored to pre-disturbance conditions by an environmentally oriented concern with documented successful experience in the restoration of wetland areas.

3.07 STREAM CROSSINGS

- A. 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.
- B. Where stream crossings are necessary, adverse impacts shall be minimized by including appropriate mitigating measures and restoration techniques. At a minimum, mitigating measures and techniques shall include the following requirements
 1. Avoid clearing until immediately preceding construction.
 2. Prior to clearing, place staked hay bales across the sloped approach to the crossing and maintain, except during actual crossing, until restoration is complete.
 3. Avoid stockpiling material in the floodplain of the stream.
 4. Set up in-stream sediment controls prior to commencing construction.

5. Complete crossing expeditiously. Consider weather and anticipated stoppages for weekends and holidays and plan to cross at such a time that the work can be continued until complete.
6. Maintain effectiveness of sediment control features throughout the crossing process.
7. Construction through stream corridors, wetlands and other surface waters shall be scheduled to minimize damage to fish populations wherever possible. Recommended periods during which construction is to take place shall be in accordance with N.J.A.C. 7:13-5.6(g) and N.J.A.C. 7:7E.
8. Restoration shall be initiated immediately following the crossing and be completed as soon as possible. Restoration shall conform to the following:
 - a. Re-establishing channel contours.
 - b. Replacing bottom with native material, or in very silty bottoms, with crushed stone (one through three-inch diameter).
 - c. Stabilizing banks with rip-rap. The size and nature of the rip-rap shall conform to the current "Standards for Soil Erosion and Sediment Control in New Jersey", prepared by the New Jersey State Soil -Conservation Committee. Jute mesh may be used to stabilize intermittent or extremely low flow streams with shallowly sloping banks in sand/silt bottomed streams.
 - d. Re-vegetating banks with appropriate native materials such as grasses, ground covers, trees and shrubs.

3.08 STEEP SLOPES

- A. Slopes exceeding 15 percent require special treatment. Measures such as water diversion berms, sodding, or the use of jute or excelsior blankets should be used as appropriate. 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.

3.09 ACID PRODUCING SOILS

- A. If there is a possibility of encountering acid-producing deposits in the course of construction, as identified during the planning process, the following special requirements and conditions will apply:
 1. In vegetated areas, the top two feet of soil shall be stripped and stockpiled separately from the material to be excavated. A soil specialist, to be provided by the Owner, 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:
 - a. 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.

- b. 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 Owner and the New Jersey Department of Environmental Protection. 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:
 - a. Lower material first, followed by upper material.
 - b. 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.
 - c. 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 the "Restoration Measures."
 - d. 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.
 - e. 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.

- a. The sample shall be air dried and ground so that the whole sample passes a 0.5-millimeter sieve.
 - b. 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.
 - c. The total lime requirement determined by this method can be extrapolated to the area under consideration.
8. At 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.

3.10 DEWATERING

- A. 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 Owner and the New Jersey Department of Environmental Protection. 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.

3.11 STOCKPILING, STORAGE, AND DISPOSAL

- A. Requirements with regard to the location and control of stockpile, storage and disposal areas, whether provided by the Owner 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 all stockpile areas 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 pre-construction grade, unless otherwise specifically approved by the Owner and the New Jersey Department of Environmental Protection. The Contractor shall remove the remainder from the site and dispose of it at a site approved by the Owner in accordance with the following:
 - a. Disposal sites selected by the Contractor shall be evaluated and approved by the Owner prior to their use. Disposal sites may also be selected by the Owner. The Owner may conduct periodic inspection of disposal sites to ensure compliance with the requirement of this subsection during the off-site disposal operation.
 - b. 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.
 - c. The Contractor shall be responsible to remove any fill improperly placed by the Contractor at the Contractor's expense and restore the area impacted.
 - d. If excess excavated material is placed on private property, a hold harmless release in favor of the Owner and New Jersey Department of Environmental Protection shall be obtained from the property owner.
 - e. Prior to approval of a site for excess excavated material disposal, where the site exceeds 5,000 square feet, the Contractor shall obtain 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) and submit same to Owner. Where the site is less than 5,000 square feet, the Contractor shall on behalf of and with a copy to Owner 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.

3.12 DUST

- A. 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 affected thereby) shall be swept and wet down with water sufficiently to lay dust. In addition, these areas shall be wet down during non-working 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.
- B. Maintain dust control throughout entire construction period including non-working hours (including weekends) by use of water sprinklers as approved by Engineer. Coatings on structures located on private property, resulting from failure to control dust, will be removed promptly at no additional expense.
- C. The Contractor will be required to maintain all excavations, embankment, stockpiles, access roads, plant sites, waste areas, borrow areas, and all other work areas within or without the

project boundaries free from dust which could cause the standards for air pollution to be exceeded, and which would cause a hazard or nuisance to others.

- D. Sprinkling must be repeated at such intervals as to keep all parts of the disturbed area at least damp at all times, and the Contractor must have sufficient competent equipment on the job to accomplish this if sprinkling is used. Dust control shall be performed as the work proceeds and whenever a dust nuisance or hazard occurs, as determined by the Engineer.

3.13 NOISE

- A. 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.
- B. The Contractor shall make every effort to minimize noises caused by his operations. Equipment shall be equipped with silencers or mufflers designed to operate with the least possible noise in compliance with NJAC State and Federal regulations. Boilers shall be equipped with insulated enclosures for noise reduction.

3.14 ENVIRONMENTAL MAINTENANCE BOND

- A. The Contractor shall 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.

3.15 PHOTOGRAPHS

- A. The Contractor shall obtain and submit to the Engineer photographs of existing conditions prior to the start of site and access clearing and construction. At a minimum, one 8 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.. As a supplement to the required photographs, video documentation may be submitted by the Contractor to the Engineer, as is encouraged as a way of documenting site conditions.

3.16 PROTECTION OF STREAMS

- A. Care shall be taken to prevent, or reduce to a minimum, any damage to any stream from pollution by debris, sediment or other material, or from the manipulation of equipment and/or materials in or near such streams. Water that has been used for washing or processing, or that contains oils or sediments that will reduce the quality of the water in the stream, shall not be directly returned to the stream. Such waters will be diverted through a settling basin or filter before being directed into the streams.

- B. The Contractor shall not discharge water from dewatering operations directly into any live or intermittent stream, channel, wetlands, surface water or any storm sewer. Water from dewatering operations shall be treated by filtration, settling basins, or other approved method to reduce the amount of sediment contained in the water to allowable levels.
- C. All preventative measures shall be taken to avoid spillage of petroleum products and other pollutants. In the event of any spillage, prompt remedial action shall be taken.

3.17 PROTECTION OF LAND RESOURCES

- A. Land resources within the project boundaries and outside the limits of permanent work shall be restored to a condition, after completion of construction, which will appear to be natural and not detract from the appearance of the project. Confine all construction activities to areas shown on the Drawings.
- B. Outside of areas requiring earthwork for the construction of the new facilities, the Contractor shall not deface, injure, or destroy trees or shrubs, nor remove or cut them without prior approval. No ropes, cables, or guys shall be fastened to or attached to any existing nearby trees for anchorage unless specifically authorized by the Engineer. Where such special emergency use is permitted, first wrap the trunk with a sufficient thickness of burlap or rags over which softwood cleats shall be tied before any rope, cable, or wire is placed. The Contractor shall in any event be responsible for any damage resulting from such use.
- C. Where trees may possibly be defaced, bruised, injured, or otherwise damaged by the Contractor's equipment, dumping or other operations, protect such trees by placing boards, planks, or poles around them. Monuments and markers shall be protected similarly before beginning operations near them.
- D. Any trees or other landscape feature scarred or damaged by the Contractor's equipment or operations shall be restored as nearly as possible to its original condition. The Engineer will decide what method of restoration shall be used and whether damaged trees shall be treated and healed or removed and disposed of.
 - 1. All scars made on trees by equipment, construction operations, or by the removal of limbs larger than 1-inch in diameter shall be coated as soon as possible with an approved tree wound dressing. All trimming or pruning shall be performed in an approved manner by experienced workmen with saws or pruning shears. Tree trimming with axes will not be permitted.
 - 2. Climbing ropes shall be used where necessary for safety. Trees that are to remain, either within or outside established clearing limits, that are subsequently damaged by the Contractor and are beyond saving in the opinion of the Engineer, shall be immediately removed and replaced.
- E. The locations of the Contractor's storage, and other construction buildings, required temporarily in the performance of the work, shall be cleared portions of the job site or areas to be cleared as shown on the Drawings and shall require written approval of the Engineer and shall not be within wetlands or floodplains. The preservation of the landscape shall be an imperative consideration in the selection of all sites. Drawings showing storage facilities shall be submitted for approval of the Engineer.

- F. If the Contractor proposes to construct temporary roads or embankments and excavations for plant and/or work areas, he shall submit the following for approval at least ten days prior to scheduled start of such temporary work.
1. A layout of all temporary roads, excavations and embankments to be constructed within the work area.
 2. Details of temporary road construction.
 3. Drawings and cross sections of proposed embankments and their foundations, including a description of proposed materials.
 4. A landscaping drawing showing the proposed restoration of the area. Removal of any trees and shrubs outside the limits of existing clearing area shall be indicated. The drawing shall also indicate location of required guard posts or barriers required to control vehicular traffic passing close to trees and shrubs to be maintained undamaged. The drawing shall provide for the obliteration of construction scars as such and shall provide for a natural appearing final condition of the area. Modification of the Contractor's approved drawings shall be made only with the written approval of the Engineer. No unauthorized road construction, excavation or embankment construction including disposal areas will be permitted.
- G. Remove all signs of temporary construction facilities such as haul roads, work areas, structures, foundations of temporary structures, stockpiles of excess of waste materials, or any other vestiges of construction as directed by the Engineer. Restore disturbed areas as shown on the Drawings and/or as specified.
- H. All debris and excess material will be disposed of outside wetland or floodplain areas in an environmentally sound manner.

3.18 PROTECTION OF AIR QUALITY

- A. Burning. The use of burning at the project site for the disposal of refuse and debris will not be permitted.
- B. Dust Control. Refer to Article 3.12 of this Section.
- C. Odors that emanate from open manholes shall be mitigated by ventilating manholes with forced-air blowers. If necessary to correct the problem upstream and downstream manholes shall also be ventilated.

3.19 MAINTENANCE OF POLLUTION CONTROL FACILITIES DURING CONSTRUCTION

- A. During the life of this Contract, maintain all facilities constructed for pollution control as long as the operations creating the particular pollutant are being carried out or until the material concerned has become stabilized to the extent that pollution is no longer being created.

END OF SECTION

SECTION 01170

SPECIAL PROVISIONS

PART 1 GENERAL

1.01 SLEEVES AND OPENINGS

- A. Provide all openings, channels, chases, etc and install anchor bolts and other items to be embedded in concrete, as required to complete the work under this Contract, together with those required by subcontractors and perform all cutting and patching, excepting cutting and patching of materials of a specified trade and as stated otherwise in the following paragraph.
- B. Subcontractors shall furnish all sleeves, inserts, hangers, anchor bolts, etc, required for the execution of their work. It shall be their responsibility before the work of the Contractor is begun to furnish him with the above items and with templates, drawings or written information covering chases, openings, etc, which they require and to follow up the work of the Contractor as it progresses, making sure that their drawings and written instructions are carried out. Failing to do this, they shall be responsible for the cost of any corrective measures which may be required to provide necessary openings, etc. If the Contractor fails to carry out the directions given him, covering details and locations of openings, etc, he shall be responsible for any cutting and refinishing required to make the necessary corrections. In no case shall beams, lintels, or other structural members be cut without the approval of the Engineer.

1.02 SPARE PARTS

- A. Furnish all spare parts recommended by the manufacturer or system supplier for one year of service. In addition, furnish all spare parts itemized in each Section.
- B. Collect and store all spare parts in an area to be designated by the Engineer. Furnish the Engineer with an inventory listing all spare parts, the equipment they are associated with, the name and address of the supplier and the delivered cost of each item. Copies of actual invoices for each item shall be furnished with the inventory to substantiate the delivery cost.
- C. Spare parts shall be packed in cartons, properly labeled with indelible markings with complete descriptive information including manufacturer, part number, part name and equipment for which the part is to be used and shall be properly treated for one year of storage.
- D. A Spare Parts Turnover Form shall be completed for each piece of equipment provided for this project. The Form to be completed is appended to this section.

END OF SECTION

**Passaic Valley Sewerage Commission
Material Control Department
Contract Spare Parts, Equipment & Supplies**

Equipment Information:
Model:
Serial No.:
Size:
Type:

[illegible]

SECTION 01300

SUBMITTALS

PART 1 - GENERAL

1.01 Description of Requirements:

- A. This section specifies the general methods and requirements of submissions applicable to the following work-related submittals: Shop Drawings, Product Data, Samples, Maintenance and Lubrication Schedule/Survey, Certified Shop test Reports, Equipment Manufacturers certification and Mock-Ups. Additional general submission requirements are contained in paragraphs 6.17 of the General Conditions. Detailed submittal requirements will be specified in the technical specification sections.
- B. All submittals shall be clearly identified by reference to Specification Section, Paragraph, Drawing No. or Detail as applicable. Submittals shall be clear and legible and of sufficient size for sufficient presentation of data.

1.02 Shop Drawings, Product Data, Samples:

A. Shop Drawings

- 1. Shop drawings, as defined in the General Conditions, and as specified in individual work sections include, but are not necessarily limited to, custom-prepared data such as fabrication and erection/installation (working) drawings, scheduled information, setting diagrams, actual shopwork manufacturing instructions, custom templates, special wiring diagrams, coordination drawings, individual system or equipment inspection and test reports including performance curves and certifications, as applicable to the Work.
- 2. All shop drawings submitted by subcontractors for approval shall be sent directly to the Contractor for checking. The Contractor shall be responsible for their submission at the proper time so as to prevent delays in delivery of materials.
- 3. The Contractor shall check all subcontractor's shop drawings regarding measurements, size of members, materials, and details to satisfy himself that they conform to the intent of the Drawings and Specifications. Shop drawings found to be inaccurate or otherwise in error shall be returned to the subcontractors for correction before submission thereof.
- 4. All details on shop drawings submitted for approval shall show clearly the relation of the various parts to the main members and lines of the structure, and where correct fabrication of the work depends upon field measurements, such measurements shall be made and noted on the drawings before being submitted for approval.

B. Product Data

- 1. Product data as specified in individual Sections, include, but are not necessarily limited to, standard prepared data for manufactured products (sometimes referred to as

catalog data), such as the manufacturer's product specification and installation instructions, availability of colors and patterns, manufacturer's printed statements of compliances and applicability, roughing-in diagrams and templates, catalog cuts, product photographs, standard wiring diagrams, printed performance curves and operational-range diagrams, production or quality control inspection and test reports and certifications, mill reports, product operating and maintenance instructions and recommended spare-parts listing and printed product warranties, as applicable to the work.

C. Samples

1. Samples specified in individual Sections, include, but are not necessarily limited to, physical examples of the work such as sections of manufactured or fabricated work, small cuts or containers of materials, complete units of repetitively-used products, color/texture/pattern swatches and range sets, specimens for coordination of visual effect, graphic symbols and units of work to be used by the Engineer or Owner for independent inspection and testing, as applicable to the work.

1.03 Contractor's Responsibilities

- A. The Contractor shall review shop drawings, product data and samples, including those by subcontractors, prior to submission to determine and verify the following:
 1. Field measurements.
 2. Field construction criteria.
 3. Catalog numbers and similar data.
 4. Conformance with the Specifications.
- B. All submittals, including shop drawings prepared by or under the direction of the Contractor, shall be thoroughly checked by the Contractor for accuracy and conformance to the intent of the Contract Documents before being submitted to the Engineer and shall bear the Contractor's certification with signature of approval certifying that they have been so checked. Submittals without the Contractor's certification with signature of approval, will not be reviewed by the Engineer and will be returned to the Contractor stamped "Rejected." Before submitting them to the Engineer, all submittals shall be bound, properly labeled and consecutively numbered and bear the certification statement, listed below, on the cover sheet for sheets 11" x 17" and smaller or in a clear space above the title block for drawings.

PASSAIC VALLEY SEWERAGE COMMISSION	
NAME OF PROJECT:	Witco Property Contractor Staging Area
Date:	
Contract No.:	B074
Name of Equipment:	
Contract Drawing No.:	
Specification Section:	
<p>I hereby represent that I have determined and verified all field measurements, field construction criteria, materials, dimensions, catalog numbers and similar data and I have checked and coordinated each item with other applicable approved shop drawings and all Contract requirements and they are hereby approved. The information contained herein has been coordinated with all involved Contractor's.</p> <p>Contractor:</p> <p>Signed:</p>	

Provide to the Resident Project Representative a copy of each submittal transmittal sheet for shop drawings, product data and samples at the time of submittal of said drawings, product data and samples to the Engineer.

- C. The Contractor shall utilize a 10-character submittal identification numbering system in the following manner:
1. The first character shall be a D, S, P, M, or R, which represents Shop/Working Drawing and other Product Data (D), Sample (S), Preliminary Submittal (P), Operating/Maintenance Manual (M), or Request for Information (R).
 2. The next five digits shall be the applicable Specification Section Number.
 3. The next three digits shall be the number 001-999 to sequentially number each initial separate item or drawing submitted under each specific Section number.
 4. The last character shall be a letter, A-Z, indicating the submission, or resubmission of the same Drawing, i.e., "A=1st submission, B=2nd submission, C=3rd submission, etc. A typical submittal number would be as follows:

Contract No.-_ B074 _D-03300-008-B

D = Shop Drawing

03300 = Specification Section for Concrete

008 = The eighth initial submittal under this specification section.

B = The second submission (first resubmission) of that particular shop drawing.

- D. Notify the Engineer in writing, at the time of submittal, of any deviations in the submittals from the requirements of the Contract Documents.
- E. The review and approval of shop drawings, samples or product data by the Engineer shall not relieve the Contractor from his/her responsibility with regard to the fulfillment of the terms of the Contract. All risks of error and omission are assumed by the Contractor and the Engineer will have no responsibility therefor.
- F. No portion of the work requiring a shop drawing, sample, or product data shall be started nor shall any materials be fabricated or installed prior to the approval or qualified approval of such item. Fabrication performed, materials purchased or on-site construction accomplished which does not conform to approved shop drawings and data shall be at the Contractor's risk. The Owner will not be liable for any expense or delay due to corrections or remedies required to accomplish conformity.
- G. Project work, materials, fabrication, and installation shall conform with approved shop drawings, applicable samples, and product data.

1.04 Submission Requirements:

- A. Make submittals promptly in accordance with approved schedule, and in such sequence as to cause no delay in the work or in the work of any other contractor.
- B. Each submittal, appropriately coded, will be returned within **21 working days** following receipt of submittal by the Engineer.
- C. Number of submittals required:
 - 1. Shop Drawings as defined in Paragraph 1.02 A: Ten (10) copies.
 - 2. Product Data as defined in Paragraph 1.02 B: Ten (10) copies.
 - 3. Samples: Submit the number stated in the respective Specifications Sections.
- D. Submittals shall conform:
 - 1. The date of submission and the dates of any previous submissions.
 - 2. The project title and number.

3. Contractor identification.
 4. The name of:
 - a. Contractor
 - b. Supplier
 - c. Manufacturer
 5. Identification of the product, with the specification section number, page and paragraph(s).
 6. Field dimensions, clearly identified as such.
 7. Relation to adjacent or critical features of the work or materials.
 8. Applicable standards, such as ASTM or Federal Specification numbers.
 9. Distinct identification of any deviations from Contract Documents.
 10. Identification of revisions or resubmittals.
 11. An 8" x 3" blank space for Contractor and Engineer stamps.
- E. All markings to identify model number, part number, dimension, capacity, etc., shall be reproducible. Highlight markings are unacceptable.

1.05 Review of Shop Drawings, Product Data, Working Drawings and Samples:

- A. The review of shop drawings, data, and samples will be for general conformance with the design concept and Contract Documents. They shall not be construed.
 1. As permitting any departure from the contract requirements;
 2. As relieving the Contractor of responsibility for any errors, including details, dimensions, and materials.
 3. As approving departures from details furnished by the Engineer, except as otherwise provided herein.
- B. The Contractor remains responsible for details and accuracy, for coordinating the work with all other associated work and trades, for selecting fabrication processes, for techniques of assembly, and for performing work in a safe manner.
- C. If the shop drawings, data or samples as submitted describe variations and show a departure from the contract requirements which the Engineer finds to be in the interest of the Owner and to be so minor as not to involve a change in Contract Price or time for performance, the Engineer may return the revised drawings without noting an exception.
- D. Submittals will be returned to the Contractor under one of the following codes:

- Code 1 - “APPROVED” is assigned when there are no notations or comments on the submittal. When returned under this code the Contractor may release the equipment and/or material for manufacture.
- Code 2 - “APPROVED AS NOTED” This code is assigned when a confirmation of the notations and comments IS NOT required by the Contractor. The Contractor may release the equipment or material for manufacture; however, all notations and comments must be incorporated into the final product.
- Code 3 - “APPROVED AS NOTED/CONFIRM” This combination of codes is assigned when a confirmation of the notations and comments is required by the Contractor. The Contractor may release the equipment or material for manufacture; however, all notations and comments must be incorporated into the final product. This confirmation shall specifically address each omission and nonconforming item that was noted. Confirmation is to be received by the Engineer within 15 calendar days of the date of the Engineer’s transmittal requiring the confirmation.
- Code 4 - "APPROVED AS NOTED/RESUBMIT" This combination of codes is assigned when notations and comments are extensive enough to require a resubmittal of the package. The Contractor may release the equipment or material for manufacture; however, all notations and comments must be incorporated into the final product. This resubmittal is to address all comments, omissions and non-conforming items that were noted. Resubmittal is to be received by the Engineer within fifteen (15) calendar days of the date of the Engineer’s transmittal requiring the resubmittal.
- Code 5 - "NOT APPROVED" is assigned when the submittal does not meet the intent of the Contract Documents. The Contractor must resubmit the entire package revised to bring the submittal into conformance. It may be necessary to resubmit using a different manufacturer/vendor to meet the Contract Documents.
- Code 6 - “COMMENTS ATTACHED” is assigned where there are comments attached to the returned submittal which provide additional data to aid the Contractor.

Codes 1 through 5 designate the status of the reviewed submittal with Code 6 showing there has been an attachment of additional data.

- E. Resubmittals will be handled in the same manner as first submittals. On resubmittals the Contractor shall direct specific attention, in writing on the letter of transmittal and on resubmitted shop drawings by use of revision triangles or other similar methods, to revisions other than the corrections requested by the Engineer, on previous submissions. Any such revisions which are not clearly identified shall be made at the risk of the Contractor. The Contractor shall make corrections to any work done because of this type revision that is not in accordance to the Contract Documents as may be required by the Engineer.
- F. Partial submittals may not be reviewed. The Engineer will be the only judge as to the

completeness of a submittal. Submittals not complete will be returned to the Contractor, and will be considered "Not Approved" until resubmitted. The Engineer may at his/her option provide a list or mark the submittal directing the Contractor to the areas that are incomplete.

G. Repetitive Review

1. Shop drawings and other submittals will be reviewed no more than twice at the Owner's expense. All subsequent reviews will be performed at times convenient to the Engineer and at the Contractor's expense, based on the Engineer's then prevailing rates. The Contractor shall reimburse the Owner for all such fees invoiced to the Owner by the Engineer. Submittals are required until approved.
2. Any need for more than one resubmission, or any other delay in obtaining Engineer's review of submittals, will not entitle Contractor to extension of the Contract Time.

H. If the Contractor considers any correction indicated on the shop drawings to constitute a change to the Contract Documents, the Contractor shall give written notice thereof to the Engineer at least seven working days prior to release for manufacture.

I. When the shop drawings have been completed to the satisfaction of the Engineer, the Contractor shall carry out the construction in accordance therewith and shall make no further changes therein except upon written instructions from the Engineer.

1.06 Distribution:

A. Distribute reproductions of approved shop drawings and copies of approved product data and samples, where required, to the job site file and elsewhere as directed by the Engineer. Number of copies shall be as directed by the Engineer but shall not exceed six.

1.07 Maintenance and Lubrication Schedule/Survey

For all items of equipment furnished, the Contractor shall provide a list including the equipment name, and address and telephone number of the manufacturer's representative and service company so that service and/or spare parts can be readily obtained. In addition, a maintenance and lubrication schedule for each piece of equipment shall be submitted with the shop drawings. Submission shall be in ten (10) copies. The schedules shall be in the form indicated below:

Typical Maintenance Schedule

Item	Action	Frequency	Remarks
Motors	Check cleanliness	As required	Motor exterior to be kept clean. Keep air intake openings free of foreign material and do not block air outlet.
	Removal of accumulated moisture	As required	Remove plug in motor frame to drain moisture.

Check insulation
resistance

Annually

See manufacturer operation
and maintenance manual for
method.

Typical Lubrication Schedule

Item	Action	Frequency	Remarks
Motor Bearings	6 Months	Grease lubricant, Gulf- crown Grease #2 for operating temperatures from 15°F to 300°F	Add grease to inlet, replace inlet plugs, run motor for ½ hour, before replacing drain plug.

* See manufacturer's instructional manual for initial operation instructions (important).

The Contractor shall furnish lubricants for all equipment supplied under this Contract in one delivery consisting of a minimum number of products, reflecting the results of the lubrication survey, as hereinafter specified.

A lubrication survey, made by an independent consultant, subject to the approval of the Engineer shall be provided by the Contractor. A representative of a lubrication supply firm is not acceptable. The lubrication survey shall list all manufacturer's lubrication recommendations and an interchangeable lubricants tabulation standardizing and consolidating lubricants whenever possible. Ten (10) copies of the approved Lubrication Survey shall be furnished prior to final acceptance. All costs for lubricants and lubrication survey shall be included in the lump sum price bid of this Contract.

1.08 Certified Shop Test Reports

Certified shop test data, for equipment not requiring witness shop tests, shall be furnished by the Contractor in accordance with the requirements of the General Conditions. Where witness shop tests are required, the Contractor shall give written notice of the tests and furnish witness shop test reports in accordance with the requirements of the General Conditions. No equipment or material shall be shipped to the Project until the Engineer notifies the Contractor, in writing, that the shop test data or reports are acceptable.

1.09 Manufacturers Certification Form

The Contractor shall submit a certificate, in the form attached to this section, from each equipment manufacturer, certifying that the equipment as installed and tested meets all the requirements of the Contract Documents that it is fully suitable and will function properly for the use intended and within the system called for by the Contract Documents, and that the guarantees as required by this Contract will be in full force and effect.

When the specifications call for "supervision, installation, adjustment, start-up," and words of similar intent, by the manufacturer's factory employed technicians or manufacturer's representatives, the Contractor shall provide a certificate co-signed by the manufacturer as to compliance with the stipulated requirements.

The final acceptance of any equipment will be withheld, appropriate amount of money will be

retained by the Owner, and the warranty will not commence until such certifications are supplied.

1.10 Professional Engineer (P.E.) Certification Form:

- A. If specifically required in other Sections of these Specifications, the Contractor shall submit a P.E. Certification for each item required, in the form attached to this Section, completed filled in and stamped.

1.11 General Procedures for Submittals:

- A. Coordination of Submittal Times: Prepare and transmit each submittal sufficiently in advance of performing the related work or other applicable activities, or within the time specified in the individual work sections, of the Specifications, so that the installation will not be delayed by processing times including disapproval and resubmittal (if required), coordination with other submittals, testing, purchasing, fabrication, delivery and similar sequenced activities. No extension of time will be authorized because of the Contractor's failure to transmit submittals sufficiently in advance of the work.

1.12 American Iron and Steel Requirements and Procedures for Submittals:

The Contractor shall submit a certificate (on company letterhead), in the sample form attached to this section, for each of the covered iron and steel products noted herein, certifying that the equipment meets with the Implementation of American Iron and Steel provisions of P.L. 113-76, Consolidated Appropriations Act, 2014.

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an "American Iron and Steel (AIS)" requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Federal Fiscal Year 2014.

- A. Covered Iron and Steel Products - For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:
 - a. Lined or unlined pipes or fittings;
 - b. Manhole Covers;
 - c. Municipal Castings (defined in more detail by the Act);
 - d. Hydrants;
 - e. Tanks;
 - f. Flanges;
 - g. Pipe clamps and restraints;

- h. Valves;
- i. Structural steel (defined in more detail below);
- j. Reinforced precast concrete; and
- k. Construction materials (defined in more detail by the Act).

P.E. CERTIFICATION FORM

The undersigned hereby certifies that he/she is a Professional Engineer registered in the State of New Jersey and that he/she has been employed by (Name of Contractor)_____

_____ to design _____
_____ in accordance with Specification Section _____ for
Contract No. B074, Witco Property Contractor Staging Area.
(Contract Title)

The undersigned further certifies that he/she has performed the design of the _____, that said design is in conformance with all applicable local, state and federal codes, rules and regulations, and that his/her signature and P.E. stamp have been affixed to all calculations and drawings used in, and resulting from, the design.

The undersigned hereby agrees to make all original design drawings and calculations available to the Passaic Valley Sewage Commissioners or their representative with seven days following written request therefore by the Owner.

P.E. Name

Signature

Address

Contractor's Name

Signature

Title

EQUIPMENT MANUFACTURER'S CERTIFICATION

Owner: Passaic Valley Sewerage Commission

Project: Witco Property Contractor Staging Area.
(PROJECT TITLE)

Contract No.: B074

EQUIPMENT SPECIFICATION SECTION: _____

EQUIPMENT DESCRIPTION: _____

I _____, authorized representative of
(Print Name)

(Print Manufacturer's Name)

hereby CERTIFY that

(Print Equipment Name & Model with Serial Number))
has been installed in complete accordance with the contract documents and manufacturers
instructions and is satisfactory to _____. The
(Manufacturer)

equipment as installed has been fully tested, operates in accordance with the contract and manufacturer's
specifications, is suitable for its intended use, and is ready for permanent use by the Owner.

CERTIFIED BY: _____

(Date)

(Signature of Manufacturer)

(Print Name and Title)

AMERICAN IRON AND STEEL CERTIFICATION (SAMPLE NO. 01)

The following information is provided as a sample letter of step certification for AIS compliance.
Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (B074 –Witco Property Contractor Staging Area)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. Xxxx
2. Xxxx
3. Xxxx

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

AMERICAN IRON AND STEEL CERTIFICATION (SAMPLE NO. 02)

The following information is provided as a sample letter of certification for AIS compliance.

Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Certification for Project (B074 –Witco Property Contractor Staging Area)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

END OF SECTION

TECHNICAL SPECIFICATIONS FOR THIS PROJECT ARE NOT
REPRINTED HERE DUE TO SIZE