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**WILL COUNTY LAND USE DEPARTMENT  
COMMUNITY DEVELOPMENT DIVISION  
BID PACKAGE FOR CDBG PROJECTS**

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REV. 2/08

WILL COUNTY LAND USE  
COMMUNITY DEVELOPMENT DIVISION  
58 E. Clinton Street Suite 500  
Joliet, IL 60432  
815-774-7890

<http://www.willcountylanduse.com/CommDev/index.html>

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
ADVERTISEMENT FOR BIDS

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

\_\_\_\_\_  
(Owner)

Separate sealed bids for \_\_\_\_\_ for  
\_\_\_\_\_ will  
be received by \_\_\_\_\_  
At the office of \_\_\_\_\_  
until \_\_\_\_\_ o'clock (A.M. \_\_\_\_, P.M. \_\_\_\_, S.T. \_\_\_\_, D.S.T. \_\_\_\_) \_\_\_\_\_, 20 \_\_\_\_,  
and then at said office publicly opened and read aloud.

The Information for Bidders, Form of Bid, Form of Contract, Plans, Specifications, and Forms of Bid Bond, Performance and Payment Bond, and other contract documents may be examined at the following:

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

Copies may be obtained at the office of \_\_\_\_\_  
located at \_\_\_\_\_ upon  
payment of \$ \_\_\_\_\_ for each set. Any unsuccessful bidder, upon returning such set promptly and in good condition, will be refunded his payment, and any non-bidder upon so returning such a set will be refunding \$ \_\_\_\_\_.

The owner reserves the right to waive any informalities or to reject any or all bids.

Each bidder must deposit with his bid, security in the amount, form and subject to the conditions provided in the Information for Bidders.

Attention of bidders is particularly called to the requirements as to conditions of employment to be observed and minimum wage rates to be paid under the contract, Section 3, Segregated Facility, Section 109 and E.O. 11246. Women and Minority Owned Businesses are encouraged to submit proposal.

No bidder may withdraw his bid within 30 days after the actual date of the opening thereof.

\_\_\_\_\_  
(Date)

\_\_\_\_\_

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
INFORMATION FOR BIDDERS

The project for which you are bidding is being funded, in part, with Federal Community Development Block Grant funds. This notice is to inform you that Federal Labor Standards under the Davis-Bacon Act are applicable to this project.

Attached please find U.S. Department of Housing and Urban Development (HUD) Form 4010, which explains the applicable Federal Labor Standards Provisions. Also, please note that the Federal Wage Decision effective on the date of bid opening is the Federal Wage Decision applicable to this project.

1. Receipt and Opening of Bids:

The \_\_\_\_\_ (herein called the "Owner"), invites bids on the form attached hereto, all blanks of which must be appropriately filled. Bids will be received by the Owner at the office of \_\_\_\_\_ until \_\_\_\_\_ o'clock a.m./p.m., ST/DST, \_\_\_\_\_, 20\_\_\_\_, and then at said office publicly opened and read aloud. The envelopes containing the bids must be sealed, addressed to \_\_\_\_\_ at \_\_\_\_\_ and designated as bid for \_\_\_\_\_.

The Owner may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement there considered. No bidder may withdraw a bid within 30 days after the actual date of the opening thereof.

2. Preparation of Bids: Each bid must be submitted on the prescribed form and accompanied by Certification by Bidder Regarding Equal Employment Opportunity, Form HUD-950.1, Certification by Bidder (Contractor) concerning Labor Standards and Prevailing Wage Requirements, Form HUD-1421, and Certification of Bidder Regarding Section 3 and Segregated Facilities. All blank spaces for bid process must be filled in, in ink or typewritten, in both words and figures, and the foregoing Certifications must be fully completed and executed when submitted.

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his/her address, and the name of the project for which the bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the bid form.

3. Subcontracts: The bidder is specifically advised that any person, for, or other party to whom it is proposed to award a subcontract under this contract:

- a. Must be acceptable to the owner after verification by the HUD Area Office of the current eligibility status; and,
  - b. Must submit Form HUD-950.2, Certification by Proposed Subcontractor Regarding Equal Employment Opportunity, Certification by Proposed Subcontractor Concerning Labor Standards and Prevailing Wage Requirements, Form HUD-1422, and Certification of Proposed Subcontractor Regarding Section 3 and Segregated Facilities. Approval of the proposed subcontractor award cannot be given by the Owner unless and until the proposed subcontractor has submitted the Certifications and/or other evidence showing that it has fully complied with any reporting requirements to which it is or was subject. Although the bidder is not required to attach such Certifications by proposed subcontractors to his/her bid, the bidder is here advised of this requirement so that appropriate action can be taken to prevent subsequent delay in subcontract awards.
4. Telegraphic Modifications: Any bidder may modify his/her bid by telegraphic communication at any time prior to the scheduled closing time for receipt of bids, provided such telegraphic communication is received by the Owner prior to the closing time; and, provided further, the Owner is satisfied that a written confirmation of the telegraphic modification over the signature of the bidder was mailed prior to the closing time. The telegraphic communication should not reveal the bid price, but should provide the addition or subtraction or other modification so that the final prices or terms will not be known by the Owner until the sealed bid is opened. If written confirmation is not received within two days from the closing time, no consideration will be given to the telegraphic modification.
5. Method of Bidding: The Owner invites the following bid(s):
6. Qualifications of Bidder: The Owner may make such investigations as he/she deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The 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 contract and to complete the work contemplated therein. Conditional bids will not be accepted.
7. Bid Security: Each bid must be accompanied by cash, certified check, or bank cashier's check in the amount not less than five percent (5%) of the bid. Bid bonds shall be accepted as bid security. Such cash, or checks will be returned to all except the three lowest bidders within three days after the opening of bids, and the remaining cash, or checks will be returned promptly after the Owner and the accepted bidder have executed the contract, or, opening of bids, upon demand of the bidder at any time thereafter, so long as he/she has not been notified of the acceptance of his/her bid.

8. Liquidated Damages for Failure to Enter into Contract: The successful bidder, upon his/her failure or refusal to execute and deliver the contract and bonds required within 10 days after he/she has received notice of the acceptance of his/her bid, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with his/her bid.
9. Time of Completion and Liquidated Damages: Bidder must agree to commence work on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within \_\_\_\_ consecutive calendar days thereafter. Bidder must agree also to pay as liquidated damages, the sum of \$ \_\_\_\_\_ for each consecutive calendar day thereafter as hereinafter provided in the General Conditions.
10. Conditions of Work: Each bidder must inform him/herself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his/her obligation to furnish all material and labor necessary to carry out the provisions of his/her contract. Insofar as possible the contractor, in carrying out the work, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor.
11. Addenda and Interpretations: No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any bidder orally.

Every request for such interpretation should be in writing addressed to:

\_\_\_\_\_ at \_\_\_\_\_ and to be given consideration must be received at least five days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be mailed by certified mail with return receipt requested to all prospective bidders (at the respective addresses furnished for such purposes), not later than three days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his/her bid as submitted. All addenda so issued shall become part of the contract documents.

12. Security for Faithful Performance: Simultaneously with his/her delivery of the executed contract, the Contractor shall furnish a surety bond or bonds as security for faithful performance of this contract and for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract, as specified in the General Conditions included herein. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to the Owner.

13. Power of Attorney: Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.
14. Notice of Special Conditions: Attention is particularly called to those parts of the contract documents and specifications which deal with the following:
  - a. Inspection and testing of materials.
  - b. Insurance requirements.
  - c. Wage rates.
  - d. Stated allowances.
15. Laws and Regulations: The bidder's attention is directed to the fact that all applicable State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full. All bidders are advised that the Contractor shall comply with the DAVIS BACON ACT, (40 USC 276a toa-7), as supplemented by U.S. Department of Labor Regulations (29 CFR, Part 5). Pursuant to the provisions of the conditions of the grant which funds all or a portion of this project, all contractors and subcontractors on this project shall pay all employees at the appropriate prevailing Davis-Bacon rates.
16. Method of Award-Lowest Qualified Bidder: If at the time this contract is to be awarded, the lowest base bid submitted by a responsible bidder does not exceed the amount of funds then estimated by the Owner as available to finance the contract, the contract will be awarded on the base bid only. If such bid exceeds such amount, the Owner may reject all bids or may award the contract on the base bid combined with such deductible alternates applied in numerical order in which they are listed in the Form of Bid, as produces a net amount which is within the available funds.
17. Obligation of Bidder: At the time of the opening of bids, each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the plans and contract documents (including all addenda). The failure or omission of any bidder to examine any form, instrument or document shall in no way relieve any bidder from any obligation in respect of his/her bid.
18. Safety Standards and Accident Prevention: With respect to all work performed under this contract, the contractor shall:
  - a. Comply with the safety standards provisions of applicable laws, building and construction codes and the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970 (Public Law 91-596), and the requirements of Title 29 of the Code of Federal Regulations, Section 1518 as published in the "Federal Register," Volume 36, No. 75, Saturday, April 17, 1971.

- b. Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
  - c. Maintain at his/her office or other well known place at the job site, all articles necessary for giving first aid to the injured, and shall make standing arrangements for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the job site before the employer has made a standing arrangement for removal of injured persons to a hospital or a doctor's care.
19. Performance Bond: A performance and payment bond will be required of the successful binder (contractor) for 100 Percent of the contract price.
20. Contract Progress Schedule: Each bid shall be accompanied by a Contract Progress Schedule. Such Schedule shall list the bidder's timetable for completion of the contract.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HUD-4238-E  
(2-66)  
(Formerly CFA-238-E)

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned,  
\_\_\_\_\_ as Principal, and  
\_\_\_\_\_ as Surety, are hereby held and  
firmly bound unto \_\_\_\_\_ as owner in  
the penal sum of \_\_\_\_\_  
for the payment of which, well and truly 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 \_\_\_\_\_ a certain  
Bid, attached hereto and hereby made a part hereof to enter into a contract in writing, for  
the \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said 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 the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

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

\_\_\_\_\_  
Principal (L.S.)

\_\_\_\_\_  
Surety

SEAL

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

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

BID FOR UNIT PRICE CONTRACTS

Place:

Date:

Project No.:

Proposal of \_\_\_\_\_  
(hereinafter called "Bidder") \* a corporation, organized and existing under the laws of the  
State of \_\_\_\_\_, \* a partnership, or an individual doing business as  
\_\_\_\_\_.

To the \_\_\_\_\_  
(hereinafter called "Owner")

Gentlemen:

The Bidder, in compliance with your invitation for bids for the construction of  
\_\_\_\_\_ having  
examined the plans and specification with related documents and the site of the proposed  
work, and being familiar with all the conditions surrounding the construction of the  
proposed project including the availability of materials and labor, hereby proposes to  
furnish all labor, materials, and supplies, and to construct the project in accordance with  
the contract documents, within the time set forth therein, and at the prices stated below.  
These prices are to cover all expenses incurred in performing the work required under the  
contract documents, of which this proposal is a part.

\*Insert corporation, partnership or individual as applicable.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in written "Notice to Proceed" of the Owner and to fully complete the project within \_\_\_\_\_ consecutive calendar days thereafter as stipulated in the specifications. Bidder further agrees to pay as liquidated damages the sum of \$\_\_\_\_\_ for each consecutive calendar day thereafter as hereinafter provided in Paragraph 19 of the General Conditions.

Bidder acknowledges receipt of the following addendum:

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Bidder agrees to perform all the road reconstruction work described in the specifications and shown on the plans, for the following unit prices:

Amounts are to be shown in both words and figures. In case of discrepancy, the amount shown in words will govern.

The above unit prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc. to cover the finished work of the several kinds called for.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding

The bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 calendar days after the scheduled closing time for receiving bids.

Upon receipt of written notice of the acceptance of this bid, bidder will execute the formal contract attached within 10 days and deliver and Surety Bond or Bonds as required by Paragraph 29 of the General Conditions. The bid security attached in the sum of \_\_\_\_\_ 10% \_\_\_\_\_.

(\$ \_\_\_\_\_ ) is to become the property of the Owner in the event the contract and bond are not executed within the time above set forth, as liquidated damages for the delay and additional expense to the Owner caused thereby.

Respectfully Submitted:

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

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Business Address &  
Zip Code)

SEAL (If bid is by a Corporation.)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

BID FOR LUMP SUM CONTRACTS

Place:

Date:

Project No.:

Proposal of \_\_\_\_\_ (hereinafter called "Bidder") a \_\_\_\_\_ (State) corporation/a partnership/an individual doing business as \_\_\_\_\_.

To the \_\_\_\_\_ (hereinafter called "Owner")

Gentlemen:

The Bidder, in compliance with your invitation for bids for the construction of a

\_\_\_\_\_ having examined the plans and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies; and to construct the project in accordance with the Contract Documents, within the time set forth therein, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the Contract Documents, of which this proposal is a part.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in written "Notice to Proceed" of the Owner and to fully complete the project within \_\_\_ consecutive calendar days thereafter as stipulated in the specifications. Bidder further agrees to pay as liquidated damages, the sum of \$ \_\_\_\_\_ for each consecutive calendar day thereafter as hereinafter provided in Paragraph 19 of the General Conditions.

Bidder acknowledges receipt of the following addendum:

\_\_\_\_\_ BASE PROPOSAL: Bidder agrees to perform all of the \_\_\_\_\_ work described in the specifications and shown on the plans for the sum of \_\_\_\_\_ (\$ \_\_\_\_\_). (Amount shall be shown in both words and figures. In case of discrepancy, the amount shown in words will govern).

HUD 4238

ALTERNATE PROPOSALS:

Alternate No. 1: \_\_\_\_\_  
 Deduct the sum of \_\_\_\_\_ (\$ \_\_\_\_\_)  
 Alternate No. 2: \_\_\_\_\_  
 Deduct the sum of \_\_\_\_\_ (\$ \_\_\_\_\_)  
 Alternate No. 3: \_\_\_\_\_  
 Deduct the sum of \_\_\_\_\_ (\$ \_\_\_\_\_)  
 Alternate No. 4: \_\_\_\_\_  
 Deduct the sum of \_\_\_\_\_ (\$ \_\_\_\_\_)

UNIT PRICES:

For changing quantities of work item from those indicated by the contract drawings upon written instructions from the architect/engineer, the following unit prices shall prevail:

- 1. \_\_\_\_\_ \$ \_\_\_\_\_
- 2. \_\_\_\_\_ \$ \_\_\_\_\_
- 3. \_\_\_\_\_ \$ \_\_\_\_\_

The above unit prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for. Changes shall be processed in accordance with Paragraph 17(a) of the General Conditions.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

The bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 calendar days after the scheduled closing time for receiving bids.

Upon receipt of written notice of the acceptance of this bid, Bidder will execute the formal contract attached within 10 days and deliver a Surety Bond or Bonds as required by Paragraph 20 of the General Conditions.

The bid security attached in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) is to become the property of the Owner in the event the contract and bond are not executed within the time above set forth, as liquidated damages for the delay and additional expense to the Owner caused thereby.

Respectfully submitted:

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Business Address & Zip Code)

SEAL (If bid is by a corporation)

## Executive Order 11246

EEO and Affirmative Action Guidelines for Federal Contractors Regarding Race, Color, Gender, Religion, and National Origin

### BASIC PROVISIONS

Since 1965, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has been committed to ensuring that Government contractors comply with the equal employment opportunity (EEO) and the affirmative action provisions of their contracts.

OFCCP administers and enforces Executive Order 11246, as amended, which prohibits federal contractors and federally-assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. The Executive Order also requires Government contractors to take affirmative action to insure that equal opportunity is provided in all aspects of their employment.

### AFFIRMATIVE ACTION REQUIREMENTS

Each Government contractor with 50 or more employees and \$50,000 or more in government contracts is required to develop a written affirmative action program (AAP) for each of its establishments.

A written affirmative action program helps the contractor identify and analyze potential problems in the participation and utilization of women and minorities in the contractor's workforce.

If there are problems, the contractor will specify in its AAP the specific procedures it will follow and the good faith efforts it will make to provide equal employment opportunity. Expanded efforts in outreach, recruitment, training and other areas are some of the affirmative steps contractors can take to help members of the protected groups compete for jobs on equal footing with other applicants and employees.

### ENFORCEMENT AND COMPLIANCE

#### **Compliance Reviews**

OFCCP conducts compliance reviews to investigate the employment practices of Government contractors. During a compliance review, a compliance officer examines the contractor's affirmative action program; checks personnel, payroll, and other employment records; interviews employees and company officials; and investigates virtually all aspects of employment in the company.

The investigator also checks to see whether the contractor is making special efforts to achieve equal opportunity through affirmative action. If problems are discovered, OFCCP will recommend corrective action and suggest ways to achieve equal employment opportunity.

### **Complaint Investigations**

Individuals may file complaints if they believe they have been discriminated against by federal contractors or subcontractors. Complaints also may be filed by organizations on behalf of the person or persons affected.

Complaints must be filed within 180 days from the date of the alleged discrimination, although filing time can be extended for a good reason.

If a complaint filed under Executive Order 11246 involves discrimination against only one person, OFCCP will normally refer it to the EEOC. Cases involving groups of people or indicating patterns of discrimination are generally investigated and resolved by OFCCP. Complaints may be filed directly with any of OFCCP's regional or district offices throughout the country, or with OFCCP in Washington, D.C.

### **Compliance Assistance**

To help contractors understand their contractual obligations for EEO and affirmative action, OFCCP provides technical assistance. District office staff offers guidance to contractors on how to develop an affirmative program through company seminars, training programs held in conjunction with industry liaison groups, and one-on-one consultations on affirmative action practices and procedures.

### **Enforcing Contract Compliance**

When a compliance review discloses problems, OFCCP attempts to work with the contractor, often entering into a conciliation agreement. A conciliation agreement may include back pay, job offers, seniority credit, promotions or other forms of relief for victims of discrimination. It may also involve new training programs, special recruitment efforts, or other affirmative action measures.

When conciliation efforts are unsuccessful, OFCCP refers the case to the Office of the Solicitor for enforcement through administrative enforcement proceedings. A contractor cited for violating EEO and affirmative action requirements may have a formal hearing before an administrative law judge.

If conciliation is not reached before or after the hearing, sanctions may be imposed. For example, a contractor could lose its government contracts or subcontracts or be debarred, i.e., declared ineligible for any future government contracts.

**Further Information**

For more information about contract compliance, filing complaints, or compliance assistance, contact any of OFCCP's regional or district offices. All offices are listed in telephone directories under U.S. Department of Labor, Employment Standards Administration, Office of Federal Contract Compliance Programs.

<http://www.dol.gov/esa/regs/compliance/ofccp/fs11246.htm>

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT  
OPPORTUNITY

-----  
INSTRUCTIONS  
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This certification is required pursuant to Executive Order 11246 (30 F R 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

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CERTIFICATION OF BIDDER  
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Name and address of Bidder (include zip code)

-----  
1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.

( ) YES ( ) NO

-----  
2. Compliance reports were required to be filed in connection with such contract or subcontract.

( ) YES ( ) NO

-----  
3. Bidder has filed all compliance reports due under applicable instructions, including SF.100.

( ) YES ( ) NO ( ) NOT REQUIRED

-----  
4. Have you ever seen or are you being considered for sanction due to violation of Executive Order 11246, as amended?

( ) YES ( ) NO

-----  
NAME AND TITLE OF SIGNER (Please type.)

-----  
SIGNATURE

DATE  
-----

CERTIFICATION OF BIDDER REGARDING SECTION 3  
AND SEGREGATED FACILITIES

Project Name:

Project No.:

Name of Prime Contractor:

The undersigned hereby certifies that:

- a. Section 3 provisions are included in the Contract
- b. A written Section 3 plan was prepared and submitted as part of the bid proceedings (if bid equals or exceeds \$10,000.00).
- c. No segregated facilities will be maintained.

\_\_\_\_\_  
Name and Title of Signer (Print or Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## CONTRACTOR

### Section 3 Plan Format

\_\_\_\_\_ agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses within the \_\_\_\_\_.

- A. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the city the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. \* To insert this Section 3 plan in all bid documents, and to require all bidders on subcontracts to submit a Section 3 Affirmative Action Plan including utilization goals and the specific steps planned to accomplish these goals.
- E. \* To insure that contracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. To formally contract unions, subcontractors and trade associations to secure their cooperation for this project.
- G. To insure that all appropriate project area business concerns are notified of pending subcontractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 plan.

\*Loans, grants, contracts and subsidies for less than \$10,000.00 will be exempt.

- J. To list on Table A, information related to subcontracts to be awarded.
- K. To list on Table B, all projected workforce needs for all phases of this project by occupation, trade, skill level and number of positions.

As officers and representative of \_\_\_\_\_  
(Name of Contractor)

We, the undersigned, have read and fully agree to this Affirmative Action Plan, and become a party to the full implementation of this program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



TABLE B

ESTMATED PROJECT WORKFORCE BREAKDOWN

Column 1	Column 2	Column 3	Column 4	Column 5
Job Category	Total Estimated Positions	No. Positions Currently Occupied by Permanent Employees	No. Positions Not Currently Occupied	No. Positions to be Filled with L.I.P.A.R.*
Officers/ Supervisors				
Professionals				
Technicians				
Housing Sales / Rental Management				
Office Clerical				
Service Workers				
Others				

TRADE:

Journeyman				
Helpers				
Apprentices				
Maximum No. of Trainees				
Others				

TRADE:

Journeyman				
Helpers				
Apprentices				
Maximum No. of Trainees				
Others				

TRADE:

Journeyman				
Helpers				
Apprentices				
Maximum No. of Trainees				
Others				
Total				

\* Lower Income Project Area Residents. Individuals residing within the \_\_\_\_\_ of \_\_\_\_\_, whose family income does not exceed 90% of the median income in the SMSA.

\_\_\_\_\_  
COMPANY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CERTIFICATION BY PROPOSED SUBCONTRACTOR REGARDING EQUAL  
EMPLOYMENT OPPORTUNITY

-----  
INSTRUCTIONS  
-----

This certification is required pursuant to Executive Order 11246 (30 F R 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such subcontractor shall be required to submit a compliance report before the owner approves the subcontract or permits work to begin under the subcontract.

-----  
SUBCONTRACTOR'S CERTIFICATION  
-----

Name and address of SUBCONTRACTOR (include zip code)

-----  
5. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.

( ) YES ( ) NO

-----  
6. Compliance reports were required to be filed in connection with such contract or subcontract.

( ) YES ( ) NO

-----  
7. Bidder has filed all compliance reports due under applicable instructions, including SF.100.

( ) YES ( ) NO ( ) NOT REQUIRED

-----  
8. Have you ever seen or are you being considered for sanction due to violation of Executive Order 11246, as amended?

( ) YES ( ) NO

-----  
NAME AND TITLE OF SIGNER (Please type.)

-----  
SIGNATURE

DATE  
-----

CERTIFICATION OF SUBCONTRACTOR REGARDING SECTION 3  
AND SEGREGATED FACILITIES

Project Name:

Project No.:

Name of Subcontractor:

The undersigned hereby certifies that:

- d. Section 3 provisions are included in the Contract
- e. A written Section 3 plan was prepared and submitted as part of the bid proceedings (if bid equals or exceeds \$10,000.00).
- f. No segregated facilities will be maintained.

---

Name and Title of Signer (Print or Type)

---

Signature

---

Date

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM  
 CONTRACTOR'S CERTIFICATION CONCERNING  
 LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS

-----  
 TO (Approved Recipient)

Date

-----  
 C/O

Project Number & Name

- 
1. The undersigned, having executed a contract with: (Name of Contractor) for the construction of the above-identified project, acknowledges that:
    - a. The Labor Standards provisions are included in the aforesaid contract;
    - b. Correction of any infractions of the aforesaid conditions, including infractions by any of his sub-contractors and any lower tier subcontractors, is his responsibility.

-----  
 2. He certifies that:

- 
- a. Neither he nor any firm, corporation, partnership or association in which he had substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(a) of the Regulations of the Secretary of Labor, Part 5 (CFR, Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended [40 U.S.C. 276-2(e)].
  - b. No part of the aforementioned contract has been or will be subordinated to any subcontractor if such sub-contractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

- 
3. He agrees to obtain and forward to the aforementioned recipient within ten days after the execution of any subcontract, including those executed by his subcontractors and any lower tier subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements secured by the subcontractors.

-----  
 He certifies that:

- 
- a. The legal name and the business address of the undersigned are:
  
  - b. The undersigned is:
    1. A Single Proprietorship \_\_\_\_\_
    2. A Partnership \_\_\_\_\_
    3. A corporation organized in the State of \_\_\_\_\_
    4. Other organization (describe) \_\_\_\_\_

-----  
c. The names, titles, and address of the owner, partners, or officer of the undersigned are:

Name                      Title                      Address

---

---

---

---

d. The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interest are (if none, so state):

Name                      Address                      Nature of Interest

---

---

---

---

e. The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are (if none, so state):

Name                      Address                      Trade Classification

---

---

---

---

\_\_\_\_\_  
Contractor (Name & Address)

\_\_\_\_\_  
Date

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

WARNING

U.S. Criminal Code, Section 1010, Title 18 U.S.C., provides in part, "Whoever...makes, processes, or publishes any statement knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years or both."

HUD 1421

## Federal Wage Decision Rates for Will County, Illinois

<http://www.gpo.gov/davisbacon/il.html>

Please note that the Davis-Bacon Federal Wage Decisions are subject to change every Friday. <http://www.wdol.gov/dba.aspx#0>

Go to State: Illinois

County: Will

Construction Types: All

The wage decision in effect on the date of bid opening is the wage decision in effect for the project.

Also please note that no more than 90 days between bid opening and contract award and ***no more than 90 days from contract award to construction start date.*** Should either exceed 90 days, the above wage determinations will need to be updated with an addendum to the municipal/contractor agreement. CFR Title 29 Chapter 1 Part 1.6.

ATTACHMENT TO FEDERAL LABOR STANDARD PROVISIONS

SO-CALLED “ANTI-KICKBACK ACT” AND REGULATIONS PROMULGATED  
PURSUENT THERETO BY THE SECRETARY OF LABOR, UNITED STATES  
DEPARTMENT OF LABOR

Title 18, U.S.C., section 874

(Replaces section 1 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C., Sec. 76b)  
pursuant to the Act of June 25, 1948 (62 Stat. 862)

KICKBACKS FROM PUBLIC WORKS EMPLOYEES

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than \$5,000.00 or imprisoned not more than five years, or both.

SECTION 2 OF THE ACT OF JUNE 14, 1934 AS AMENDED (48 Stat. 948, 62 Stat. 862,  
63 Stat. 108, 72 Stat. 967, 40 U.S.C., sec 276c)

The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall finish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of Title 18 (United States Code) shall apply to such statements.

-XXX-

Pursuant to the aforesaid Anti-Kickback Act, the Secretary of Labor, United States Department of Labor, has promulgated the regulations hereinafter set forth, which regulations are found in Title 29, Subtitle A, Code of Federal Regulations, Part 3. The term “this part”, as used in the regulations hereinafter set forth, refers to part 3 last above mentioned. Said regulations are as follows:

TITLE 29 – LABOR

Subtitle A – Office of the Secretary of Labor

## PART 3 – CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

### Section 3.1 Purpose and Scope

This part describes “anti-kickback” regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with Federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act.

Whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

### Section 3.2 Definitions

As used in the regulation in this part:

- a. The terms “building” or “work” generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of material, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a “building” or “work” within the meaning of the regulations in this part.
- b. The terms “construction”, “prosecution”, “completion”, or “repair” mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employee of the construction

contractor or construction subcontractor, and the manufacturing or furnishing of material, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

- c. The terms “public building” or “public work” include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal Agency.
- d. The term “building” or “work financed in whole or in part by loans or grants from the United States” includes building or work for those construction, prosecution, completion, or repair, as defined above payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term does not include building or work for which Federal assistance is limited solely to loan guarantees or insurance.
- e. Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States is “employed” and receiving “wages”, regardless of any contractual relationship alleged to exist between him and the real employer.
- f. The term “any affiliated person” includes a spouse, child, parent, or any other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary or otherwise, and an officer or agent of such corporation.
- g. The term “Federal Agency” : means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the united States and the District of Columbia, or any of the foregoing department, establishments, agencies, and instrumentalities.

### Section 3.3 Weekly Statement with Respect to Payment of Wages

- a. As used in this section, the term “employee” shall not apply to persons in classifications higher than that of laborer, mechanic and those who are the immediate supervisors of such employees.

- b. Each contractor or subcontractor engaged in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by 29 CFR Parts 3 and 5 during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on form WH 348, "Statement of Compliance," or in an identical form on the back of WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample of WH348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased from the Government Printing Office,
- c. The requirements of this section shall not apply to any contract of \$2,000.00 or less.
- d. Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 F.R. 95, Jan. 4, 1964, as amended at 33 F.R. 10186, July 17, 1968]

#### Section 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

- a. Each weekly statement required under Section 3.3 required under section 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State at the site of the building or work, the statement shall be mailed to the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.
- b. Each contractor subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

#### Section 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor.

- a. Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.
- b. Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide repayment of wages" is considered to have been made only when cash of its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.
- c. Any deductions of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor or any affiliated person, or when collusion or collaboration exists.
- d. Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness,

accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: *Provided, however,* That the following standards are met: (1) the deduction is not otherwise permitted by law; (2) it is either: (i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; (3) no profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and (4) the deductions shall serve the convenience and interest of the employee.

- e. Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.
- f. Any deduction requested by the employee to enable him to repay loans or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- g. Any deductions voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
- h. Any deductions voluntarily authorized by the employee for the making of contributions to Community Chests, united Givers Funds, and similar charitable organizations.
- i. Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: *Provided, however,* That a collective bargaining agreement between the contractor or subcontractor and representatives of

its employees provides for such deductions and the deductions are not otherwise prohibited by law.

- j. Any deduction not more than for the “reasonable cost” of board, lodging, or other facilities meeting the requirements of section 3 (m) of the Fair Labor Standards Act of 1938, as amended, and Part 531 of this title. When such a deduction is made, the additional records required under Section 516.27 (a) of this title shall be kept.

### Section 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under Section 3.5. The Secretary may grant permission whenever he finds that:

- a. The Contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;
- b. The deduction is not otherwise prohibited by law;
- c. The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment between the contractor or subcontractor and representatives of its employees; and
- d. The deduction serves the convenience and interest of the employee.

### Section 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under Section 3.6 shall comply with the requirements prescribed in the following paragraph of this section:

- a. The application shall be in writing to the Secretary of Labor.
- b. The application shall identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions
- c. The application shall state affirmatively that there is compliance with the standards set forth in the provisions of Section 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.
- d. The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.
- e. The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

### **Section 3.8 Action by the Secretary of Labor upon applications.**

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provision of Section 3.6; and shall notify the applicant in writing of his decision.

**Section 3.9 Prohibited payroll deductions.**

Deductions not elsewhere provided for by this part and which are not found to be permissible under Section 3.6 are prohibited.

**Section 3.10 Methods of payment of wages.**

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

**Section 3.11 Regulations part of contract.**

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, is Section 5.5(a) of this subtitle.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM  
 SUBCONTRACTOR'S CERTIFICATION CONCERNING  
 LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS

-----  
 TO (Approved Recipient)

Date

-----  
 C/O

Project Number & Name

- 
1. The undersigned, having executed a contract with: (Name of Contractor/Subcontractor) for (type of work):  
 In the amount of \$ \_\_\_\_\_  
 In the construction of the above-identified project, certifies that:
- a. The Labor Standards Provisions of the Contract for Construction are included in the aforesaid contract.
  - b. Neither he nor any firm, corporation, partnership or association in which he had substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(a) of the Regulations of the Secretary of Labor, Part 5(29 CFR, Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended [U.S.C. 276-2(e)].
  - c. The part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

- 
2. He agrees to obtain and forward to the contractor, for transmittal to the recipient, within ten days after the execution of any lower subcontract, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the lower tier subcontractor, in duplicate.
- a. The workmen will report for duty on or about: (Date) \_\_\_\_\_

- 
3. He certifies that:

The legal name and the business address of the undersigned are:

- b. The undersigned is:
  1. A Single Proprietorship \_\_\_\_\_
  2. A Partnership \_\_\_\_\_
  3. A corporation organized in the State of \_\_\_\_\_
  4. Other organization (describe) \_\_\_\_\_

-----  
c. The names, titles, and address of the owner, partners, or officer of the undersigned are:

Name                      Title                      Address

---

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d. The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interest are (if none, so state):

Name                      Address                      Nature of Interest

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---

e. The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are (if none, so state):

Name                      Address                      Trade Classification

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---

\_\_\_\_\_  
Subcontractor (Name & Address)

\_\_\_\_\_  
Date

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

WARNING

U.S. Criminal Code, Section 1010, Title 18 U.S.C., provides in part, "Whoever...makes, processes, or publishes any statement knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years or both."

HUD 1422

CONTRACT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, herein called "Owner" acting herein through its \_\_\_\_\_ and \_\_\_\_\_  
(Title of Authorized Official)

STRIKE OUT: (a corporation) (a partnership)  
INAPPLICABLE: (an individual doing business as \_\_\_\_\_)  
TERMS \_\_\_\_\_ )  
of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_,  
hereinafter called "Contractor."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned to be made and performed by the OWNER, the CONTRACTOR hereby agrees with the OWNER to commence and complete the construction described as follows:

Hereinafter called the project, for the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and all extra work connected therewith, under the terms as stated in the General and Special Conditions of the Contract; and at his (its or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Proposal, the General Conditions, Supplemental General Conditions and Special Conditions of the Contract, the plans, which include all maps, plats, blue prints, and other drawings and printed or written explanatory matter thereof, the herein entitled the Architect/Engineer, and as enumerated in Paragraph 1 of the Supplemental General Conditions, all of which are made a part hereof and collectively evidence and constitute the contract.

The Contractor hereby agrees to commence work under this Contract on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within \_\_\_\_\_ consecutive calendar days thereafter. The Contractor further agrees to pay, as liquidated damages, the sum of \$\_\_\_\_\_ for each consecutive calendar day thereafter as hereinafter provided in Paragraph 19 of the General Conditions.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Contract, subject to additions and deductions, as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in Paragraph 25, "Payments to Contractor," of the General Conditions.

The CONTRACTOR acknowledges that this Federal Wage Decision is the prevailing wage rate(s) as determined by the United States Government and attest that

these Federal wage rates apply for any wages the Contractor must pay to the employees for work done under contract with Municipality.

The CONTRACTOR acknowledges that all subcontractors who are part of this project are required to pay their employees the same Federal wage rates and that they have been so informed by the Contractor and have adjusted their costs, if necessary to reflect compliance with these standards.

If construction does not start within 90 days of the contract award, the Federal Wage Decision as referenced and attached to this contract/Agreement will need to be updated and an amendment to this contract will be allowed if this occurs.

The CONTRACTOR acknowledges that the project for which the CONTRACTOR has been awarded is being assisted with federal funds and the Federal Labor Standards (HUD 4010) are applicable and shall be enforced by the County of Will, the enforcement agency for the Community Development Block Grant Program. Failure to abide by these standards may jeopardize funding and result in cancellation of any agreement/contract which has been made by CONTRACTOR/OWNER.

IN WITNESS WHEREOF, the parties to these presents have executed this Contract in six (6) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(SEAL)

\_\_\_\_\_  
(Owner)

ATTEST:

\_\_\_\_\_

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

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

(SEAL)

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

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

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

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address & Zip)

NOTE:

Secretary of the Owner should not attest. If Contractor is a corporation, Secretary should attest.

**COMMUNITY DEVELOPMENT**  
**BLOCK GRANT REGULATIONS**

OMB CIRCULAR A-102  
ATTACHMENT B

BONDING AND INSURANCE REQUIREMENTS

A state or local unit of government receiving a grant from the Federal Government which requires contracting for construction of facility improvement shall follow which requires contracting for construction or facility improvement shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds, except for contracts or subcontracts exceeding \$100,000.00. For contracts or subcontracts exceeding \$100,000.00 the Federal agency may accept the bonding policy and requirements of the grantee provided the Federal agency has made a determination that the Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- a. A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his/her bid, execute such contractual documents as may be required within the time specified.
  
- b. A performance bond on the part of the contractor for one hundred percent (100%) of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  
- c. A payment bond on the part of the contractor for one hundred percent (100%) of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CERTIFICATE OF OWNER'S ATTORNEY

I, the undersigned, \_\_\_\_\_, the duly authorized and acting legal representative of \_\_\_\_\_, do hereby certify as follows:

I have examined the attached Contract(s) and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their fully authorized representatives; that said representatives have full power and authority to execute said agreements on the behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

**GENERAL CONDITIONS**

ARTICLE I – DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated, which are applicable to both the singular and plural thereof:

- 1.1 *Addenda* – Written of graphic instruments issued prior to the opening of bids which clarify, correct, or change the Bidding Requirements of the Contract Documents.
- 1.2 *Agreement* – The written contract between the Owner and the Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof and provided therein.
- 1.3 *Application for Payment*- The form accepted by Engineer which is to be used by Contractor in requesting progress or final payment and which is to be accompanied by such supporting documentation as is required by the contract Documents.
- 1.4 *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 1.5 *Bid*- The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.6
- 1.7 *Bidding Documents* – the advertisement or invitation to bid, instructions to bidders, and the bid form
- 1.8 *Bidding Requirements* – The advertisement or invitation to bid, instructions to bidders, and the bid form.
- 1.9 *Bonds* – Performance and Payment Bonds and other instruments of security
- 1.10 *Change Order* – A document recommended by Engineer, which is signed by Contractor and Owner and authorizes an addition, deletion, or revision of the work, or an adjustment in the contract Price or the contract Times issued on or after the Effective Date of the Agreement.
- 1.11 *Contract Documents* – the agreement, Addenda (which pertain to the Contract Documents), Contractor’s Bid (including documentation accompanying the Bid and any post-bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Engineer’s written interpretations and clarifications issued pursuant to paragraphs 3.5, 3.6.1 and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1 and 4.2.2 are not Contract Documents.
- 1.12 *Contract Price* – The moneys payable by Owner to the contractor for completion of the Work in accordance with the contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).
- 1.13 *Contract Times* – The numbers of days or the dates stated in the Agreement (i) to achieve Substantial Completion, (ii) to complete the Work so that it is ready for final payment as evidenced by the Engineer’s written recommendation of final payment is accordance with paragraph 14.13

- 1.14 *Contractor* – The person, firm or corporation with whom the Owner has entered into the Agreement
- 1.15 *defective* – An adjective which when modifying the word Work refers to work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by the Owner at Substantial Completion in accordance with paragraph 14.8 or 14.10).
- 1.16 *Drawings* – The Drawings which show the scope, extent and character of the Work to be furnished and performed by the Contractor and which have been prepared or approved by the Engineer and are referred to in the Contract documents. Shop Drawings are not Drawings as so defined.
- 1.17 *Effective Date of the Agreement* – The date indicated in the Agreement upon which it becomes effective, but if no such date is indicated it means the date upon which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
- 1.18 *Engineer* – The person, firm or corporation named as such in the Agreement.
- 1.19 *Engineer’s Consultant* – a person, firm or corporation having a contract with the Engineer to furnish services as Engineer’s independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.
- 1.20 *Field Order* – A written order issued by the Engineer which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Times.
- 1.21 *General Requirements* – Sections of Division I of the Specifications
- 1.22 *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.
- 1.23 *Laws and Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
- 1.24 *Liens* – Liens, charges, security interests or encumbrances upon real property or personal property.
- 1.25 *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of the Work.
- 1.26 *Notice of Award* – The written notice issued by the Owner to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, Owner will sign and deliver the Agreement.
- 1.27 *Notice to Proceed* – A written notice issued by the Owner to the Contractor (with a copy to the Engineer), fixing the date upon which the Contract Time shall commence to run and on which the Contractor shall begin to perform the Contractor’s obligations as provided in the Contract Documents.
- 1.28 *Owner* – The public body or authority, corporation, association, firm, or person with whom the contractor has entered into the Agreement and for whom the Work is to be provided.
- 1.29 *Partial Utilization* – Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
- 1.30 *PCBs* – Polychlorinated biphenyls

- 1.31 *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 wastes and crude oils.
- 1.32 *Project* – The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part of as indicated elsewhere in the Contract Documents.
- 1.33 *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.
- 1.34 *Resident Project Representative* – The authorized representative of the Engineer who may be assigned to the site or any part thereof.
- 1.35 *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which some portion of the Work will be judged.
- 1.36 *Shop Drawings* – All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for the Contractor and submitted by the Contractor to illustrate some portion of the Work.
- 1.37 *Specifications* – Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
- 1.38 *Subcontractor* – An individual, firm or corporation having a direct contact with the Contractor or with any other subcontractor for the performance of the work at the site.
- 1.39 *Substantial Completion* - The Work (or a specified part thereof) has progressed to the point where, in the opinion of the Engineer as evidenced by the Engineer’s definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by Engineer’s written recommendation of final payment in accordance with paragraph 14.13. The terms “Substantially Complete” and “Substantially Completed” as applied to all or part of the Work refer to the Substantial Completion thereof.
- 1.40 *Supplementary Conditions* – The part of the contract Documents which amends or supplants these General Conditions
- 1.41 *Supplier* – A manufacturer, supplier, fabricator, distributor, material man or vendor having a direct contact with Contractor or with any subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any subcontractor.
- 1.42 *Underground Facilities* – All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, television cables, sewage and drainage removal, traffic or other control systems or water.
- 1.43 *Unit Price Work* – Work to be paid for on the basis of unit prices.
- 1.44 *Work* – The entire completed construction of the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing and incorporating materials and equipment to the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.
- 1.45 *Work Change Directive* – A written directive to Contractor, issued on or after the Effective Date of the Agreement and signed by the Owner and recommended by the

Engineer, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or the emergencies under paragraph 6.23. A Work Change Directive will not change the Contract Price or the contract Times, but is evidence that the Parties expect that the change directed 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, upon the Contract Price or Contract Times as provided in paragraph 10.2

- 1.46 *Written Amendment* – A written amendment of the Contract Documents, signed by the Owner and Contractor on or after the effective date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

## ARTICLE II, PRELIMINARY MATTERS

### *Delivery of Bonds:*

- 2.1.1 When Contractor delivers the executed Agreement to the Owner, the Contractor shall also deliver to Owner such Bonds as Contractor may be required to furnish in accordance with paragraph 5.1

2.1.2 **Additional or Substitute Bond**

If at any time the Owner for justifiable cause shall be or become dissatisfied with any surety or sureties, then upon the Performance or Payment Bonds, the Contractor shall within five (5) days after notice from the Owner so to do, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the Owner.

### *Copies of Documents*

- 2.2 Owner shall furnish to Contractor up to ten copies (unless otherwise specified in the Supplementary Conditions) of the contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

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

- 2.3 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 issued, on the date indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty 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 is earlier.

### *Starting the Work*

- 2.4 Contractor shall start to perform the Work on the date when the Contract Times commence to run, but no work shall be done at the site prior to the date on which the Contract times commence to run.

### *Before Starting Construction*

- 2.5 Before undertaking each part of the Work, the Contractor shall carefully study and compare the contract Documents and check to verify pertinent figures shown thereon and on all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which the Contractor may discover, and shall obtain a written interpretation or clarification from the Engineer before proceeding with any work directed thereby; however, 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 knew or reasonably should have known thereof.
- 2.6 Within ten (10) days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to the Engineer for review:
- 2.6.1 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;
- 2.6.2 a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittals;
- 2.6.3 A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
- 2.7 Before any Work at the site is started, the contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplemental 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 paragraphs 5.4, 5.6 and 5.7.

### *Preconstruction Conference*

- 2.8 Within twenty (20) days after the Contract Times commence, but before any Work at the site is started, a conference attended by the Contractor, the Engineer, the Grant Manager, and any 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 2.6, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

### *Initially Acceptable Schedules*

- 2.9 Unless otherwise provided in the Contract Documents, at least ten (10) days before submission of the first Application for Payment a conference attended by the

Contractor, the Engineer, and others as appropriate will be held to review for acceptability to the Engineer as provided below, the schedules submitted in accordance with paragraph 2.6. The Contractor shall have an additional ten (10) days to make corrections and adjustments and to complete and resubmit the schedules. No progress payments shall be made to the contractor until the schedules are submitted to and accepted by the Engineer as provided below. The progress schedule will be acceptable to the Engineer as providing an orderly progression of the work to completion without any specified milestones and the contract Times, but such acceptance will neither impose upon the Engineer responsibility for the sequencing, scheduling or progress of the Work nor interfere with other or relieve the Contractor from his/her full responsibility therefore. The contractor's schedule of Shop Drawings and Sample submissions will be acceptable to the Engineer as providing a workable arrangement the reviewing and processing the required submittals. The Contractor's schedule of values will be acceptable to the Engineer as to form and substance.

2.10 Time for Completion and Liquidated Damages

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed." The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for completion of the work described herein is a reasonable time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the Owner the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work.

The said amount is fixed and agreed upon by and between the contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever: and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the

Owner. Provided further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- a. To any preference, priority or allocation order duly issued by the Government;
- b. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freights embargoes, and severe weather; and
- c. To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article:  
Provided further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the contract, notify the Owner, in writing, or the causes of the delay, who shall ascertain the facts and extend of the delay and notify the Contractor within a reasonable time of its decision in the matter.

### ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING AND REUSE

#### *Intent*

The Contract Documents comprise the entire Agreement between the Owner and the Contractor concerning the Work. The contract Documents are complementary; what is called for by one is legal and binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

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 Work, materials or equipment that may reasonably be inferred from the contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically enumerated. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the contract documents shall be issued by the Engineer as provided in paragraph 9.4.

#### *Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies:*

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

If, during the performance of the Work, the contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract

Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.5, the Contractor shall report it to the Engineer in writing at once, and, the Contractor shall not proceed with the Work affected thereby (except in the case of emergency as authorized by paragraph 6.23) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.5 or 3.6; provided, however, that the contractor shall not be liable to Owner or Engineer for failure to report any such conflict, error, ambiguity, or discrepancy unless the contractor knew or reasonably should have known thereof.

Except as otherwise specifically stated in the contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5 or 3.6, 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:

- 3.3.3.1 The provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the contract Documents): or
- 3.3.3.2 The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such interpretation of the provisions of the Contract documents would result in a violation of such Laws or Regulations). No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of the Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, not shall it be effective to assign the Owner, Engineer or any of the Engineer's consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty of authority to undertake responsibility inconsistent with the provisions of paragraph 9.13 or any other provision of the Contract Documents.

3.4 Whenever in the contract documents the term "as ordered", "as directed", "as required", "as allowed", "as approved", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of like effect or import are used to describe a requirement, ad direction, review or judgment of the Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed 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 shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing or performance of the Work or any duty of authority to undertake responsibility contrary to the provisions of paragraph 9.13 or any other provision of the contract Documents.

### *Amending and Supplementing Contract Documents*

3.5 The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.5.1 a formal Written Amendment,
- 3.5.2 a Change Order (pursuant to paragraph 10.4), or
- 3.5.3 a Work Change Directive (pursuant to paragraph 10.1).

3.6 In addition, the requirements of the contract Documents may be supplanted and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- 3.6.1 a Field Order (pursuant to paragraph 9.5),
- 3.6.2 Engineer's approval of a Shop Drawing or Sample (pursuant to paragraph 6.26 and 6.27), or
- 3.6.3 Engineer's written interpretation or clarification (pursuant to paragraph 9.4).

### *Reuse of Documents*

3.7 Contractor, and any subcontractor or supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the Owner (i) shall not have nor 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 the Engineer or the Engineer's Consultant, and (ii) shall not reuse any of such Drawings, specifications, other documents or copies on extensions of the Project or any other project without written consent of the Owner and the Engineer and specific written verification or adaptation by the Engineer.

3.8 Equal Employment Opportunity

3.8.1 The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 17010 (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

3.8.2 The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

3.8.3 The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or worker's representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth

- minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- 3.8.4 The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- 3.8.5 The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- 3.8.6 Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 3.8.7 With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) required that to the greatest extent feasible (I) preference and opportunities for training and employment shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
- 3.9 Equal Employment Opportunity
- 3.9.1 The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 17010 (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- 3.9.2 The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- 3.9.3 The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or worker's representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the

- person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- 3.9.4 The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- 3.9.5 The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- 3.9.6 Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 3.9.7 With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) required that to the greatest extent feasible (I) preference and opportunities for training and employment shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

#### ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

##### *Availability of Lands:*

- 4.1 The Owner shall furnish, as indicated In the contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of the Contractor. Upon reasonable written request, Owner shall furnish Contractor with a correct 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 or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations. Owner shall identify any encumbrances or restrictions not of general application bye specifically related to use of lands so furnished with which Contractor will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the Owner unless otherwise provided in the contract Documents. If Contractor and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or Contract Times as a result of any delay in Owner's furnishing these lands, rights-of-way, or easements, Contractor may make a claim therefore as provided in Articles 11 and 12. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

## 4.2 *Subsurface and Physical Conditions:*

4.2.1 Reports and Drawings: Reference is made to the Supplementary Conditions for identification of:

- 4.2.1.1 Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by the Engineer in preparing the Contract Documents; and
- 4.2.1.2 Physical Conditions: Those Drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except underground facilities) that have been utilized by the Engineer in preparing the Contract Documents.

4.2.2 *Limited Reliance by Contractor Authorized; Technical Data:* The Contractor may rely upon the general 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 reliance on such “technical data” the Contractor may not rely upon or make any claim against Owner, Engineer, or any of the Engineer’s consultants with respect to:

- 4.2.2.1 the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by the contractor and safety precautions and programs incident thereto, or
- 4.2.2.2 other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or
- 4.2.2.3 any contractor interpretation of or conclusion drawn from any “technical data” or any such data, interpretations, opinions or information.

4.2.3 *Notice of Differing Subsurface or Physical Conditions:* If the Contractor believes that any subsurface or physical conditions at or contiguous to the site that is uncovered or revealed either:

- 4.2.3.1 is of such a nature as to establish that any “technical data” on which the contractor is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is materially inaccurate, or
- 4.2.3.2 is of such a nature as to require a change in the Contract Documents, or,
- 4.2.3.3 differs materially from that shown or indicated in the Contract Documents, or
- 4.2.3.4 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 conditions affected thereby or performing any Work in connection therewith (except in an emergency as provided by paragraph 6.23), notify Owner and engineer in writing about said condition. The Contractor shall not further disturb such conditions or perform any work in connection therewith (except as foresaid), until receipt of written order to do so is received.

4.2.4 *Engineer’s Review:* The Engineer will promptly review the pertinent conditions, determine the necessity of Owner’s obtaining additional exploratory tests with

respect thereto and advise the Owner in writing, (with copy to the Contractor) of the Engineer's findings and conclusions.

- 4.2.5 *Possible Contract Documents Change:* If the Engineer concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories detailed in paragraph 4.2.3, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the change.
- 4.2.6 *Possible Price and Times Adjustment:* An equitable change in the Contract Price or the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or unrevealed condition causes an increase or decrease in the Contractor's cost of, or time required for the performance of the Work; subject however to the following:

- 4.2.6.1 such conditions must meet any one or more of the categories described in paragraph 4.2.3.1 through 4.2.3.4, inclusive;
- 4.2.6.2 a change in the contract documents pursuant to paragraph 4.2.5 will not be automatic authorization of nor a condition precedent to entitlement to any such adjustment;
- 4.2.6.3 with respect to the Work that is paid for on a Unit Price Basis, any adjustment in the Contract Price will be subject to the provisions of paragraphs 9.10 and 11.9; and
- 4.2.6.4 the contractor shall not be entitled to any adjustment in the Contract Price or Time if;
- 4.2.6.4.1 Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner in respect of the Contract Price and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or
- 4.2.6.4.2 the existence of such conditions could have reasonably been discovered or revealed as a result of any examination, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract documents to be conducted by the Contractor prior to the contractor making such final commitment; or
- 4.2.6.4.3 Contractor failed to provide the written notice within the time and as required by paragraph 4.2.3.

If the Owner and the contractor are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or the Contract Times, a claim may be made therefore as provided in Articles 11 and 12. However, Owner, Engineer and Engineer's Consultants shall not be liable to Contractor for any claims, costs, losses or damages sustained by the Contractor on or in connection with any other project or associated project.

#### 4.3 *Physical Conditions- Underground Facilities:*

- 4.3.1 *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 upon information and data furnished to the Owner or engineer by the owners of such underground facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions.

- 4.3.1.1 The Owner and the Engineer shall not be responsible for the accuracy or completeness of any such information or data: and
- 4.3.1.2 The cost of the following will be included in the Contract Price and the Contractor shall have the full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all underground facilities shown or indicated in the contract Documents, (iii) coordination of the Work with the Owners of such underground facilities during construction, and (iv) the safety and protection of all such underground facilities as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work.
- 4.3.2 *Not Shown or Indicated:* If an underground facility is uncovered or revealed at or contiguous to the site which was not shown nor indicated in the Contract Documents, the contractor shall, promptly after being aware thereof and before further disturbing conditions affected thereby or performing any of the Work in connection therewith (except in an emergency as required by paragraph 6.23), identify the owner of such underground facility and give written notice to said owner and to the Owner and Engineer. The 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 of the Underground Facility. If the Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, Contractor shall be responsible for the safety and protection of said Underground Facility as provided in paragraph 6.20. The Contractor shall be allowed an increase in the Contract price, and extension in the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated 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 the Owner and the Contractor are unable to agree on entitlement to or the amount or length of any such adjustment in the contract Price or the Contract Times, the contractor may make a claim therefore as provided in Articles 11 and 12. However, the Owner, the Engineer, and the Engineer's Consultants shall not be liable to the contractor for any claims, costs, losses, or damages incurred or sustained by the contractor on or in connection with any other project or anticipated project.
- 4.3.3 **Project Staking and Control:**
- 4.3.4 Unless specifically called for in the contract documents, the Engineer shall provide project staking services at Owner's cost. Any damage to construction stakes, or project control by the contractor shall be replaced by the Engineer at Contractor's sole expense.
- 4.3.5 If required by the contract documents, the Contractor shall be responsible for project staking and the Owner shall provide engineering surveys to establish reference points for construction which in the Engineer's judgment are necessary to enable the Contractor to proceed with the Work. The Contractor shall be responsible for laying out the work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written consent of the Owner. In case of damage to control points by the Contractor, he shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

- 4.3.6 The Contractor shall report to the Engineer whenever any reference point or construction stake is lost or destroyed or requires relocation because of necessary changes in grades or locations.

**4.4 Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials:**

- 4.4.1 The Owner shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site which was not shown or indicated in the Drawings or Specifications or identified in the contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. The Owner shall not be responsible for any such materials brought to the site by the Contractor, subcontractor, suppliers or anyone else for whom the Contractor is responsible.

4.5.2 The Contractor shall immediately: (i) stop all Work in connection with such hazardous conditions and in any area affected thereby (except in an emergency as required by paragraph 6.23), and (ii) notify the Owner and the Engineer (and thereafter confirm such contact in writing). The Owner shall promptly consult with the Engineer concerning the necessity for the Owner to retain a qualified expert to evaluate such hazardous conditions or take corrective action, if any. The Contractor shall not be required to resume work in connection with any such hazardous conditions or in any such affected area until after the Owner has obtained any required permits related thereto and delivered to the Contractor special written notice: (i) specifying that such conditions 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 the Owner and the contractor cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of Work stoppage or such special conditions under which work is agreed by the Contractor to be resumed, either party may make a claim therefore as provided in Articles 11 and 12.

- 4.5.3 If after receipt of special written notice the contractor does not agree to resume Work based upon a reasonable belief that it is safe, or does not agree to resume Work under any special conditions, then the Owner may order such portion of the Work that is in connection with such hazardous conditions or in such affected area to be deleted from the work. If the Owner and the contractor cannot agree as to entitlement to or to the amount or extent of an adjustment, if any, in the contract Price or the contract Times as a result of deleting such portion of the work, then either party may make a claim therefore as provided in Articles 11 and 12.. The Owner may have such deleted portion of the work performed by the Owner's own forces or others in accordance with Article 7.

- 4.5.4 To the fullest extent permitted by Laws and Regulations, the Owner shall indemnify and hold harmless the Contractor, subcontractors, the Engineer, the Engineer's Consultant(s), and the officers, directors, employees, agents, assigns, other subcontractors and consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition, provided that: (i) 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 there from, and (ii) nothing in this subparagraph 4.5.4 shall obligate the Owner to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.

## **ARTICLE 5 – BONDS AND INSURANCE**

### *Performance, Payment and Other Bonds*

- 5.1 The Contractor shall furnish all 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 the Contractor's obligations under the contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided By Laws, Regulations, or the Contract Documents. The contractor shall also furnish such other Bonds as are required by the Supplementary Conditions. 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 current list of "companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U. S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- 5.2 If the surety on any Bond furnished by the Contractor is declared a 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 5.1, the Contractor shall, within ten days thereafter, substitute another Bond and surety, both of which must be acceptable to the Owner.

### *5.3 Licensed Sureties and Insurers; Certificates of Insurance*

- 5.3.1 All Bonds and insurance required by the Contract Documents to be purchased and maintained by the Owner or the 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.
- 5.3.2 The Contractor shall deliver to the Owner, with copies to each additional insured identified in the Supplemental Conditions, certificates of insurance (and other evidence or insurance requested by the Owner or any other additional insured) which the Contractor is required to purchase and maintain in accordance with paragraph 5.4. The Owner shall deliver to the Contractor, with copies to each additional insured identified in the Supplemental Conditions, certificates of insurance (and other evidence of insurance requested by the Contractor or any other additional insureds) which the Owner is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7 hereof.

### *Contractor's Liability Insurance:*

- 5.4 The Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnish and as well provide protection from claims set forth below which might arise out of or result from the Contractor's performance and furnishing of the Work and the contractor's other obligations under the Contract Documents, whether it is to be performed or furnished by the contractor, any

subcontractor, supplier, or by anyone directly or indirectly employed by any of those described above obligated to furnish any of the Work, or by anyone for whose acts any of those described above may be liable:

- 5.4.1 claims under worker's compensation, disability benefits and other similar employee benefit acts;
- 5.4.2 claims for damages because of bodily injury, sickness or disease, or death of the Contractor's employees;
- 5.4.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the contractor's employees;
- 5.4.4 claims for damages insured by customary personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (ii) by any other person for any other reason;
- 5.4.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including the loss of use resulting therefrom; and
- 5.4.6 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. The policies of insurance so required by this paragraph 5.4 to be purchased and maintained shall:
- 5.4.7 with respect to insurance required by paragraphs 5.4.3 through 5.4.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) the Owner, the engineer, the Engineer's Consultant(s) and any other persons or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers and employees of all such additional insureds;
- 5.4.8 include the specific coverages and be written for not less than the limits of liability provided in the Supplemental Conditions or required by Laws or Regulations, whichever is greater;
- 5.4.9 include completed operations insurance;
- 5.4.10 include contractual liability insurance covering the Contractor's indemnity obligations under paragraphs 6.12, 6.16 and 6.33;
- 5.4.11 contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed or renewal refused until at least thirty days prior written notice has been given to the Owner and the Contractor and to each other additional insured identified in the Supplemental Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to paragraph 5.3.2 will so provide;
- 5.4.12 remain in effect at least until final payment and at all times thereafter when the Contractor may be correcting, removing or replacing defective Work in accordance with paragraph 13.12; and
- 5.4.13 with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and the Contractor shall furnish the Owner and each other additional insured identified in the Supplemental Conditions to whom a certificate of insurance has been issued evidence satisfactory to the Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter).

*Owner's Liability Insurance:*

5.5 In addition to the insurance required to be provided by the Contractor under paragraph 5.4, the Owner, at the Owner's option, may purchase and maintain at the Owner's expense, Owner's own liability insurance as will protect the Owner against claims which may arise from operations under the Contract Documents.

*Owner's Liability Insurance:*

- 5.6 Unless otherwise provided in the Supplementary Conditions, the 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 or Regulations). This insurance shall;
- 5.6.1 include the interests of the Owner, the Contractor, subcontractors, the engineer, Engineer's consultant(s) and any other person or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as insured or additional insured;
  - 5.6.2 be written on a Builder's Risk (all risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and work in transit and shall insure against at least the following perils: fire, lightning, extended coverage, theft, vandalism, and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions;
  - 5.6.3 include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  - 5.6.4 cover materials and equipment stored at the site or at another location that was agreed to in writing by the Owner prior to being incorporated in the work, provided that such materials and equipment have been included in an Application for Payment recommended by the Engineer; and
  - 5.6.5 be maintained in effect until final payment is made unless otherwise agreed to in writing by the Owner, the contractor and the Engineer with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.
- 5.7 the Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the supplementary Conditions or Laws or Regulations which will include the interests of the Owner, the Contractor, subcontractors, the Engineer, the Engineers Consultant(s) and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as insured or additional insured.
- 5.8 All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by the Owner in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be cancelled or materially changed or renewal refused until at least thirty days prior written notice has been given to the Owner, the Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.11.

- 5.9 The Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of the Contractor, Subcontractors or others in the Work to the extent of any deductible amounts that are identified in the Supplemental Conditions. The risk of loss within such identified deductible amount will be borne by the Contractor, subcontractor 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.
- 5.10 If the contractor requests in writing that other special insurance be included in the property insurance policies provided under paragraphs 5.6 of 5.7, the Owner shall, if possible, include such insurance, and the cost thereof will be charged to the Contractor by appropriate Change Order or Written Amendment. Prior to the commencement of the Work at the site, the Owner shall in writing advise the Contractor whether or not such other insurance has been purchased by the Owner.
- 5.11 *Waiver of Rights*
- 5.11.1 the Owner and the Contractor intend that all policies purchased in accordance with paragraphs 5.6 and 5.7 will protect the Owner, the Contractor, the Engineer, the Engineer's Consultant(s) and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils 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 additional insureds thereunder. The Owner and the Contractor waive all rights against each other and their respective officers, directors, employees or agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such work policies and any other property insurance applicable to the Work; and in addition, waive all such rights against subcontractors, the Engineer, the Engineer's Consultant(s) and all other persons or entities identified in the Supplemental Conditions to be listed as insureds or additional insureds 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 the Owner as trustee or otherwise payable under any policy so issued.
- 5.11.2 In addition, the Owner waives all rights against the Contractor, subcontractors, the Engineer, the Engineer's Consultant(s) and the officer, directors, employees and agents of any of them, for;
- 5.11.2.1 loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to the Owner's property or the Work caused by, arising out of, or resulting from fire or other peril, whether or not insured by the Owner; and
- 5.11.2.2 loss or damage to the completed Project or part thereof caused by, arising out of or resulting from fire or other insured peril covered by any property insurance maintained on the completed Project or any part thereof by the Owner during partial utilization pursuant to paragraph 14.10, after substantial completion pursuant to paragraph 14.8 or after final payment pursuant to paragraph 14.13. Any insurance policy maintained by the Owner covering any loss, damage, or consequential loss referred to in this paragraph 5.11.2 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 any of the Contractor, subcontractors, the Engineer, the Engineer's Consultant(s) and the officers, directors, employees and agents of any of them.

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

- 5.12 Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with the Owner and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. The 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 nor Written Amendment.
- 5.13 The 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 fifteen days after the occurrence of loss to the Owner's exercise of this power. If such objection is made, the Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. In the event that no such agreement among the parties in interest is reached, the Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, the Owner as fiduciary shall give bond for the proper performance of such duties.

#### *Acceptance of Bond and Insurance; Option to Replace:*

- 5.14 If either party (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 ten days after receipt of the certificates (or other evidence requested) required by paragraph 2.7. The Owner and the 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 said failure to purchase or maintain prior to the commencement of the Work, or 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 required to provide said coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### *Partial Utilization – Property Insurance*

- 5.15 If the Owner finds it necessary to occupy or use a portion of the Work prior to Substantial Completion of all the Work, such use of occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance 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 cancelled or permitted to lapse on account of any such partial use or occupancy.

## ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

### *Supervision and superintendence:*

- 6.1 The 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. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but the Contractor shall not be responsible for the negligence of others 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. The Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- 6.2 The Contractor shall keep on the Work at all times during its progress a competent resident supervisor, who shall not be replaced without written notice to the Owner and the Engineer except under extraordinary circumstances. The superintendent will be the Contractor’s representative at the site and shall have authority to act on behalf of the Contractor. All communications to the superintendent shall be as binding as if given to the Contractor.

### *Labor Material and Equipment:*

- 6.3 The Contractor shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the contract Documents. The Contractor shall at all times maintain good discipline and order at the site. Except as otherwise required for safety or protection of persons or the Work or property adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and the Contractor shall not permit overtime work or the performance of Work on Saturday, Sunday or any federal holiday without the Owner’s written consent given after prior written notice of the intent to conduct work during the aforementioned irregular times to the Engineer.
- 6.4 Unless otherwise specified in the General Requirements, the Contractor shall furnish and assume full responsibility for all 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 furnishing, performance, testing, start-up and completion of the Work.
- 6.5 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guaranties specifically called for by the Specification shall expressly run to the benefit of the Owner. If required by the Engineer, the Contractor shall furnish satisfactory evidence (including reports or required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier, except as otherwise provided in the Contract Documents.

### *Progress Schedule:*

- 6.6 The Contractor shall adhere to the progress schedule established in accordance with paragraph 2.9 as it may be adjusted from time to time as provided below:
- 6.6.1 The Contractor shall submit to the Engineer for acceptance (to the extent indicated in paragraph 2.9) proposed adjustments in the progress schedule that will not change the Contract Times (of Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.
- 6.6.2 Proposed adjustment in the progress schedule that will change the Contract Times or Milestones shall be submitted in accordance with the requirements of paragraph 12.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.
- 6.7 *Substitutes and "Or Equal" Items*
- 6.7.1 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 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 items of material or equipment of other Suppliers may be accepted by the Engineer under the following circumstances:
- 6.7.1.1 "*Or-Equal*": If in the Engineer's sole discretion an item of material or equipment proposed by the 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 the Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in the Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.
- 6.7.1.2 *Substitute Items*: If, in the Engineer's sole discretion an item of material or equipment proposed by the Contractor does not qualify as an "or-equal" item under subparagraph 6.7.1.1, it will be considered a proposed substitute item. The Contractor shall submit sufficient information as provided below to allow the Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. The procedure for review by the Engineer will include the following as supplemented in the General Requirements and as the Engineer may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by the Engineer from anyone other than the Contractor. If the Contractor wishes to furnish or use a substitute item of material or equipment, the Contractor must first make written application to the Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suitable to the same use as that specified. The application shall state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice the Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the Owner for Work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the

application and available maintenance, repair and replacement service will indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by the Engineer in evaluating the proposed substitute. The Engineer may require the Contractor to furnish additional data about the proposed substitute.

- 6.7.1.3 *Contractor's Expense:* All data to be provided by the Contractor in support of any proposed "or-equal" or substituted item will be provided at the Contractor's expense.
- 6.7.2 *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, the Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the Engineer. The Contractor shall submit sufficient information to allow the Engineer, in the Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for in the Contract Documents. The procedure for review by the Engineer will be that provided in subparagraph 6.7.1.2.
- 6.7.3 *Engineer's Evaluation:* the Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.7.1.2 and 6.7.2. The Engineer will be the sole judge of acceptability. No "or-equal" or substitute shall be ordered, installed or utilized without the Engineer's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. The Owner may require the Contractor to furnish at the Contractor's expense a special performance guarantee or other surety with respect to any "or-equal" or substitute. The Engineer will record the time required by the Engineer and/or the Engineer's Consultant(s) in evaluating substitutes proposed or submitted by the Contractor pursuant to paragraphs 6.7.1.2 or 6.7.2 and in making changes in the Contract Documents (or in the provisions of any other direct contract with the Owner for Work on the Project) occasioned thereby. Whether or not the Engineer accepts a substitute item so proposed or submitted by the contractor, the contractor shall reimburse the Owner for the charges of the Engineer and the engineer's Consultant(s) for evaluation of each such proposed substitute item.

*Concerning Subcontractors, Suppliers and Others:*

- 6.8.1 The Contractor shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to the Owner and the Engineer as indicated in paragraph 6.8.2) whether initially or as a substitute, against whom the Owner or the Engineer may have reasonable objection. The Contractor shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom the Contractor has reasonable objection.
- 6.8.2 If the Supplementary Conditions require the identity of certain Subcontractors, suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to the Owner in advance of the specified date prior to the Effective Date of the Agreement for acceptance by the Owner and the Engineer, and if the contractor has submitted a list thereof in accordance with the Supplementary Conditions, the Owner's or the Engineer's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bid Documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case the Contractor shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in cost

occasioned by such substitution and an appropriate Change Order will be issued or Written Agreement signed. No acceptance by the Owner or the Engineer of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of the Owner or the Engineer to reject defective Work.

- 6.9.1 The Contractor shall be fully responsible to the Owner and the engineer for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the contractor just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between the Owner or the Engineer and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the Owner or the Engineer to pay or to see to the payment of any monies due any such Subcontractor, Supplier or other person or organization except as may be otherwise required by Laws and Regulations.
- 6.9.2 The Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons or organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor. The Contractor shall require all Subcontractors, Suppliers and other persons and organization performing or furnishing any of the Work to communicate with the Engineer through the Contractor.
- 6.10 The divisions and section of the Specification and the identifications of any Drawings shall not control the Contractor in dividing the Work among Subcontractors or Suppliers nor delineating the Work to be performed by any specific trade.
- 6.11 All Work performed for the contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between the 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 the Owner and the Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.6 or 5.7, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against the Owner, the contractor, the Engineer, the Engineer's Consultant(s) and all other additional insureds for all losses or damages caused by, arising out of, or resulting from any of the perils 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, the Contractor shall obtain the same.

*Patent Fees and Royalties:*

- 6.12 The contractor shall pay all license fees and royalties and assume all costs incidental to the use in the performance of the Work or 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 the Owner or the Engineer its use is subject to patent rights or copyright calling for the payment of any licensing fee or royalty to others, the existence of such rights shall be disclosed to the Owner in the Contract Documents. To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner, the

Engineer and the Engineer's Consultant(s) and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses, and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation into the Work of any invention, design, process, product or device not specified in the Contract Documents.

*Permits:*

- 6.13 Unless otherwise provided in the Supplementary Conditions, the Contractor shall obtain and pay for all construction permits and licenses. The Owner shall assist the Contractor, when necessary, in obtaining such permits and licenses. The Contractor shall pay for all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of the Bids, or, if there are no Bids, on the Effective Date of the Agreement. The Contractor shall pay all charges of utility owners for connections of the Work, and the Owner shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

*Laws and Regulations:*

- 6.14.1 The Contractor shall give all notices and comply with all Laws and Regulations applicable to the furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither the Owner nor the Engineer shall be responsible for monitoring the Contractor's compliance with any Laws or Regulations.
- 6.14.2 If the Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, the Contractor shall bear all claims, costs, losses and damages caused by, arising out of, or resulting therefrom; however, it shall not be the Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve the Contractor of the Contractor's obligations under paragraph 3.3.2.

*Taxes:*

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

*Use of Premises:*

- 6.16 The Contractor shall confine construction and equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The 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. Should any claim be made by any such owner or occupant because of the performance of the Work, the 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. The Contractor shall, to the fullest extent permitted by

Laws and Regulations, indemnify and hold harmless the Owner, the Engineer, the Engineer's Consultant(s) and anyone directly or indirectly employed by any of them from and against all claims, costs, losses, and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against the Owner, the Engineer or any other party indemnified hereunder to the extent caused by or based upon the contractor's performance of the Work.

- 6.17 During the progress of the Work, the Contractor shall keep the premises free from the accumulation of waste materials, rubbish and other debris resulting from the work. Upon completion of the Work the Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools appliances, construction equipment and machinery, and surplus materials. The Contractor shall leave the site clean and ready for occupancy by the Owner upon Substantial Completion of the work. The Contractor shall restore to original condition all property not designated for alterations by the Contract Documents.
- 6.18 The Contractor shall not permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the contractor subject any part of the Work or adjacent property to stresses or pressures that might endanger it.

*Record Documents:*

- 6.19 The Contractor shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directions, Field Orders, and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to the Engineer for reference. Upon completion of the Work these recorded documents, Samples and Shop Drawings will be delivered to the Engineer for retention by the Owner.

*Safety and Protection:*

- 6.20 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take the necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
- 6.20.1 All persons on the Work site who may be affected by the work;
- 6.20.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
- 6.20.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designate for removal, relocation or replacement in the course of the Construction.

The contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety or persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify the Owner of adjacent property and of Underground Facilities and 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. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, Supplier or any other 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, shall be remedied by the Contractor (except damage or loss attributable to the fault of the Drawings or Specifications or to the acts or omissions of the Owner or the engineer or Engineer's Consultant(s) or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly in whole or in part, to the fault or negligence of the Contractor or any Subcontractor, Supplier or other person directly or indirectly employed by them). The contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the work has been completed and the Engineer has issued a notice to the Owner and the Contractor in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

*Safety Representative:*

- 6.21 The 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.

*Hazard Communications Programs:*

- 6.22 The Contractor shall be responsible for coordination of and 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 and Regulations.

*Emergencies:*

- 6.23 In emergencies affecting the safety and protection of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Owner or the Engineer, is obligated to act to prevent threatened damage, injury, or loss. The Contractor shall give the Engineer prompt written notice of the contractor believes that any significant changes in the work or variations from the contract Documents have been caused thereby. If the Engineer determines that a change in the Contract Documents is required because of the action taken by the contractor in response to such an emergency, a work Change Directive or Change Order will be issued to document the sequence of such events.

6.24 *Shop Drawings and Samples:*

- 6.24.1 The Contractor shall submit Shop Drawings to the Engineer for review and approval in accordance with the accepted schedule of Shop Drawings and Sample Submittals (see paragraph 2.9). All submittals will be identified as the Engineer may require and in the number of copies specified in the General Requirements. The 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 the Engineer the materials and equipment the Contractor proposes to provide and to enable the Engineer to review the information for the limited purposes required by paragraph 6.26.
- 6.24.2 The Contractor shall also submit Samples to the Engineer for review and approval in accordance with said accepted shop Drawings and Sample submittals. Each sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as the Engineer may require to enable the

Engineer to review the submittal for the limited purposes required by paragraph 6.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

6.25 *Submittal Procedures:*

6.25.1 Before submitting each Shop Drawing or Sample, the Contractor shall have determined and verified:

6.25.1.1 All field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information in respect thereto,

6.25.1.2 All materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and

6.25.1.3 All information relative to the contractor's sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

Contractor shall also have 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.

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

6.25.3 At the time of each submission, the Contractor shall give the Engineer specific written notices of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the contract Documents, such notice to be in the form of a written communication separate from the submittal; and in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to the Engineer for review and approval is each such variation.

6.26 The engineer shall review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by the Engineer as required in paragraph 2.9. The Engineer's review and approval will be only to determine in 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. The engineer's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular mean, 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 for a separate item as such will not indicate approval of the assembly in which the item functions. The Contractor shall make corrections required by the Engineer, and shall return the required number of corrected copies of shop Drawings and submit as required new Samples for review and approval. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Engineer on previous submittals.

6.27 The engineer's review and approval of Shop Drawings or Samples shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Documents unless the Contractor has in writing called the Engineer's attention to each such variation at the time of submission as required by paragraph 6.25.3 and the Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawings or Sample approval; nor will any

- approval by the Engineer relieve the Contractor from any responsibility for complying with the requirements of paragraph 6.25.1
- 6.28 Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by the Engineer as required by paragraph 2.9, any related Work performed prior to the Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of the Contractor.

*Continuing the Work:*

- 6.29 The Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as the Owner and the contractor may otherwise agree in writing.

*Contractor's General Warranty and Guarantee:*

- 6.30.1 The Contractor warrants and guarantees to the Owner, the Engineer, and the Engineer's Consultant(s) that all Work will be in accordance with the Contract Documents and will not be defective. The Contractors' warranty and guarantee hereunder excludes defects or damages caused by:

6.30.1.1 Abuse, modification or improper maintenance or operation by persons other than the Contractor, Subcontractor(s), or Supplier(s), or

6.30.1.2 Normal wear and tear under normal usage.

- 6.30.2 The 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 the Work that is not in accordance with the Contract Documents or a release of the Contractor's obligation to perform the Work in accordance with the Contract Documents:

6.30.2.1 Observations by the Engineer;

6.30.2.2 Recommendation of any progress or final payment by the Engineer;

6.30.2.3 The issuance of a certificate of Substantial Completion or any payment by the Owner to the Contractor under the Contract Documents

6.30.2.4 Use or occupancy of the Work or any part thereof by the Owner;

6.30.2.5 Any acceptance by the Owner or failure to do so;

6.30.2.6 Any review and approval of a Shop Drawing or Sample submittal or the issuance of the notice of acceptance by the Engineer pursuant to paragraph 14.13;

6.30.2.7 Any inspection, test or approval by others; or

6.30.2.8 Any correction of defective Work by the Owner.

*Indemnification:*

- 6.31 To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner, the Engineer, the Engineer's Consultant(s) and the officers, directors, employees, agents and other consultants or 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 professional and all court or arbitration or other dispute resolution costs) caused by or arising out of or resulting from the performance of the Work, provided that any such claim, cost, or damage: (i) is attributable to bodily injury to or destruction of tangible property (other than the Work

- itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of the Contractor, and Subcontractor, Supplier, or 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 such person or entity.
- 6.32 In any and all claims against the Owner or Engineer or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such an employee) of the Contractor, Subcontractor, Supplier, or 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, the indemnification obligation under paragraph 6.31 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any such Subcontractor, Supplier, or other person or organization under worker's compensation acts, disability benefit acts or other employee benefit acts.
- 6.33 The indemnification obligations of the Contractor under paragraph 6.31 shall not extend to the liability of the Engineer, the Engineer's Consultant(s) officers, directors, employees, or agents caused by the professional negligence, errors, or omissions of any of them.

*Survival of Obligations:*

- 6.34 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 payments, completion and acceptance of the Work and termination or completion of the Agreement.
- 6.35 In the event of temporary suspension of work, or during inclement weather, or whenever the Architect/Engineer shall direct, the Contractor will, and will cause his subcontractors to protect carefully his and their work and materials against damage or injury from weather. If, in the opinion of the Architect/Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors so to protect his work, such materials shall be removed and replaced at the expense of the Contractor.
- 6.36 Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay with such determination to be set forth in writing.

*Minimum Wages*

- 6.37 All laborers and mechanics employed upon the work covered by this Contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached and herein incorporated

by reference), regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the Local Public Agency or Public Body for the cashing of the same without cost or expense to the employee. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1(b)(2) of the David-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

*Underpayment of Wages or Salaries*

- 6.37.1 In case of underpayment of wages by the Contractor or by any subcontractor to laborers or mechanics employed by the Contractor or subcontractor upon the work covered by this Contract, the Local Public Agency or Public Body in addition to such other rights as may be afforded it under this Contract shall withhold from the Contractor, out of any payments due to Contractor, so much thereof as the Local Public Agency or Public Body may consider necessary to pay such laborers or mechanics the full amount of wages required by this Contract. The amount so withheld may be disbursed by the Local Public Agency or Public Body, for and on account of the Contractor or the subcontractor (as may be appropriate), to the respective laborers or mechanics to whom the same is due or on their behalf to plans, funds, or programs for any type of fringe benefit prescribed in the applicable wage determination.

*Anticipated Costs of Fringe Benefits*

- 6.37.2 If the Contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing fringe benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is part of this contract: Provided, however, 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. A copy of any findings made by the Secretary of Labor in respect to fringe benefits being provided by the contractor must be submitted to the Local Public Agency or Public Body with the first payroll filed by the Contractor subsequent to receipt of the findings

- 6.37.3 Overtime Compensation Required by Contract Work Hours and Safety Standards Act (76 Stat. 357-360: Title 40 U.S.C., Sections 327-332)

- 6.37.3.1 Overtime Requirements: No Contractor or subcontractor for any part of the Contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such work week unless laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such work week, as the case may be.

- 6.37.3.2 Violation: liability for unpaid wages liquidated damages. In the event of any violation of the clause set forth in paragraph (a), the Contractor and any subcontractors responsible therefor shall be liable to any affected employee for this unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violations of the clause set forth in paragraphs (a), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (a).
- 6.37.3.3 Withholding for liquidated damages. The Local Public Agency or Public Body shall withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in the clause set forth in paragraph (b).
- 6.37.3.4 Subcontractors. The Contractor shall insert in any subcontractors the clauses set forth in paragraph (a), (b), and (c) of this Section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

#### 6.37.4 *Employment of Apprentices/Trainees*

- 6.37.4.1 Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by Bureau, or if a person is employed in his 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 Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (b) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall not be less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.
- 6.37.4.2 Trainees: Except as provided in 29 CFR 5.15, 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, Manpower Administration, Bureau of Apprentice and Training. The ratio of trainees to journeymen shall not be greater then permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the

payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for classification of work he actually performed. The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees; and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training 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.

- 6.37.4.3 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.

*Employment of Certain Persons Prohibited*

- 6.37.5 No person under the age of sixteen years and no person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered in this Contract.

*Regulations Pursuant to So-Called "Anti-Kickback Act"*

- 6.37.6 The Contractor shall comply with the applicable regulations (a copy of which is attached and herein incorporated by reference) of the Secretary of Labor, United States Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat.; Title U.S.C., Section 874; and Title 40 U.S.C., Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

*Employment of Laborers or Mechanics Not Listed in Aforesaid Wage Determination Decision*

- 6.37.7 Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract will be classified or reclassified conformably to the wage determined by the Local Public Agency or Public Body, and a report of the action taken shall be submitted by the local Public Agency or Public Body, through the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the Local Public Agency or Public Body shall be referred, through the Secretary of Housing and Urban Development, to the Secretary of Labor for final determination.

*Fringe Benefits Not expressed as Hourly Wage Rates*

- 6.37.8 The Local Public Agency or Public Body shall require, 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 wage rate and the Contractor is obligated to pay cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the Local Public Agency or

Public Body, shall be referred, through the Secretary of Housing and Urban Development, to the Secretary of Labor for determination.

*Posting Wage Determination Decisions and Authorized Wage Deductions*

- 6.37.9 The applicable wage poster of the Secretary of Labor, United States Department of Labor, and the applicable wage determination decisions of said Secretary of Labor with respect to the various classification of laborers and mechanics employed and to be employed upon the work covered by this Contract, and a statement showing all deductions, if any, in accordance with the provisions of this Contract, to be made from wages actually earned by persons so employed or to be employed in such classifications, shall be posted at appropriate conspicuous points at the site of the work.

*Complaints, Proceedings, or Testimony by Employees*

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

*Claims and Disputes Pertaining to Wage Rates*

- 6.37.11 Claims and disputes pertaining to wage rates or to classification of laborers and mechanics employed upon the work covered by this Contract shall be promptly reported by the Contractor in writing to the Local Public Agency or Public Body for referral by the latter through the Secretary of Housing and Urban Development to the Secretary of Labor, United States Department of Labor, for said Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purposes of this Contract.

*Questions Concerning Certain Federal Statutes and Regulations*

- 6.37.12 All questions arising under this Contract which relate to the application or interpretation of (a) the aforesaid Anti-Kickback Act, (b) the Contract Work Hours and Safety Standards Act, (c) the aforesaid Davis-Bacon Act, (d) the regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to said Acts, or (e) the labor standards provisions of any other pertinent Federal statute, shall be referred, through the Local Public Agency or Public Body and the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor, for said Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purposes of this Contract.

*Payrolls and Basic Payroll Records of Contractor and Subcontractors*

- 6.37.13 The Contractor and each subcontractor shall prepare his payrolls on forms satisfactory to and in accordance with instructions to be furnished by the Local Public Agency or Public Body. The Contractor shall submit weekly to the Local Public Agency or Public Body two certified copies of all payrolls of the Contractor and of the subcontractors, it being understood that the Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. Each such payroll shall contain the "Weekly Statement of Compliance" set forth in Section 3.3 of Title 29, Code of Federal Regulations. The payrolls and basic payroll records of the Contractor and each subcontractor covering all laborers and mechanics employed upon the work covered by this Contract shall be maintained during the course of the work and preserved for a period of 3 years thereafter.

Such payrolls and basic payroll records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions or costs anticipated of the types described in Section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. In addition, whenever the Secretary of Labor has found under Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations, 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 or subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or programs 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. The Contractor and each subcontractor shall make his employment records with respect to persons employed by him upon the work covered by this Contract available for inspection by authorized representatives of the Secretary of Housing and Urban Development, the Local Public Agency or Public Body, and the United States Department of Labor. Such representatives shall be permitted to interview employees of the Contractor or of any subcontractor during working hours on the job.

*Specific Coverage of Certain types of Work by Employees*

- 6.37.14 The transporting of materials and supplies to or from the site of the Project or Program to which this Contract pertains by the employees of the Contractor or of any subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment of the site of the Project or Program to which this Contract pertains by persons employed by the Contractor or by any subcontractor, shall, for the purposes of this Contract, and without limiting the generality of the foregoing provisions of the Contract, be deemed to be work to which these Federal Labor Standards Provisions are applicable.

*Ineligible Subcontractors*

- 6.37.15 The Contractor shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the Local Public Agency's or Public Body's prior written approval of the subcontractor. The Local Public Agency or Public Body will not approve any subcontractor for work covered by this Contract who is at the time ineligible under the provisions of any applicable regulations issued by the Secretary of Labor, United States Department of Labor or the Secretary of Housing and Urban Development, to receive an award of such subcontract.

*Provisions to be included in Certain Subcontracts*

- 6.37.16 The Contractor shall include or cause to be included in each subcontract covering any of the work covered by this Contract, provisions which are consistent with these Federal Labor Standards Provisions and also a clause requiring the subcontracts to include such provisions in any lower tier subcontractors which they may enter into, together with a clause requiring such insertion in any further subcontracts that may in turn be made.

*Breach of Foregoing Federal Labor Standards Provisions*

- 6.37.17 In addition to the causes for termination of this Contract as herein elsewhere set forth, the Local Public Agency or Public Body reserves the right to terminate this Contract if the Contractor or any subcontractor whose subcontract covers any of the work covered by this Contract shall breach any of these Federal Labor Standards Provisions. A breach of these Federal Labor Standards Provisions may also be grounds for debarment as provided

by the applicable regulations issued by the Secretary of Labor, United States Department of Labor.

*Employment Practices*

6.37.18 The Contractor (1) shall, to the greatest extent practicable, follow hiring and employment practices for work on the project which will provide new job opportunities for the unemployed and underemployed, and (2) shall insert or cause to be inserted the same provision in each construction contract.

*Contract Termination; Debarment*

6.37.19 A breach of Section 45 and the Federal Labor Standards Provisions, may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

ARTICLE 7 – OTHER WORK

*Related Work at Site:*

- 7.1 The Owner may perform other work related to the Project at the site by the Owner's own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to the Contractor prior to starting any such other work, and (ii) the Contractor may make a claim therefor as provided in Articles 11 and 12 if the Contractor believes that such performance will involve additional expense to the Contractor or requires additional time and the parties are unable to agree as to the amount or extent thereof.
- 7.2 The Contractor shall afford each other contractor who is party to such a direct contract and each utility owner (and Owner if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, the Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several part come together properly and integrate with such other Work. The Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of the Engineer and the others whose work will be affected. The duties and responsibilities of the 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 the Contractor in said direct contracts between the Owner and such utility owners and other contractors.
- 7.3 If the proper execution or results of any part of the Contractor's Work depends upon work performed by others under this Article 7, the contractor shall inspect such other Work and promptly report to the 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 the Contractor's Work. The Contractor's failure so to report will constitute and acceptance of such other Work as fit and proper for integration with the Contractor's Work except for latent or nonapparent defects and deficiencies in such other work.

*Coordination:*

- 7.4 It the Owner contracts with others for the performance of other work on the Project at the site, the following will be set forth in the Supplementary Conditions:
- 7.4.1 the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
  - 7.4.2 the specific matters to be covered by such authority and responsibility will be itemized; and
  - 7.4.3 the extent of such authority and responsibilities will be provided.

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

#### ARTICLE 8 – OWNER’S RESPONSIBILITIES

- 8.1 Except as otherwise provided in these General Conditions, the Owner shall issue all communications to the Contractor through and by way of the Engineer.
- 8.2 In case of termination of the employment of the Engineer, the Owner shall appoint an engineer against whom the Contractor has no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.
- 8.3 The Owner shall furnish the data required of the Owner under the Contract Documents promptly and shall make payments to the Contractor promptly when they are due as provided in paragraphs 14.4 and 14.13.
- 8.4 The Owner’s duties in respect of providing lands and easement and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to the Owner’s identifying and making available to the Contractor copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by the Engineer in preparing the Contract Documents.
- 8.5 The Owner’s responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.10.
- 8.6 The Owner is obligated to execute Change Orders as indicated in paragraph 10.4
- 8.7 the Owner’s responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.4
- 8.8 In connection with the Owner’s right to stop work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with the Owner’s right to terminate services of the Contractor under certain circumstances.
- 8.9 The Owner shall not supervise, direct or have control or authority over, nor be responsible for, the Contractor’s means, methods, techniques, sequences or procedures of construction or the safety programs incident thereto, nor for any failure of the Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the Work. The Owner will not be responsible for the Contractor’s failure to perform or finish the Work in accordance with the Contract Documents.
- 8.10 The Owner’s responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 4.5.
- 8.11 If and to the extent the Owner has agreed to furnish the Contractor reasonable evidence that financial arrangements have been made to satisfy the Owner’s obligations under the Contract Documents, the Owner’s responsibility in respect thereof will be as set forth in the Supplementary Conditions.

#### ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION

*Owner's Representative :*

- 9.1 The Engineer will be the Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of the Engineer as the Owner's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of the Owner and the Engineer.

*Visits to the Site:*

- 9.2 The Engineer will make visits to the site at intervals appropriate to the various stages of construction as the Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of various aspects of the Contractor's executed Work. Based upon information obtained during such visits and observations, the engineer will endeavor for the benefit of the Owner to determine, in general, if the work is proceeding in accordance with the Contract Documents. The Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer's efforts will be directed toward providing the the Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, the Engineer will keep the Owner informed of the progress of the Work and will endeavor to guard the Owner against defective Work. The engineer's visits and on-site observations are subject to all the limitations on the engineer's authority and responsibility set forth in paragraph 9.13, and particularly, but without limitation, during or as a result of the Engineer's on-site visits or observations of the Contractor's Work the Engineer will not supervise, direct, control or have authority over or be responsible for the Contractor's means, methods, techniques, sequences or procedures of construction, nor the safety precautions and programs incident thereto, nor for any failure of the Contractor to comply with any Laws and Regulations applicable to the furnishing or performance of the Work.

*Project Representative:*

- 9.3 By agreement of the Engineer and the Owner, the engineer shall furnish a Resident Project Representative to assist the Engineer in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.13 and in the Supplementary Conditions. If the Owner designates another representative or agent to represent the Owner at the site who is not the Engineer's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other person will be as provided in the Supplemental Conditions.

*Clarifications and Interpretations:*

- 9.4 The Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the forms of Drawings or otherwise) as the Engineer may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations shall be binding upon the Owner and the Contractor. If the Owner or the Contractor believes that a written clarification or interpretation justifies and amendment in the Contract Price or the Contract Times and the parties are unable to

agree to the amount or extent thereof, if any, the Owner or the Contractor may make a written claim therefor as provided in Article 12.

*Authorized Variations in the Work:*

9.5 The 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 upon the Owner and also on the Contractor who shall perform the Work involved promptly. If the Owner or the contractor believes that a Field Order justifies an adjustment in the contract Price or the Contract Times and the parties are unable to agree as to the amount or extent thereof, the Owner or the Contractor may make a written claim therefor as provided in Article 11 or 12.

*Rejecting Defective Work:*

9.6 the Engineer will have the authority to disapprove or reject Work which the engineer believes to be defective, or the 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. The Engineer shall have the authority to require special inspections or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

*Shop Drawings, Change Orders & Payments*

- 9.7 In connection with the Engineer's authority as to Shop Drawings and Samples, see paragraphs 6.24 through 6.28 inclusive.
- 9.8 In connection with the Engineer's authority as to Change Orders see Articles 10, 11, and 12.
- 9.9 In connection with the Engineer's authority as to Applications for Payment, see Article 14.

*Determinations for Unit Prices:*

9.10 The Engineer shall determine the actual quantities and classifications of Unit Price Work performed by the Contractor. The Engineer shall review with the Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon which will be final and binding upon the Owner and the Contractor, unless, within ten days after the date of any such decision, either the Owner or the Contractor delivers to the other and to the Engineer written notice of intention to appeal from the Engineer's decision and: (i) an appeal from the Engineer's decision is taken within the time limits and in accordance with the procedures set forth in Exhibit GC-A, "Dispute Resolution Agreement", entered into between the Owner and the contractor pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to the Engineer's decision, unless otherwise agreed in writing by the Owner and the contractor. Such appeal will not be subject to the procedures of paragraph 9.11.

*Decisions on Disputes:*

- 9.11 The engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes, and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect to changes in the Contract Price or Contract Times will be referred initially to the Engineer in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute, or other matter will be delivered by the claimant to the Engineer and the other party to the Agreement promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to the Engineer and the other party within sixty days after the start of such occurrence or event unless the Engineer allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to the Engineer and the claimant within thirty days after the receipt of the claimant's last submittal (unless the Engineer allows more time). The Engineer will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. The Engineer's written decision on such claim, dispute or other matter will be final and binding upon the Owner and the contractors unless: (i) an appeal from the Engineer's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement", entered into between the Owner and the Contractor pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from the Engineer's written decision is delivered by the Owner or the Contractor to the other and to the Engineer within thirty days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and regulations within sixty days of the date of such decision, unless otherwise agreed in writing by the Owner and the Contractor.
- 9.12 When functioning as interpreter and judge under paragraphs 9.10 and 9.11, the Engineer shall not show partiality toward the Owner nor the Contractor and shall not be liable in good faith in such capacity. The rendering of such decision by the Engineer pursuant to paragraphs 9.10 or 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.15) will be a condition of precedent to any exercise by the Owner or the Contractor of such rights or remedies as wither might otherwise have under the Contract Documents or by Laws and Regulations in respect of any such claim, dispute or other matter pursuant to Article 16.
- 9.13 *Limitations on Engineer's Authority and Responsibility*
- 9.13.1 Neither the Engineer's authority or responsibility under this Article 9 nor any other provision of the Contract Documents nor any decision made by the 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 the Engineer shall create, impose or give rise to any duty owed by the Engineer to the Contractor, any subcontractor, any supplier, any other person or organization, or to any surety for or employee or agent of any of them.
- 9.13.2 The Engineer shall not supervise, direct, control nor have any authority over nor be responsible for the Contractor's means, methods, techniques, sequences or procedures of construction, nor the safety precautions and programs incident thereto, nor for any failure

- of the Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the Work. The Engineer shall not be responsible for the Contractor's failure to perform or finish the Work in accordance with the Contract Documents.
- 9.13.3 The Engineer shall not be responsible for the acts or omissions of the Contractor nor any subcontractor, Supplier, or any other person or organization performing or furnishing the Work.
- 9.13.4 The Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by paragraph 14.12 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspection, test, and approvals that the results certified indicate compliance with the Contract Documents.
- 9.13.5 The limitations upon authority and responsibility set forth in this paragraph 9.13 shall also apply to the Engineer's Consultant (s) the Resident Project Representative and assistants.
- 9.14 The authorized representatives and agents of the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

#### ARTICLE 10 – CHANGES IN THE WORK

- 10.1 Without invalidating the Agreement and without notice to the surety, the Owner may, at any time from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order or a Work Change Directive. Upon receipt of any such document, the 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).
- 10.2 In the event that the owner and the contractor are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment in the Contract Times that should be allowed as a result of the Work Change Directive, a claim may be made therefor as provided in Article 11 or 12.
- 10.3 The Contractor shall not be entitled to any increase in the Contract Price or extension of the contract Times with respect to any work performed that is not required by the Contract documents as amended, modified and supplemented as provided in paragraphs 3.5 and 3.6 except in the case of an emergency as provided in paragraphs 3.5 and 3.6 except in the event of an emergency as provide din paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9
- 10.4 The Owner and the contractor shall execute appropriate Change Orders recommended by the Engineer (or written amendments) covering:
- 10.4.1 changes in the Work which are (i) ordered by the Owner pursuant to paragraph 10.1, (ii) required because of acceptance of defective Work under paragraph 13.13, or (iii) agreed to by the parties;
- 10.4.2 changes in the contract Price or the contract Times which are agreed to by the parties; and
- 10.4.3 changes in the contract Price or the Contract Times which embody the substance of any written decision rendered by the Engineer pursuant to paragraph 9.11; provided that in lieu of executing any such Change Order, an appeal may by taken from any such decision in accordance with the provisions of the contract Documents and applicable Laws and Regulations, but during such appeal, the contractor shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

- 10.5 If notice 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) is required by the provisions of any Bond to be given to a surety, the giving of any such notice shall be the Contractor's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

#### ARTICLE 11 – CHANGE OF CONTRACT PRICE

- 11.1 the contract Price constitutes the total compensation (subject to authorized adjustments) payable to the Contractor for performing all of the Work, All duties, responsibilities, and obligations assigned to or undertaken by the contractor shall be a the Contractor's expense without change in the Contract Price.
- 11.2 The contract Price can be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based upon written notice delivered to the party making the claim to the other party and to the engineer promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount for the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless the Engineer allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be determined by the Engineer in accordance with paragraph 9.11 in the Owner and the contractor cannot otherwise agree on the amount involved. No claim for adjustment in the contract Price will be valid if not submitted in accordance with this paragraph 11.2
- 11.3 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:
- 11.3.1 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 paragraphs 11.9.1 through 11.9.3 inclusive);
- 11.3.2 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 11.6.2);
- 11.3.3 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 11.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a Contractor's fee for overhead and profit (determined as provided in paragraph 11.6).

#### *Cost of the Work*

11.4 The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by the Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1 Payroll costs for employees in the direct employ of the Contractor in the performance of the Work under any schedules of job classifications agreed upon by the Owner and the Contractor. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. 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, salary and wages plus the cost of fringe benefits which shall include Social Security contributions, unemployment insurance premiums, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturdays, Sundays or legal holidays, shall be included in the above to the extent authorized by the Owner.

11.4.2 Cost of all materials and equipment furnished and incorporated into the Work, including the cost of transportation and storage thereof, and supplier's field services required in connection therewith. All cash discounts shall accrue to the Contractor except in the event that the Owner deposits funds with the Contractor with which to make payments, in which case the cash discounts shall accrue to the Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they may be obtained.

11.4.3 Payments made by the Contractor to the Subcontractors for Work performed or furnished by the Subcontractor shall be as follows. If required by the Owner, the Contractor shall obtain competitive bids from Subcontractors acceptable to the Owner and the Contractor shall deliver such bids to the Owner who will then determine, with advice from the Engineer, which bids, if any, will be accepted. 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 the Contractor's Cost of the Work fee as provided in paragraphs 11.4, 11.5, and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4 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.

11.4.5 Supplemental Costs include the following:

11.4.5.1 The proportion of necessary transportation, travel and subsistence expenses of the Contractor's employees incurred in the discharge of duties connected with the Work;

11.4.5.2 Costs, including transportation and maintenance of all materials, supplies, equipment, machinery, appliances, office and temporary 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 the Contractor;

11.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from the Contractor or others in accordance with Rental Agreements approved by the Owner upon advice of the Engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof—all in accordance with the terms of said rental agreements. The rental of such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

11.4.5.4 Sales, consumer, use or similar taxes related to the Work, and for which the Contractor is liable, imposed by Laws and Regulations;

11.4.5.5 Deposits for causes other than negligence of the 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.

11.4.5.6 Losses and damages (and related expenses) caused by damage to the Work not compensated by insurance or otherwise, sustained by the contractor in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by the Owner in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of the 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 the Owner. No such losses, damages and/or expenses shall be included in the Cost of the Work for the purpose of determining the Contractor's fee. If however, any such loss or damage requires reconstruction and the Contractor is placed in charge thereof, the Contractor shall be paid for the service a fee proportionate to that stated in paragraph 11.6.2;

11.4.5.7 The cost of utilities, fuel, and sanitary facilities at the site.

11.4.5.8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work;

11.4.5.9 Cost of premiums for additional Bonds and insurance work because of changes in the Work.

11.5 The term "Cost of the Work" shall not include any of the following:

11.5.1 payroll costs and other compensation of the Contractor's officers executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by the Contractor whether at the site or is the contractor's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4, all of which are to be considered administrative costs covered by the Contractor's fee.

11.5.2 Expenses of the Contractor's principal and branch offices other than the Contractor's office at the site.

11.5.3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments.

11.5.4 Cost of premiums for all Bonds and for all insurance whether or not the Contractor is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5 Costs due to negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them of the 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.

Other overhead or general expense costs of any kind and the costs of any item not specifically included in paragraph 11.4.

11.6 The Contractor's fee allowed to the Contractor for overhead and profit shall be determined as follows:

11.6.1 a mutually acceptable fixed fee; or

11.6.2 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:

11.6.2.1 for costs incurred under paragraphs 11.4.1 and 11.4.2, the Contractor's fee shall be fifteen percent;

11.6.2.2 for costs incurred under paragraph 11.4.3 the Contractor's fee shall be five percent;

11.6.2.3 where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.4.1, 11.4.2, 11.4.3, and 11.6.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under paragraphs 11.4.1 and 11.4.2 and that any higher tier Subcontractor and the Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor.

11.6.2.4 no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5, and 11.5.

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

11.6.2.6 When both additions and credits are involved in any one change, the adjustment in the Contractor's fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.5, inclusive.

11.7 Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4 and 11.5, the Contractor shall establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to the Engineer an itemized breakdown together with supporting data.

#### *Cash Allowances*

11.8 It is understood that the Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work to be so covered as to be furnished and performed for such sums as may be acceptable to the Owner, and the Engineer. The Contractor agrees that:

11.8.1 the allowances include the cost to the Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered to the site, and all applicable taxes, and

11.8.2 the Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the 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.

Prior to final payment, an appropriate change Order will be issued as recommended by the Engineer to reflect the actual amounts due the Contractor on account of Work covered by the allowances, and the contract Price shall be correspondingly adjusted.

#### 11.9 *Unit Price Work*

11.9.1 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 established unit price for each separately identified item of the Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and in determining an initial Contract Price. Determinations of the actual quantities and classifications of the Unit Price Work performed by the Contractor will be made by the Engineer in accordance with paragraph 9.10.

11.9.2 Each Unit Price will be deemed to include an amount considered by the Contractor to be adequate to cover the Contractor's overhead and profit for each separately identified item.

11.9.3 The Owner or the Contractor may make a claim for an adjustment in the Contract Price in accordance with Article 11 if:

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

11.9.3.2 There is no corresponding adjustment with respect to any other item of Work; and

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

#### ARTICLE 12 – CHANGE OF CONTRACT TIMES

12.1 The Contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based upon a written notice delivered by the party making the claim to the other party and to the Engineer promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless the Engineer allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe he or she is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by the Engineer in accordance with paragraph 9.11 in the event that the Owner and the contractor cannot agree. No claim for an adjustment of the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2 All time limits stated in the contract documents are of the essence of the Agreement.

12.3 Where the contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of the Contractor, the contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefore as provided in paragraph 12.1. Delays beyond the control of the Contractor shall include, but not be limited to, acts or neglect on the part of the owner, acts or neglects of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of the Contractor.

12.4 Where the Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both the Owner and the Contractor, an extension of the Contract Timers (or Milestones) in an amount equal to the time lost due to such delay shall be the Contractor's sole and exclusive remedy for such delay. In no event shall the Owner be liable to the Contractor, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of the Contractor, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

#### ARTICLE 13 – TESTS AND INSPECTIONS: CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.1 *Notice of Defects:* Prompt notice of all defective Work of which the Owner or the Engineer have actual knowledge will be given to the Contractor. All defective Work may be rejected, corrected or accepted as provided in the Article 13.

##### *Access to Work:*

13.2 The Owner, the Engineer, the Engineer's Consultants, other representatives and personnel of the Owner, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. The Contractor shall provide these named above proper and safe conditions for such access and advise them of the Contractor's site safety procedures and programs so that they might comply therewith as applicable.

##### *Tests and Inspections:*

13.3 The Contractor shall give the 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.

13.4 The 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:

13.4.1 for inspections, tests of approvals covered by paragraph 13.5 below;

13.4.2 The costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.9 below shall be paid as provided in said paragraph 13.9; and

13.4.3 As otherwise specifically provided in the Contract Documents.

13.5 If Laws and Regulations of any public body having jurisdiction require any Work, or part thereof, to specifically be inspected, tested or approved by an employee or other representative of such public body, the Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish the Engineer with the required certificates of inspection, or approval. The Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the Owner's and the Engineer's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation into the work.

13.6 If any Work (or the work of others) that is to be inspected, tested or approved is covered by the Contractor without written concurrence of the Engineer, it must, if requested by the Engineer, be uncovered for observation.

13.7 Uncovering Work as provided in paragraph 13.6 shall be at the Contractor's expense unless the Contractor has given the Engineer timely notice of the Contractor's intention to cover the same and the Engineer has not acted with reasonable promptness in response to such notice.

#### *Uncovering Work*

13.8 If any Work is covered contrary to the written request of the Engineer, it must, if requested by the Engineer, be uncovered for the Engineer's observations and replaced at the Contractor's expense.

13.9 If the Engineer considers it necessary or advisable that covered Work be observed by the Engineer or inspected or tested by others, the Contractor at the Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as the Engineer may require, that portion of the Work in question, furnishing all necessary labor, materials and equipment. In the event that it is found that such Work is defective, the Contractor shall pay all claims, costs, losses, and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair and replacement of the work of others): and the Owner shall be entitled to an appropriate decrease in the Contract Price, and if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Article 11. If however, such Work is not found to be defective, the contractor shall be allowed an increase in the Contract Price, an extension in the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, testing, replacement or reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, the Contractor may make a claim therefore as provided in Articles 11 and 12.

#### *OWNER May Stop Work*

13.10 In the event that the Work is defective, or the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will not conform to the Contract Documents, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been

eliminated; however this right of the Owner to stop the Work shall not give rise to any duty of the part of the Owner to exercise this right for the benefit of the Contractor or any other surety or other party.

#### *Correction or Removal of Defective Work*

13.11 If required by the Engineer, the Contractor shall promptly as directed, either correct all defective Work, whether or not fabricated, installed, or completed, or, in the event the Work has been rejected by the Engineer, remove it from the site and replace it with Work that is not defective. The Contractor shall pay all claims, costs, losses, and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of the work of others).

#### *13.12 Correction Period:*

13.12.1 If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, the Contractor shall promptly, without cost to the Owner and in accordance with the Owner's written instructions: (i) correct such defective Work, or, in the event that it has been rejected by the Owner, remove it from the site and replace it with Work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. In the event that the Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the Owner may have the defective Work removed and replaced and all claims, costs, losses, and damages caused by or resulting from such removal and replacement, (including, but not limited to, all costs of repair or replacement work of others), will be paid by the Contractor.

13.12.2 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 or by Written Amendment.

13.12.3 Where defective Work (and damage to other Work resulting therefrom), has been corrected, removed or replaced under this paragraph 13.12, the correction period hereunder with respect to such Work shall be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

#### *Acceptance of Defective Work:*

13.13 If, instead of requiring correction or removal and replacement of defective work, the Owner (and prior to the Engineer's recommendation of final payment, also the Engineer) prefers to accept it, the Owner may do so. the Contractor shall pay all claims, costs, losses and damages attributable to the Owner's evaluation of and determination to accept such defective work (such costs to be approved by the Engineer as to reasonableness). If such acceptance occurs prior to the 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 the Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the Owner may make claim therefore as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by the Contractor to the Owner.

*Owner may Correct Defective Work:*

13.14 In the event the Contractor fails to, within a reasonable time after written notice from the Engineer, correct defective work or remove and replace defective work as required by the Engineer in accordance with paragraph 13.11, or in the event the Contractor fails to comply with any other provisions of the Contract Documents, the Owner may, after seven days written notice to the Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the Owner shall proceed expeditiously. In connection with such corrective and remedial action, the Owner may exclude the Contractor from all or part of the site, take possession of all or part of the Work, and suspend the Contractor's services related thereto, take possession of the 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 the Owner has paid the Contractor but which are stored elsewhere. The Contractor shall allow the Owner, Owner's representatives, agents and employees, Owner's other contractors, the Engineer and the Engineer's Consultants access to the site to exercise the rights and remedies spelled out in this paragraph. All claims, costs, losses and damages incurred or sustained by the Owner in exercising such rights and remedies shall be charged against the Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the Owner shall be entitled to an appropriate decrease in the Contract Price, and if the parties are unable to agree as to the amount thereof, the Owner may make a claim therefore as provided in Article 11. Such claims, costs, losses and damages are to include but not be limited to all costs or repair or replacement of work of others destroyed or damaged by the correction, removal or replacement of the Contractor's defective Work. The Contractor shall not be allowed an extension of the Contract Times or Milestones because of any delay in the performance of the Work attributable to the exercise by the Owner of Owner's rights and remedies hereunder.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

*Schedule of Values:*

14.1 The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Engineer. Progress payments on account of Unit Price Work will be based upon the number of units completed.

*Application for Progress Payment:*

14.2 No less than twenty days before the date established for each progress payment (but not more than once per month), the Contractor shall submit to the Engineer for review, an Application for Payment filled out and signed by the Contractor enumerating 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 another location agreed to in writing by the Principal Parties to the Agreement, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that the Owner has received the materials and equipment listed in the Application for Payment free and clear of all Liens and evidence that the materials and equipment in question are covered by appropriate property insurance and other arrangements to protect the Owner's interest therein, all of which are to be satisfactory to the Owner. The amount of retainage with respect to Progress Payments shall be as stipulated in the Agreement.

*Contractor's Warranty of Title:*

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

*Review of Application for Payment:*

14.4 The Engineer shall, within ten (10) days of receipt of each Application for Payment either present the Application to the Owner with a written recommendation for payment, or return the Application to the Contractor with written notice for reason to refuse payment recommendation. In the latter case, the Contractor may affect the necessary corrections and resubmit the Application. Twenty (20) days after presentation of the Application for Payment to the Owner with the Engineer's recommendation for payment, the amount recommended (subject to the provisions of paragraph 14.7) become due and shall be paid by the Owner to the Contractor.

14.5 The Engineer's recommendation of any payment requested in an Application for Payment shall constitute a representation by the Engineer to the Owner, based upon the Engineer's on-site observations of the executed Work as an experienced and qualified design professional and upon the Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of the Engineer's knowledge, information and belief:

14.5.1 the Work has progressed to the point indicated,

14.5.2 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, to the results of any tests called for in the contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10 and to any other qualifications stated in the recommendation), and

14.5.3 the conditions precedent to the Contractor's entitlement appear to have been fulfilled in so far as it is the Engineer's responsibility to observe the Work.

However, by recommending any such payment the Engineer shall not be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to the Engineer in the Contract Documents or (ii) that there may not be other matters or issues between the Parties that may entitle the Contractor to be paid additionally by the Owner or entitle the Owner to withhold payment to the Contractor.

14.6 The Engineer's recommendation of any payment shall not mean that the Engineer is responsible for the Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the Work, or for any failure of the Contractor to perform or furnish Work in accordance with the Contract Documents.

14.7 The engineer may refuse to recommend the whole or part of any payment if, in the Engineer's opinion, it would be incorrect to make the representations to the Owner referred to in paragraph 14.5. The Engineer may also refuse to recommend any such payment, or, because of

subsequently discovered evidence or the results or subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Engineer's opinion to protect the Owner from loss resulting from:

14.7.1 Defective Work, or completed Work which has become damaged to an extent sufficient to require correction or replacement,

14.7.2 Reduction in the Contract Price by Written Amendment or Change Order,

14.7.3 Work required of the Owner to correct a defect or complete Work in accordance with paragraph 13.14, or

14.7.4 The Engineer has actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.4 inclusive.

The Owner may refuse to make payment of the full amount recommended by the Engineer in the event that:

14.7.5 Claims have been made against the Owner on account of the Contractor's performance or furnishing of the Work,

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

14.7.7 There are other items entitling the Owner to a set-off against the amount recommended, or

14.7.8 The Owner has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.7.1 through 14.7.3 or paragraphs 15.2.1 through 15.2.4 inclusive;

but the Owner must give the Contractor immediate written notice (with a copy to the Engineer) stating the reason for such action and promptly pay the Contractor the amount so withheld, or any adjustment thereto agreed to by the Owner and the Contractor, when the Contractor corrects to the Owner's satisfaction the conditions that gave rise for such action.

### *Substantial Completion*

14.8 When the Contractor considers the entire Work ready for its intended use the Contractor shall notify the Owner and the Engineer in writing that the Work is substantially complete (except for items specifically listed by the Contractor as incomplete) and request that the Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, the Owner, Contractor and the Engineer shall make an inspection of the Work to determine the status of completion. If the Engineer does not consider the Work Substantially Complete, the Engineer shall notify the Contractor in writing detailing the deficiencies. If the Engineer considers the Work to be Substantially Complete, the Engineer shall prepare and deliver to the Owner a tentative schedule of Substantial Completion in which the date of Substantial Completion is indicated. There shall be, attached to the certificate, a tentative list of items to be completed or corrected before final payment. The Owner shall have seven days after the receipt of the tentative certificate during which to make written objection to the Engineer as to any provisions of the certificate or attached list. If, after considering such objections, the Engineer concludes that the Work is not

substantially complete, the Engineer will, within fourteen (14) days after the submission of the tentative certificate to the Owner, notify the Contractor in writing, enumerating the reasons therefore. If, after consideration of the Owner's objections, the Engineer considers the Work substantially complete, the Engineer shall, within the aforementioned fourteen days, execute and deliver to the Owner and the Contractor, a definitive certificate of Substantial Completion (with a revised list of items to be completed or corrected), reflecting such changes from the tentative certificate as the Engineer believes justified after consideration of any objections from the Owner. At the time of delivery of the tentative certificate of Substantial Completion the Engineer shall deliver to the Owner and the Contractor a written recommendations to the division of responsibilities pending final payment between the Owner and the Contractor with respect to security, operation, safety, maintenance, heart, utilities, insurance, warranties and guarantees. Unless the Owner and the Contractor agree otherwise in writing and so inform the Engineer in writing prior to the Engineer's issuance of the definitive certificate of Substantial Completion, the Engineer's aforesaid recommendation shall be binding on the Owner and the Contractor until final payment.

14.9 The Owner shall have the right to exclude the Contractor from the Work after the date of Substantial Completion, but shall not deny the Contractor access to the site to correct items on the tentative list.

*Partial Utilization*

14.10 Use by the Owner and the Owner's option of any substantially completed portion(s) of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) the Owner, the Engineer and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the Owner for its intended purpose without significant interference with the Contractor's performance of the remainder of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following conditions:

14.10.1 The Owner may at any time request the Contractor's written permission for the Owner to use any such part of the Work which the Owner believes to be ready for its intended use and substantially complete. In the event that the Contractor agrees that such part of the Work is substantially complete, the Contractor shall certify to both the Owner and the Engineer that such part of the Work is substantially complete and request that the Engineer issue a certificate of Substantial Completion for that portion of the Work. The Contractor at any time may notify the Owner and the Engineer in writing that the Contractor considers any such portion of the Work ready for its intended use and substantially complete and request that the Engineer issue a certificate of Substantial Completion for that portion of the Work. Within a reasonable time after either such request, the Owner, Contractor and Engineer shall make an inspection of that part of the Work to determine its status of completion. In the event that the Engineer does not consider the portion of the Work in question to be substantially complete, the Engineer shall notify the Owner and the Contractor in writing enumerating the reasons therefore. In the event that the Engineer consider the portion of the Work in question to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that portion of the Work an the division of responsibility in respect thereto and access thereto.

14.10.2 Upon written notice from the Contractor that the entire Work or an agreed portion thereof is complete, the Engineer shall conduct a final inspection with the Owner and the Contractor and subsequently notify the Contractor in writing of any/all Work items the inspection reveals incomplete or defective. The Contractor shall immediately take such measures as are necessary to complete such Work or remedy said deficiencies.

*Final Payment and Acceptance:*

14.12 Following the Contractor's completion of all such corrections to the satisfaction of the Engineer and the delivery in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by paragraph 5.4, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents, the Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.4.13, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to the Owner) of all Liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of liens and as approved by the Owner, the Contractor may furnish receipts or releases in full and an affidavit or the Contractor that: (i) the releases and receipts include all labor, services, material and equipment for which a lien could be held, and (ii) all payrolls, materials and equipment bills and other indebtedness connected with the Work for which the Owner or the Owner's property might in any way be responsible have been paid or otherwise satisfied. In the event that any Subcontractor or Supplier fails to furnish such a release or receipt in full, the Contractor may furnish a Bond or other collateral satisfactory to the Owner to indemnify the Owner against any liens.

*Final Payment and Acceptance:*

14.13 If, on the basis of the 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, the Engineer is satisfied that the Work has been completed and the Contractor's other obligations under the Contract Documents have been fulfilled, the Engineer shall, within ten (10) days after receipt of the application for Final Payment, indicate in writing the Engineer's recommendation of payment and present the application to the Owner for payment. At that same time the Engineer shall also give written notice to the Owner and the Contractor that the Work is acceptable subject to the provisions of paragraph 14.15. In the event that the Engineer is not satisfied that the Work has been completed and the Contractor's other obligations under the Contract Documents have not been fulfilled, the Engineer shall return the Application to the Contractor along with written notice of the reason for refusing to recommend final payment, in which case the Contractor shall make the necessary corrections and resubmit the Application. Thirty (30) days after the presentation to the Owner of the Application and accompanying documentation, in appropriate form and substance and with the Engineer's recommendation and notice of acceptability, the amount recommended by the Engineer will become due and be paid by the Owner to the Contractor.

14.14 If, through no fault of the Contractor, final completion of the Work is significantly delayed, and said delay is confirmed by the Engineer, the Owner shall, upon receipt of the Contractor's final Application for Payment and recommendation of the Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by the Owner for Work not fully completed or corrected in less than the retainage stipulated in the Agreement and if Bonds have been furnished are required in paragraph 5.1, 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 the contractor to the Engineer with the Application for such payment. Such payment shall be made subject to the conditions governing final payment, except that it shall not constitute a waiver of claims.

*Waiver of Claims:*

14.15 The making and acceptance of final payments shall constitute:

14.15.1 a waiver of all claims by the Owner against the Contractor, except claims arising out of unsettled liens, from defective Work appearing after final inspection pursuant to paragraph 14.11, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from the Contractor's continuing obligations under the Contract Documents; and

14.15.2 a waiver of all claims by the Contractor against the Owner other than those previously made in writing and still unresolved.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

*Owner may Suspend work:*

15.1 At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to the Contractor and the Engineer, which will fix the date on which the Work will be resumed. The Contractor shall resume the Work on the date so fixed. The Contractor shall be allowed an adjustment in the Contract Price and/or an extension of the Contract Times directly attributable to any such suspension if the Contractor makes an approved claim therefore as provided in Articles 11 and 12.

*Owner may terminate:*

15.2 Upon the occurrence of any one or more of the following events:

15.2.1 if the Contractor consistently fails 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 2.9 as adjusted from time to time pursuant to paragraph 6.6; or

15.2.2 if the Contractor disregards Laws or Regulations of any public body having jurisdiction; or

15.2.3 if the Contractor disregards the authority of the Engineer; or

15.2.4 if the Contractor otherwise violates in any substantial way any provisions of the Contract Documents;

The Owner may, after giving the Contractor (and the surety if any), seven (7) days written notice and to the extent permitted by Laws and Regulations, terminate the services of the Contractor, exclude the contractor from the site and take possession of the Work and all of the Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by the contractor (without liability to the Contractor for trespass or conversion) incorporate in the Work all materials and equipment stored at the site or for which the Owner has paid the contractor but which are stored elsewhere, and finish the Work as the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. In the event that the unpaid balance of the Contract

Price exceeds all claims, costs, losses and damages sustained by the Owner arising out of or resulting from completing the Work such excesses will be paid to the Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, the Contractor shall pay the difference to the Owner. Such claims, costs, losses, and damages incurred by the Owner will be reviewed by the Engineer as to their reasonableness and when so approved by the Engineer incorporated into a Change order, provided that when exercising any rights or remedies under this paragraph the Owner shall not be required to obtain the lowest price for the Work performed.

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

15.4 Upon seven (7) days written notice to the Contractor and the Engineer, the Owner may, without cause and without prejudice to any other right or remedy of the Owner, elect to terminate the Agreement. In such case the Contractor shall be paid (without duplication of any items):

15.4.1 for 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;

15.4.2 for 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;

15.4.3 for all claims, costs, losses and damages incurred in the settlement of terminated contracts with Subcontractors, Suppliers and others; and

15.4.4 for reasonable expenses directly attributable to termination.

The 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.

*Contractor may Stop Work or Terminate:*

15.5 If, through no fault of the Contractor, the Work is suspended for a period of more than ninety days by the Owner or under an order of court or other public authority, or the Engineer fails to act on any Application for Payment within thirty days after it is submitted or the Owner fails for thirty days to pay the Contractor any sum finally determined to be due, then the Contractor may, upon seven (7) days written notice to the Owner and the Engineer, and provided that the Owner and/or Engineer do not remedy such suspension or failure within that time, terminate the Agreement and recover from the Owner payment on the same terms as provided in paragraph 15.4. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if the Engineer has failed to act on an Application for Payment within thirty (30) days after it is submitted, or the Owner has failed for thirty days to pay the Contractor any sum finally determined to be due, the contractor may, upon seven (7) days written notice to the Owner and the engineer, stop the work until payment until all such amounts due the contractor, including interest thereupon. The provisions of this paragraph 15.5 are not intended to preclude the Contractor from making claim under Articles 11 or 12 for an

increase in the Contract Price or Contract Times or otherwise for expenses or damages directly attributable to the Contractor's stopping Work as permitted by this paragraph.

#### ARTICLE 16 – DISPUTE RESOLUTION / MEDIATION

In an effort to resolve any conflicts that arise during the construction of the Project or following the completion of the Project, the Owner and the Contractor agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. The Owner and the Contractor further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

#### ARTICLE 17 – MISCELLANEOUS

##### *Giving Notice:*

17.1 Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if 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 if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

##### *Computation of Times:*

17.2.1 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 the given period. If the last day of any such period falls on a Saturday or Sunday or on any day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.2.2 A calendar day of twenty-four (24) hours measured from midnight to midnight shall constitute a day.

##### *Notice of Claim:*

17.3 In the event that the Owner or the Contractor suffer injury or damage to person or property because of any error, omission, or act of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute or waiver of the provisions of any applicable statute of limitations or repose.

##### *Cumulative Remedies:*

17.4 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular, but without limitation, the warranties, guarantees and obligations imposed upon the Contractor by paragraphs 6.12, 6.16, 6.30, 6.32, 13.1, 13.12, 13.14, 14.3, and 15.2 and all of the rights and remedies available to the Owner and the Engineer there under, 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, and 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.

*Professional Fees and Court Costs Included:*

17.5 Whenever reference is made to “claims, costs, losses and damages” it shall include in each case, but not be limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs.

END

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUPPLEMENTAL GENERAL CONDITIONS

1. Enumeration of Plans, Specifications and Addenda
2. Stated Allowances
3. Special Hazards
4. Public Liability, Vehicle Liability, and Property Damage Insurance
5. Photographs of Project
6. Schedule of Occupational Classifications and Minimum Hourly Wage Rates
7. Builder's Risk Insurance
8. Special Equal Opportunity Provisions
9. Certification of Compliance with Air and Water Acts
10. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention

1. ENUMERATION OF PLANS, SPECIFICATIONS AND ADDENDA

Following are Plans, Specifications and Addenda which form a part of this contract, as set forth in Paragraph 1 of the General Conditions, "Contract and Contract Documents":

DRAWINGS:

General Construction:	Nos.	_____
Heating and Ventilating	"	_____
Plumbing:	"	_____
Electrical:	"	_____
_____	"	_____
_____	"	_____

SPECIFICATIONS:

General Construction:	Page _____ to _____, incl.
Heating and Ventilating:	" _____ to _____, incl.
Plumbing:	" _____ to _____, incl.
Electrical:	" _____ to _____, incl.
_____	" _____ to _____, incl.
_____	" _____ to _____, incl.

ADDENDA:

No. _____	Date _____
No. _____	Date _____
No. _____	Date _____
No. _____	Date _____

2. STATED ALLOWANCES

Pursuant to paragraph 36 of the General Conditions, the contractor shall include the following cash allowances in his proposal:

- (a) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_
- (b) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_
- (c) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_
- (d) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_

(e) For \_\_\_\_\_ (Page \_\_\_\_ of Specifications) \$ \_\_\_\_\_

(f) For \_\_\_\_\_ (Page \_\_\_\_ of Specifications) \$ \_\_\_\_\_

3. SPECIAL HAZARDS

The Contractor's and his Subcontractor's Public Liability and Property Damage Insurance shall provide adequate protection against the following special hazards:

4. CONTRACTOR'S AND SUBCONTRACTOR'S PUBLIC LIABILITY, VEHICLE LIABILITY, AND PROPERTY DAMAGE INSURANCE

As required under paragraph 28 of the General Conditions, the contractor's Public Liability Insurance and Vehicle Liability Insurance shall be in an amount not less than \$ \_\_\_\_\_ for injuries, including accidental death, to any one person, and subject to the same limit for each person, in an amount not less than \$ \_\_\_\_\_ on account of one accident, and Contractor's Property Damage Insurance in an amount not less than \$ \_\_\_\_\_.

5. PHOTOGRAPHS OF PROJECT

As provided in paragraph 50 of the General Conditions, the Contractor will furnish photographs in the number, type, and state as enumerated below:

6. SCHEDULE OF OCCUPATIONAL CLASSIFICATIONS AND MINIMUM HOURLY WAGE RATES AS REQUIRED UNDER PARAGRAPHS 52 OF THE GENERAL CONDITIONS

Given on Pages \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

7. BUILDER'S RISK INSURANCE

As provided in the General Conditions, paragraph 28(e), the Contractor will/will not\* maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portions of the project for the benefit of the Owner, the Contractor, and all subcontractors, as their interests may appear.

8. SPECIAL EQUAL OPPORTUNITY PROVISIONS

A. Activities and Contracts Not Subject to Executive Order 11246, as Amended

(Applicable to Federally assisted construction contracts and related subcontracts \$10,000.00 and under)

\*Strike out one choice.

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

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (2) The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Official setting forth the provisions of this nondiscrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) Contractors shall incorporate foregoing requirements in all subcontracts.

B. Executive Order 11246 (Contracts/subcontracts above \$10,000.00)

1. Section 202 Equal Opportunity Clause

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, 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 setting forth the provisions of the nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisement for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the contractor's commitment under this section, and shall post copies of the notice on conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.

- (6) In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

#### EQUAL OPPORTUNITY CONTRACT LANGUAGE CHANGES

FEDERAL REGISTER – OCTOBER 3, 1980

#### INSERT A.

Continuation of Paragraph 7, above.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry

out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part of this grant (contract, loan, insurance, guarantee), refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurances of future compliance has been received from such applicant, and refer the case to the Department of Justice for appropriate legal proceedings.

C. SUBCONTRACTS

Each nonexempt contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

INSERT B.

Notice of Requirements for Affirmative Action to Ensure Equal Opportunity (Page 404).

Insert language at line 8 of paragraph 2: "If the contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction."

INSERT C.

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Page 405).

Insert this language at line 10 of paragraph 4: "Covered construction contractors performing contracts in geographical areas where they do not have a federal or federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal Procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting goals in each craft during the period specified."

2. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246). (Applicable to contracts/subcontracts exceeding \$10,000.00.)
  1. The Offeror’s or Bidder’s attention is called to the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” set forth herein.
  2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor’s aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for Minority Participation	Goals for Female Participation
Insert goals	Insert Goals for Current Year

These goals are applicable to all the Contractor’s construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor’s compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor’s goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000.00 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the “covered area” is (insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any).

3. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:
  - a. “Covered area” means the geographical area described in the solicitation from which this contract resulted;
  - b. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. “Minority” includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin):
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO Clause, and to make a good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor’s or Subcontractor’s failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with reason therefor, along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred

to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

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- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement, by publicizing it in the company newspaper, annual report, etc; by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

- l. Conduct, at least annually, an inventory and evaluation at least of all minority female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEI policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontractors from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
  - \*q. Covered construction contractors performing contracts in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through q). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through q of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's non-compliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contract pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity.

\*PROPOSED RULE

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If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned; social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirements, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

C. Certification of Nonsegregated Facilities (Over \$10,000)

By the submission of this bid, the bidder, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her employees any segregated facility at any of his/her establishments, and that he/she does not permit employees to perform their services at any location under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any locations under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of his certification is a violation of the Equal Opportunity Clause of this contract. As used in this certification, 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, \*transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. He/she further agrees that (except where he/she has obtained identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

D. Civil Rights Act of 1964

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

E. Section 109 of the Housing and community Development Act of 1974

- a. No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

\*parking lots, drinking fountains, recreation or entertainment areas.

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F. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

- a. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The contractor will send to each labor organization or representative of workers with which he had a collective bargaining agreement or other contract or understanding, if any, a notice advertising the said labor organization or workers' representative of this commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The contractor will include this Section 3 clause in every subcontractor for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontract is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with an preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors or subcontractors, its successors and assigns to those sanction specified by

the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR part 135.

9. Certification of Compliance with Air and Water Acts

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

Compliance with Air and Water Acts

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

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

1. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
2. Agreement by the contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
3. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.
4. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

9. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention

A. Lead-Based Paint Hazards

(Applicable to contracts for construction or rehabilitation of residential structures)

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and Subcontractors shall comply with the provisions for the elimination of lead-based paint hazards under sub-part B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14(f) thereof.

B. Use of Explosives (Modify as Required)

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and Federal laws in purchasing and handling explosives. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to

structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

The Contractor shall notify all owners of public utility property of intention to use explosives at least eight hours before blasting is done, close to such property. Any supervision or direction of use of explosives by the Engineer, does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

C. Danger Signals and Safety Devices (Modify as Required)

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or

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warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

Wage Rate Determination:

Appropriate wage rates shall be inserted here.

Technical Specifications:

Technical specifications shall be inserted behind wage rates.

## WILL COUNTY

IRONWORKERS (SOUTH)-That part of the county South of a diagonal line through Braidwood and Goodenow.

The following list is considered as those days for which holiday rates of wages for work performed apply: New Years Day, Memorial/Decoration Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day. Generally, any of these holidays which fall on a Sunday is celebrated on the following Monday. This then makes work performed on that Monday payable at the appropriate overtime rate for holiday pay. Common practice in a given local may alter certain days of celebration such as the day after Thanksgiving or Veterans Day. If in doubt, please check with IDOL.

## EXPLANATION OF CLASSES

### TRUCK DRIVER-BUILDING, HEAVY AND HIGHWAY CONSTRUCTION

Class 1. A-frame truck when used for transportation purposes; Air Compressors and Welding Machines, including those pulled by cars, pick-up trucks and tractors; Ambulances; Batch Gate Lockers; Batch Hopperman; Car and Truck Washers; Carry Alls; Fork Lifts and Hoisters; Helpers; Mechanics Helpers and Greasers; Oil Distributors, 2-man operation; Pavement Breakers; Pole Trailer, up to 40 feet; Power Mower Tractors; Self-Propelled Chip Spreader; Shipping and receiving Clerks and Checkers; Skipman; Slurry Trucks, 2-man operation; Slurry Trucks, Conveyer Operated-2 or 3-man operation; Teamsters, Unskilled Dumpmen; Warehousemen and Docksmen; Truck Drivers hauling warning lights, barricades and portable toilets on the job site.

Class 2. Dispatcher, Dump Crets and Adgetors under 7 yards and over, Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnapulls or Turnatrialers when pulling other than self-loading equipment or similar equipment under 16 cubic yards; Mixer Trucks under 7 yards; Ready-Mix Plant Hopper Operator, Winch Trucks, 2 Axles.

Class 3. Dump Crets and Adgetors 7 yards and over, Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnatrialers or Turnapulls when puling other than self-loading equipment or similar equipment over 16 cubic yards. Explosives and/or Fission Material Trucks; Mixer Trucks 7 yards or over; Mobile Cranes while in transit; Oil Distributors, 1-man operation; Pole Trailer, over 40 feet; pole and Expandable Trailers hauling material over 50 feet long; additional 50 cents per hour, Slurry Trucks, 1-mann operation; Winch Trucks, 3 axles or more; Mechanic-Truck Welder and Truck Painter.

Class 4. Asphalt Plant Operations in areas where it has been past practice Dual-purpose vehicles, such as mounted crane trucks with hoist and accessories; Foreman; Master Mechanic; Self-loading equipment like P.B. and trucks with scoops on the front.

### OPERATING ENGINEERS-BUILDING

Class 1. Assistance Craft Foreman; Craft Foreman; Mechanic; Asphalt Plant; Asphalt Spreader; Autograde; Batch Plant; Benoto (required Two Engineers); Boiler and Throttle Valve; Caisson Rigs; Central Redi-Mix Plant; Combination Back Hoe Front End-loader Machine; Compressor and Throttle Valve; Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Paver; Concrete Placer; Concrete Pump (Truck Mounted); Concrete Tower, Cranes, All, Cranes, Hammerhead, Creter Crane; Crusher, Stone, etc.; Derricks, All; Derricks, Traveling; Formless Curb and Gutter Machine; Grader, Elevating; Grouting Machines; Hoists, one, two and three Drum; Hoists, Two tigger One Floor; Hydraulic Backhoes; Hydraulic Boom Trucks; Locomotives, All; Motor Patrol; Pile Drivers and Skid Rig; Post Hole Digger; Pre-Stress Machine; Pump Cretes; Squeeze Cretes-screw Type Pumps; Gypsum Bulker and Pump; Raised and Blind Hole Drill; Rock Drill; Roto Mill Grinder, Scoops-Tractor Drawn; Slip-form Paver; Straddle Buggies; Tournapull; Tractor with Book and Side Boom; Trenching Machines.

Class 2. Bobcat (over ¾ cu.yd.); Boilers; Brick Forklift; Broom, All Power Propelled; Bulldozers; Concrete Mixer (Two Bag and Over); Conveyor, Portable; Forklift Trucks; Gressor Engineer, Highlift Shovels or Front Endloaders under 2-1/4 yd. An over, Hoists, Automatic; Hoists, inside Freight Elevators; Hoists, Sewer Dragging Machine; Hoists, Tugger Single Drum; Rollers, All; Steam Generators; Tractors, All; Tractor Drawn Vibratory Roller (Receives an additional \$.50 per hour); Winch Trucks with “A” Frame.

Class 3. Air Compressor-Combination-Small Equipment Operator, Generators, Heaters, Mechanical; Hoists, Inside Elevators –(Rheostat Manual Controlled); Hoists. Inside Elevators-Push Button with Automatic Doors; Hydraulic Power Units (Pile Driving and Extracting): Pumps, over 3” (1 to 3 not to exceed a total of 300 ft.): Pumps, Well Points: Welding Machines (2 through 5); Winches, 4 small Electric Drill Winches; Bobcat (up to and including ¾ cu.yd.)

Class 4. Hoists, Inside Elevators, Push Button with Automatic Doors; Oilers; Brick Forklift.

#### OPERATING ENGINEERS-HEAVY AND HIGHWAY CONSTRUCTION

Class 1. Craft Foreman; Asphalt Plant, Asphalt Heater and Planner Combination; Asphalt Spreader; autograder, Belt Loader; Caisson Rigs; car Dumper; Central Redi-Mix Plant; Combination Backhoe Front Endloader Machine, (1 cu.yd. Backhoe Bucket or over or with attachments); Concrete Breaker (Truck Mounted): Concrete Conveyor; Concrete Paver over 27E cu.ft.; Concrete Placer; concrete Tube Float; Cranes, all attachments; Cranes, Hammerhead, Linden, Peco & Machines of a like nature; Crete Crane; crusher, Stone, Etc.; Derricks, All; Derrick Boats; Derricks, Traveling; Dredges; Field Mechanic-Welder; Formless Curb and Gutter Machine; Gradall and Machines of a like nature; Grder, Elevating; Grader, Motor Grader, Motor Patrol, Auto Patrol, Form Grader, Pull Grader, Subgrader; Guard Rail Post Driver Mounted; Hoists, One, Two and Three Drum; Hydraulic Backhoes; Locomotive, All; Mucking Machine; Pile Drivers and Skid Rig; Pre-Stress Machine; Pump Cretes Dual Ram (Requires frequent lubrication and water); Rock Drill-Crawler or Skid Rig; Rock Drill-Truck Mounted; Roto Mill Grinder; Slip-Form Paver; Soil Test Drill Rig (Truck Mounted): Straddle Buggies; Hydraulic Telescoping form (Tunnel); Tractor Drawn Belt Loader, Tractor with Boom; Tractor-aire with Attachments; Trenching Machine; Truck Mounted Concrete Pump with Boom; Raised or Blind Hole; Drills (Tunnel Shaft); Underground Boring and/or Mining Machines; Wheel Excavator; Widener (APSCO).

Class 2. Batch Plant; Bituminous Mixer; Bobcats (over ¾ cu.yd.); Boiler and Throttle Valve; Bulldozers; Car Loader Trailing Conveyors; Combination Backhoe Front Endloader Machine (less than 1 cu.yd. Backhoe Bucket or over or with attachments); Compressor and Throttle Valve; Compressor, Common Receiver (3); Concrete Breaker or Hydro Hammer; Concrete Grinding Machine; Concrete Mixer or Paver 78 Series to and including 27 cu.ft.; Concrete Spreader; Concrete Curing Machine, Burlap Machine, Belting Machine and Sealing Machine; Conveyor Muck Cars (Hagland or similar Type); finishing Machine-Concrete; Greaser Engineer; Highlift Shovels or Front Endloader; Hoist-Sewer Dragging Machine; Hydraulic boom Trucks (All Attachments); Locomotives, Dinky; Pump Cretes; Squeeze Cretes-Screw Type Pumps, Gypsum Builder and Pump; Roller, Asphalt; Rotary Snow Plows; Rototiller, Seaman, etc., self-propelled; Scoops-Tractor Drawn; Self-Propelled Compactor; Spreader-Chip-stone, etc.; Scraper; Scraper-Prime Mover in Tandem (Regardless of Size) (Add \$1.00 to Class II hourly rate for each hour and for each machine attached thereto, Add \$1.00 to Class II hourly rate for each hour); Tank Car Heater; Tractors, Push, Pulling Sheeps Foot, Disc Compactor, etc. Tug Boats.

Class 3. Boilers; Brooms, All Power Propelled; Cement Supply Tender; Compressor, Common Receiver (2); Concrete Mixer (Two Bag and Over); Conveyor, Portable; Farm-Type Tractors Used for Mowing, Seeding, etc; Fireman on boilers; Forklift Trucks; Grouting Machine; Hoist, Automatic; Hoists, All Elevators; Hoists, Tugger Single Drum; Jeep Diggers, Pipe Jacking Machines; Post-Hole Digger; Power Saw, Concrete Power Driven; Pug Mills; Rollers, other than asphalt; Seed and Straw Blower; Steam Generators; Stump Machine; Winch Trucks with “A” Frame; Work Boats; Tamper-Form-Motor Driven.

Class 4. Air Compressor-Small and Large; Asphalt Spreader, Backend Man; Combination-Small Equipment Operator; Generators-Small 50kw and Under; Generators-Large over 50kw; Heaters, Mechanical; Hydraulic Power Unit (Pile Driving, Extracting, or Drilling); Light Plants, All (1 through 5);

Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.); Pumps, Well Points; Tract-aire; Welding Machines (2 through 5); Winches, 4 Small Electric Drill Winches; Bobcats (up to and including  $\frac{3}{4}$  cu.yd.).

#### Class 5. Oilers

##### Other Classifications of Work:

For definitions of classifications not otherwise set out, the Department generally has on file such definitions which are available. If there is no such definition on file, the Bureau of Labor Statistics SIC list will be used. If a task to be performed is not subject to one of the classifications of pay set out, the Department will upon being contacted state which neighboring county has such a classification and provide such rate, such rate being deemed to exist by reference in this document. Further, if no such neighboring county rate applies to the task, the Department shall undertake a special determination, such special determination being then deemed to have existed under this determination. If a project required these, or any classifications not listed, please contact IDOL at 618/993-7271 for wage rates or classifications.

#### LANDSCAPING

Landscaping work falls under the existing classifications for laborer, operating engineer and truck driver. The work performed by landscape plantsman and landscape laborer is covered by the existing classification of laborer. The work performed by landscape operators (regardless of equipment used or its size) is covered by the classifications of operating engineer. The work performed by landscape truck drivers (regardless of size of truck driven) is covered by the classifications of truck driver.



