



SPECIFICATIONS

For

NEW FIRE STATION

**Norwalk Area Fire District
Monroe County, Wisconsin**

January 2026

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**ADVERTISEMENT FOR BIDS
FOR**

**Norwalk Area Fire District New Fire Station
Norwalk, Monroe County, Wisconsin**

BIDS CLOSE: WEDNESDAY, FEBRUARY 18, 2026, AT 10:30 AM, LOCAL TIME

The Norwalk Area Fire District (NAFD) will receive sealed bids for the New Fire Station Construction project at General Engineering Company at 916 Silver Lake Drive, Portage, WI 53901 at the time and date stated above, at which time, all Bids will be publicly opened and read aloud.

The proposed project will include the construction of a new 9,000 sf Pre-Engineered Metal Building to be used as the local fire station in the Village of Norwalk on the corner of Main Street and W. South Street. The building is to consist of 6,750 sf for vehicle storage, and 2,250 sf for office, utility, and restroom facilities below a 2,250 sf precast concrete mezzanine. The plumbing, electrical, and HVAC components are to be design-build under the guidance of provided bid documents.

Digital Bidding Documents are available at www.generalengineering.net or at www.questcdn.com. You may download the digital documents for \$40.00 by inputting Quest Project #10017179. An optional paper set is also available from the office of General Engineering Company, P.O. Box 340, 916 Silver Lake Drive, Portage, WI 53901 for a fee.

All Bidders are asked to participate in the Pre-Bid Teleconference held on Wednesday, February 4, 2026 at 10:30 AM, local time via Microsoft Teams. Access the Pre-Bid Teleconference through Microsoft Teams using Meeting ID: 239 671 230 907 25 and passcode: Lj78HT6r. Access via phone by calling (323) 538-5492 and entering conference ID: 497 591 309#.

Bids must be accompanied by bid security in the form of a certified check or bid bond equal to five percent of the maximum bid price, payable to the Owner as a guaranty that if the Bid is accepted, the Bidder will execute the Contract Documents and furnish the required contract security. If the Successful Bidder fails to execute the Contract Documents and provide the required contract security within 15 days after the Notice of Award, the Owner may annul the Notice of Award and the Bid Security will be forfeited.

Bids may not be withdrawn within 60 days after the date of the bid opening. The Owner reserves the right to reject any or all Bids, and to award the Contract to the Bidder, who in the judgment of the Owner, will best serve the interest of the Owner.

The Contract shall be subject to Wis. Stats. 66.0903 pertaining to prevailing wage rates and Federal Davis-Bacon wage rates.

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 this contract in accordance with federal labor standards (Davis-Bacon and Related Acts [DBRA]), Build America, Buy America (BABA) Act domestic procurement, Housing and Community Development Act of 1974 Section 3 (24 CFR 75), Section 109, and E.O. 11246.

This project will be funded in part by the Community Development Block Grant program. Disadvantaged Business Enterprises (DBEs), including Minority-Owned Business Enterprises (MBEs), and Women-Owned Business Enterprises (WBEs) are encouraged to submit bid proposals.

Published by the authority of the Norwalk Area Fire District.

By: Norwalk Area Fire District
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SECTION 00 21 13
INSTRUCTIONS TO BIDDERS

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INSTRUCTIONS TO BIDDERS

Article 1 - Defined Terms

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

Article 2 - Copies of Bidding Documents

- 2.01 Complete sets of Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement for Bids may be obtained from the Issuing Office. The deposit is non-refundable.
- 2.02 Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assumes responsibility for errors or misrepresentations resulting from use of incomplete sets of Bidding Documents.
- 2.03 Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

Article 3 - Qualifications of Bidder

- 3.01 To demonstrate Bidder's qualifications to perform the Work, within five days of the Owner's request, Bidder shall submit written evidence of financial data, previous experience, present commitments, and other such data as may be desired by the Owner. At a minimum, the following data shall be provided:
- A. The address and description of the Bidder's place of business.
 - B. A list of plant and equipment owned by the Bidder.
 - C. A financial statement of the Bidder showing the Bidder has the financial resources to meet all obligations incident to the Work.
 - D. The technical experience of main personnel to be employed in responsible charge of the work or portions thereof. Provide evidence of performance on previous work of similar nature, magnitude and difficulty.
 - E. Such additional information as will assist the Owner in determining whether the Bidder is adequately prepared to fulfill the terms and conditions of the Contract Documents.

Article 4 - Examination of Bidding Documents, Other Related Data, and Site

- 4.01 Subsurface and Physical Conditions
- A. There are no available reports or tests. The Contractor may perform at his expense explorations and tests of subsurface conditions prior to the bid, but only with written permission from the Owner and Engineer.
- 4.02 Underground Facilities

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.
- 4.03 Hazardous Environmental Condition
- A. There are no reports or drawings available.
- 4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 4.06 of the General Conditions.
- 4.05 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such investigations, explorations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates. For Sites in Wisconsin, any drill hole or other excavation or opening deeper than it is wide that extends more than ten feet below the ground surface shall be abandoned in accordance with Wisconsin Administrative Code Nr 812.26. An abandonment report shall be submitted to the appropriate DNR District Office within 30 days of the abandonment.
- 4.06 Reference is made to the Bidding Documents for the identification of the general nature of other work that is to be performed, if any, at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of contract documents (other than portions thereof related to price) for such other work.
- 4.07 It is the responsibility of each Bidder before submitting a Bid to:
- A. Examine and carefully study the Bidding Documents, the other related data identified in the Bidding Documents, and any Addenda.
- B. Visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress and performance of the Work.
- C. Become familiar with and satisfy the Bidder as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.
- D. Carefully study all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Bidding Documents.
- E. Consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any

specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.

- F. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
 - G. Become aware of the general nature of the work to be performed by Owner and others at the Site, if any, that relates to the Work indicated in the Bidding Documents.
 - I. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder.
 - J. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of the Work.
- 4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

Article 5 - Pre-Bid Conference

- 5.01 There will be a pre-bid conference as indicated in the Advertisement for Bids.

Article 6 - Site and Other Areas

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

Article 7 - Interpretations and Addenda

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.
- 7.03 Where there is a discrepancy within the Contract Documents, and the Engineer does not correct the discrepancy by Addenda, the larger number, highest cost, best quality and most restrictive shall apply.

Article 8 - Bid Security

- 8.01 Unless specifically stated otherwise in the Bidding Documents, a Bid must be accompanied by Bid security made payable to Owner in the amount of five percent of Bidder's maximum Bid price and in the form of a certified or bank check or Bid Bond issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General Conditions.
- 8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

Article 9 - Contract Time

- 9.01 The time for completion will be set forth as follows:
 - A. The number of days within which, or the dates by which, the Work is to be Substantially Completed and completed and ready for final payment are set forth in the Agreement.

Article 10 - Liquidated Damages

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

Article 11 - Substitute and “Or-Equal” Items

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

Article 12 - Subcontractors, Suppliers and Others

- 12.01 If the Bidding Documents require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, in which case apparent Successful Bidder shall submit an acceptable substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award
- 12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such

acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.

- 12.03 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom the Contractor has a reasonable objection.
- 12.04 The successful Bidder must have contracts with their sub-contractors in writing. The successful Bidder must submit a copy of the fully executed contracts, including contract amounts, with their sub-contractors after the project is awarded. Those contracts must also include the following CDBG contract specifications:
- 00 43 39 MBE/WBE/DBE & Section 3 Web Resources
 - 00 45 20 Potential Conflict of Interest Disclosure
 - 00 45 20.10 Federal Conflict of Interest Clause
 - 00 45 46.11 Lobbying Certification from Contractor/Subcontractor
 - 00 45 46.21 Disclosure of Lobbying Activities
 - 00 45 46.23 CDBG Build America Buy America
 - 00 73 36.10 Equal Opportunity Clause
 - 00 73 36.12 Section 3 Language Requirements
 - 00 73 36.13 Affirmative Action Requirements
 - 00 73 36.16 Federal Employment Opportunity Clauses Contract Specification
 - 00 73 43.12 Federal Labor Standards Provisions
 - 00 73 43.13 Davis-Bacon and Related Acts
 - 00 73.46.11 Federal Wage Determination
 - 01 31 00.10 Pre-Construction Checklist for Contractors

Inclusion by reference is not allowed.

Article 13 - Preparation of Bid

- 13.01 The Bid Form is included with the Bidding Documents.
- 13.02 All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, bid item, alternate, adjustment unit price item, and unit price item listed therein. In the case of optional alternatives the words "No Bid," "No Change," or "Not Applicable" may be entered.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner, whose title must appear under the signature, accompanied by evidence of authority to sign. The official address of the partnership shall be shown.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.06 A Bid by an individual shall show the Bidder's name and official address.
- 13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.08 All names shall be typed or printed in ink below the signatures.

- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.10 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's Wisconsin contractor license number shall be shown on the Bid Form.

Article 14 - Basis of Bid

- 14.01 Bids may be lump sum, unit price, or combination thereof as set forth in the Bid Form.
- 14.02 Lump Sum
 - A. Bidders shall submit a Bid on a lump sum basis for the base Bid and include a separate price for each alternate described in the Bidding Documents as provided for in the Bid Form. The price for each alternate will be the amount added to or deleted from the base Bid if Owner selects the alternate.
- 14.03 Unit Price
 - A. Bidders shall submit a Bid on a unit price basis for each item of work listed in the Bid Form.
 - B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.
 - C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- 14.04 Allowances
 - A. For cash allowances the Bid price shall include such amounts as the Bidder deems proper for Contractor's overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 11.02.B of the General Conditions.

Article 15 - Submittal of Bid

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

Article 16 - Modification and Withdrawal of Bid

- 16.01 A Bid may be modified by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for opening Bids.

- 16.02 If within 24 hours after the Bids are opened any Bidder files a duly signed written notice with the Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is re-bid, that Bidder will be disqualified from further bidding on the Work.

Article 17 - Opening of Bids

- 17.01 Bids will be opened publicly at the time and place indicated in the Advertisement for Bids. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

Article 18 - Bids to Remain Subject to Acceptance

- 18.01 All bids will remain subject to acceptance for the period of time stated in the Advertisement or Invitation to Bid, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

Article 19 - Evaluation of Bids and Award of Contract

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.
- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which the Bidder has an interest.
- 19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 19.04 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals, or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals, or entities must be submitted as provided in the Supplementary Conditions.
- 19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed of Subcontractors, Suppliers, and other individuals, or entities to perform the Work in accordance with the Contract Documents.
- 19.06 If the Contract is awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Project.

Article 20 - Contract Security and Insurance

- 20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to Performance and Payment Bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required Bonds and insurance.

Article 21 - Signing of Agreement

- 21.01 When Owner gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents which are identified in the Agreement as attached thereto. Within 15 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

Article 22 - Sales Tax

- 22.01 Contractor shall pay all taxes described in paragraph 6.10 of the General Conditions. Contractor may be exempt from paying sales tax on all or a portion of this project. Additional sales tax information, if any, is found in 6.10 of the Supplementary Conditions.

Article 23 - Retainage

- 23.01 Retainage shall be five percent of the amount of the completed Work. If the Work has been 50 percent completed, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of the Engineer, may determine there will be no additional retainage on the Work subsequently completed as long as the character and progress of the Work remains satisfactory.
- 23.02 Retainage shall be fifteen percent for materials and products on site, but not incorporated into the Work.

END OF SECTION

BID FORM & PROPOSAL

ARTICLE 1 - BID RECIPIENT

- 1.01 This Bid is submitted to: Norwalk Area Fire District (NAFD)
213 W. South Street
Norwalk, WI 54648

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

ARTICLE 2 - BIDDER'S ACKNOWLEDGEMENTS

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

ARTICLE 3 - BIDDER'S REPRESENTATIONS

- 3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

<u>Number</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____
_____	_____

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

 1. Bidder has attended Pre-Bid Teleconference as noted in Advertisement for Bid.

C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in the Bidding Documents as containing reliable technical data, and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in the Bidding Documents as containing reliable technical data.

- required by the Bidding Documents; and (3) Bidder's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
 - G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
 - H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
 - I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

ARTICLE 4 - FURTHER REPRESENTATIONS

- 4.01 Bidder further represents that:
- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
 - B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
 - C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
 - D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 1. **Corrupt practice** means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process.
 2. **Fraudulent practice** means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
 3. **Collusive practice** means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels.
 4. **Coercive practice** means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 - BASIS OF BID

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

Contract 1: Fire Station Construction

Item No.	Item	Estimated No. of Units	Units	Unit Price	Total Bid Amount
Division 00 and 01 – GENERAL					
1	General Conditions – Bonding, Dumpster Fees, Superintendent, Testing, Inspections, etc.	1	LS	\$	\$
Division 03 – CONCRETE- (Approx. Units)					
2	Strip-Footings, Concrete, 24" W x 12" Thick	250	LF	\$	\$
3	Strip-Footings, Concrete, 16" W x 12" Thick	55	LF	\$	\$
4	Strip-Footings, Concrete, 30" W x 12" Thick	110	LF	\$	\$
5	Concrete Poured Wall, 8" Thick, 4' Depth	290	LF	\$	\$
6	Concrete Poured Wall, 16" Thick, 4' Depth	55	LF	\$	\$
7	4" Slab – Interior Slab	1950	SF	\$	\$
8	6" Slab – interior Slab	6700	SF	\$	\$
9	PF-1 Footing (84x84x12)	12	EA	\$	\$
10	PF-2 Footing (48x48x12)	8	EA	\$	\$
11	P1 – 26"x42" Pier	12	EA	\$	\$
12	P2 – 24"x24" Pier	12	EA	\$	\$
13	Interior Stair Footing (24x24x12)	2	EA	\$	\$
14	Precast Plank 10" Plank w/ Topping	2050	SF	\$	\$
15	Other Division 03 Work	1	LS	\$	\$
Division 04 – MASONRY					
16	8" Smooth CMU Walls	1665	SF	\$	\$
17	CMU Block Filler & Paint	3330	SF	\$	\$
18	Other Division 04 Work	1	LS	\$	\$
Division 05 – METALS					
19	Mezzanine Handrails	96	LF	\$	\$
20	Mezzanine Stair	17	Riser	\$	\$
21	Mezzanine Columns	2	EA	\$	\$
22	Other Division 05 Work	1	LS	\$	\$
Division 06 – WOOD, PLASTIC, & COMPOSITES					
23	Misc. Blocking / Reinforcement (approx. 40 Hrs)	1	LS	\$	\$
24	Partition Walls	200	LF	\$	\$
25	Other Division 06 Work	1	LS	\$	\$
Division 07 – THERMAL & MOISTURE PROTECTION					
26	Joint Caulking / Sealing	1	LS	\$	\$
27	Insulation, Roof	9000	SF	\$	\$
28	Insulation, Exterior Walls	5500	SF	\$	\$
29	Below Slab Insulation R-15	9000	SF	\$	\$
30	Gutters and Downspouts	200	LF	\$	\$
Division 08 – OPENINGS					
31	Exterior Hollow Metal Doors & Frames, 3'x7' (includes hardware)	7	EA	\$	\$
32	Hollow Metal Double Doors	2	EA	\$	\$

Item No.	Item	Estimated No. of Units	Units	Unit Price	Total Bid Amount
33	Interior Wood Doors	3	EA	\$	\$
34	14'x14' Insulated Overhead Door	8	EA	\$	\$
35	Exterior Windows	5	EA	\$	\$
36	Other Division 08 Work	1	LS	\$	\$
Division 09 – FINISHES					
37	Painting – Exterior HM Doors & Frames, 3'x7'	8	EA	\$	\$
38	Painting – HM Double Doors & Frames	2	EA	\$	\$
39	Staining – Wood Doors & Frames	3	EA	\$	\$
40	Partition / Furring Wall Drywall	2500	SF	\$	\$
41	Panting Partition / Furring Walls	2500	SF	\$	\$
42	Floor Finishing	2000	SF	\$	\$
43	Exterior Stone Veneer	900	SF	\$	\$
44	Other Division 09 Work	1	LS	\$	\$
DIVISION 10 – SPECIALTIES					
39	Signage	3	EA	\$	\$
40	Temporary CDBG Project Sign	1	LS	\$	\$
41	Mirror, 1/4" Plate Glass, Polished Edge	3	EA	\$	\$
42	Soap Dispensers	6	EA	\$	\$
43	Paper Towel Dispenser & Waste Receptacle, 18 gal.	6	EA	\$	\$
44	Toilet Paper Dispensers, wall-mounted	5	EA	\$	\$
45	Grab Bars (1 @ 36" and 1 @ 42")	3	Set	\$	\$
46	Metal Lockers	6	EA	\$	\$
47	Fire Extinguishers, ABC All Purpose, 9.5#	4	EA	\$	\$
48	Plastic Toilet Surrounds / Partitions	1	LS	\$	\$
49	Electric Hand Dryer (115 volt, 20 amp)	2	EA	\$	\$
50	Other Division 10 Work	1	LS	\$	\$
Division 11 – EQUIPMENT					
51	Handwash Sinks	6	EA	\$	\$
52	Multi-Wash Sink	2	EA	\$	\$
53	Water Heater	1	EA	\$	\$
54	Toilets	5	EA	\$	\$
55	Urinals	2	EA	\$	\$
56	Shower Unit	1	EA	\$	\$
57	Other Division 11 Work	1	LS	\$	\$
Division 12 – FURNISHINGS					
58	Cabinets	1	LS	\$	\$
59	Training Room Conference Tables w/ Chairs	6	EA	\$	\$
60	Countertops – Laminate	1	LS	\$	\$
61	Other Division 12 Work	1	LS	\$	\$
Division 13 – SPECIAL CONSTRUCTION					
62	Pre-Engineered Metal Building	9000	SF	\$	\$
63	Other Division 13 Work	1	LS	\$	\$
Division 22 – PLUMBING					
64	Interior Water Plumbing	1	LS	\$	\$
65	Interior Natural Gas Piping	1	LS	\$	\$
66	Exterior Natural Gas Piping	1	LS	\$	\$
67	Trench Drain, 20' Length	2	EA	\$	\$

Item No.	Item	Estimated No. of Units	Units	Unit Price	Total Bid Amount
68	36x36x36 inch Round Drain w/ Catch Basin	1	EA	\$	\$
69	24x24x24 inch Round Drain w/ Catch Basin	1	EA	\$	\$
70	Water Heater	1	EA	\$	\$
71	Other Division 22 Work	1	LS	\$	\$
Division 23 – HVAC					
72	HVAC Make Up Air / Furnace/ Ducting	1	LS	\$	\$
73	Radiant Heat Boiler with Distribution Equipment	2	EA	\$	\$
74	AC Unit and Connections	1	LS	\$	\$
75	Other Division 23 Work	1	LS	\$	\$
Division 26 – ELECTRICAL					
76	Electrical – Wiring	1	LS	\$	\$
77	Electrical – Outlets	1	LS	\$	\$
78	Electrical – Lighting	1	LS	\$	\$
79	Electrical – Panels	1	LS	\$	\$
80	Electrical – Emergency Generator Connection	1	LS	\$	\$
81	Electrical – Overhead Fans	1	LS	\$	\$
82	Other Division 26 Work	1	LS	\$	\$
Division 31 – EARTHWORKS					
83	Excavation / Grading	1	LS	\$	\$
84	Site Restoration / Erosion Control	1	LS	\$	\$
85	Other Division 31 Work	1	LS	\$	\$
Division 32 – SITE IMPROVEMENTS					
86	Site Improvements (Sidewalk, Pavement, Curb Cutting)	1	LS	\$	\$
87	Other Division 32 Work	1	LS	\$	\$
Division 32 – UTILITIES					
88	6" Sanitary Sewer Lateral	30	LF	\$	\$
89	4" Water Lateral	74	LF	\$	\$
90	8" Storm Sewer	290	LF	\$	\$
91	Other Division 33 Work	1	LS	\$	\$
ALTERNATES					
A-1	Chain Link Fence Around North Lot Line	1	LS	\$	\$

Approximate Total Contract 1 \$

ARTICLE 6 - TIME OF COMPLETION

6.01 Bidder agrees that the work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07.B of the General Conditions as follows:

CONTRACT 1	SUBSTANTIAL COMPLETION 10/30/2026	FINAL COMPLETION 11/20/2026
---------------	--------------------------------------	--------------------------------

6.02 Bidder accepts the provisions for liquidated damages in the amount of \$500.00 for each day that expires after the date of substantial completion and until the Work is substantially complete; and liquidated damages in the amount of \$500.00 for each day that expires after the date of final completion until the Work is complete.

ARTICLE 7 - ATTACHMENTS TO THIS BID

7.01 The following documents are submitted with and made a condition of this Bid:

- A. Required Bid Security in the form of a bid bond or certified check payable to the Owner.
- B. List of Proposed Subcontractors.
- C. Lobbying Certification
- D. Disclosure of Lobbying Activities, if necessary
- E. Potential Conflict of Interest Disclosure

ARTICLE 8 - DEFINED TERMS

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

ARTICLE 9 - COMMUNICATIONS

9.01 Communications concerning this Bid shall be addressed to:

Name

Address

Phone

FAX

E-Mail Address

ARTICLE 10 - BID SUBMITTAL

10.01 This Bid submitted by:

An Individual

Name (typed or printed) _____

By _____ (SEAL)
(Signature of Individual)

Doing business as _____

Business Address _____

A Partnership

Partnership Name: _____ (SEAL)

By _____
(Signature of General Partner, attach evidence of authority to sign)

Name (typed or printed) _____

Business Address _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____

By _____
(Signature, attach evidence of authority to sign)

Name (typed or printed) _____

Title _____
(CORPORATE SEAL)

Attest _____
(Signature of Corporate Secretary)

Business Address _____

A Limited Liability Company

Company Name: _____ (SEAL)

State of Registration: _____

By: _____
(Signature, attach evidence of authority to sign)

Name (typed or printed) _____

Title _____

By: _____
(attach evidence of authority to sign)

Name (typed or printed) _____

Title _____

Business Address _____

BID BOND

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

BIDDER (*Name and Address*):

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

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name and Include Location*):

BOND

Bond Number:

Date (*Not earlier than Bid due date*):

Penal sum

(Words)

\$

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

BIDDER

Bidder's Name and Corporate Seal

(Seal)

SURETY

Surety's Name and Corporate Seal

(Seal)

By:

Signature

By:

Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest:

Signature

Attest:

Signature

Title

Title

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

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

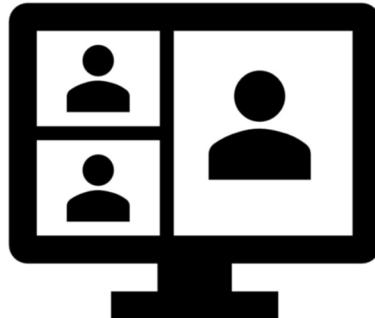
SECTION 00 43 36

LIST OF SUBCONTRACTORS

In accordance with Section 66.0901(7) of the Wisconsin Statutes Bidder shall provide a list of subcontractors the Bidder proposes to contract with as part of the bid and the class of work to be performed by each. This list may not be added to or altered without the written consent of the Owner. A proposal of a bidder shall not be invalid if any subcontractor, and the class of work to be performed by such subcontractor, has been omitted. The omission shall be considered inadvertent or the bidder will perform the work personally.

SECTION 00 43 39

MBE/WBE/DBE & Section 3 Web Resources



Resources for outreach to, contracting with, and certified registration for Minority-owned Business Enterprise (MBE), Woman-owned Business Enterprise (WBE) and Disadvantaged Business Enterprise (DBE) firms and Section 3 Business concerns:

Department of Administration Certified Minority-Owned Business Enterprise (MBE) and Woman-Owned Business Enterprise (WBE) Directory:

<https://wisdp.wi.gov/search.aspx>

Department of Administration Certified Minority-Owned Business Enterprise (MBE) and Woman-Owned Business Enterprise Registration:

<https://doa.wi.gov/Pages/StateEmployees/HowtoApply.aspx>

Department of Transportation

Disadvantaged Business Enterprise (DBE) Program

<https://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/default.aspx>

U.S. Department of Housing and Urban Development (HUD) Section 3 Resources Website for Grantees and Contractors

<https://www.hud.gov/section3>

City of Madison Targeted Business Enterprise Program Directories:

<http://www.cityofmadison.com/dcr/aaTBDir.cfm>

SECTION 00 45 20

POTENTIAL CONFLICT OF INTEREST DISCLOSURE

**New Fire Station
Town of Ridgeville / Norwalk Area Fire District, Monroe County, Wisconsin**

Do you have family or business ties to any of the people listed below?

Yes No

If yes, please check the box next to the name(s) of the individual(s) and describe the relationship in the space provided below:

ELECTED OFFICIALS:

- Keith Giraud, Town of Ridgeville Chairman and NAFD President
- Greg Larson, Town of Ridgeville Supervisor 1
- Ron Luethe, Town of Ridgeville Supervisor 2
- Rita Williams, Town of Ridgeville Clerk
- Kathy Cale, Town of Ridgeville Treasurer

NAFD ADMINISTRATION, DEPARTMENT HEADS AND LEGAL COUNSEL:

- Deb Ferries, NAFD Secretary/Treasurer
- Levi Helgren, NAFD Vice President
- Kenny Schmitz, NAFD Board Member
- Kevin Schmitz, NAFD Board Member
- Katie Vian, NAFD Board Member

ARCHITECT AND CONSULTING FIRM:

- Greg Cashman, AIA, NCARC, Architect, Cashman & Associates
- Elizabeth A.F. Shumate, Grants & Funding Coordinator, General Engineering Company
- Jim Nellessen, PE, Structural Engineer, General Engineering Company

Description of Relationship(s):

Please Note: The name of any bidder with a potential conflict of interest will be disclosed at the NAFD Board Meeting in which bids are discussed. Potential conflicts of interest will be reviewed in accordance with 24 CFR 570.489(h).

Printed Name of Individual	Title	Signature
Name of Business/Firm/Company		Date Signed [MM/DD/YYYY]

SECTION 00 45 20.10

24 CFR 570.489(h) CONFLICT OF INTEREST CLAUSE

Code of Federal Regulations Title 24 570.489(h) Program Administrative Requirements

(h) Conflict of interest: (1) *Applicability.* (i) *In the procurement of supplies, equipment, construction, and services by the States, units of local general governments, and sub-recipients, the conflict of interest provisions in paragraph (g) of this section shall apply.*

(ii) *In all cases not governed by paragraph (g) of this section, this paragraph (h) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with CDBG funds by the unit of general local government or its sub-recipients, to individuals, businesses and other private entities.*

(2) *Conflicts prohibited.* Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (h)(3) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this subpart or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(3) *Persons covered.* The conflict of interest provisions for paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or sub-recipients which are receiving CDBG funds.

(4) *Exceptions: Thresholds requirements.* Upon written request by the State, an exception to the provisions of paragraph (h)(2) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the state may be granted by HUD on a case-by-case basis. In all other cases, the state may grant such an exception upon written request of the unit of general local government provided the state shall fully document its determination in compliance with all requirements of paragraph (h)(4) of this section including the state's position with respect to each factor at paragraph (h)(5) of this section and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the state or unit of general local government as appropriate. An exception may be considered only after the state or unit of general

local government, as appropriate, has provided the following:

(i) *A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and*

(ii) *An opinion of the attorney for the state or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate state or local law.*

(5) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the requirements of paragraph (h)(4) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

(i) *Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;*

(ii) *Whether an opportunity was provided for open competitive bidding or negotiation;*

(iii) *Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;*

(iv) *Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;*

(v) *Whether the interest or benefit was present before the affected person was in a position as described in paragraph (h)(3) of this section;*

(vi) *Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and*

(vii) *Any other relevant considerations.*

SECTION 00 45 46.11

LOBBYING CERTIFICATION from the Contractor/Subcontractor

The undersigned certifies, to the best of their knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Name of Entity Completing This Form (i.e., Municipality / Company / Organization / Firm Name)

Signature (required)

Title

Date Signed

Printed/Typed Name of the Chief Elected Official, Owner, Chief Executive Officer, or Other Authorized Representative of the Entity/Organization

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C.1352

OMB Number: 4040-0013
Expiration Date: 02/28/2025

<p>1. * Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input checked="" type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p> <p>2. * Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application <input checked="" type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p> <p>3. * Report Type:</p> <p><input checked="" type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change</p>		
<p>4. Name and Address of Reporting Entity:</p> <p><input checked="" type="checkbox"/> Prime <input type="checkbox"/> SubAwardee</p> <p>* Name: <input type="text"/></p> <p>* Street 1: <input type="text"/> Street 2: <input type="text"/></p> <p>* City: <input type="text"/> State: <input type="text"/> Zip: <input type="text"/></p> <p>Congressional District, if known: <input type="text"/></p>		
<p>5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:</p>		
<p>6. * Federal Department/Agency: <input type="text"/></p>		<p>7. * Federal Program Name/Description: <input type="text"/></p> <p>CFDA Number, if applicable: <input type="text"/></p>
<p>8. Federal Action Number, if known: <input type="text"/></p>		<p>9. Award Amount, if known: \$ <input type="text"/></p>
<p>10. a. Name and Address of Lobbying Registrant:</p> <p>Prefix: <input type="text"/> * First Name: <input type="text"/> Middle Name: <input type="text"/> * Last Name: <input type="text"/> Suffix: <input type="text"/> * Street 1: <input type="text"/> Street 2: <input type="text"/> * City: <input type="text"/> State: <input type="text"/> Zip: <input type="text"/></p>		
<p>b. Individual Performing Services (including address if different from No. 10a)</p> <p>Prefix: <input type="text"/> * First Name: <input type="text"/> Middle Name: <input type="text"/> * Last Name: <input type="text"/> Suffix: <input type="text"/> * Street 1: <input type="text"/> Street 2: <input type="text"/> * City: <input type="text"/> State: <input type="text"/> Zip: <input type="text"/></p>		
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		
<p>* Signature: <input type="text"/> Completed on submission to Grants.gov</p> <p>* Name: Prefix: <input type="text"/> * First Name: <input type="text"/> Middle Name: <input type="text"/> * Last Name: <input type="text"/> Suffix: <input type="text"/></p> <p>Title: <input type="text"/> Telephone No.: <input type="text"/> Date: <input type="text"/> Completed on submission to Grants.gov</p>		
<p>Federal Use Only:</p> <p>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</p>		

SECTION 00 45 46.23

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) BUILD AMERICA, BUY AMERICA (BABA) ACT REQUIREMENTS FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

BACKGROUND INFORMATION

The Build America, Buy America (BABA) Act, 41 USC § 8301 note, was enacted in the Infrastructure Investment and Jobs Act on November 15, 2021. The BABA Act specifies that products purchased in connection with infrastructure projects funded by Federal financial assistance (FFA) programs must be produced in the United States (U.S.). According to the BABA Act, “none of the funds made available for a Federal Financial Assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” This requirement is known as the “**Buy America Preference (BAP)**” (or “domestic procurement requirement”). The purpose of BABA is to stimulate private sector investments in American manufacturing, bolster critical American supply chains, and support the creation of jobs so that America’s workers and firms can compete and lead globally. Additional information is provided on the [HUD BABA website](https://www.hudexchange.info/programs/baba/) at: <https://www.hudexchange.info/programs/baba/>

REQUIREMENTS

The prime contractor and all subcontractors (all tiers) must comply with the requirements of the BABA Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, as applicable to the Community Development Block Grant (CDBG) infrastructure project. Pursuant to the U.S. Department of Housing and Urban Development's (HUD's) [CPD-2023-12](#) notice, [Public Interest Phased Implementation Waiver for FY2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance](#) ([88 FR 17001](#)), and [CPD-2025-01](#) notice, [CPD Implementation Guidance for the Build America, Buy America Act's Buy America Preferences](#), any funds obligated by HUD on or after the applicable BAP implementation dates listed in [88 FR 17001](#) are subject to BABA requirements, unless excepted by a waiver.

The contractor (whether a prime contractor or subcontractor – any tier) must:

- **ensure compliance with the BAP requirement** for all products and materials covered under BABA that are purchased for a CDBG infrastructure project, unless the project or item qualifies for a waiver or exemption; and
- **submit the BABA Compliance Self-Certification form and Covered Materials List documents, and obtain and submit these documents from their affiliated subcontractors for the project** (to be provided to the CDBG Grantee/unit of general local government (UGLG), which transmits the documents to the State of Wisconsin Department of Administration (DOA) – Division of Energy, Housing and Community Resources (DEHCR)); and
- **maintain records that verify compliance with the BAP** for all products and materials covered under BABA and provide them to the CDBG Grantee/UGLG, DEHCR, HUD, and/or other regulating entities upon request; and
- **receive the required approvals for any project-specific waiver request prior to purchasing** any product or material not produced in the U.S. that is covered under BABA and not eligible for a general waiver or other exemption.

General waivers and project-specific waiver categories are specified in [88 FR 17001](#).

In accordance with HUD's phased implementation plan for BABA for the CDBG program,* iron and steel, manufactured products, and production materials purchased for infrastructure project awarded by DEHCR to a CDBG Grantee/UGLG on or after the dates listed below must be produced in the U.S. unless a waiver or exemption applies:

<u>Category</u>	<u>WI CDBG Projects Subject to BABA*</u>
Iron and steel products	Grant Awarded on or after 1/1/2023
Construction materials specifically listed in 88 FR 17001	Grant Awarded on or after 1/1/2024
Construction materials <i>not</i> specifically listed in 88 FR 17001	Grant Awarded on or after 1/1/2025
Manufactured products	Grant Awarded on or after 1/1/2025

An article, material, or supply is not to be classified into more than one category and must be made based on the status of the article, material, or supply upon arrival to the work site for use in an infrastructure project. Articles, materials, or supplies must meet the BAP for only the single category in which they are classified and, in some cases, may not fall under any of the categories listed above.

DEFINITIONS

Key terms that have relevance to the interpretation and implementation of the BAP for CDBG are defined in the BABA statute and may be found in HUD Notice [CPD-2023-12](#), [2 CFR 184](#), and [OMB M-24-02, CPD-2025-01](#) guidance.

BABA PROJECT-SPECIFIC WAIVER REQUEST PROCESS**

Waivers are explained in HUD Notice [CPD-2023-12](#), [OMB M-24-02](#) and [CPD-2025-01](#) and are required by the Infrastructure, Investments and Jobs Act (IIJA) sections 70901 through 70952 for exceptions not otherwise exempt to the BAP.

A contractor seeking a project-specific waiver must demonstrate the criteria for one or more of the project-specific waiver categories are met. Contractors are to consult with and submit waiver requests to the Grantee/UGLG.** The CDBG BABA Project-Specific Waiver Request Form (Attachment 3-K linked on the Wisconsin State CDBG Small Cities Program [CDBG Implementation Handbook](#) website [<https://energyandhousing.wi.gov/Pages/AgencyResources/CDBG-Implementation-Handbook.aspx>]) must be completed and submitted with the required supporting documentation, following the instructions on the form, for project-specific waiver consideration.

The contractor must submit the waiver request documentation to the CDBG Grantee/UGLG, and the CDBG Grantee/UGLG must verify that it is complete and submit it to DEHCR. DEHCR will review the documentation and if it is confirmed to be complete and in compliance, will submit the required waiver request information and additional documentation to the appropriate HUD representative for further review and processing. A waiver must be approved by DEHCR, HUD, and the [Made in America Office](#) (MIAO) prior to an entity proceeding with using any construction items subject to the BAP for the CDBG project that are not produced in the U.S. [Note: The waiver request review process includes a public notice requirement and the issuance of a decision by HUD and the MIAO may require six (6) weeks or more.]

**Other Federal funding agencies may have different phase-in plans with different phase-in dates.*

***If the project is funded with multiple Federal funding sources, to avoid duplicative waiver requests, the Grantee/UGLG and DEHCR are to coordinate with the “Cognizant Agency” (i.e., the entity contributing the greatest amount of Federal funds to the project) to process the waiver request and submit it for approval by the Federal agency and MIAO. The Cognizant Agency is responsible for consulting with the other Federal agencies, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to the MIAO.*

NOTICE OF AWARD

Date: _____

Project: _____

Owner:	Owner's Contract No.:
Contract:	Engineer's Project No.:

Bidder: _____

Bidder's Address: _____

You are notified that your Bid dated ____ for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for ____

The Contract Price of your Contract is ____ Dollars and ____ (\$__).

[Insert appropriate data if unit prices are used. Change language for cost-plus contracts]

____ copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

____ sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within [15] days of the date you receive this Notice of Award.

1. Deliver to the Owner [____] fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security [Bonds] as specified in the Instructions to Bidders (Article 20), General Conditions (Paragraph 5.01), and Supplementary Conditions (Paragraph SC-5.01).
3. Other conditions precedent:

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

Owner
By: _____
Authorized Signature

Title

Copy to Engineer

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

THIS AGREEMENT is by and between _____ ("Owner") and _____ ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

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

ARTICLE 2 – THE PROJECT

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

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by General Engineering Company, which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Dates for Substantial Completion and Final Payment*

A. The Work for Contract 3 will be substantially completed on or before _____, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before _____.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract

Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A below:

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

(\$ _____)

The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the _____ day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

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

- a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
- b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 97.5 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

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

ARTICLE 7 – INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 8 percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 1. This Agreement (pages 00 52 00-1 to 00 52 00-6, inclusive).
 2. Notice to Proceed (page 00 55 00-1).
 3. Performance Bond (pages 00 61 13-1 to 00 61 13-3, inclusive).
 4. Payment Bond (pages 00 61 16-1 to 00 61 16-3, inclusive).

5. Submittal Transmittal Form (page 00 62 11-1).
 6. Construction Site Inspection Report (pages 00 62 30-1 to 00 62 30-3, inclusive).
 7. Application for Payment (pages 00 62 76-1 to 00 62 76-2, inclusive).
 8. Field Order (00 63 46-1).
 9. Work Change Directive (00 63 49-1).
 10. Change Order (page 00 63 63).
 11. Certificate of Substantial Completion (pages 00 65 16-1).
 12. General Conditions (pages 00 72 00-1 to 00 72 00-62, inclusive).
 13. Supplementary Conditions (pages 00 73 00-1 to 00 73 00-5, inclusive).
 14. Specifications as listed in the table of contents of the Project Manual with the following general title _____.
 15. Drawings as listed in the table of contents of the Project Manual with the following general title _____.
 16. Addenda (number ____)
 17. Exhibits to this Agreement (enumerated as follows):
 - a. Bid Form and Proposal (pages 00 41 00-1 to 00 41 00- 6, inclusive).
 18. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Written Amendments.
 - b. Work Change Directives.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

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

10.02 *Assignment of Contract*

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

10.03 *Successors and Assigns*

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

10.04 *Severability*

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

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

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

OWNER:

CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

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

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____

(Where applicable)

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

Agent for service of process:

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

NOTICE TO PROCEED

Date:

Project:

Owner:

Owner's Contract No.:

Contract:

Engineer's Project No.:

Contractor:

Contractor's Address:

You are notified that the Contract Times under the above Contract will commence to run on _____ . On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the date of Substantial Completion is 30 days from State Date, and the date of readiness for final payment is _____ .

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds and loss payees) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Owner

Given by:

Authorized Signature

Title

Date

Copy to Engineer

PERFORMANCE BOND

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

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*):

CONTRACT

Effective Date of Agreement:

Amount:

Description (*Name and Location*):

BOND

Bond Number:

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

Amount:

Modifications to this Bond Form:

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

CONTRACTOR AS PRINCIPAL

SURETY

(Seal)

(Seal)

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By:

Signature

By:

Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest:

Signature

Attest:

Signature

Title

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

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

1. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.

2. If there is no Owner Default, Surety's obligation under this Bond shall arise after:

- 2.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
- 2.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
- 2.3 Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract; or
 2. Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.

3. When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:

- 3.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
- 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
- 3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
- 3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
 2. Deny liability in whole or in part and notify Owner citing reasons therefor.

4. If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.

5. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

- 5.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
 - 5.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and
 - 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.
6. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.
 7. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.
 8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located, and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
 9. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.
 10. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

11. Definitions.

- 11.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
- 11.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 11.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 11.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – (Name, Address and Telephone)

Surety Agency or Broker:

Owner's Representative (Engineer or other party):

PAYMENT BOND

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

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*):

CONTRACT

Effective Date of Agreement:

Amount:

Description (*Name and Location*):

BOND

Bond Number:

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

Amount:

Modifications to this Bond Form:

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

CONTRACTOR AS PRINCIPAL

SURETY

(Seal)

Contractor's Name and Corporate Seal

(Seal)

Surety's Name and Corporate Seal

By:

Signature

By:

Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest:

Signature

Attest:

Signature

Title

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

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

subcontracts, purchase orders, and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

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

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

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

15. Definitions

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

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

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

FOR INFORMATION ONLY – (*Name, Address, and Telephone*)

Surety Agency or Broker:

Owner's Representative (*Engineer or other*):



General Engineering Company
P.O. Box 340
916 Silver Lake Dr.
Portage, WI 53901
608-742-2169 (Office)
608-742-2592 (Fax)
gec@generalengineering.net

SUBMITTAL TRANSMITTAL

Project: _____

Date: _____
Project Number: _____

TRANSMITTAL To (Contractor):

Date: _____

A

From (Subcontractor):

By: _____

Resubmission

Qty.	Reference/ Number	Title/Description/ Manufacturer	Spec. Section Title and Paragraph/ Drawing Detail Reference

- Submitted for review and approval
 Resubmitted for review and approval
 Complies with contract schedule
 Will be available to meet construction schedule
 A/E review time included in construction schedule

- Substitution involved – Substitution request attached
 If substitution involved, submission includes point-by-point comparative data or preliminary details.
 Items included in submission will be ordered immediately upon receipt of approval

Other remarks on above submission:

One copy retained by sender

TRANSMITTAL To (A/E):

Attn: _____ Date Rec'd by Contractor: _____

B

From (Contractor):

By: _____

Date Trnsmt'd by Contractor: _____

- Approved
Approved as noted

- Revise/Resubmit
Rejected/Resubmit

Other remarks on above submission

One copy retained by sender

TRANSMITTAL To (Contractor):

Attn: _____ Date Rec'd by A/E: _____

C

From (A/E):

Other

By: _____ Date Trnsmt'd by A/E: _____

- Reviewed
Reviewed as noted
Not subject to review
No action required
Revise/Resubmit
Rejected/Resubmit
Reviewed as noted/Resubmit
Other remarks on above submission:

- Provide file copy with corrections identified
Sepia copied only returned
Point-by-point comparative data required
to complete approval process
Submission Incomplete/Resubmit

Two copies retained by sender

TRANSMITTAL To (Subcontractor):

Attn: _____ Date Rec'd by Contractor: _____

D

From (Contractor):

By: _____

Date Trnsmt'd by Contractor: _____

Copies: Owner Consultants

One copy retained by sender

Notice: Use of this specific form is voluntary, but the information contained on this form must be collected and kept by the permittee under s. NR 216.48(4), Wis. Adm. Code, for a construction site covered under the General WPDES Construction Site Storm Water Discharge Permit, Permit No. WI-0067831-2. This form is provided for the convenience of the permittee to meet the requirements of s. NR 216.48(4), Wis. Adm. Code. Multiple copies of this form may be made to compile the inspection report.

Inspections of implemented erosion and sediment control best management practices must be performed weekly and within 24 hours after a precipitation event 0.5 inches or greater which results in runoff.

Weekly written reports of all inspections conducted by or for the permittee must be maintained throughout the period of general permit coverage. The information maintained in accordance with s. NR 216.48 (4) must be submitted to the Department upon request.

Name of Permittee:				
Construction Site Name (Project):			Construction Site ID No.:	
Location:			County:	
Contractor:			Field Office Phone:	
Note: Weekly inspection reports, along with erosion control and stormwater management plans, are required to be maintained on site and made available upon request.				
Date of inspection (mm/dd/yy): _____			Type of inspection: <input type="checkbox"/> Weekly <input type="checkbox"/> Precipitation Event <input type="checkbox"/> Other (specify) _____	
Time of inspection: Start: _____ a.m./p.m. End: _____ a.m./p.m.			Name(s) of individual(s) performing inspection:	
Weather:				
Description of present phase of construction:				
Modifications Required	Yes	No	Not Applicable	Comments/Recommendations about the overall effectiveness of the erosion and sediment control measures. Note: For each item checked "Yes", complete the follow-up information on page 2.
Ditch Checks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Erosion Control Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Erosion Mat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Grading Practices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Inlet Protection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Mulch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Offsite Sediment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Permanent Seeding	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Schedule / Phasing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Silt Fence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Silt Screen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sod	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Stabilized Outlet	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Temp. Diversion Channel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Temp. Settling Basin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Temporary Seeding	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tracking Pads	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Turbidity Barrier	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Other (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

CONSTRUCTION SITE INSPECTION REPORT

Form 3400-187 (rev. 9/04)

Page 2 of 2

Name of Permittee:		
Construction Site Name (Project):		Construction Site ID No.:
<i>Use the space below for detailed follow-up action items.</i>		
Exact place of erosion/sediment control inspected	Type of erosion/sediment control and its observed condition	Description of any necessary maintenance or repair to erosion/sediment control, including anticipated date of completion

Contractor's Application for Payment No. [Redacted]

To (Owner):	Application Period:	Application Date:
From (Contractor):	Via (Engineer):	
Project:	Contract:	
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.:

Application For Payment

Change Order Summary

Approved Change Orders		
Number	Additions	Deductions
TOTALS		
NET CHANGE BY CHANGE ORDERS		

1. ORIGINAL CONTRACT PRICE..... \$ _____
2. Net change by Change Orders..... \$ _____
3. Current Contract Price (Line 1 ± 2)..... \$ _____
4. TOTAL COMPLETED AND STORED TO DATE
 (Column F on Progress Estimate)..... \$ _____
5. RETAINAGE:
 a. 5% X _____ Work Completed..... \$ _____
 b. 5% X _____ Stored Material..... \$ _____
 c. Total Retainage (Line 5a + Line 5b)..... \$ _____
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c)..... \$ _____
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... \$ _____
8. AMOUNT DUE THIS APPLICATION..... \$ _____
9. BALANCE TO FINISH, PLUS RETAINAGE
 (Column G on Progress Estimate + Line 5 above)..... \$ _____

Contractor's Certification

The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

By:

Date:

Payment of: \$ _____
 (Line 8 or other - attach explanation of the other amount)

is recommended by: _____ (Engineer) (Date)

Payment of: \$ _____
 (Line 8 or other - attach explanation of the other amount)

is approved by: _____ (Owner) (Date)

Concurrence by: _____ Funding Agency (if applicable) (Date)

Endorsed by the Construction Specifications Institute.

EJCDC C-620 Contractor's Application for Payment

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Progress Estimate

Contractor's Application

**Field Order
No.**

Date of Issuance: _____ Effective Date: _____

Project:	Owner:	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.:

Attention:

You are hereby directed to promptly execute this Field Order issued in accordance with General Conditions Paragraph 9.04.A, for minor changes in the Work without changes in Contract Price or Contract Times. If you consider that a change in Contract Price or Contract Times is required, please notify the Engineer immediately and before proceeding with this Work.

Reference:

(Specification Section(s))

(Drawing(s) / Detail(s))

Description:

Attachments:

Engineer:

Engineer:

Receipt Acknowledged by Contractor: _____ **Date:** _____

Copy to Owner

Work Change Directive

No.

Date of Issuance: **Effective Date:**

Project:	Owner:	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.:

Contractor is directed to proceed promptly with the following change(s):

Attachments (list documents supporting change):

Purpose for Work Change Directive:

Authorization for Work described herein to proceed on the basis of Cost of the Work due to:

- Nonagreement on pricing of proposed change.
 - Necessity to expedite Work described herein prior to agreeing to changes on Contract Price and Contract Time.

Estimated change in Contract Price and Contract Times:

Recommended for Approval by Engineer:	Date
Authorized for Owner by:	Date
Received for Contractor by:	Date
Received by Funding Agency (if applicable):	Date:

Change Order**No. _____**

Date of Issuance: _____

Effective Date: _____

Project:	Owner:	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.:

The Contract Documents are modified as follows upon execution of this Change Order:

Description:

Attachments (list documents supporting change):**CHANGE IN CONTRACT PRICE:**

Original Contract Price:

\$ _____

[Increase] [Decrease] from previously approved
Change Orders No. ____ to No. ____:

\$ _____

Contract Price prior to this Change Order:

\$ _____

[Increase] [Decrease] of this Change Order:

\$ _____

Contract Price incorporating this Change Order:

\$ _____

CHANGE IN CONTRACT TIMES:Original Contract Times: Working days Calendar days

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

[Increase] [Decrease] from previously approved Change Orders
No. ____ to No. ____:

Substantial completion (days): _____

Ready for final payment (days): _____

Contract Times prior to this Change Order:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

[Increase] [Decrease] of this Change Order:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

Contract Times with all approved Change Orders:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

RECOMMENDED:

By: _____

Engineer (Authorized Signature)

Date: _____

Approved by Funding Agency (if applicable):
_____**ACCEPTED:**

By: _____

Owner (Authorized Signature)

Date: _____

ACCEPTED:

By: _____

Contractor (Authorized)

Date: _____

Date: _____

CERTIFICATE OF SUBSTANTIAL COMPLETION

Project:

Owner:	Owner's Contract No.:
Contract:	Engineer's Project No.:

This [tentative] [definitive] Certificate of Substantial Completion applies to:

All Work under the Contract Documents: The following specified portions of the Work:

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby declared and is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

A [tentative] [definitive] list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as provided in the Contract Documents except as amended as follows:

Amended Responsibilities Not Amended

Owner's Amended Responsibilities:

Contractor's Amended Responsibilities:

The following documents are attached to and made part of this Certificate:

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

EJCDC C-625 Certificate of Substantial Completion

Prepared by the Engineers Joint Contract Documents Committee and endorsed by the Construction Specifications Institute.

00 65 16 - Page 1 of 2

Executed by Engineer _____ Date _____

Accepted by Contractor _____ Date _____

Accepted by Owner _____ Date _____

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

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

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(703) 548-3118
www.agc.org

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

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

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

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

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

1.02 Terminology

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

B. *Intent of Certain Terms or Adjectives:*

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

C. *Day:*

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

D. *Defective:*

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

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

E. *Furnish, Install, Perform, Provide:*

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

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

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of

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

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

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

3.03 *Reporting and Resolving Discrepancies*

- A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies:

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

3.04 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 1. A Field Order;
 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 Reuse of Documents

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

3.06 Electronic Data

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the

Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

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

4.02 Subsurface and Physical Conditions

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

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

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

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other

professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 Underground Facilities

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price

or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 Reference Points

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

4.06 Hazardous Environmental Condition at Site

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by

Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

6. include completed operations coverage:

- a. Such insurance shall remain in effect for two years after final payment.
- b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property

insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery

against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

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

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 Substitutes and "Or-Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. **"Or-Equal" Items:** If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items:

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and

- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.
- 6.06 *Concerning Subcontractors, Suppliers, and Others*
- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 Patent Fees and Royalties

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

6.08 Permits

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all

court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

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

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

- 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
 - 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
 - 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor

shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 Record Documents

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

6.13 Safety and Protection

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

1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

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

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

F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

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

6.15 Hazard Communication Programs

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

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

6.17 Shop Drawings and Samples

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
 - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

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

Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 6. any inspection, test, or approval by others; or
 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor,

Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

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

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

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

8.12 *Compliance with Safety Program*

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

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

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

9.02 *Visits to Site*

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

and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

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

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

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

- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

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

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 Notification to Surety

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

10.05 Claims

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The

opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on

Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

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

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. Contractor's Fee: When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 *Allowances*

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

B. *Cash Allowances:*

1. Contractor agrees that:

- a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
- b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

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

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

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

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

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

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
2. there is no corresponding adjustment with respect to any other item of Work; and
3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

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

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

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

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the

control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.

- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 Owner May Stop the Work

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

13.06 Correction or Removal of Defective Work

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute

resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and

equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments:

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the

Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or

- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

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

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or

- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
- 2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
- 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 Contractor's Warranty of Title

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

14.04 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities

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

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

14.05 Partial Utilization

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

- 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
- 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
- 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
- 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 Final Inspection

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

14.07 Final Payment

A. Application for Payment:

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Engineer's Review of Application and Acceptance:

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

C. Payment Becomes Due:

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

14.08 Final Completion Delayed

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

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

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

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

15.02 Owner May Terminate for Cause

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

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

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

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

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

17.02 Computation of Times

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

17.03 Cumulative Remedies

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

17.04 Survival of Obligations

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

17.05 Controlling Law

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

17.06 Headings

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

SECTION 00 73 00
SUPPLEMENTARY CONDITIONS

INSTRUCTIONS

SC-4.02 - Subsurface and Physical Conditions

The General Conditions refers to subsurface and physical conditions reports that are available. If there are no reports include the language provided. If there are such reports, describe them and indicate how they can be obtained or reviewed.

SC-4.06 - Hazardous Environmental Conditions

The General Conditions refers to hazardous environmental conditions reports that are available. If there are no reports include the language provided. If there are such reports, describe them and indicate how they can be obtained or reviewed.

SC-5.01 - Performance, Payment, and Other Bonds

The General Conditions require that the contractor provide Performance and Payment Bonds. If these bonds are not required for the project included this paragraph in the Supplementary Conditions.

SC 5.06 - Property Insurance

The General Conditions states that the Owner will provide property insurance.

If the Owner will not be providing, typical for a street or utility type projects, then choose the appropriate language provided.

For building projects the Owner may provide the insurance as per the General Conditions or the contract documents can require the contractor to provide the insurance. If the Owner will be providing property insurance, then remove this paragraph from the Supplementary Conditions. If the contractor is required to provide the insurance, choose the appropriate language provided.

SC-9.03 - Project Representative

Use the first option for all projects except those that will have a full-time project representative. If the project includes a full-time resident project representative, coordinate this section with the Engineer/Owner contract.

SECTION 00 73 00
SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

SC 2.02 - Copies of Documents

In 2.02.A. change the number of copies from ten to five.

[SC 4.02 - Subsurface and Physical Conditions

Delete Paragraphs 4.02.A and 4.02.B in their entirety and insert the following:

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

[SC 4.06 - Hazardous Environmental Conditions

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

SC 5.03 - Certificates of Insurance

In paragraph A replace "(and other evidence of insurance requested by Owner or any other additional insured)" with the following:

(and additional insured endorsements, and other evidence of insurance requested by Owner or any other additional insured)

SC 5.04 - Contractor's Insurance

In paragraph B.1 replace "(to these additional insureds shall provide primary coverage for all claims covered thereby;)" with the following:

(to these additional insureds shall provide primary and non-contributory coverage for all claims covered thereby;)

Add the new paragraph immediately after paragraph 5.04.B:

- C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation, and related coverages under paragraphs 5.04.A.1 and A.2 of the General Conditions:
- | | |
|--|-----------|
| a. State: | Statutory |
| b. Applicable Federal
(e.g. Longshoreman's) | Statutory |
| c. Employers Liability
Each Accident | \$500,000 |
| Disease Policy Limit | \$500,000 |
| Disease Each Employee | \$500,000 |

2. Contractor's General Liability under paragraphs 5.04A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under care, custody and control of Contractor:

a. General Aggregate	\$2,000,000				
b. Products - On-Going and Completed Operations Aggregate	\$2,000,000				
c. Personal and Advertising Injury	\$1,000,000				
d. Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000				
e. Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where applicable.					
f. Excess or Umbrella Liability: <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">General Aggregate</td> <td style="text-align: right;">\$ 1,000,000</td> </tr> <tr> <td>Each Occurrence</td> <td style="text-align: right;">\$ 1,000,000</td> </tr> </table>	General Aggregate	\$ 1,000,000	Each Occurrence	\$ 1,000,000	
General Aggregate	\$ 1,000,000				
Each Occurrence	\$ 1,000,000				
3. Automobile Liability under paragraph 5.04A.6 of the General Conditions:

a. Combined Single Limit of	\$ 1,000,000
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4. The Contractual Liability coverage required by paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following amounts:

a. Bodily Injury: <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Each Accident</td> <td style="text-align: right;">\$1,000,000</td> </tr> <tr> <td>Annual Aggregate</td> <td style="text-align: right;">\$2,000,000</td> </tr> </table>	Each Accident	\$1,000,000	Annual Aggregate	\$2,000,000	
Each Accident	\$1,000,000				
Annual Aggregate	\$2,000,000				
b. Property Damage: <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Each Accident</td> <td style="text-align: right;">\$1,000,000</td> </tr> <tr> <td>Annual Aggregate</td> <td style="text-align: right;">\$2,000,000</td> </tr> </table>	Each Accident	\$1,000,000	Annual Aggregate	\$2,000,000	
Each Accident	\$1,000,000				
Annual Aggregate	\$2,000,000				

SC6.06 - Concerning, Subcontractors, Suppliers, and Others

Add the following paragraph immediately after paragraph 6.06.G:

- H. The General or Prime Contractor shall maintain a list of all subcontractors, suppliers, and services providers performing, furnishing, or procuring labor, services, materials, plans, or specifications under the contract.
- I. The General or Prime Contractor must have contracts with their sub-contractors in writing. The General or Prime Contractor must submit a copy of the fully executed contracts, including contract amounts, with their sub-contractors after the project is awarded. Those contracts must also include the following CDBG contract specifications (inclusion by reference is not acceptable):
 - 00 43 39 MBE/WBE/DBE & Section 3 Web Resources
 - 00 45 20 Potential Conflict of Interest Disclosure
 - 00 45 20.10 Federal Conflict of Interest Clause
 - 00 45 46.11 Lobbying Certification from Contractor/Subcontractor
 - 00 45 46.21 Disclosure of Lobbying Activities
 - 00 45 46.23 CDBG Build America Buy America
 - 00 73 36.10 Equal Opportunity Clause
 - 00 73 36.12 Section 3 Language Requirements
 - 00 73 36.13 Affirmative Action Requirements
 - 00 73 36.16 Federal Employment Opportunity Clauses Contract Specification
 - 00 73 43.12 Federal Labor Standards Provisions
 - 00 73 43.13 Davis-Bacon and Related Acts
 - 00 73.46.11 Federal Wage Determination
 - 01 31 00.10 Pre-Construction Checklist for Contractors

SC6.08 - Permits

Add the following paragraph immediately after paragraph 6.08.A:

- A. Permits, certificates of inspections, and similar documents shall be delivered to the Engineer upon completion of the work.

[SC-6.10 - Taxes]

Add a new paragraph immediately after Paragraph 6.10.A:

- B. Owner may be exempt from payment of sales and compensating use taxes of the State of Wisconsin and of cities and counties thereof on all or a portion of the materials to be incorporated into the Work or a component of a facility per WI State Statute 77.54 (9m) with a "facility" defined as "any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and waste water treatment facility, but does not include a highway, street, or road."
 - 1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
 - 2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.]

SC 7.04 - Claims Between Contractors

Add the following new paragraph immediately after paragraph GC-7.03.C:

- D. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the construction coordinator, then Contractor (without involving Owner, Engineer, or construction coordinator) shall either (1) remedy the damage, (2) agree to compensate the other contractor for remedy of the damage, or (3) remedy the damage and attempt to settle with such other contractor by agreement, or otherwise resolve the dispute by arbitration or at law.
- E. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against Owner, Engineer, consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, or the construction coordinator on account of any such damage or Claim.
- F. If Contractor is delayed at any time in performing or furnishing the Work by any act or neglect of another contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, and construction coordinator for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or construction coordinator for activities that are their respective responsibilities.

SC 9.03 - Project Representative

Add the following new paragraphs immediately after paragraph GC-9.03.A:

- [B.] Owner or Engineer may appoint personnel for construction observation to observe materials furnished and the Work performed for compliance with the Drawings and Specifications. Construction observation personnel shall:
1. Serve as Engineer's liaison with Contractor, working principally through Contractor's authorized representative, assist in providing information regarding the intent of the Contract Documents.
 2. Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
 3. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 4. Report to Engineer whenever they believe that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that they believe should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 5. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
 6. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Hazardous Environmental Condition.
- C Construction observation personnel shall not:
3. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 4. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
 5. Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.
 6. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
 7. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.]

OR

- [B.] The Resident Project Representative (RPR) will be Engineer's employee or agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall be through or with the full knowledge and approval of Contractor. The RPR shall:
1. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
 2. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 3. Liaison:
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's authorized representative, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
 4. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

5. **Shop Drawings and Samples:**
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 6. **Modifications:** Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
 7. **Review of Work and Rejection of Defective Work:**
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 8. **Inspections, Tests, and System Startups:**
 - a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
 9. **Records:**
 - a. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
 - b. Maintain records for use in preparing Project documentation.
 10. **Reports:**
 - a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Hazardous Environmental Condition.
 11. **Payment Requests:** Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
 12. **Certificates, Operation and Maintenance Manuals:** During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
 13. **Completion:**
 - a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
 - b. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
 - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.
- C. The RPR Shall Not:
1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintend.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.]

SC 11.03. - Unit Price Work

Delete paragraph 11.03.D in its entirety and insert the following in its place:

- C. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:
 1. if the Bid price of a particular item of Unit Price Work amounts to 20 percent or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 10 percent from the estimated quantity of such item indicated in the Agreement; and
 2. if there is no corresponding adjustment with respect to any other item of Work; and
 3. if Contractor believes that Contractor has incurred additional expense as a result thereof or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, either Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Article 10 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

SC 12.03 - Delays

Add the following new paragraph immediately after paragraph GC-12.03.E:

- F. Contractor shall be responsible for damages incurred by Owner, Engineer, and any other separate Contractors for delay resulting from Contractor's failure to complete work within Contract Time. All costs associated with any subsequent inspections, in which these items are again noted will be documented by Engineer at Engineer's standard hourly rate, submitted to Owner. An equivalent amount will be deleted from the Contract by Construction Change Directive.

SC 16.01 - Methods and Procedures

Delete paragraph 16.01.A in its entirety and replace with the following:

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under paragraph 10.05 before decision becomes final and binding. The Owner shall have the sole right to identify and select mediation organization or company whose rules and procedures shall control the mediation, including the method by which the neutral who will preside over the mediation and render a related decision will be selected. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

Delete paragraph 16.01.C in its entirety and replace with the following:

- C. If the claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within the time period;
 1. Owner elects to invoke arbitration provided for in the Supplementary Conditions; or
 2. Owner or Contractor each agree to submit the Claim to another dispute resolution process mutually agreed upon; or
 3. if arbitration is not elected under sub. 1 nor another alternative dispute resolution process agreed upon under sub. 2, either Owner or Contractor may give written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

Add the following new paragraph immediately after Paragraph 16.01:

SC 16.02 - Arbitration

- A. If the Owner elects to utilize arbitration to decide any claim or counter claims, disputes, or other matter in question between Owner and Contractor arising out of the Contract Documents or the breach thereof, the Owner shall have the sole right to identify and select the arbitration organization or company whose rules and procedures shall control the arbitration, including the method by which the neutral who will preside over the arbitration and render a related decision will be selected. The rules and procedures of the selected arbitration organization or company shall be subject to the conditions and limitations of applicable law.
- B. The demand for arbitration will be filed in writing with the Contractor and with the selected arbitration organization or company selected by the Owner and a copy will be sent to the Engineer for information. The demand for arbitration will be made within the 30 day period specified in Paragraph SC-16.01.C, and in all other cases within a reasonable time after the Claim or counterclaim, dispute, or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such Claim or dispute or matter in question would be barred by the applicable statute of limitations.
- C. No arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
 1. the inclusion of such other individual or entity as a party is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and
 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings; and
 3. all parties and the individual or entity to be joined consent to the joinder.
- D. The award rendered by the arbitrator(s) shall be consistent with the agreement of the parties, in writing, and include; (i) a concise breakdown of the award; (ii) a written explanation of the award specifically citing the Contact Document provisions deemed applicable and relied on in making the award.
- E. The award will be final. The award may be confirmed and Judgment may be entered upon it in any court having jurisdiction thereof. Any action upon the award, including confirmation, modification, vacation, appeal, and enforcement of any related Judgement, shall be subject to the applicable controlling law.
- F. The fees and expenses of the arbitrators and any arbitration service shall be shared equally by Owner and Contractor.

END OF SECTION

SECTION 00 73 36.10

EQUAL OPPORTUNITY CLAUSE (EO 11246) FOR CONTRACTORS

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 will take affirmative action to ensure that applicants are employed and that employees are treated, 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 this nondiscrimination clause.
2. The contractor shall, 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 shall send to each labor union or representative of workers with which he/she 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 in conspicuous place available to employees and applicants for employment.
4. The contractor shall 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 shall 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 of Energy, Housing and Community Resources 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 noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, the 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 shall include the provisions of paragraphs 1 through 7 in every sub-contract 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 sub-contractor or vendor. The contractor will take such action with respect to any sub-contract or purchase order as DEHCR may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction by DEHCR, the contractor may request the United States to enter into such litigation to protect the interest of the United States.
8. The UGLG 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 UGLG 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.

9. The UGLG agrees that it will assist and cooperate actively with DEHCR and the Secretary of Labor in obtaining the compliance of contractors and sub-contractors 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.
10. The UGLG 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 sub-contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the UGLG agrees that if it fails or refuses to take any or all of the following actions: cancel, terminate, or suspend in whole or in part 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.

SECTION 00 73 36.12

SECTION 3 CONTRACT LANGUAGE REQUIREMENTS [24 CFR 75]

(For Grants/Projects Awarded On or After November 30, 2020)

Insertion of this document is required in all prime contracts and sub-contracts funded in whole or in part with U.S. Department of Housing and Urban Development (HUD) funds (including Community Development Block Grant (CDBG) projects) when the HUD/CDBG Award to the Grantee is greater than \$200,000 and the project includes construction activities.*

SECTION 3 TERMS OF CONTRACT

1. **Section 3 of the Housing and Urban Development Act of 1968:** The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3), 24 CFR 75. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by the U.S. Department of Housing and Urban Development (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.
2. **Contractor Certification of Compliance:** The parties to this contract agree to comply with HUD's regulations in 24 CFR 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the 24 CFR 75 regulations.
3. **Contract Language Requirement:** The contractor agrees to include this Section 3 Contract Requirements document in every subcontract subject to compliance with regulations in 24 CFR 75, and agrees to take appropriate action, as provided in an applicable provision of the sub-contractor in this Section 3 Contract Requirements document, upon a finding that the sub-contractor is in violation of the regulations in 24 CFR 75. The contractor will not sub-contract with any sub-contractor where the contractor has notice or knowledge that the sub-contractor has been found in violation of the regulations in 24 CFR 75.
4. **Section 3 Definitions:** Definitions for key Section 3 terms per 24 CFR 75 are as follows:
Section 3 Worker: An employee who *currently* fits, or *fit at the time of hire* if hired on or after 11/30/2020, *at least one of the following categories:*
 - (1) is employed by a Section 3 Business Concern; or
 - (2) is a low- or very low-income resident (i.e., a local person living within the Section 3 service area, with an individual annualized income currently as of the date of starting work on the project, or at the time of hire if hired on or after 11/30/2020, that is/was at or below the low-income (80%) threshold established by HUD for a Family of 1 for the county in which the person lives) [Note: The HUD income threshold must be from the HUD Income Limits for the CDBG program in effect currently in effect as of the date the worker started work on the project, or at the time of hire if hired on or after 11/30/2020]; or

* This language is required to be included in prime contracts and sub-contracts for a project that are funded in whole or in part with HUD/CDBG funds, and the HUD/CDBG Award to the Grantee is greater than \$200,000, and the HUD/CDBG funds were awarded to the Grantee on 11/30/2020 or later, and the HUD/CDBG funded project includes construction activities (including new construction, rehabilitation, renovation, site demolition and/or clearance). HUD/CDBG funded projects awarded on or after 11/30/2020, for which the HUD/CDBG funded Award is \$200,000 or less and/or for which there are no construction activities in the scope of work (e.g., Planning-only, Public Services-only, Housing Counseling-only, Financial Assistance-only [such as housing or economic development loans], etc.) are not subject to the Section 3 requirements of 24 CFR 75. Insertion of this Section 3 Contract Requirements document is required for contracts funded in whole or in part with the HUD/CDBG funds and strongly recommended for ALL contracts, regardless of funding source for the specific contract, for a project that is subject to 24 CFR 75, to help avoid issues with compliance and reporting later in the project cycle in the event that the funding source for the contract changes. All sub-contractors of a prime contractor that is funded in whole or in part with HUD/CDBG funding are subject to the same Section 3 requirements as the prime contractor.

(3) is/was a YouthBuild.

Targeted Section 3 Worker: A Section 3 Worker who:

- (1) is employed by a Section 3 Business Concern, **or**
- (2) currently fits, **or** fit at the time of hire if hired on or after 11/30/2020) at least one of the following categories as documented:
 - (i.) lives/lived in the neighborhood or within the Section 3 service area of the project; **or**
 - (ii.) is/was a YouthBuild.

Section 3 Business Concern: A business that fits *at least one* of the following categories (as certified within the past 6 months):

- (1) 51% or more owned by low- or very low-income persons; **or**
- (2) 75% or more of the labor hours are performed by low- or very low-income persons; **or**
- (3) 51% or more owned by current residents of public housing or Section 8-assisted housing.

Section 3 Service Area: An area within one mile of the project's location (i.e., street address); or an area within a circle centered around the project site that encompasses 5,000 people [if less than 5,000 people live within a one mile radius of the project site].

5. **Contracting Requirements**: To the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, the Grantee, subrecipients, and prime contractors and sub-contractors for the HUD/CDBG funded project agree to ensure contracts and sub-contracts for work awarded in connection with the project are awarded to business concerns that provide economic opportunities to Section 3 Workers; and where feasible in the following order of priority: (1) Section 3 Business Concerns that provide economic opportunities to Section 3 Workers residing within the metropolitan area (or nonmetropolitan county) in which the HUD funded assistance is provided/in which the HUD/CDBG funded project is occurring; and (2) YouthBuild programs.
6. **Employment and Training Requirements**: To the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, the Grantee, subrecipients, and prime contractors and sub-contractors for the HUD/CDBG funded project agree to ensure employment and training opportunities generated in connection with the project are filled by Section 3 Workers; and where feasible, in the following order of priority: (1) low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the HUD/CDBG assistance is expended (i.e., in which the HUD/CDBG funded project is occurring); and (2) participants in YouthBuild programs.
7. **Reporting Labor Hours**: The Grantee, subrecipients, and prime contractors and sub-contractors for the HUD/CDBG funded project agree to report all worker (see **exception** below)** labor hours on the project as follows: (1) the total number of labor hours worked on the project by each worker; (2) the total number of labor hours worked on the project by Section 3 Workers; and (3) the total number of labor hours worked on the project by Targeted Section 3 Workers. The labor hours reported shall include the total number of labor hours worked on the HUD/CDBG funded project by workers employed by the Grantee, subrecipients, their prime contractors and the sub-contractors of the project, during the reporting period specified by HUD and the State CDBG Program. The labor hours reported may be based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting. [Note: Construction contractors required to maintain certified payroll records to meet federal labor standards requirements agree to report actual work hours as reported on the certified payroll records.]

****Exception for positions that require an advanced degree or a professional certification: Reporting of hours for positions requiring an advanced degree or a professional certification is not required, but the hours may be reported to demonstrate Section 3 "best efforts". The Grantee, prime contractors and sub-contractors may report the labor hours by Section 3 Workers and Targeted Section 3 Workers without including labor hours from employees covered by the exception in the total number of labor hours worked. If the contract covers both work completed by employees covered by the exception and other work completed by employees not covered by the exception,**

then the labor hours for the other work by employees not covered by the exception must be reported.

8. **Section 3 Goals/“Safe Harbor” Benchmarks:** The Grantee, subrecipients, and prime contractors and sub-contractors agree to strive to meet the “safe harbor” benchmarks (as established by the HUD Section 3 Final Rule (24 CFR 75), which established quantitative benchmarks and prioritized qualitative efforts for funding recipients to achieve to assist low- and very low-income persons with employment and training opportunities. The “safe harbor” benchmarks are to have: (1) 25% or more of all labor hours worked on the project be by Section 3 Workers; and (2) 5% or more of all labor hours worked on the project be by Targeted Section 3 Workers. If the “safe harbor” benchmarks are not met over the course of the project, then the Grantee and prime contractors and sub-contractors for the HUD/CDBG funded project agree to provide evidence of completing qualitative efforts to assist low- and very low-income persons with employment and training opportunities. Supporting documentation of these completed efforts must also be maintained in the Grantee’s and contractors’ project files, to be made available upon request for monitoring purposes.
9. **Demonstrating Best Efforts:** When the Section 3 benchmarks are not met, the Grantee and prime contractors and sub-contractors for the HUD/CDBG funded project agree to demonstrate and report qualitative efforts made in an attempt to meet the benchmarks, which may include but are not limited to the following:
 - (1) Engage in outreach efforts to generate job applicants who are Targeted Section 3 Workers.
 - (2) Provide training or apprenticeship opportunities.
 - (3) Provide technical assistance to help Section 3 Workers compete for jobs (e.g., resume assistance, coaching, etc.).
 - (4) Provide or connect Section 3 Workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
 - (5) Hold one or more job fairs.
 - (6) Provide or refer Section 3 Workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care, etc.).
 - (7) Provide assistance to Section 3 Workers to apply for and/or attend community college, a four-year educational institution, or vocational/technical training.
 - (8) Assist Section 3 Workers to obtain financial literacy training and/or coaching.
 - (9) Engage in outreach efforts to identify and secure bids from Section 3 Business Concerns.
 - (10) Provide technical assistance to help Section 3 Business Concerns understand and bid on contracts.
 - (11) Divide contracts into smaller jobs to facilitate participation by Section 3 Business Concerns.
 - (12) Provide bonding assistance, guaranties, or other efforts to support viable bids from Section 3 Business Concerns.
 - (13) Promote use of business registries designed to create opportunities for disadvantaged and small businesses.
 - (14) Conduct outreach, engagement, or referrals with the State one-stop Supplier Diversity Program system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.
10. **Recordkeeping & Reporting:** The Grantee, subrecipients, and prime contractors and sub-contractors for the HUD/CDBG funded project agree to maintain all records demonstrating compliance with 24 CFR 75, including contracting information and documents, Section 3 Business Concern Certification forms, Section 3 Employee Income Certifications, and worker labor hours; and provide data and reporting documents as requested and required by the State CDBG Program and/or HUD. Grantee, subrecipient, and contractor records may be monitored for compliance by the State CDBG Program and/or HUD.
11. **Non-Compliance:** Non-compliance with HUD's regulations in 24 CFR 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

12. **Indian Housing Assistance Project Specifications:** For 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. 46) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians; and (ii) preference in the award of contracts and sub-contracts 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).

SECTION 3 DOCUMENTATION & RECORDKEEPING SUMMARY

(For Grants/Projects Awarded On or After 11/30/2020)

Grantees and Contractors for projects subject to the Section 3 requirements of 24 CFR 75 are subject to the Section 3 documentation and recordkeeping requirements, as summarized below. The "Employer" refers to a Grantee or Contractor. The "Grantee" refers to the direct recipient of the HUD/CDBG award and their grant subrecipient(s) (i.e., the organization(s) on which behalf the Grantee submitted the grant application), if applicable; and "Contractors" refer to prime contractors and sub-contractors (all tiers) for construction and/or nonconstruction activities and/or services.

1. **Section 3 Requirements [24 CFR 75] contract language insertion (Attachment 6-B(2)):** If the project is subject to the Section 3 requirements of 24 CFR 75, then this must be included in all prime contracts and subcontracts funded in whole or in part with HUD/CDBG funds. When HUD/CDBG funding will cover the costs (in whole or in part) for a prime contractor's work, then all subcontracts of that prime contract are also considered to be funded (in whole or in part) with the HUD/CDBG funds and therefore subject to the same Section 3 requirements as the prime contractor.
 2. **Section 3 Employee Income Certification forms (Attachment 9-K(2)):** Employers (i.e., Grantees, Subrecipients, and Contractors) must complete Part A and Part C of the form for all of their employees** working on the project upon the employee starting work on the project, basing responses on the wages the employer pays the employee (annualized) and address information the employer has on file for the employee. Part B of the form is optional (not required) for the employer to provide to an employee to complete and sign to collect income and public housing status data at the time of the employee's hire date if hired on or after 11/30/2020.
 3. **Labor Hours Tracking:** The labor hours worked by all employees** who work on the HUD/CDBG funded project must be tracked and reported semi-annually on the Contractor's Individual Contractor Section 3 Report (**Attachment 9-M**) or similar document and on the Grantee's CDBG Data Report (**Attachment 9-C**).
- **Exception:** An exception is allowed for Employees in positions that require an advanced degree or professional certification. It is optional (not required) for the Employer to complete the Section 3 Employee Income Certification form for these Employees and to track their labor hours on the project. If the employee may qualify as a Section 3 Worker, then it is beneficial to have complete the Certification form and to track their hours to help the Employer meet the Section 3 "safe harbor" benchmarks.
4. **Section 3 Business Concern Certification forms (Attachment 9-L):** All Employers (excluding non-profit organizations) must complete this form at the time of contracting or starting work on the project. The Grantee must maintain the completed forms (along with the Section 3 Employee Income Certification forms collected from the Contractor) in the project file.
 5. **Individual Contractor Section 3 Report (Attachment 9-M):** All Employers must complete this form or a similar type of reporting form with the same information each semi-annual reporting period in which they worked on the project (the semi-annual reporting periods are April 1 – September 30, and October 1 – March 31 each year); and the Grantee must maintain them in the project file.
 6. **CDBG Data Report (Attachment 9-C):** The Grantee must complete this form, reporting all Section 3 data from the Grantee, Subrecipients, and Contractors (data from the Attachment 9-K(2), 9-L, and 9-M forms); and submit it to DEHCR by the due dates specified in the Grant Agreement – Attachment A – Time Table, and in Chapter 9: Reporting of the CDBG Implementation Handbook.
 7. **Achieving Section 3 Goals/“Safe Harbor” Benchmarks:** Grantees, Subrecipients, and Contractors must strive to meet the HUD Section 3 “safe harbor” benchmarks for assisting low- and very low-income persons with employment and training opportunities, which are to:
 - have 25% or more of all labor hours worked on the project be by Section 3 Workers; and

- have 5% or more of all labor hours worked on the project be by Targeted Section 3 Workers.
- To accomplish this, Grantees, Subrecipients, and Contractors must, to the greatest extent feasible, award contracts to Section 3 Business Concerns and YouthBuild programs; and fill employment and training opportunities generated in connection with the project with low- and very low-income persons (i.e., Section 3 Workers and Targeted Section 3 Workers).
8. **“Best Efforts” Reporting:** If the “safe harbor” benchmarks are not met over the course of the project, then the Grantee, Subrecipient, and Contractors for the project must provide evidence of completing qualitative **“best efforts”** to assist low- and very low-income persons with employment and training opportunities. “Best efforts” examples are listed on page 2 of this Section 3 Requirements [24 CFR 75] document (**Attachment 6-B(2)**), the CDBG Data Report (**Attachment 9-C**), and the Individual Contractor Section 3 Report (**Attachment 9-M**). Efforts must be reported by the Grantee on the CDBG Data Report (**Attachment 9-C**); and reported by the Contractor on the Individual Contractor Section 3 Report (**Attachment 9-M**) or similar document with the same information.

NOTE: The “Attachment” documents listed in this document refer to “attachments” that appear within Chapter 6 and Chapter 9 of the CDBG Implementation Handbook and that are linked under the “Chapter Attachments/Fillable Forms” section of the CDBG Implementation Handbook website.

SECTION 00 73 36.13

AFFIRMATIVE ACTION REQUIREMENTS (EO 11246)

(Applicable to construction contracts/sub-contracts exceeding \$10,000)

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 Women = **6.9 percent** (this goal applies nationwide)

Goals for minority participation = **0.60 percent** (this goal applies county-wide)

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. 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. The contractor is also subject to the goals for both its federal and nonfederal construction.

3. The contractor's compliance with the Executive Order and the regulations in 41 CFR 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 60-4. Compliance with the goals will be measured against the total work hours performed.
4. 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 sub-contract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the sub-contractor; employer identification number; estimated dollar amount of the sub-contract; estimated starting and completion dates of the sub-contract; and the geographical area in which the contract is to be performed.

As used in this notice, and in the contract resulting from this solicitation, the "covered area" is a description of the geographical areas where the contract is to be performed indicating the state, county, and city, if any.

SECTION 00 73 36.16

FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CLAUSES CONSTRUCTION CONTRACT SPECIFICATIONS (EO 11246)

(Applicable to construction contracts/sub-contracts exceeding \$10,000)

1. As used in these specifications: (41 CFR 60-4.3)
 - 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 sub-contractor at any tier, sub-contracts a portion of the work involving any construction trade, it shall physically include in each sub-contract 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 sub-contractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or sub-contractors toward a goal in an approved Plan does not excuse any covered contractor's or sub-contractor's failure to take good faith effort to achieve the Plan goals and timetables.

The contractor shall implement the specific affirmative action standards provided in paragraphs 7(a) 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 areas. 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 its goals in each craft during the period specified.

4. 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, nor the regulations promulgated pursuant thereto.
5. 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.
6. 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 where 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 and 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 applicant and minority or female referral from a union, a recruitment source or community organization and what, if any, 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 the reason along with whatever additional actions the contractor may have taken.
 - d) Provide immediate written notification to the Director when the union contractor has a collective bargaining agreement which has/has not referred a minority person or woman, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
 - e) Develop 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 funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7(b) 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 and discussing the contractor's EEO policy with other contractors and sub-contractors 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 of 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 60-3.
- l) Conduct, at least annually, an inventory and evaluation at least of all minority and 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 EEO policy and the contractor's obligations under these specifications are being carried out.
- n) Ensure that all facilities and company activities are non-segregated 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 sub-contractors 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.

7. Contractors are encouraged to participate in voluntary associations that assist in fulfilling one or more of their affirmative action obligations [7 (a) through (p)]. 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 7(a) through (p), 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 work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documents that demonstrate the effectiveness of actions taken on behalf of the contractor. The obligations shall not be a defense for the contractor's noncompliance.
8. A single goal for minorities and a separate single goal for women must be 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 goal for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

9. 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.
10. The contractor shall not enter into any sub-contract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
11. 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 sub-contracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Officer 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.
12. 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. 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 CFR60-4.8.

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 requirement, contractors shall not be required to maintain separate records.
13. Nothing herein provided shall be construed as a limitation upon the application of other laws that 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).

SECTION 00 73 43.12

FEDERAL LABOR STANDARDS PROVISIONS HUD-4010

A. APPLICABILITY

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

(1) Minimum Wages

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment, computed at rates not less than those contained in the wage determination of the Secretary of Labor (which is attached hereto and made a part hereof), regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place, where it can be easily seen by the workers.

(ii) Additional Classifications.

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

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

- (B) If the contractor, the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division ("Administrator"), Employment Standards Administration, U.S. Department of Labor, Washington,

D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget ("OMB") under OMB control number 1235-0023.)

- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, or HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)
- (D) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (1)(ii)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)
- (2) **Withholding.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The U.S. Department of Labor shall make such disbursements in the case of direct Davis-Bacon Act contracts.
- (3) **Payrolls and Basic Records.**
- (i) **Maintaining Payroll Records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification(s), hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof

of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid.

Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1235-0023 and 1215-0018)

(ii) Certified Payroll Reports.

(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/forms> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the U.S. Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1235-0008.)

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

- (1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;
- (2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full

- wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract; and
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (a)(3)(ii)(b).
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under subparagraph (a)(3)(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the U.S. Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (4) **Apprentices and Trainees.**
- (i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate), to be eligible for probationary employment as an apprentice.
- The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program.

If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor

Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed, unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) **Equal employment opportunity.** The utilization of apprentices, trainees, and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (5) **Compliance with Copeland Act Requirements.** The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.
- (6) **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs (1) through (11) in this paragraph (a) and such other clauses as HUD or its designee may, by appropriate instructions, require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.
- (7) **Contract Termination; Debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- (9) **Disputes Concerning Labor Standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.
- (10) **Certification of Eligibility.**

- (i) By entering into this Contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.
 - (ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.
 - (iii) Anyone who knowingly makes, presents, or submits a false, fictitious, or fraudulent statement, representation or certification is subject to criminal, civil and/or administrative sanctions, including fines, penalties, and imprisonment (e.g., 18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802).
- (11) Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic, to whom the wage, salary, or other labor standards provisions of this Contract are applicable, shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The provisions of this paragraph (b) are applicable where the amount of the prime contract exceeds **\$100,000**. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

- (1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph B(1) of this paragraph, the contractor, and any subcontractor responsible therefor, shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph B(1) of this paragraph, **in the sum set by the U.S. Department of Labor at 29 CFR 5.5(b)(2)** for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph B(1) of this paragraph. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Note), the DOL adjusts this civil monetary penalty for inflation no later than January 15 each year.
- (3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages, as provided in the clause set forth in subparagraph B(2) of this paragraph.
- (4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph B(1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor

shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs B(1) through (4) of this paragraph.

C. HEALTH AND SAFETY

The provisions of this paragraph (c) are applicable where the amount of the prime contract exceeds **\$100,000**.

- (1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- (2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 3701 et seq.
- (3) The contractor shall include the provisions of this paragraph in every subcontract, so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

SECTION 00 73 43.13

DAVIS-BACON AND RELATED ACTS (DBRA)

- A. Force Account - Under most Davis-Bacon statutes, only employees of contractors or sub-contractors are subject to Davis-Bacon wage requirements. In some instances, rather than contracting or sub-contracting out construction work, a grant recipient performs the construction in-house, with its own "force account" employees. Such force account work is not subject to Davis-Bacon wage requirements under statutes that cover only employees of contractors and sub-contractors. Furthermore, the United States Department of Labor (USDOL) does not consider a state or local government to be a contractor, even if it enters into a contract to perform construction work (see 29 CFR Section 5.2(h)). However, under the Housing and Community Development Act (HCDA) of 1974, a private firm that receives federal assistance funds indirectly from a recipient pursuant to a written procurement contract of sub-grant agreement that provides for the performance of construction work is considered a contractor or sub-contractor, and the force account exception **does not** apply to construction activity performed by employees of such a firm.

Laborers and mechanics employed by a local or state agency PHA (Public Housing Authority only), even though not employed by a contractor, are subject to Davis-Bacon when performing development work financed by the U.S. Housing Act of 1937, as amended. Davis-Bacon federal wage requirements are not applicable where such employees are used in work defined as major repairs (deferred maintenance) pursuant to 24 CFR 868.3 and 868.9(h), which constitute project operation rather than development.

- B. Compliance and Certification Parameters - HUD policy clearly affords federal wage protection for all laborers and mechanics, regardless of contractual relationship. There is no exception to this protection for self-employed laborers or mechanics, including owners of businesses, sole proprietors, partners, corporate officers, or others. Laborers and mechanics may not certify to the payment of their own federal wages except where the laborer or mechanic is the owner of a business working on the site of the work with his/her own crew.

Accordingly, HUD and program participants responsible for labor standards administration and enforcement may not accept certified payrolls reporting single or multiple owners (e.g., partners) are certifying that they have paid to themselves the prevailing wage for their craft. A sole proprietor may not submit a payroll reporting himself or herself as simply "Owner" signing the certification as to his/her own wage payment from "draws" or other payment methods. Nor may several mechanics submit a payroll reporting themselves as "partners" with one or more certifying as to the payment of their wages or salaries. Such mechanics must instead be carried on the certified payroll of the contractor or sub-contractor for whom they are working and with whom they have executed a "contract" for services.

In these cases, maintenance of an accurate accounting of weekly work hours including any overtime hours for such mechanics is essential. Whatever method of compensation computation is utilized (piecework, weekly contract draw performance), the amount of weekly compensation divided by the actual hours of work performed for that week must result in an "effective" hourly wage rate for that week that is not less than the prevailing hourly rate for the type of work involved. This computation must take into account overtime pay rates (i.e., one and one-half) for all hours worked in excess of 40 hours per week, pursuant to the CWHSSA, where applicable, and pursuant to the Fair Labor Standards Act where CWHSSA is not applicable.

The name, work classification, actual hours of work, effective hourly wage rate, and wage payment for each such mechanic and laborer must be reported and certified on the responsible employer's weekly payroll. Note that the effective hourly wage rate for such mechanics and laborers may fluctuate from week to week. However, the effective hourly wage rate may not be less than the minimum prevailing wage rate for the respective craft.

In any case, where the effective rate falls below the corresponding craft prevailing wage rate, the responsible employer must compensate the mechanic at no less than the prevailing wage rate on the wage determination for the craft.

- C. Business Owners Working with Their Crew - Owners of businesses working with their crew on the same HUD-assisted job site **may** certify to the payment of their own federal wages in conjunction with the prevailing wages paid to their employees. This exception to compliance standards **does not** suggest that such owners are not likewise entitled to prevailing wages for their labor. Rather, it accepts the wage payment certification on weekly payroll reports by the owner of his/her own wages as that certification **accompanies** the certification offered for payment of prevailing wages to his/her employees. On weekly payroll reports, include the owner's name, identifying him/her as "owner," and the daily and total hours worked on the covered project for the week. Omit the Rate of Pay and Amount Earned.
- D. Owner-operators of Power Equipment - Frequently, owner-operators of power equipment (e.g., backhoes, front-end loaders) will contract for services at a rate for both "man and machine." In these cases, the owner-operator includes liability, equipment maintenance, and salary in an hourly or contract rate for services. Because of the prevalence of such practice and the inherent difficulty in ascribing costs for liability and maintenance costs verses hourly labor salary, HUD and its program clients may accept a combined ("man and machine") hourly rate on the responsible contractor's certified payroll provided that such hourly rate may not be less than the rate on the wage determination for the respective power equipment operator. **Note:** Owner-operators of power equipment, like self-employed mechanics, **may not** submit their own payrolls certifying to the payment of their own wage **but** must be carried on the responsible contractor's certified payroll report. Include the name, work classification, and actual hours worked. Upon completion of the contract, verify the pay by taking the amount paid to the sub-contractor (documented with copies of all invoices identified for this job) and divide by the hours reported on the certified payrolls. Compare the actual hourly wage rate with the rate in the Wage Determination. If the actual hourly wage is less than the Davis-Bacon Wage Rate, collect and disburse the wage underpayments.
- E. "Owner Operator" Truck Drivers – USDOL policy excludes bona fide owner-operators of trucks who are independent contractors from Davis-Bacon/CWHSSA provisions concerning their own hours of work and rate(s) of pay. These truck "owner-operators" may certify to their own weekly payrolls **but** the payrolls do not need to show the hours worked or rates allegedly paid – only the notation "Owner-operator." **Note** that any laborers or mechanics, including truck drivers, employed by the owner-operator/independent contractor are subject to Davis-Bacon/CWHSSA provisions in the usual manner.

This policy **does not** pertain to owner-operator of other equipment such as backhoes, bulldozers, cranes and scrapers (i.e., power equipment as noted in the paragraph titled "Owner-operators of Power Equipment," above).

"Contractor's" Truck Drivers – Based on the USDOL 'Final Rule' for DBRA regulations (effective 10/23/2023), truck drivers employed by contractors or subcontractors must be paid applicable prevailing wage rates for all onsite driving time unrelated to offsite delivery (e.g., hauling materials on the site of the work from one location to another), for any time spent transporting "significant portions" of public works from secondary construction sites, for any time spent transporting materials to or from adjacent or virtually adjacent dedicated support sites, as well as for any onsite time related to offsite delivery if such time is not *de minimis*. Where workers spend a significant portion of their day or week onsite, short periods of time that in isolation might be considered *de minimis* may be added together. The total amount of time a driver spends on the site of the work during a typical day or workweek—not only the amount of time that each delivery takes—is relevant to a determination of whether the onsite time is *de minimis*.

De minimis may be interpreted as time spent on the job site that is not sufficient nor consequential enough to be tracked as an itemizable job function (i.e., "a few minutes"). Any single visit at the project site that is more than *de minimis* (more than a few minutes) is subject to the DBA wage rate requirements. Contractors must report hours worked, and pay at least the DBA wage rate for any time the truck driver spends on the project site if the driver is making multiple trips throughout the day that cumulatively challenge a *de minimis* determination. If a series of project site visits by the truck driver that individually are each a *de minimis* amount of time but cumulatively exceed 20% of the driver's hours in the same day, the employee's time on-site that day is subject to the DBA wage

rate requirements. If a series of project site visits by the truck driver that individually are each a *de minimus* amount of time but cumulatively exceed 20% of the driver's hours in the same work week, the employee's time on-site time that week is subject to the DBA wage rate requirements.

- F. Determining Proper Classification for Various Work - Questions as to the proper classification of a laborer or mechanic for various types of work are resolved by making an area-practice determination. In determining the proper classification for work performed on a project, it is immaterial whether the contractor is union or nonunion.

On projects where the federal wage rate for the classifications in question within the applicable wage determination is based on negotiated rates, the prevailing practice concerning work performed in those classifications is to follow the practice observed on projects built by contractors who are a signatory to the collective bargaining agreements. Therefore, unless there is a jurisdictional dispute between the crafts, the duties ascribed to any job classification will be the same as those outlined in the appropriate collective bargaining agreements. If the collective bargaining agreements are silent on this issue, the local unions involved must be consulted. Conversely, in areas where open shop (non-union) rates are determined to prevail for the classifications in question, those prevailing job practices followed on projects by open shop contractors in the same area become area practice.

- G. Helpers - The **classification of Helper in any trade will be very difficult to have approved by the USDOL**. If the contractor wants to pursue a helper classification through the USDOL, they should contact the Labor Standards Specialist at DOA.
- H. Relatives - There are no exceptions made in the enforcement of Davis-Bacon on the basis of family relationship for relatives who are performing the work of laborers or mechanics. They **must be paid the federal wage rate for the classification of work performed and be included on the certified payrolls**.
- I. Volunteers - HUD allows for the waiver of Davis-Bacon wage rates for volunteers that are **not otherwise employed** at any time of the work for which the individual volunteers. Contact DOA's Labor Standards Specialist for more details if the community plans on using volunteers on the construction site.
- J. Job Corps Workers - USDOL staff in Washington, DC has informed HUD staff that Job Corps workers are not exempt from Davis-Bacon wage when they are working on a job subject to the Davis-Bacon Act.
- K. Employees of a Governmental Body -The USDOL has taken the position that the prevailing wage requirements does not apply to employees of a state or political subdivision of a state, but shall apply to employees of a private contractor who is sub-contractor of the state or political subdivision. This rule does not apply to the Public Housing Authority (PHA) employees under the U.S. Housing Act of 1937 (see paragraph A. in this section). **Employees of utilities are exempt providing they are only extending existing service to the property.**
- L. Employees Performing Work in More than One Classification - (Split Classification) if the UGLG/contractor has employees who perform work in more than one trade during a work week, it can pay the wage rates specified for each work classification in which work was performed **only if** maintaining accurate time records showing the amount of time spent in each classification. If the UGLG does not maintain accurate time records, it must pay these employees the highest wage rate of all the classifications of work performed. **Work, which is normally performed as part of the mechanic's craft, is not separable.**
- M. Laborers and Mechanics – Definition - The terms "laborers" and "mechanics" are construed to include at least those workers whose duties are manual or physical in nature as distinguished from mental or managerial. Since the classifications of laborers and mechanics to who specified wage rates are payable are identified in the Davis-Bacon wage rate, there is ordinarily no need to distinguish between laborers and mechanics. However, **mechanics are generally considered to include any worker who uses tools, or who is performing the work of a trade.**

- N. **Precutting of Parts and Prefabrication of Assemblies** - The precutting of parts and/or the prefabrication of assemblies are not covered unless conducted in connection with and at the site of the project, or in a temporary plant set up elsewhere solely to supply the needs of the project.
- O. **Supply and Installation Contracts** – The USDOL ‘New Rule’ (effective 10/23/2023) confirms that suppliers are deemed contractors (or subcontractors if their contract is with the prime contractor or another subcontractor). The manufacturing or furnishing of materials, articles, supplies, or equipment is not subject to prevailing wages *unless* conducted in connection with and at the site of the project, or in a temporary plant set up elsewhere solely to meet the needs of the project.

Installation work performed in conjunction with an equipment supply contract is subject to DBRA wage requirements where it involves more than an incidental amount of construction activity. Whether installation work involves more than an incidental amount of construction activity depends on the specific circumstances of each case. Factors requiring consideration include the nature of the prime contract work; the type of work performed by the employees installing the equipment (e.g., the techniques, materials and equipment used and the skills required for its performance); the extent to which structural modifications to buildings are needed to accommodate the equipment (e.g., widening entrances, relocating walls, installing wiring); and the cost of the installation work, either in terms of absolute amount or in relation to the cost of the equipment and the total project cost.

(Source: [2023 HUD Handbook 1244.1: Ch. 11: Federal Labor Standards Requirements in HUD Programs, Section 11-29](#))

- P. **Start of Construction** - “Start of Construction,” as that term is used in connection with labor standards and prevailing wage requirements, means the beginning of initial site clearance and preparation, provided those activities are pursued diligently and are followed without appreciable delay by other construction activity.
- Q. **Site of Work** - The “site of work” is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and to other adjacent or nearby property used by the contractor in such construction which can reasonably be said to be included in the “site” because of proximity. **Operations of a commercial or material supplier established in the proximity of but not on the active site of work prior to the opening of bids are not covered by the Act even if dedicated exclusively to the federal project for a time.**
- R. **Fringe Benefits – Funded Plans** - A contractor may credit contributions for “bona fide” fringe benefits regardless of whether the USDOL has found the particular benefits to be prevailing in the area. Such fringe benefits must be “bona fide.” Ordinarily, bona fide benefits are those common to the construction industry and are paid directly to the employee in cash or into a fund, plan, or program on the employee’s behalf. Contractors may take credit for contributions made under such conventional plans without requesting approval of the USDOL.
- S. **Fringe Benefits – Unfunded Plans** - Where fringe benefit plans are not of the conventional type, it will be necessary for the USDOL to determine if the benefits are “bona fide.” **Contractors seeking approval of unfounded plans must obtain approval from the USDOL.** Contact DOA for more details.
- T. **Fringe Benefits – General**
 1. Contributions to funded plans must be made at least quarterly.
 2. When the cash paid and the per-hour contribution for benefits do not equal the total rate set forth in the wage determination, the difference must be paid to the employee in cash.
 3. Fringe benefits must be paid for straight time and overtime; however, fringe benefits are not included when computing the overtime rate.
 4. Employees who are excluded from funded plans for whatever reason must be paid fringe benefits in cash.
 5. **Note:** Vacation and sick leave plans are generally unfunded, paid from the contractor’s own

account, and require USDOL approval before a contractor takes credit toward meeting the fringe benefit obligation.

6. In determining the cash equivalent credit for fringe benefits payments, the period of time to be used is the period covered by the contribution. For example, if an employer contributes to a plan on a weekly basis, the total hours worked each week (federal and nonfederal) by each employee should be divided into the contribution made by the employer.
7. Acceptable fringe benefits include the following: medical or hospital care; pensions on retirement or death; compensation for injuries or illness resulting from occupational activity; or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, defrayment of cost of apprenticeship or other similar programs, or other bona fide fringe benefits; but only where the contractor to subcontractor is not required by other federal, state, or local law to provide any of such benefits. The Act excludes fringe benefits that a contractor or sub-contractor is obligated to provide under federal, state, or local law. No credit may be taken for such benefit. For example, payment for workmen's compensation insurance under either a compulsory or elective state statute is not considered payments for fringe benefits under the Act. Payments made for travel, subsistence, or to industry promotion funds are not normally payments for fringe benefits under the Act.

No type of fringe benefits is eligible for consideration as a so-called unfunded plan unless:

- a. It could be reasonably anticipated to provide benefits described in the Act;
- b. It represents a commitment that can be legally enforced;
- c. It is carried out under a financially responsible plan or program; and
- d. The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected.

- U. Summer Youth Employment – Youth who are bona fide students and part of a bona fide "youth opportunity program" may be employed on Davis-Bacon projects on a temporary basis during the summer months and paid below the predetermined Davis-Bacon rates. USDOL All Agency Memoranda #71 and #96 provide policy guidance in this area. HUD requires that the following stipulations be met before summer youth may be employed at less than Davis-Bacon rates:

1. Where collective bargaining agreements representing workers performing similar or related activities at the worksite to which youth are stationed exists, the union or unions representing those workers must provide concurrence as to the design of the employment project and the use of youth;
2. Such employment must be provided in accord with statutory safety and minimum wage requirements (both state and federal);
3. Competent supervision must be provided to all youth employment on the project worksites. Ratios of youth to such supervisors should be no greater than four-to-one.

In order to ensure that the administration of summer youth employment complies with USDOL policies and regulations, request for exceptions to the application of Davis-Bacon must be made to the HUD Field Office Labor Relations Staff who will advise the requesting contractor of its decision. The specific provisions of the agreement (between management and labor) or the plan of employment must be submitted to the USDOL, Wage and Hour and Public Contracts Division, for enforcement purposes. The HUD Field Office Labor Relations Staff will send such plans to the Headquarters Office of Labor Relations.

- V. Non-Covered Job Classifications – Workers performing the normal duties of the following job classifications are not subject to Davis-Bacon federal wage requirements:

1. Project Superintendent
2. Project Engineer
3. Project Foreman, as distinguished from a working foreman, (working foremen, who devote more than 20% of their time during the workweek to mechanic or laborer duties, are laborers and

mechanics for the time spent and must be paid the applicable rate for the hours so worked).

4. Watchman
5. Water Carrier
6. Messenger, Clerical Workers

Financing of Construction Work – CDBG - Laborers and mechanics employed by contractors and sub-contractors on construction work financed in whole or in part with Title I assistance are subject to Davis-Bacon wage rates under Section 110 of Title I. To the extent that Part 570 requires broader Davis-Bacon coverage, e.g., on construction work “assisted” under that Part, the regulations shall govern unless an individual waiver is requested and granted by the Assistant Secretary for Community Planning and Development. The use of Title I funds for any of the following items is an example of financing construction work, and Davis-Bacon wage rates shall apply to all construction work performed on the building or property in question: construction loans or grants; payment for construction materials; payment of interest (or part of the interest) on a construction loan; payment of construction loan origination fees; provisions of a Title I funded permanent loan, mortgage or grant on a structure constructed with a private construction loan when the parties contemplate such ultimate Title I financing at the time of construction; Title I funded “collateral” or “default” accounts established with the lending bank which receive no interest or less than the interest payable on demand accounts. Questions as to whether a use of Title I funds constitutes financing of construction work shall be referred to HUD headquarters for determination.

- W. Technical/Maintenance Wage Rates – Public Housing - Section 12 of the U.S. Housing Act of 1937 requires that wages prevailing in the locality shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation of the project. Such wages are determined or adopted by HUD.
- X. Payment of Low- and Moderate-Income (LMI) assessments - In some projects federal funds are used to pay special assessments of LMI households, where those assessments are for the purpose of paying for a public improvement. This use of federal funds invokes the Federal Labor Standards Provisions and makes the construction subject to Davis-Bacon wage rates.
- Y. Piecework - Roofers and dry-wall hangers are sometimes paid by piecework. Piecework is work paid for at a fixed rate (piece rate) per piece of work done.

SECTION 00 73 46.11

FEDERAL WAGE RATES

In accordance with the Davis-Bacon Act, Federal prevailing wage rates have been completed by the U.S. Department of Labor. A copy of the wage determination for this project follows this page. All Contractors are required to comply with the wage determination.

SECTION 00 73 46.11

FEDERAL WAGE RATES

In accordance with the Davis-Bacon Act, Federal prevailing wage rates have been completed by the U.S. Department of Labor. A copy of the wage determination for this project follows this page. All Contractors are required to comply with the wage determination.

"General Decision Number: WI20260011 01/02/2026

Superseded General Decision Number: **WI20250011**

State: Wisconsin

Construction Type: **Building**

Counties: Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond Du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, **Monroe**, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara and Wood Counties in Wisconsin.

BUILDING CONSTRUCTION PROJECTS (does not include residential construction consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	01/02/2026

ASBE0019-002 06/01/2025

COLUMBIA, CRAWFORD, DODGE, GRANT, GREEN, IOWA, JEFFERSON, JUNEAU, LAFAYETTE, MARQUETTE, **MONROE**, RICHLAND, SAUK, VERNON, AND WALWORTH COUNTIES

Rates	Fringes
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Asbestos Workers/Insulator

(Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems. Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems whether they contain asbestos or not)....\$ 45.88

38.15

ASBE0034-005 06/09/2025

BARRON, BUFFALO, DUNN, PEPIN, AND POLK COUNTIES

Rates	Fringes
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Asbestos Workers/Insulator

(Includes the application of all insulating materials; protective coatings, coverings, and finishes to all types of mechanical systems. Includes preparation, wetting, stripping, removal,

scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems whether they contain asbestos or not)....\$ 55.34 34.03

ASBE0049-003 05/01/2025

ASHLAND, BAYFIELD, BURNETT, IRON, SAWYER, AND WASHBURN COUNTIES

Rates Fringes

Asbestos Workers/Insulator
(Includes the application of all insulating materials; protective coverings, coatings, and finishes to all types of mechanical systems. Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems whether they contain asbestos or not)....\$ 49.17 23.83

ASBE0127-002 06/01/2025

ADAMS, CLARK, DOOR, FLORENCE, FOND DU LAC, FOREST, GREEN LAKE, JACKSON, KEWAUNEE, LANGLADE, LINCOLN, MANITOWOC, MARINETTE, MENOMINEE, OCONTO, ONEIDA, PORTAGE, PRICE, RUSK, SHAWANO, TAYLOR, TREMPEALEAU, VILAS, WAUPACA, WAUSHARA, AND WOOD COUNTIES

Rates Fringes

Heat and Frost Insulator
(Includes the application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems; and the application of firestopping material in walls, floors, ceilings. Includes preparation, wetting, stripping, removal, scrapping vacuuming, bagging and disposing of all insulation materials from mechanical systems whether they contain asbestos or not)....\$ 45.24 30.56

BOIL0107-001 01/01/2025

Rates Fringes

BOILERMAKER
Boilermaker.....\$ 46.52 34.63

BRWI0001-003 06/01/2025

CRAWFORD, JUNEAU, MONROE, TREMPEALEAU, AND VERNON COUNTIES

Rates Fringes

Bricklayer & Tile Setter.....\$ 40.09	28.10
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BRWI0002-003 06/01/2025

ASHLAND, BURNETT, IRON, WASHBURN

Rates	Fringes
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BRICKLAYER

Bricklayer, Tile Setter.....\$ 48.60	29.31
Cement Mason/Concrete	
Finisher.....\$ 46.01	29.31

BRWI0002-004 06/01/2025

BAYFIELD COUNTY

Rates	Fringes
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BRICKLAYER

Bricklayer & Tile Setter....\$ 48.60	29.31
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BRWI0003-001 06/01/2024

DOOR, KEWAUNEE, FLORENCE, FOND DU LAC, GREEN LAKE, MANITOWOC, MARINETTE, MARQUETTE, OCONTO, SHAWANO, WAUPACA, AND WAUSHARA COUNTIES

Rates	Fringes
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BRICKLAYER

Bricklayer, Cement Mason,	
Tile Setter.....\$ 38.45	27.41

BRWI0004-003 06/01/2025

WALWORTH COUNTY

Rates	Fringes
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BRICKLAYER.....\$ 44.71	28.90
CEMENT MASON/CONCRETE FINISHER...\$ 40.50	28.90
TILE SETTER.....\$ 39.19	28.90

BRWI0006-001 06/01/2025

ADAMS, CLARK, FOREST, LANGLADE, LINCOLN, MENOMINEE, ONEIDA, PORTAGE, TAYLOR, VILAS AND WOOD COUNTIES

Rates	Fringes
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BRICKLAYER

Bricklayer,Cement	
Mason,Tile Setter.....\$ 39.36	28.83

BRWI0006-004 06/01/2025

PRICE COUNTY

Rates	Fringes
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Bricklayer & Tile Setter.....\$ 39.36	28.83
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BRWI0007-003 06/01/2025

GREEN AND LAFAYETTE COUNTIES

	Rates	Fringes
Bricklayer & Tile Setter.....	\$ 40.34	29.49

BRWI0013-003 06/01/2025

GRANT, IOWA, AND RICHLAND COUNTIES

	Rates	Fringes
Bricklayer.....	\$ 41.17	28.66
Tile Layer.....	\$ 38.39	29.79

BRWI0019-004 06/01/2025BARRON, BURNETT (Southern half), DUNN, PEPIN, POLK, RUSK, AND
WASHBURN (Southern half) COUNTIES

	Rates	Fringes
BRICKLAYER		
Bricklayer, Cement Mason,		
Tile Layer.....	\$ 39.50	28.69

BRWI0019-005 06/01/2025

SAWYER COUNTY

	Rates	Fringes
Bricklayer & Tile Setter.....	\$ 39.50	28.69

BRWI0021-001 06/01/2025

DODGE AND JEFFERSON COUNTIES

	Rates	Fringes
BRICKLAYER		
Bricklayer, Cement Mason,		
Tile Layer.....	\$ 40.14	29.67

BRWI0034-001 06/01/2025

COLUMBIA AND SAUK COUNTIES

	Rates	Fringes
BRICKLAYER		
Bricklayer, Cement Mason,		
Tile Layer.....	\$ 41.17	28.66

CARP0068-013 05/05/2025BURNETT (West of highway 48) AND POLK(West of Highways 35, 48 &
65) COUNTIES

Rates	Fringes
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CARPENTER (Including Drywall Hanging, Acoustical work).....	\$ 48.54	28.84
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CARP0310-007 06/01/2025

ADAMS, BAYFIELD (Eastern 2/3), FOREST, IRON, ONEIDA, PORTAGE, PRICE, SHAWANO (Western Portion of the County), TAYLOR, VILAS, AND WOOD COUNTIES

Rates	Fringes
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CARPENTER (Including Acoustical Work & Drywall Hanging).....	\$ 41.43	29.99
PILEDRIVERMAN.....	\$ 41.43	29.99

CARP0310-008 06/01/2025

ASHLAND COUNTY

Rates	Fringes
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CABINET INSTALLER (Including Acoustical Work & Drywall Hanging).....	\$ 41.43	29.99
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CARP0314-006 06/02/2025

COLUMBIA, DODGE, GRANT, GREEN, IOWA, JEFFERSON, LAFAYETTE, RICHLAND, SAUK, AND WALWORTH COUNTIES

Rates	Fringes
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Carpenter (Including Drywall Hanging, Acoustical Work).....	\$ 42.45	28.78
Piledriverman.....	\$ 44.45	28.78

CARP0361-006 05/05/2025

BAYFIELD COUNTY (West of Hwy 63)

Rates	Fringes
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Carpenters: (Including Drywall Hanging, Acoustical work).....	\$ 40.79	27.90
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CARP0731-006 06/01/2025

FOND DU LAC (Eastern Portion of the County) AND MANITOWOC COUNTIES

Rates	Fringes
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CARPENTER (Including Acoustical Work & Drywall Hanging).....	\$ 41.43	29.99
PILEDRIVERMAN.....	\$ 41.43	29.99

CARP0955-004 06/01/2025

FOND DU LAC (Western Portion of the County), GREEN LAKE,
MARQUETTE, WAUPACA, AND WAUSHARA COUNTIES

Rates	Fringes
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CARPENTER (Including Acoustical Work & Drywall Hanging).....	\$ 41.43	29.99
PILEDRIVERMAN.....	\$ 41.43	29.99

CARP1056-004 06/01/2024

ADAMS, ASHLAND, BARRON, BAYFIELD (Eastern 2/3), BUFFALO,
BURNETT, CLARK, COLUMBIA, CRAWFORD, DODGE, DOOR, DUNN,
FLORENCE, FOND DU LAC, FOREST, GRANT, GREEN, GREEN LAKE, IOWA,
IRON, JACKSON, JEFFERSON, JUNEAU, KEWAUNEE, LAFAYETTE,
LANGLADE, LINCOLN, MANITOWOC, MARINETTE, MARQUETTE, MENOMINEE,
MONROE, OCONTO, ONEIDA, PEPIN, POLK (E. of Hwy. 35, 48 & 65),
PORTAGE, PRICE, RICHLAND, RUSK, SAUK, SAWYER, SHAWANO, TAYLOR,
TREMPEALEAU, VERNON, VILAS, WALWORTH, WASHBURN, WAUPACA,
WAUSHARA, AND WOOD COUNTIES

Rates	Fringes
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MILLWRIGHT.....	\$ 42.00	28.85
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CARP1074-009 06/01/2025

BARRON, BURNETT (East of Hwy 48), CLARK, DUNN, POLK (East of
Hwy 35, 48, 65), RUSK, SAWYER, AND WASHBURN COUNTIES

Rates	Fringes
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CARPENTER (Including Acoustical Work & Drywall Hanging).....	\$ 41.43	29.99
PILEDRIVERMAN.....	\$ 41.43	29.99

CARP1143-006 06/01/2025

BUFALO, CRAWFORD, JACKSON, MONROE, TREMPEALEAU, AND VERNON
COUNTIES

Rates	Fringes
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CARPENTER (Including Acoustical Work & Drywall Hanging).....	\$ 41.43	29.99
PILEDRIVERMAN.....	\$ 41.43	29.99

CARP1146-006 06/01/2025

DOOR, FLORENCE (Except area bordering Michigan), KEWAUNEE,
MARINETTE (Except N.E. corner), MENOMINEE, OCONTO, AND SHAWANO
(Western Portion of the County) COUNTIES

Rates	Fringes
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CARPENTER (Including Acoustical Work & Drywall	
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Hanging).....	\$ 41.43	29.99
PILEDRIVERMAN).....	\$ 41.43	29.99

CARP1348-006 05/01/2025

BAYFIELD COUNTY (Western 1/3)

	Rates	Fringes
MILLWRIGHT).....	\$ 41.90	29.51

ELEC0014-001 05/25/2025

ASHLAND, BARRON, BAYFIELD, BUFFALO, BURNETT, CHIPPEWA, CLARK
(Except Colby, Fremont, Lynn, Maryville, Sherman, Sherwood,
Unity), CRAWFORD, DUNN, GRANT, IRON, JACKSON, MONROE, PEPIN,
POLK, PRICE, RICHLAND, RUSK, SAWYER, TAYLOR, TREMPEALEAU,
VERNON, AND WASHBURN COUNTIES

	Rates	Fringes
ELECTRICIAN).....	\$ 44.29	25.21

ELEC0014-005 05/25/2025

	Rates	Fringes
Electricians (Teledata System Installer/Technician).....	\$ 31.17	20.08

Low voltage construction, installation, maintenance and
removal of teledata facilities (voice, data, and video)
including outside plant, telephone and data inside wire,
interconnect, terminal equipment, central offices, PABX,
fiber optic cable and equipment, micro waves, V-SAT,
bypass, CATV, WAN (wide area networks), LAN (local area
networks), and ISDN (integrated systems digital network).

ELEC0158-007 05/25/2025

DOOR, KEWAUNEE, MANITOWOC (except Schleswig),
MARINETTE(Wausaukeee and area South thereof), OCONTO, MENOMINEE
(East of a line 6 miles West of the West boundary of Oconto
County), SHAWANO (Except Area North of Townships of Aniwa and
Hutchins) COUNTIES

	Rates	Fringes
Electricians:.....	\$ 42.00	23.93

ELEC0159-001 05/26/2024

COLUMBIA, DODGE (West of Hwy 26 except Chester and Emmet Twps),
GREEN LAKE COUNTY (Except Townships of Berlin, Seneca & St.
Marie), IOWA, MARQUETTE COUNTY (Except Townships of Neshkoka,
Crystal Lake, Newton, and Springfield), AND SAUK COUNTIES

	Rates	Fringes
Electricians:.....	\$ 48.55	25.91

ELEC0219-006 06/01/2019

FLORENCE COUNTY (Townships of Aurora, Commonwealth, Fern, Florence and Homestead) AND MARINETTE COUNTY (Township of Niagara)

Rates	Fringes
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ELECTRICIAN

Electrical contracts over \$180,000.....	\$ 33.94	21.80
Electrical contracts under \$180,000.....	\$ 31.75	21.73

ELEC0388-004 06/01/2024

ADAMS, CLARK (Colby, Freemont, Lynn, Mayville, Sherman, Sherwood, Unity), FOREST, JUNEAU, LANGLADE, LINCOLN, MARINETTE (Beecher, Dunbar, Goodman & Pembine), MENOMINEE (Area West of a line 6 miles West of the West boundary of Oconto County), ONEIDA, PORTAGE, SHAWANO (Aniwa and Hutchins), VILAS AND WOOD COUNTIES

Rates	Fringes
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ELECTRICIAN.....	\$ 40.19	26%+12.45
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ELEC0494-010 06/01/2025

DODGE COUNTY (Area East of Hwy 26 including all of Chester Township, but excluding Emmet Township), FOND DU LAC (except Waupun), AND MANITOWOC (Schleswig) COUNTIES

Rates	Fringes
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ELECTRICIAN.....	\$ 45.20	25.27
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ELEC0494-014 06/01/2025

DODGE (Area East of Hwy 26 including Chester Twp but excluding Emmet Twp), FOND DU LAC (Except Waupun), AND MANITOWOC (Schleswig) COUNTIES

Rates	Fringes
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Sound & Communications

Installer.....	\$ 37.13	21.58
Technician.....	\$ 37.13	21.58

Installation, testing, maintenance, operation and servicing of all sound, intercom, telephone interconnect, closed circuit TV systems, radio systems, background music systems, language laboratories, electronic carillon, antenna distribution systems, clock and program systems and low-voltage systems such as visual nurse call, audio/visual nurse call systems, doctors entrance register systems. Includes all wire and cable carrying audio, visual, data, light and radio frequency signals. Includes the installation of conduit, wiremold, or raceways in existing structures that have been occupied for six months or more where required for the protection of the wire or cable, but does not mean a complete conduit or raceway system.

work covered does not include the installation of conduit, wiremold or any raceways in any new construction, or the installation of power supply outlets by means of which external electric power is supplied to any of the foregoing equipment or products

ELEC0577-001 06/01/2025

GREEN LAKE (N. Part including Twp of Berlin, St Marie, and Seneca), MARQUETTE (N. part including Twp of Crystal Lake, Neshkoro, Newton, and Springfield), WAUPACA, AND WAUSHARA COUNTIES,

	Rates	Fringes
ELECTRICIAN.....	\$ 41.76	23.65

ELEC0890-005 06/01/2024

DODGE (Emmet Township only), GREEN, JEFFERSON, LAFAYETTE, AND WALWORTH COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 43.65	25.95%+12.26

ENGI0139-004 06/02/2025

	Rates	Fringes
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OPERATOR: Power Equipment		
(1) Cranes, Tower Cranes with or w/o attachments over 100 tons; Cranes, tower Cranes with boom, leads and or jib length 176 ft or longer.....	\$ 50.53	27.89
(2) Cranes, Tower Cranes with or w/o attachments 100 tons or less; Cranes, Tower Cranes with boom, leads, and or jib lengths 175 ft or less.....	\$ 49.28	27.89
(3) Travelling Crane (bridge type).....	\$ 45.73	27.89
(4) Hydraulic Crane, 10 tons or less.....	\$ 45.20	27.89
(6) Forklift.....	\$ 41.60	27.89

HAZARDOUS WASTE PREMIUMS:

EPA Level ""A"" Protection: \$3.00 per hour
 EPA Level ""B"" Protection: \$2.00 per hour
 EPA Level ""C"" Protection: \$1.00 per hour

IRON0008-012 06/01/2025

CALUMET, DOOR, FOND DU LAC, KEWAUNEE, MANITOWOC, MARINETTE, OCONTO, OUTAGAMIE, SHAWANO AND WALWORTH (Northeastern part) COUNTIES

Rates	Fringes
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IRONWORKER.....	\$ 44.66	33.67
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Paid Holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day & Christmas Day.

IRON0383-004 06/01/2025

ADAMS, COLUMBIA, CRAWFORD, DODGE, FLORENCE, FOREST, GRANT, GREENE (Except S.E. tip), GREEN LAKE, IOWA, JEFFERSON, JUNEAU, LAFAYETTE, LANGLADE, MARATHON, MARQUETTE, MENOMINEE, MONROE, PORTAGE, RICHLAND, SAUK, VERNON, WAUPACA, WAUSHARA, AND WOOD COUNTIES

Rates	Fringes
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IRONWORKER.....	\$ 44.00	32.66
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IRON0498-007 06/01/2025

GREEN (S.E. 1/3) AND WALWORTH (Except N.E. part) COUNTIES

Rates	Fringes
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IRONWORKER.....	\$ 48.74	49.65
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IRON0512-009 05/01/2025

BARRON, BUFFALO, CLARK, DUNN, JACKSON, PEPIN, POLK, RUSK, TAYLOR AND TREMPEALEAU COUNTIES

Rates	Fringes
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IRONWORKER.....	\$ 46.35	36.86
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IRON0512-023 05/01/2025

ASHLAND, BAYFIELD, BURNETT, IRON, LINCOLN, ONEIDA, PRICE, SAWYER, VILAS AND WASHBURN COUNTIES

Rates	Fringes
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IRONWORKER.....	\$ 42.89	36.86
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LAB00140-003 06/01/2025

BUFFALO, CRAWFORD, GRANT, JACKSON, JUNEAU, MONROE, RICHLAND, TREMPEALEAU (Southern part), AND VERNON COUNTIES

Rates	Fringes
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Laborer, General.....	\$ 37.70	19.97
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Laborer: Asbestos/hazardous

material remover

(Preparation, Removal and

Encapsulation of Hazardous

Materials from Non-Mechanical

Systems).....

\$ 36.65

19.97

NOTE: Mason Tender \$1.00 over general laborer scale;
Pipelayer \$1.00 over general laborer scale

LAB00268-005 06/02/2025

AREA 1: BARRON, CLARK (West 1/3), DUNN, PEPIN, POLK, RUSK
TAYLOR (West 1/3)

AREA 2: CLARK (East 2/3), LANGLADE, LINCOLN, ONEIDA, PRICE,
TAYLOR (East 2/3), VILAS, WOOD

AREA 3: BURNETT, IRON, SAWYER, WASHBURN

Rates	Fringes
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Laborer, General

Area 1.....	\$ 37.70	19.97
Area 2.....	\$ 37.05	19.97
Area 3.....	\$ 36.35	19.97

Laborer: Asbestos/hazardous

material remover

(Preparation, Removal,
Encapsulation of Hazardous
materials from Non-mechanical
Systems)

Area 1, 2, and 3.....	\$ 36.65	19.97
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NOTE: Mason Tender \$1.00 over general laborer. Burnett, Iron,
Sawyer & Washburn \$.70 over general laborer.

LAB00330-001 06/01/2025

DODGE, DOOR, FLORENCE, FOND DU LAC, FOREST, GREEN LAKE,
KEWAUNEE, MANITOWOC, MARINETTE, MARQUETTE, MENOMINEE, OCONTO,
PORTAGE, SHAWANO, WAUPACA,WAUSHARA

Rates	Fringes
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Laborer: Asbestos/hazardous
material remover

(Preparation, Removal,
Encapsulation of Hazardous
materials from Non-mechanical
Systems).....

\$ 36.65	19.97	
Laborers, General.....	\$ 37.05	19.97

NOTE: Mason Tender \$1.00 over general laborer.

LAB00464-005 06/01/2025

ADAMS, COLUMBIA, GREEN, IOWA, JEFFERSON, LAFAYETTE, SAUK, AND
WALWORTH COUNTIES

Rates	Fringes
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Laborer, General

Adams County.....	\$ 37.05	19.97
Remaining Area.....	\$ 37.70	19.97

Laborer: Asbestos/hazardous

material remover
 (Preparation, Removal,
 Encapsulation of Hazardous
 Materials from Non-mechanical
 Systems)

Adams County.....	\$ 36.65	19.97
Remaining Area.....	\$ 36.65	19.97

 LAB00464-008 06/01/2025

Rates	Fringes
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Landscape Laborer.....	\$ 21.52	18.94
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 LAB01091-001 05/01/2025

BAYFIELD (West of County Trunk A including the Iron River
 National Fish Hatchery and Great Lakes Transmission Co.,
 Station 6) COUNTY

Rates	Fringes
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Laborer, General.....	\$ 36.04	23.47
Laborer: Asbestos/hazardous material remover (Preparation, Removal, Encapsulation of Hazardous materials from Non-mechanical Systems).....	\$ 37.04	23.47

 LAB01091-002 05/01/2025

ASHLAND & BAYFIELD (East of County Trunk A exclusive of the
 Iron River National Fish Hatchery and Great Lakes Transmission
 Co., Station 6) COUNTIES

Rates	Fringes
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Laborer, General.....	\$ 34.59	23.47
Laborer: Asbestos/hazardous material remover (Preparation, Removal, Encapsulation of Hazardous materials from Non-mechanical Systems).....	\$ 35.59	23.47

 PLAS0599-003 06/01/2025

PEPIN COUNTY

Rates	Fringes
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CEMENT MASON/CONCRETE FINISHER....	\$ 37.25	27.84
PLASTERER.....	\$ 39.75	25.10

 PLAS0599-007 06/01/2025

BUFFALO, CRAWFORD, JACKSON, JUNEAU, MONROE, POLK, RICHLAND,
 TREMPEALEAU, AND VERNON COUNTIES

Rates	Fringes
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CEMENT MASON/CONCRETE FINISHER...	\$ 37.25	27.84
PLASTERER.....	\$ 39.75	25.10

PLAS0599-011 06/01/2025

GRANT, GREEN, IOWA, AND LAFAYETTE COUNTIES

Rates	Fringes
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CEMENT MASON/CONCRETE FINISHER...	\$ 43.27	25.69
PLASTERER.....	\$ 39.89	28.04

PLAS0633-046 06/01/2025

BAYFIELD, PRICE, AND SAWYER COUNTIES

Rates	Fringes
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CEMENT MASON/CONCRETE FINISHER...	\$ 47.22	31.90
PLASTERER.....	\$ 40.84	25.66

PLUM0011-009 05/06/2024

ASHLAND BAYFIELD, BURNETT, IRON, SAWYER, AND WASHBURN COUNTIES

Rates	Fringes
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PLUMBER/PIPEFITTER (Including HVAC work).....	\$ 49.32	27.18
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PLUM0075-006 06/01/2025

DODGE (Watertown), GREEN, JEFFERSON, AND LAFAYETTE COUNTIES

Rates	Fringes
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PLUMBER (Including HVAC work)....	\$ 60.05	27.90
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PLUM0075-008 06/01/2025

COLUMBIA, IOWA, MARQUETTE, RICHLAND, AND SAUK COUNTIES

Rates	Fringes
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PLUMBER (Including HVAC work)....	\$ 60.57	27.34
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PLUM0118-003 06/01/2025

WALWORTH COUNTY

Rates	Fringes
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PLUMBER/PIPEFITTER (Including HVAC work).....	\$ 57.35	29.37
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PLUM0400-002 06/01/2025

ADAMS, CALUMET, DODGE (Except Watertown), DOOR, FOND DU LAC,
GREEN LAKE, KEWAUNEE, MANITOWOC, MARINETTE (Except Niagara),
MENOMINEE, OCONTO, OUTAGAMIE, SHAWANO, WAUPACA, WAUSHARA, AND
WINNEBAGO COUNTIES

Rates	Fringes
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PLUMBER/PIPEFITTER (Including
HVAC work)

(1) Small buildings (except industrial and power plants) where plumbing or heating is \$50,000 or less.....	\$ 50.02	23.29
(2) All other work.....	\$ 53.23	23.40

PLUM0434-004 06/01/2025

BARRON, BUFFALO, CLARK, CRAWFORD, DUNN, FLORENCE, FOREST,
GRANT, JACKSON, JUNEAU, LANGLADE, LINCOLN, MONROE, ONEIDA,
PEPIN, PIERCE, POLK, PORTAGE, PRICE, RUSK, TAYLOR, TREMPEALEAU,
VERNON, VILAS, AND WOOD COUNTIES

Rates Fringes

PLUMBER/PIPEFITTER (Including HVAC work).....	\$ 50.94	25.98
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PLUM0601-006 06/01/2025

DODGE (Watertown), GREEN, JEFFERSON, AND LAFAYETTE COUNTIES

Rates Fringes

PIPEFITTER (Including HVAC work).....	\$ 58.92	31.34
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PLUM0601-008 06/01/2025

COLUMBIA, IOWA, MARQUETTE, RICHLAND, AND SAUK COUNTIES

Rates Fringes

PIPEFITTER (Including HVAC work).....	\$ 60.13	30.16
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SHEE0010-031 05/01/2025

ASHLAND, BAYFIELD AND IRON COUNTIES

Rates Fringes

SHEET METAL WORKER.....	\$ 40.43	29.99
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SHEE0010-035 06/05/2023

Rates Fringes

SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 31.97	20.67
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SHEE0018-003 06/01/2025

FOND DU LAC AND MANITOWOC COUNTIES

Rates Fringes

Sheet Metal Worker (Including HVAC work).....	\$ 45.07	31.04
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SHEE0018-004 06/01/2025

ADAMS, DOOR, FLORENCE, FOREST, GREEN LAKE, KEWAUNEE, MARINETTE, MARQUETTE, MENOMINEE, OCONTO, SHAWANO, WAUPACA, AND WAUSHARA COUNTIES

Rates Fringes

Sheet Metal Worker (Including
HVAC work).....\$ 46.47 31.33

SHEE0018-014 06/01/2025

DODGE AND JEFFERSON COUNTIES

Rates Fringes

Sheet Metal Worker (Including
HVAC work).....\$ 58.03 29.98

SHEE0018-015 09/01/2025

WALWORTH COUNTY

Rates Fringes

SHEET METAL WORKER (Including
HVAC work).....\$ 48.92 38.21

SHEE0018-017 06/01/2025

GREEN AND IOWA COUNTIES

Rates Fringes

Sheet Metal Worker (Including
HVAC work).....\$ 48.51 35.86

SHEE0018-022 06/01/2025

BARRON, BUFFALO, BURNETT, CLARK, DUNN, JACKSON, PEPIN, POLK, PRICE, RUSK, SAWYER, TAYLOR, TREMPEALEAU, AND WASHBURN COUNTIES

Rates Fringes

Sheet Metal Worker (Including
HVAC work).....\$ 42.00 31.56

SHEE0018-023 06/02/2025

COLUMBIA AND SAUK COUNTIES

Rates Fringes

Sheet Metal Worker (Including
HVAC work).....\$ 51.92 34.78

SHEE0018-024 06/01/2025

CRAWFORD, GRANT, JUNEAU, MONROE, RICHLAND, AND VERNON COUNTIES

Rates Fringes

SHEET METAL WORKER (Including

HVAC work).....	\$ 45.63	29.02
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SHEE018-036 05/26/2025

LANGLADE, LINCOLN, ONEIDA, PORTAGE, AND WOOD COUNTIES

Rates Fringes

Sheet Metal Worker (Including HVAC work).....	\$ 42.90	32.47
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TEAM0346-003 05/01/2025

ASHLAND, BAYFIELD, BURNETT, SAWYER & WASHINGTON COUNTIES

Rates Fringes

TRUCK DRIVER		
2 Axle Trucks.....	\$ 35.79	24.13

TEAM0662-002 06/01/2025

ADAMS, BARRON, BUFFALO, CLARK , DOOR, DUNN, JACKSON, JUNEAU, KEWAUNEE, LANGLADE, LINCOLN, MANITOWOC, MENOMINEE, OCONTO, ONEIDA, PEPIN, POLK, PORTAGE, PRICE, RUSK, SHAWANO, TAYLOR, TEMPEALEAU, WAUPACA & WOOD COUNTIES

Rates Fringes

TRUCK DRIVER		
2 Axle Trucks.....	\$ 39.57	28.57
3 or more Axles.....	\$ 39.72	28.57

SUWI2002-001 01/23/2002

Rates Fringes

Fence Installers.....	\$ 15.00	2.37
GLAZIER.....	\$ 20.21	1.86

Painters:

Brush & Roller (Excluding Drywall Finishing).....	\$ 14.64	2.55
Spray.....	\$ 13.72	2.25

Power Equipment Operator		
Backhoe.....	\$ 17.454	7.61
Excavator.....	\$ 17.37	7.45
Front End Loader.....	\$ 23.36	4.61

ROOFER.....	\$ 15.52	3.21
TRUCK DRIVER (3-Axle).....	\$ 15.28	4.78

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any

solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes

over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE:

UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination

- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

END OF GENERAL DECISION

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