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SPECIFICATIONS  
AND  
CONTRACT DOCUMENTS

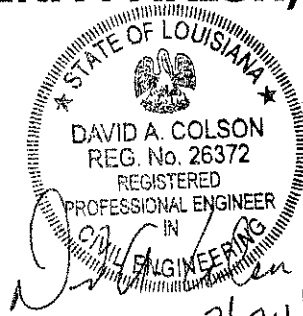
**IMPROVEMENTS TO THE MUNICIPAL WATER SYSTEM  
CONTRACT NO. 2 – NEW GROUND STORAGE TANK AND  
NEW HYDROPNEUMATIC TANK**

**FUNDED BY:**

**United States Department of Agriculture Rural Utilities Service**

**OWNER**

**VILLAGE OF MONTPELIER  
ST. HELENA PARISH, LOUISIANA**



*2/24/2012*

**PEC PROJECT NO. 10449-2**

February 2012



**PROFESSIONAL ENGINEERING CONSULTANTS CORPORATION**

7600 GSRI Avenue • Baton Rouge, LA 70820

Phone: 225.769.2810 • Fax: 225.769.2882

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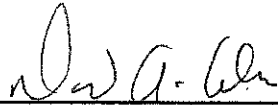
### Engineer's Certification

This certification is for the Contract documents.

Modifications to the EJCDC documents may be necessary and all modifications to these documents are made by either **BOLD fonts** for add items and strikethrough font (~~Strikethrough~~) for items to be deleted.

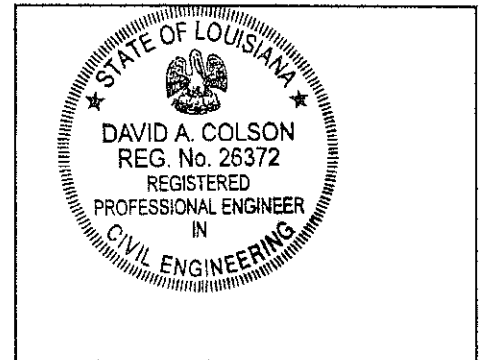
I hereby certify that **Professional Engineering Consultants Corporation** has only made changes to the EJCDC and the attached USDA RUS documents by fill in the blank and deleted the items allowed in the documents as either/or, and by bold fonts or strikethrough fonts only.

FIRM: **Professional Engineering Consultants Corporation**

BY: 

PRINT NAME: **David A. Colson, P.E.**

DATE: 2/24/2012



*Engineer's Seal*

**VILLAGE OF MONTEPELIER, LOUISIANA  
IMPROVEMENTS TO THE MUNICIPAL WATER SYSTEM  
CONTRACT NO. 2 – NEW GROUND STORAGE TANK AND NEW HYDROPNEUMATIC  
TANK**

**CONTRACT DOCUMENTS AND SPECIFICATIONS**

**TABLE OF CONTENTS**

**Engineer's Certification**

**DIVISION 0 - BIDDING REQUIREMENTS AND CONTRACT DOCUMENTS**

C-30	Advertisement for Bids <i>(RD 1780-26 Exhibit D)</i>
C-200	Instructions to Bidders <i>(RUS Bulletin 1780-26, Exhibit E)</i> Attestation Clause Required by LA R.S. 38:2227 (Past Criminal Convictions of Bidders) Certification for Contracts, Grants and Loans <i>(1940-Q)</i> Certification Regarding Debarment <i>(AD-1048)</i> Compliance Statement <i>(RD 400-6)</i> Notice to Prospective Subcontractors of Requirements for Certifications of Non-Segregated Facilities
C-410	Bid Form <i>(RUS Bulletin 1780-26, Exhibit F)</i>
C-430	Bid Bond <i>(EJCDC 2002)</i>
C-510	Notice of Award <i>(EJCDC 2002)</i>
C-521	Form of Agreement Between Owner and Contractor, Funding Agency Edition <i>(EJCDC 2002)</i>
C-550	Notice to Proceed
C-610	Performance Bond <i>(EJCDC 2002)</i>
C-615 (A)	Payment Bond <i>(EJCDC 2008)</i>
C-710	Standard General Conditions of the Construction Contract – Funding Agency Edition Certificate of Owner's Attorney <i>(Exhibit GC-A, 2002)</i>
C-800	Supplemental Conditions <i>(RUS Bulletin 1780-26, Exhibit G)</i>
C-620	Contractors Application for Payment <i>(EJCDC 2002)</i>
C-941	Change Order <i>(EJCDC 2002)</i>
C-625	Certificate of Substantial Completion <i>(EJCDC 2002)</i>
C-900	Special Conditions Notice of Buy American Exception under the American Recovery & Reinvestment Act of 2009 General Wage Decision-LA 6 Payroll Form Project Sign

**DIVISION 1 – GENERAL REQUIREMENTS**

01005	General Requirements
01010	Summary of Work
01025	Measurement and Payment
01040	Project Coordination
01210	Preconstruction Conference
01310	Construction Schedules
01340	Shop Drawings, Product Data and Samples
01370	Schedule of Values
01400	Quality Control
01500	Temporary Facilities and Controls
01600	Material and Equipment
01630	Product Options & Substitutions
01641	Environmental Controls
01650	Facility Startup and Testing
01700	Contract Closeout

**VILLAGE OF MONTPELIER, LOUISIANA  
IMPROVEMENTS TO THE MUNICIPAL WATER SYSTEM  
CONTRACT NO. 2 – NEW GROUND STORAGE TANK AND NEW HYDROPNEUMATIC  
TANK**

**CONTRACT DOCUMENTS AND SPECIFICATIONS**

**TABLE OF CONTENTS**

01720	Project Record Documents
01740	Miscellaneous Work and Cleanup
01750	Spare Parts & Maintenance Materials

**DIVISION 2 – SITE CONSTRUCTION**

02200	Earthwork
02221	Modifications to Existing Structures, Piping, & Equipment
02230	Clearing & Grubbing
02315	Excavation, Backfilling & Compaction
02510	Water Piping, Materials & Structures
02920	Lawns and Grasses
02921	Seeding & Mulching

**DIVISION 3 – CONCRETE**

03100	Concrete Formwork
03200	Concrete Reinforcement
03250	Concrete Accessories
03300	Cast-In-Place Concrete
03350	Concrete Finishing

**DIVISION 9 – FINISHES**

09900	Painting
09910	Surface Preparation & Shop Prime Painting

**DIVISION 13 – SPECIAL CONSTRUCTION**

13205	Ground Storage Tanks
13206	Pressure Tank and Air Compressor

**DIVISION 16 – ELECTRICAL**

16001	General Electrical Provisions
16002	Raceways, Fittings, and Boxes
16003	Underground Duct System
16004	Wires and Cables (Power and Control)
16005	Grounding System
16007	Miscellaneous Electrical Equipment
16008	Lighting Fixtures and Accessories
16011	Electric Motors

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**DIVISION 0**

**BIDDING REQUIREMENTS AND  
CONTRACTING REQUIREMENTS**

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## SECTION C-30 ADVERTISEMENT FOR BIDS

OWNER: Village of Montpelier  
36400 LA Hwy 16  
Montpelier, LA 70422

Separate sealed BIDS for the construction of Improvements to the Municipal Water System, Contract No. 2 – New Ground Storage Tank and New Hydropneumatic Tank will be received by the Village of Montpelier, Louisiana at the office of 36400 LA Hwy 16, Montpelier, LA 70422 until 6:30 p.m. (local time) on Monday, April 9, 2012 and then at said office publicly opened and read aloud.

The CONTRACT DOCUMENTS may be examined at the following locations:

-----PROFESSIONAL ENGINEERING CONSULTANTS CORPORATION-----  
7600 GSRI AVENUE, BATON ROUGE, LA 70820

-----AGC/F. W. DODGE DIVISION, MCGRAW-HILL INFORMATION SYSTEMS-----  
666 NORTH STREET, BATON ROUGE, LA 70802

-----AGC/F.W. DODGE DIVISION, MCGRAW-HILL INFORMATION SYSTEMS-----  
2475 CANAL STREET, SUITE 101, NEW ORLEANS, LA 70119

Copies of the CONTRACT DOCUMENTS may be obtained at the issuing office of Professional Engineering Consultants Corporation located at 7600 GSRI Avenue, Baton Rouge, Louisiana 70820 upon payment of \$100.00 for each set.

**Buy American Provisions shall apply to this project. This contract is expected to be funded in whole or in part using funds from the American Recovery and Reinvestment Act (ARRA.) Section 1605 of the ARRA prohibits the use of these funds unless all iron, steel, and manufactured goods are produced in the United State. All iron and steel manufacturing processes must take place in the United States, except for metallurgical processes involving refinement of steel additives. There is no requirement for the origin of components and subcomponents of manufactured goods. Products listed at 48 CFR 25.104(a) have been determined to be unavailable in the United States and if required for the project may be purchased from foreign sources. No unauthorized use of foreign iron, steel and/or manufactured goods will be allowed on this project. The Contractor must comply with the minimum rates for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts.**

Wednesday, February 29, 2012  
DATE

Village of Montpelier  
OWNER

BY: Kenneth G. Giardina

TITLE: Mayor

Advertisement to be published:

Wednesday, February 29, 2012  
Wednesday, March 7, 2012  
Wednesday, March 14, 2012  
Wednesday, March 21, 2012

## SECTION C-200 INSTRUCTIONS TO BIDDERS

### TABLE OF ARTICLES

	Page
Article 1 - Defined Terms	1
Article 2 - Copies of Bidding Documents	1
Article 3 - Qualifications of Bidders	2
Article 4 - Examination of Bidding Documents, Other Related Data, and Site	2
Article 5 - Pre-Bid Conference	4
Article 6 - Site and Other Areas	4
Article 7 - Interpretations and Addenda	4
Article 8 - Bid Security	4
Article 9 - Contract Times	5
Article 10 - Liquidated Damages	5
Article 11 - Substitute and "Or-Equal" Items	5
Article 12 - Subcontractors, Suppliers, and Others	5
Article 13 - Preparation of Bid	6
Article 14 - Basis of Bid; Comparison of Bids	7
Article 15 - Submittal of Bid	7
Article 16 - Modification and Withdrawal of Bid	8
Article 17 - Opening of Bids	8
Article 18 - Bids to Remain Subject to Acceptance	8
Article 19 - Evaluation of Bids and Award of Contract	8
Article 20 - Contract Security and Insurance	9
Article 21 - Signing of Agreement	9
Article 22- Buy American Provisions	9
Article 23- Davis Bacon Wage Rate Requirements	9

#### 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 meanings indicated below:

- A. Issuing Office--The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

#### ARTICLE 2 - COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the 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 will be refunded to each document holder of record who returns a complete set of Bidding Documents in good condition within 30 days after opening of Bids.

2.02 Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.03 Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

### **ARTICLE 3 - QUALIFICATIONS OF BIDDERS**

~~3.01 To demonstrate Bidder's qualifications to perform the Work, within five days of Owner's request, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below.~~

### **ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE**

#### **4.01 Subsurface and Physical Conditions**

##### **A. The Supplementary Conditions identify:**

1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Bidding Documents.
2. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in paragraph 4.01.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.02 of the General Conditions has been identified and established in paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

#### **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. The Supplementary Conditions identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that ENGINEER has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in paragraph 4.03.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.06 of the General Conditions has been identified and established in paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

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 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 explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.
- 4.06 Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed 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 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 Bidder as to all Federal, State, and local Laws and Regulations that may affect cost, progress, or performance of the Work;
  - D. Carefully study all: (1) 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 Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and (2) reports and drawings of Hazardous Environmental Conditions at the Site which have been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions;
  - E. Obtain and carefully study (or accept consequences for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of 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 safety precautions and programs incident thereto;
  - 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(s) 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 that relates to the Work as indicated in the Bidding Documents;
  - H. Correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with 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; and
- J. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the 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 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 A pre Bid conference will be held at { } {a.m.} {p.m.} on { } at { }. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.~~

#### **ARTICLE 6 - SITE AND OTHER AREAS**

6.01 The Site is identified in the Bidding Documents. Easement 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 five 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.

## **ARTICLE 8 - BID SECURITY**

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 % of Bidder's maximum Bid price and in the form of a certified check or a Bid bond (EJCDC No. C-430, 2002 Edition) 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 annul the Notice of Award and the Bid security of that Bidder will be forfeited. 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.
- 8.03 Bid security of other Bidders whom OWNER believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

## **ARTICLE 9 - CONTRACT TIMES**

- 9.01 The number of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

## **ARTICLE 10 - LIQUIDATED DAMAGES**

- 10.01 Provisions for liquidated damages 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, or "or-equal" materials and equipment as defined in paragraph 6.05 of the General Conditions, or those substitute materials and equipment approved by the Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed substitute or "or-equal" item. Request for Engineer's clarification of materials and equipment considered "or-equal" prior to the Effective Date of the Agreement must be received by the Engineer at least 5 days prior to the date for receipt of Bids. No item of material or equipment will be considered by Engineer as a substitute unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 days prior to the date for receipt of Bids. Each request shall conform to the requirements of paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon the Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed substitute item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

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

- 12.01 If the Supplementary Conditions 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, without an increase in the Bid.

12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest responsible 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 and 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 Contractor has reasonable objection.

12.04 The Contractor shall not award work to Subcontractor(s) in excess of the limits stated in SC 6.06.

### ARTICLE 13 - PREPARATION OF BID

13.01 The Bid form is included with the Bidding Documents. Additional copies may be obtained from Engineer.

13.02 All blanks on the Bid form shall be completed by printing in ink or by typewriter and the Bid 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 *Bid item* listed therein, or the words "No Bid," "No Change," or "Not Applicable" 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. If required by State where work is to be performed, the corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporation business address and state of incorporation shall be provided on the Bid Form.

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 business address of the partnership shall be provided on the Bid Form.

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 business address of the firm must be provided on the Bid Form.

13.06 A Bid by an individual shall show the Bidder's name and business 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 business address of the joint venture must be provided on the Bid Form.

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 and dates of which shall be filled in on the Bid form.~~

13.10 The address ~~and telephone number~~ for communication 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 covenant to obtain such qualification prior to award of the Contract. Bidder's state contractor license number for the state of the Project, if any, shall also be shown on the Bid Form.

## ARTICLE 14 - BASIS OF BID; COMPARSION OF BIDS

### 14.01 Lump Sum

- ~~A. Bidders shall submit a Bid on lump sum basis as set forth in the Bid Form.~~
- A. Bidders shall submit a Bid on a lump sum basis for the 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 the Bid if OWNER selects the alternate. In the comparison of Bids, alternates will be applied in the same order as listed in the Bid Form.

### 14.01 Unit Price

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.
- B. The total of all bid 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. Discrepancies between words and figures will be resolved in favor of the words.

## ARTICLE 15 - SUBMITTAL OF BID

- 15.01 With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form, and the Bid bond form. ~~The unbound copy of the Bid Form is to be completed and submitted with all the attachments outlined in Article 7 of the Bid Form.~~
- 15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement for Bids and shall be enclosed in an opaque sealed envelope plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED." When using the mail or other delivery system, the Bidder is totally responsible for the mail or other delivery system delivering the Bid at the place and prior to the time indicated in the Advertisement for Bid. A mailed Bid shall be addressed to Owner at address in Article 1.01 of Bid Form.

## ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BID

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

16.02 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid or negotiated, that Bidder will be disqualified from further bidding on the Work. This provision to withdraw a Bid without forfeiting the Bid security does not apply to Bidder's errors in judgment in preparing the Bid.

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

17.01 Bids will be opened at the time and place indicated in the Advertisement for Bids and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the 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 75 (seventy-five) calendar days as the contract is financed in whole or in part by federal or other funds which will not be available at time of bidding.

#### **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 be non-responsive. 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 that 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 Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the contract Documents.

19.06 If the Contract is to be awarded, Owner will award the Contract to the responsible Bidder whose Bid, conforming with all the material terms and conditions of the Instructions to Bidders, is lowest, price and other factors considered.

#### **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 such bonds.

## **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.

21.02 This Contract is expected to be funded in part with funds provided by the United States Department of Agriculture, Rural Utilities Service (RUS). Refer to Article 18 of the General Conditions for information on the Federal Requirements.

21.03 Concurrence by RUS in the award of the Contract is required before the Contract is effective.

## **ARTICLE 22 -BUY AMERICAN PROVISIONS**

22.01 This contract is funded in whole or in part using funds from the American Recovery and Reinvestment Act (ARRA). Section 1605 of the ARRA prohibits the use of these funds unless all iron, steel, and manufactured goods are produced in the United States of America. All iron and steel manufacturing processes must take place in the United States, except for metallurgical processes involving refinement of steel additives. There is no requirement for the origin of components and subcomponents of manufactured goods. Products listed at 48 CFR 25.104 (a) have been determined to be unavailable in the United States and if required for the project may be purchased from foreign sources. No unauthorized use of foreign iron, steel, and/or manufactured goods will be allowed on this project.

## **ARTICLE 23 -DAVIS BACON WAGE RATE REQUIREMENTS**

23.01 The Contractor must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts.



**CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS**

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

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

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

, Louisiana

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

# U.S. DEPARTMENT OF AGRICULTURE

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## CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

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

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

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

VILLAGE OF MONTPELIER

Improvements to the Municipal Water System  
Contract No. 2 – New Ground Storage Tank and New  
Hydropneumatic Tank

Organization Name

PR/Award Number or Project Name

---

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

---

Signature(s)

Date

## Instructions for Certification

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

## COMPLIANCE STATEMENT

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

### VILLAGE OF MONTPELIER

*(Name of borrower or grantee)*

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

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

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

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

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

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

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

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

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

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

Date \_\_\_\_\_

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

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

**SECTION C-410**  
**LOUISIANA UNIFORM PUBLIC WORK BID FORM**

**TO:** Village of Montpelier  
36400 Highway 16  
Montpelier, LA 70422

*(Owner to provide name and address of owner)*

**BID FOR:** Improvements to the Municipal Water System  
Contract No. 2-New Ground Storage Tank and  
New Hydropneumatic Tank  
PEC Project No. 10449.05-2

*(Owner to provide name of project and other identifying information)*

The undersigned bidder hereby declares and represents that she/he; a) has carefully examined and understands the Bidding Documents, b) has not received, relied on, or based his bid on any verbal instructions contrary to the Bidding Documents or any addenda, c) has personally inspected and is familiar with the project site, and hereby proposes to provide all labor, materials, tools, appliances and facilities as required to perform, in a workmanlike manner, all work and services for the construction and completion of the referenced project, all in strict accordance with the Bidding Documents prepared by: **Professional Engineering Consultants Corp.** and dated: **February 2012**

*(Owner to provide name of entity preparing bidding documents.)*

Bidders must acknowledge all addenda. The Bidder acknowledges receipt of the following **ADDENDA:** (Enter the number the Designer has assigned to each of the addenda that the Bidder is acknowledging) \_\_\_\_\_.

**TOTAL BASE BID:** For all work required by the Bidding Documents (including any and all unit prices designated "Base Bid" \* but not alternates) the sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

**ALTERNATES:** For all work required by the Bidding Documents for Alternates (including any and all unit prices designated as Alternates in the unit price description:

Not Applicable Dollars (\$ \_\_\_\_\_)

**Alternate No. 1** *(Owner to provide description of alternate and state whether add or deduct)* for the lump sum of:

Not Applicable Dollars (\$ N/A)

**Alternate No. 2** *(Owner to provide description of alternate and state whether add or deduct)* for the lump sum of:

Not Applicable Dollars (\$ N/A)

**Alternate No. 3** *(Owner to provide description of alternate and state whether add or deduct)* for the lump sum of:

Not Applicable Dollars (\$ N/A)

**NAME OF BIDDER:** \_\_\_\_\_

**ADDRESS OF BIDDER:** \_\_\_\_\_

**LOUISIANA CONTRACTOR'S LICENSE NUMBER:** \_\_\_\_\_

**NAME OF AUTHORIZED SIGNATORY OF BIDDER:** \_\_\_\_\_

**TITLE OF AUTHORIZED SIGNATORY OF BIDDER:** \_\_\_\_\_

**SIGNATURE OF AUTHORIZED SIGNATORY OF BIDDER \*\*:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

\* The Unit Price Form shall be used if the contract includes unit prices. Otherwise it is not required and need not be included with the form. The number of unit prices that may be included is not limited and additional sheets may be included if needed.

\*\* If someone other than a corporate officer signs for the Bidder/Contractor, a copy of a corporate resolution or other signature authorization shall be required for submission of bid. Failure to include a copy of the appropriate signature authorization, if required, may result in the rejection of the bid unless bidder has complied with La. R.S. 38:2212(A)(1)(c) or RS 38:2212(O).

**BID SECURITY** in the form of a bid bond, certified check or cashier's check as prescribed by LA RS 38:2218.A is attached to and made a part of this bid.

**LOUISIANA UNIFORM PUBLIC WORK BID FORM  
UNIT PRICE FORM**

**TO: Village of Montpelier**  
**36400 Highway 16**  
**Montpelier, LA 70422**

(Owner to provide name and address of owner)

**BID FOR: Improvements to the Municipal Water System**  
**Contract No. 2-New Ground Storage Tank and**  
**New Hydropneumatic Tank**  
**PEC Project No. 10449.05-2**

(Owner to provide name of project and other identifying)

**UNIT PRICES:** This form shall be used for any and all work required by the Bidding Documents and described as unit prices. Amounts shall be stated in figures and only in figures.

**BASE BID**

<b>DESCRIPTION</b>	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___	<b>64,300 Gallon Bolted Steel Ground Storage Tank (Potable Water) and Foundation-Complete and In Place - AS DETAILED</b>		
REF. NO. <b>1</b>	QUANTITY: <b>1</b>	UNIT OF MEASURE: <b>L.S.</b>	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>

<b>DESCRIPTION</b>	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___	<b>5, 000 Gallon Steel Hydropneumatic Tank-Complete and In Place - AS DETAILED</b>		
REF. NO. <b>2</b>	QUANTITY: <b>1</b>	UNIT OF MEASURE: <b>L.S.</b>	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>

<b>DESCRIPTION</b>	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___	<b>Air Compressor and Air Piping, Fittings, Valves, Gauges and Appurtenances-Complete and In Place - AS DETAILED</b>		
REF. NO. <b>3</b>	QUANTITY: <b>1</b>	UNIT OF MEASURE: <b>L.S.</b>	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>

<b>DESCRIPTION</b>	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___	<b>Yard Piping Including All Connections, Valves, Fittings, and Appurtenances</b>		
REF. NO. <b>4</b>	QUANTITY: <b>1</b>	UNIT OF MEASURE: <b>L.S.</b>	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>

<b>DESCRIPTION</b>	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ___	<b>Mobilization/Demobilization</b>		
REF. NO. <b>5</b>	QUANTITY: <b>1</b>	UNIT OF MEASURE: <b>L.S.</b>	UNIT PRICE	UNIT PRICE EXTENSION <i>(Quantity times Unit Price)</i>

<b>TOTAL BASE BID (Item Nos. 1 -5 )</b>	
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Wording for "DESCRIPTION" is to be provided by the Owner.

All quantities are estimated. The contractor will be paid based upon actual quantities as verified by the Owner

Authority Note: Promulgated in accordance with R.S. 38:2212.

Historical Note: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1522

Jerry W. Jones  
Assistant Commissioner

# SECTION C-430 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): **Village of Montpelier, Louisiana**  
**36400 LA Highway 16**  
**Montpelier, LA 70499**

**BID**

Bid Due Date:

Project (Brief Description Including Location): **Improvements to the Municipal Water System**  
**Contract No. 2 – New Ground Storage Tank and New**  
**Hydropneumatic Tank**  
**Village of Montpelier**  
**St. Helena Parish, LA**

**BOND**

Bond Number:

Date (Not later than Bid due date):

Penal sum \_\_\_\_\_

(Words)

\_\_\_\_\_ (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

**BIDDER**

**SURETY**

(Seal

(Seal)

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

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

By: \_\_\_\_\_  
Signature and Title

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

Attest: \_\_\_\_\_  
Signature and Title

Attest: \_\_\_\_\_  
Signature and Title

Note: Above addresses are to be used for giving required notice.

PENAL SUM FORM

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 Surety's liability.
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 by 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 C-510 NOTICE OF AWARD

Dated \_\_\_\_\_, 20\_\_

Project: <b>Improvements to the Municipal Water System- New Ground Storage Tank and New Hydropneumatic Tank</b>	Owner: <b>Village of Montpelier, Louisiana</b>	Owner's Contract No.: <b>10449-2</b>
Contract: <b>Two (2)</b>		Engineer's Project No.: <b>10449-2</b>

Bidder: \_\_\_\_\_

Bidder's Address: (send Certified Mail, Return Receipt Requested)  
 \_\_\_\_\_  
 \_\_\_\_\_

You are notified that your Bid dated \_\_\_\_\_, 20\_\_ for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for **Improvements to the Municipal Water System, Contract No. 2 – New Ground Storage Tank and New Hydropneumatic Tank.**

The Contract Price of your Contract is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

**Six (6)** copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

**Six (6)** 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 **Six (6)** 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), and General Conditions (Paragraph 5.01) and Supplementary Conditions (Paragraph SC-5.01).
3. Other conditions precedent:

Not Applicable

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.

Village of Montpelier, Louisiana

Owner

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

Authorized Signature

Kenneth G. Giardina, Mayor

Title

Copy to Engineer

**SECTION C-521**  
**SUGGESTED FORM OF AGREEMENT**  
**BETWEEN OWNER AND CONTRACTOR**  
**FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**  
**FUNDING AGENCY EDITION**

THIS AGREEMENT is by and between Village of Montpelier, Louisiana ("Owner") and \_\_\_\_\_ ("Contractor").

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, 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:

**Contract No. 2 – New Ground Storage Tank and New Hydropneumatic Tank**

**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:

**New ground storage tank, new hydropneumatic tank and miscellaneous piping**

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by Professional Engineering Consultants Corporation, who 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 *Days to Achieve Substantial Completion and Final Payment*

A. The Work will be substantially completed within 180 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 225 days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence of this Agreement 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 \$400.00 for each day that expires after the time specified in Paragraph 4.02 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 \$400.00 for each day that expires after the time specified in Paragraph 4.02 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, 5.01.B, and 5.01.C below:~~

A. ~~For all Work other than Unit Price Work, a Lump Sum of:~~

\_\_\_\_\_ (\$ \_\_\_\_\_)  
 (words) (figure)

~~All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.02 of the General Conditions.~~

B. ~~For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.B:~~

~~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. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.~~

UNIT PRICE WORK

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Total Estimated Price</u>
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~~ESTIMATED TOTAL OF ALL UNIT PRICE WORK~~ \$ \_\_\_\_\_ (use words) \$( \_\_\_\_\_) (figure)

C. For all Work, at the prices stated in Contractor’s Bid, attached hereto as an exhibit.

**(SEE SECTION C-410 BID FORM)**

## 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 1<sup>st</sup> day of each month during performance of the Work as provided in Paragraphs 6.02.A.1 and 6.02.A.2 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); and
  - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions.

### 6.03 *Final Payment*

- A. Upon receipt of the final Application for Payment accompanied by Engineer's recommendation of payment in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay Contractor as provided in Paragraph 14.07 of the General Conditions the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages.

## 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 maximum legal rate.

## 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 in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.~~
- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of 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 Bidding Documents, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any 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 correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. 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.
- J. 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 1 to 6, inclusive).
  2. Performance bond (pages 1 to 2, inclusive).
  3. Payment bond (pages 1 to 2, inclusive).
  4. Other bonds (pages N/A to N/A, inclusive).
    - a. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
    - b. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
    - c. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  5. General Conditions (pages 1 to 56, inclusive).

6. Supplementary Conditions (pages 1 to 4, inclusive).
  7. Specifications as listed in the table of contents of the Project Manual.
  8. Drawings consisting of 8 sheets with each sheet bearing the following general title: **Improvements to the Municipal Water System, Contract No. 2- New Ground Storage Tank and New Hydropneumatic Tank**
  9. Addenda (numbers \_\_\_\_ to \_\_\_\_, inclusive).
  10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages 1 to 8, inclusive).
    - b. Documentation submitted by Contractor prior to Notice of Award (pages \_\_\_\_ to \_\_\_\_, inclusive).
  11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Notice to Proceed (pages 1 to 1, inclusive).
    - b. Work Change Directives.
    - c. Change Order(s).
- 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 *Other Provisions*~~

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in four copies. One counterpart each has been delivered to Owner, Contractor, Engineer, and Agency. All portions of the Contract Documents have been signed, initialed, or identified by Owner and Contractor or identified by Engineer on their behalf.

This Agreement is dated \_\_\_\_\_, 20\_\_ . This Agreement shall not be effective unless and until Agency's designated representative concurs.

OWNER:

CONTRACTOR

Village of Montpelier, Louisiana

\_\_\_\_\_

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

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

Title: Kenneth G. Giardina, Mayor

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

[CORPORATE SEAL]

[CORPORATE SEAL]

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

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

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

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

Address for giving notices:

Address for giving notices:

36400 LA Highway 16

\_\_\_\_\_

Montpelier, LA 70499

\_\_\_\_\_

225-777-4400

\_\_\_\_\_

Agent for service of process:

\_\_\_\_\_

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

Agency Concurrence:

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

Agency: USDA Rural Development

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

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

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

# SECTION C-550 Notice to Proceed

Dated \_\_\_\_\_, 20\_\_

Project: <b>Improvements to the Municipal Water System – New Ground Storage Tank and New Hydropneumatic Tank</b>	Owner: <b>Village of Montpelier, Louisiana</b>	Owner's Contract No.: <b>10449-2</b>
Contract: <b>Two (2)</b>	Engineer's Project No.: <b>10449-2</b>	

Contractor:

Contractor's Address: [send Certified Mail, Return Receipt Requested]:

You are notified that the Contract Times under the above contract will commence to run on \_\_\_\_\_, 20\_\_. 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 \_\_\_\_\_, 20\_\_, and the date of readiness for final payment is \_\_\_\_\_, 20\_\_ or the number of days to achieve Substantial Completion is \_\_\_\_\_, 20\_\_, and the number of days to achieve readiness for final payment is **45**.

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) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Village of Montpelier, Louisiana**

Owner

Given by:

Authorized Signature

**Kenneth G. Giardina, Mayor**

Title

Date

Copy to Engineer

**SECTION C-610  
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): **Village of Montpelier**  
**36400 LA Highway 16**  
**Montpelier, LA 70422**

**CONTRACT**

Date:

Amount:

Description (Name and Location): **Improvements to the Municipal Water System**  
**Contract No. 2 -- New Ground Storage Tank and New Hydropneumatic**  
**Village of Montpelier**  
**St. Helena Parish, Louisiana**

**BOND**

Bond Number:

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL  
Company:

SURETY

Signature: \_\_\_\_\_ (Seal)  
Name and Title:

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

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

(Space is provided below for signatures of additional parties, if required.)

Attest: \_\_\_\_\_  
Signature and Title

CONTRACTOR AS PRINCIPAL  
Company:

SURETY

Signature: \_\_\_\_\_ (Seal)  
Name and Title:

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

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

Attest: \_\_\_\_\_  
Signature and Title:

EJCDC No. C-610 (2002 Edition)  
Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.

1. 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.

2. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.

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

3.1. Owner has notified Contractor and Surety, at the addresses described in Paragraph 10 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

3.2. 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 3.1; and

3.3. Owner has agreed to pay the Balance of the Contract Price to:

1. Surety in accordance with the terms of the Contract;
2. Another contractor selected pursuant to Paragraph 4.3 to perform the Contract.

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

4.1. Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or

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

4.3. 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 6 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or

4.4. 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.

5. If Surety does not proceed as provided in Paragraph 4 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 4.4, 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.

6. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3 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 a 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:

6.1. The responsibilities of Contractor for correction of defective Work and completion of the Contract;

6.2. Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions or failure to act of Surety under Paragraph 4; and

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

7. 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.

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

9. 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.

10. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

11. 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.

12. Definitions.

12.1. 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.

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

12.3. Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4. 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 comply with the other terms thereof.

FOR INFORMATION ONLY – Name, Address and Telephone

Surety Agency or Broker

Owner's Representative: Professional Engineering Consultants Corp, 7600 GSRI Avenue, Baton Rouge, LA 70820

(225) 769-2810

**SECTION C-615(A)**

**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*):

**Village of Montpelier  
36400 LA Highway 16  
Montpelier, LA 70422**

**CONTRACT**

Effective Date of Agreement:

Amount:

Description (*Name and Location*): **Improvements to the Municipal Water System, Contract No. 2 – New  
Ground Storage Tank and New Hydropneumatic Tank  
Village of Montpelier  
St. Helena Parish, Louisiana**

**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**

\_\_\_\_\_  
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: **Professional Engineering Consultants Corp, 7600 GSRI Avenue, Baton Rouge, LA 70820  
(225) 769-2810**

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 Law.

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT FUNDING AGENCY EDITION

*Prepared by*

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

**ACEC**

AMERICAN COUNCIL OF ENGINEERING COMPANIES



**ASCE** American Society  
of Civil Engineers

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*a practice division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General Contractors of America



and the

Construction Specification Institute



Knowledge for Creating  
and Sustaining  
the Built Environment

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Funding Agency Edition No. C-521 (2002 Edition). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001, 2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800, 2002 Edition).

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1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723

## TABLE OF CONTENTS

	Page
Article 1 – Definitions and Terminology .....	6
1.01 Defined Terms .....	6
1.02 Terminology .....	9
Article 2 – Preliminary Matters .....	10
2.01 Delivery of Bonds and Evidence of Insurance .....	10
2.02 Copies of Documents .....	10
2.03 Commencement of Contract Times; Notice to Proceed .....	10
2.04 Starting the Work .....	11
2.05 Before Starting Construction .....	11
2.06 Preconstruction Conference .....	11
2.07 Initial Acceptance of Schedules .....	11
Article 3 – Contract Documents: Intent, Amending, Reuse .....	11
3.01 Intent .....	11
3.02 Reference Standards .....	12
3.03 Reporting and Resolving Discrepancies .....	12
3.04 Amending and Supplementing Contract Documents .....	13
3.05 Reuse of Documents .....	13
3.06 Electronic Data .....	13
Article 4 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions; Reference Points .....	13
4.01 Availability of Lands .....	13
4.02 Subsurface and Physical Conditions .....	14
4.03 Differing Subsurface or Physical Conditions .....	14
4.04 Underground Facilities .....	15
4.05 Reference Points .....	16
4.06 Hazardous Environmental Condition at Site .....	16
Article 5 – Bonds and Insurance .....	18
5.01 Performance, Payment, and Other Bonds .....	18
5.02 Licensed Sureties and Insurers .....	18
5.03 Certificates of Insurance .....	18
5.04 Contractor’s Liability Insurance .....	18
5.05 Owner’s Liability Insurance .....	19
5.06 Property Insurance .....	20
5.07 Waiver of Rights .....	21
5.08 Receipt and Application of Insurance Proceeds .....	21
5.09 Acceptance of Bonds and Insurance; Option to Replace .....	21
5.10 Partial Utilization, Acknowledgment of Property Insurer .....	22
Article 6 – Contractor’s Responsibilities .....	22
6.01 Supervision and Superintendence .....	22
6.02 Labor; Working Hours .....	22
6.03 Services, Materials, and Equipment .....	22
6.04 Progress Schedule .....	23
6.05 Substitutes and “Or-Equals” .....	23
6.06 Concerning Subcontractors, Suppliers, and Others .....	25
6.07 Patent Fees and Royalties .....	26
6.08 Permits .....	26
6.09 Laws and Regulations .....	26
6.10 Taxes .....	27

6.11	Use of Site and Other Areas .....	27
6.12	Record Documents .....	27
6.13	Safety and Protection.....	28
6.14	Safety Representative .....	28
6.15	Hazard Communication Programs .....	28
6.16	Emergencies.....	28
6.17	Shop Drawings and Samples .....	29
6.18	Continuing the Work .....	30
6.19	Contractor's General Warranty and Guarantee.....	30
6.20	Indemnification.....	31
6.21	Delegation of Professional Design Services .....	31
Article 7 – Other Work at the Site.....		32
7.01	Related Work at Site.....	32
7.02	Coordination .....	32
7.03	Legal Relationships .....	33
Article 8 – Owner's Responsibilities.....		33
8.01	Communications to Contractor.....	33
8.02	Replacement of Engineer.....	33
8.03	Furnish Data.....	33
8.04	Pay When Due .....	33
8.05	Lands and Easements; Reports and Tests.....	33
8.06	Insurance .....	33
8.07	Change Orders .....	33
8.08	Inspections, Tests, and Approvals.....	33
8.09	Limitations on Owner's Responsibilities.....	34
8.10	Undisclosed Hazardous Environmental Condition .....	34
8.11	Evidence of Financial Arrangements .....	34
Article 9 – Engineer's Status During Construction.....		34
9.01	Owner's Representative.....	34
9.02	Visits to Site.....	34
9.03	Project Representative .....	34
9.04	Authorized Variations in Work .....	35
9.05	Rejecting Defective Work .....	35
9.06	Shop Drawings, Change Orders and Payments.....	35
9.07	Determinations for Unit Price Work .....	35
9.08	Decisions on Requirements of Contract Documents and Acceptability of Work .....	35
9.09	Limitations on Engineer's Authority and Responsibilities.....	36
Article 10 – Changes in the Work; Claims.....		36
10.01	Authorized Changes in the Work .....	36
10.02	Unauthorized Changes in the Work .....	36
10.03	Execution of Change Orders .....	37
10.04	Notification to Surety .....	37
10.05	Claims .....	37
Article 11 – Cost of the Work; Allowances; Unit Price Work .....		38
11.01	Cost of the Work.....	38
11.02	Allowances.....	40
11.03	Unit Price Work.....	40
Article 12 – Change of Contract Price; Change of Contract Times.....		41
12.01	Change of Contract Price.....	41
12.02	Change of Contract Times .....	42

12.03	Delays .....	42
Article 13	– Tests and Inspections; Correction, Removal or Acceptance of Defective Work.....	43
13.01	Notice of Defects .....	43
13.02	Access to Work.....	43
13.03	Tests and Inspections.....	43
13.04	Uncovering Work .....	43
13.05	Owner May Stop the Work.....	44
13.06	Correction or Removal of Defective Work.....	44
13.07	Correction Period.....	44
13.08	Acceptance of Defective Work .....	45
13.09	Owner May Correct Defective Work.....	45
Article 14	– Payments to Contractor and Completion .....	46
14.01	Schedule of Values .....	46
14.02	Progress Payments.....	46
14.03	Contractor’s Warranty of Title .....	48
14.04	Substantial Completion.....	48
14.05	Partial Utilization.....	49
14.06	Final Inspection .....	49
14.07	Final Payment .....	49
14.08	Final Completion Delayed.....	50
14.09	Waiver of Claims.....	51
Article 15	– Suspension of Work and Termination .....	51
15.01	Owner May Suspend Work.....	51
15.02	Owner May Terminate for Cause.....	51
15.03	Owner May Terminate For Convenience.....	52
15.04	Contractor May Stop Work or Terminate .....	52
Article 16	– Dispute Resolution .....	53
16.01	Methods and Procedures .....	53
Article 17	– Miscellaneous.....	53
17.01	Giving Notice.....	53
17.02	Computation of Times .....	53
17.03	Cumulative Remedies.....	53
17.04	Survival of Obligations.....	54
17.05	Controlling Law.....	54
17.06	Headings .....	54
Article 18	– Federal Requirements.....	54
18.01	Agency Not a Party.....	54
18.02	Contract Approval .....	54
18.03	Conflict of Interest .....	54
18.04	Gratuities.....	54
18.05	Audit and Access to Records.....	55
18.06	Small, Minority and Women’s Businesses.....	55
18.07	Anti-Kickback.....	55
18.08	Clean Air and Pollution Control Acts .....	55
18.09	State Energy Policy.....	55
18.10	Equal Opportunity Requirements .....	55
18.11	Restrictions on Lobbying.....	56
18.12	Environmental Requirements .....	56

# GENERAL CONDITIONS

## 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. *Agency* – The Federal or state agency named as such in the Agreement.
  3. *Agreement* – The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
  4. *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.
  5. *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.
  6. *Bid* – The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  7. *Bidder* – The individual or entity who submits a Bid directly to Owner.
  8. *Bidding Documents* – The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  9. *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.
  10. *Change Order* – A document recommended by Engineer which is signed by Contractor and Owner and Agency 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.
  11. *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.
  12. *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.
  13. *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's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *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).
15. *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.
16. *Contractor* – The individual or entity with whom Owner has entered into the Agreement.
17. *Cost of the Work* – See Paragraph 11.01.A for definition.
18. *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.
19. *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.
20. *Engineer* – The individual or entity named as such in the Agreement.
21. *Field Order* – A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
22. *General Requirements* – Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
23. *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 in connection with the Work.
24. *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.
25. *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.
26. *Liens* – Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
27. *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.
28. *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.
29. *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.
30. *Owner* – The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
31. *PCBs* – Polychlorinated biphenyls.

32. *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.
33. *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.
34. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
35. *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.
36. *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.
37. *Related Entity* – An officer, director, partner, employee, agent, consultant, or subcontractor.
38. *Resident Project Representative* – The authorized representative of Engineer who may be assigned to the Site or any part thereof.
39. *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.
40. *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.
41. *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.
42. *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.
43. *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.
44. *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.
45. *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.
46. *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.
47. *Successful Bidder* – The Bidder submitting a responsive Bid to whom Owner makes an award.

48. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements these General Conditions.
49. *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 any Subcontractor.
50. *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.
51. *Unit Price Work* – Work to be paid for on the basis of unit prices.
52. *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.
53. *Work Change Directive* – A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and Agency upon recommendation of the 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 following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following 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 requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.
- C. *Day*
  1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. does not conform to the Contract Documents, or
  - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
  - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide*

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

**ARTICLE 2 – PRELIMINARY MATTERS**

2.01 *Delivery of Bonds and Evidence of Insurance*

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

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement.

#### 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;
  - 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*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, Agency, 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.

#### 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 may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage

as being required to produce the intended result will be 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, or Engineer, or any of their Related Entities, 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 may discover 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 any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, 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 knew or reasonably should have known 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, code, or instruction (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 Engineer's consultants, including electronic media editions; or
  - 2. reuse any of 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 prohibition 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. Copies of data furnished by Owner or Engineer to Contractor or 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 of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and
  - 2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities 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 at or contiguous to the Site 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, Owner and Engineer, and any of their Related Entities 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.

#### 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; 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:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities 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.
  - 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 to Contractor written notice: (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, 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, 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 current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.
- 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 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 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.

### 5.04 *Contractor's Liability Insurance*

- A. Contractor shall purchase and maintain such liability and other 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, 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, 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 completed operations insurance;
4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
5. 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);
6. 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
7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.
  - a. 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, Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (Contractor shall be responsible for any deductible or self-insured retention.). 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, partners, employees, agents, consultants and subcontractors of any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
  2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, 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 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 additional insured to whom a certificate of insurance has been issued.
- B. Contractor shall purchase and maintain such boiler and machinery 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, 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 an insured or additional insured.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with 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 additional insured 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.

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 to be listed as insureds or additional insureds (and the officers, directors, 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 additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, 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 to be listed as insured or additional insured (and the officers, directors, 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 Contractor as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, 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, 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 Contractor and made payable to Contractor as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Contractor 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.
- B. Contractor 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 Contractor's exercise of this power. If such objection be made, Contractor 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, Contractor as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Contractor 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. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

#### 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;
      - 3) it has a proven record of performance and availability of responsive service; and
    - 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 that 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 procedure requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in 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) will 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 or not 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 or not 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;
    - 4) and 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 either a Change Order for a substitute or 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 item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the 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 anything in the Contract Documents 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 an additional insured 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, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, 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, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, 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 primary 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, 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. 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. 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 , 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).
- D. 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 acceptable 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 determined and verified:
    - a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
    - b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
    - c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and
    - d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.
  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 Related Entities 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, 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 respective consultants, agents, officers, directors, partners, or employees 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, 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 via 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, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall 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 their work and will only cut or alter their 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 actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's 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 in respect of 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 in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

### 8.06 *Insurance*

- A. Owner's responsibilities, if any, in 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 in 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. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

**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 and will not be changed without written consent of Owner and Engineer.

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 believe 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.

**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, subject to written approval by Agency 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.B.

### 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 notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice 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 Time 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 include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.
  - 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 at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, 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, 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, expressages, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

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

- 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 Bid price of a particular item of Unit Price Work amounts to more than 5 percent 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 25 percent 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 Paragraph 12.01.C.2.a 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.B.
  - 1. delays caused by or within the control of Contractor; or
- D. Owner, Engineer and the Related Entities of each of them 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. All 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, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site 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 said 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, it must, if requested by Engineer, be uncovered 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 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 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 on the Site 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, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to 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. that 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. the Contractor's performance or furnishing of the Work is inconsistent with funding Agency requirements;
  - d. there are other items entitling Owner to a set-off against the amount recommended; or
  - e. 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 corrects to Owner's satisfaction the reasons for such action.
3. If it is subsequently determined 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.

#### 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, Agency, Contractor, and Engineer shall make a prefinal 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 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 will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion 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, Agency, 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.7;
  - 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 or Owner's property might in any way be responsible 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. The remaining balance of any sum included in the final Application for Payment but held by OWNER for Work not fully completed and accepted will become due when the Work is fully completed and accepted.

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 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. Owner and Contractor may mutually 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. 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 their 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.

**ARTICLE 18 – FEDERAL REQUIREMENTS**

18.01 *Agency Not a Party*

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

18.02 *Contract Approval*

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

18.03 *Conflict of Interest*

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

18.04 *Gratuities*

- A. If Owner finds after a notice and hearing that Contractor, or any of Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of Owner or Agency in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, Owner may, by written notice to Contractor, terminate this Contract. Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.
- B. In the event this Contract is terminated as provided in paragraph 18.04.A, Owner may pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, Owner may pursue exemplary damages in an

amount (as determined by Owner) which shall not be less than three nor more than ten times the costs Contractor incurs in providing any such gratuities to any such officer or employee.

#### 18.05 *Audit and Access to Records*

- A. For all negotiated contracts and negotiated modifications (except those of \$10,000 or less), Owner, Agency, the Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor, which are pertinent to the Contract, for the purpose of making audits, examinations, excerpts and transcriptions. Contractor shall maintain all required records for three years after final payment is made and all other pending matters are closed.

#### 18.06 *Small, Minority and Women's Businesses*

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

#### 18.07 *Anti-Kickback*

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

#### 18.08 *Clean Air and Pollution Control Acts*

- A. If this Contract exceeds \$100,000, Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 USC 1251 *et seq.*). Contractor will report violations to the Agency and the Regional Office of the EPA.

#### 18.09 *State Energy Policy*

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

#### 18.10 *Equal Opportunity Requirements*

- A. If this Contract exceeds \$10,000, Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- B. Contractor's compliance with Executive Order 11246 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative active obligations required by the Standard Federal Equal Employment

Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4 and its efforts to meet the goals established for the geographical area where the Contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting Contractor's goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- C. Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.

#### 18.11 *Restrictions on Lobbying*

- A. Contractor and each subcontractor shall comply with Restrictions on Lobbying (Public Law 101-121, Section 319) as supplemented by applicable Agency regulations. This Law applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, Contractor must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Contract. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

#### 18.12 *Environmental Requirements*

- A. When constructing a project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental constraints:
1. Wetlands – When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.
  2. Floodplains – When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert 100 year floodplain areas delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, i.e., alluvial soils on NRCS Soil Survey Maps.
  3. Historic Preservation – Any excavation by Contractor that uncovers an historical or archaeological artifact shall be immediately reported to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the State Historic Preservation Officer (SHPO).
  4. Endangered Species – Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of Contractor, Contractor will immediately report this evidence to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the U.S. Fish and Wildlife Service.

**EXHIBIT GC-A**

Certificate of Owner's Attorney

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

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

\_\_\_\_\_

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

## SECTION C-800 SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract Funding Agency Edition (No. C-710, 2002 Edition) and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings indicated 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.

### TABLE OF CONTENTS

		Page
SC-1.01.A.4	Application for Payment	1
SC-1.01.A.10	Change Order	1
SC-1.01.A.21	Field Order	1
SC-2.03.A	Commencement of Contract Times; Notice to Proceed	1
<del>{SC 4.02</del>	<del>Subsurface and Physical Conditions</del>	<del>2}</del>
<del>{SC-4.06</del>	<del>Hazardous Environmental Condition at Site</del>	<del>2}</del>
SC-5.03	Certificates of Insurance	3
SC-5.04	Contractor's Liability Insurance	3
<del>{SC 5.06.A</del>	<del>Property Insurance</del>	<del>4}</del>
<del>{SC 5.06.A.1</del>	<del>Property Insurance</del>	<del>4}</del>
SC-6.05.C	Substitutes and "Or-Equals", Engineer's Evaluation	4
SC-6.06	Concerning Subcontractors, Suppliers, and Others	4
<del>{SC 6.10</del>	<del>Taxes</del>	<del>4}</del>
<del>{SC-7.01.A</del>	<del>Related Work at Site</del>	<del>5}</del>
<del>{SC-7.02.A.1</del>	<del>Coordination</del>	<del>5}</del>
SC-9.03	Project Representative	5
SC-14.02.A.3	Applications for Payment	5
SC-14.02.C.1	Payment Becomes Due	5
<del>{SC-17.05.B</del>	<del>Tribal Sovereignty</del>	<del>5}</del>
SC-18.08	Clean Air and Pollution Control Acts	5
Article 19	Buy American Provisions	6
SC-19.01 A	Buy American Provisions	6
Article 20	Davis Bacon Wage Requirements	6
SC-20.01 A	Davis Bacon Wage Requirements	6

**SC-1.01.A.2. Add the following language to the end of Paragraph 1.01.A.2:**

The Project is financed in whole or in part by USDA Rural Utilities Service pursuant to the Consolidated Farm and Rural Development Act (7 USC Section 1921 et seq.). The Rural Utilities Service programs are administered through the USDA Rural Development offices, therefore, the Agency for these documents is USDA Rural Development. ~~{add other funding sources and modify when necessary.}~~

**SC-1.01.A.4. Add the following language to the end of Paragraph 1.01.A.4:**

The Application for Payment form to be used on this Project is EJCDC No. C-620. The Agency must approve all Applications for Payment before payment is made.

**SC-1.01.A.10. Add the following language to the end of Paragraph 1.01.A.10:**

The Change Order form to be used on this Project is EJCDC No. C-941. Agency approval is required before Change Orders are effective.

**SC 1.01.A.21. Add the following language to the end of Paragraph 1.01.A.21:**

The Engineer's Consultants on this project are: *{list all consultants}*.

**SC-2.03.A. Delete Paragraph 2.03.A in its entirety and insert the following in its place:**

- A. The Contract Times will commence to run 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.

**~~SC 4.02. Add the following new paragraphs immediately after Paragraph 4.02.B:~~**

~~C— In the preparation of Drawings and Specifications, Engineer relied upon the following reports of exploration and tests of subsurface conditions at the Site:~~

~~1. See EJCDC No. C-800 for examples.~~

~~D— In the preparation of Drawings and Specifications, Engineer relied upon the following drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the Site:~~

~~1. See EJCDC No. C-800 for examples.~~

~~E. Copies of reports and drawings itemized in SC 4.02.C and SC 4.02.D that are not included with Bidding Documents may be examined at \_\_\_\_\_ during regular business hours. These reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which the Contractor may rely as identified and established above are incorporated therein by reference. Contractor is not entitled to rely upon other information and data utilized by Engineer in the preparation of the Drawings and Specifications.~~

OR

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

- A. No reports or explorations or tests of subsurface conditions at or contiguous to the Site are known to the Owner or Engineer. }

**~~SC 4.06. Add the following new paragraphs immediately after Paragraph 4.06.A:~~**

~~1. In the preparation of Drawings and Specifications, Engineer relied upon the following reports of Hazardous Environmental Conditions at the Site:~~

~~a. See EJCDC No. C-800 for examples.~~

~~2. In the preparation of Drawings and Specifications, Engineer relied upon the following drawings of Hazardous Environmental Conditions which are at or contiguous to the Site:~~

~~a. See EJCDC No. C-800 for examples.~~

~~3. Copies of reports and drawings itemized in SC 4.06.A.1 and SC 4.06.A.2 that are not included with Bidding Documents may be examined at \_\_\_\_\_ during regular~~

~~business hours. These reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which the Contractor may rely as identified and established above are incorporated therein by reference. Contractor is not entitled to rely upon other information and data utilized by Engineer in the preparation of the Drawings and Specifications.~~

**OR**

**SC-4.06. Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following:**

- A. No reports or explorations or tests of subsurface conditions at or contiguous to the Site are known to the Owner or Engineer.
- B. Not used.

**SC-5.03. Add the following new paragraph immediately after Paragraph 5.03.B:**

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

~~{The amounts of coverage for each type of insurance under paragraph 5.04 are recommended amounts that should be used to provide the Owner adequate protection. These amounts should be reviewed in the context of the specific project and adjusted accordingly.}~~

**SC-5.04. Add the following new paragraph immediately after Paragraph 5.04.B:**

- C. The limits of liability for 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., Longshoremen's) Statutory
    - c. Employer's Liability {\$ 500,000}
  - 2. Contractor's General Liability under Paragraphs 5.04.A.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 the care, custody, and control of the Contractor:
    - a. General Aggregate \$ 2,000,000
    - b. Products - Completed Operations Aggregate \$ 1,000,000
    - 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
      - 1) General Aggregate \$ 5,000,000

- 2) Each Occurrence \$ 5,000,000
  
- 3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:
  - a. Bodily Injury:
    - Each Person \$ 1,000,000
    - Each Accident \$ 1,000,000
  - b. Property Damage:
    - Each Accident \$ 1,000,000
  - c. Combined Single Limit of \$ 1,000,000
  
- 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:
    - Each Person \$ 2,000,000
    - Each Accident \$ 2,000,000
  - b. Property Damage:
    - Each Accident \$ 2,000,000
    - Annual Aggregate \$ 2,000,000

~~{5. List additional types and amounts of insurance that may be required by Owner.}~~

~~{6. List by name other persons or entities to be included on policy as additional insureds.}~~

~~{SC 5.06.A. In the case of multiple prime contractors on a single Site (multiple prime contractors for the Project may each need to provide property insurance), it is necessary to define the Contractor responsible for providing the Property Insurance. If there is only one contractor on the site, do not modify paragraph 5.06.A of the General Conditions.}~~

~~{SC 5.06.A.1. List by name other persons or entities to be included on policy as additional insureds.}~~

**SC-6.05.C. Amend the paragraph by making two subparagraphs under the title C. Engineer's Evaluation. The paragraph text is retitled, 6.05.C.2 After Effective Date of Agreement. A new paragraph is added before this paragraph to read as follows:**

1. During Bidding. The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or "or-equal" materials and equipment as defined in paragraph 6.05 of the General Conditions, or those substitute materials and equipment approved by the Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function, and quality to be met by any proposed substitute or "or-equal" item. Request for Engineer's clarification of materials and equipment considered "or-equal" prior to the Effective Date of the Agreement must be received by the Engineer at least 5 days prior to the date for receipt of Bids. No item of material or equipment will be considered by Engineer as a substitute unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 days prior to the date for receipt of Bids. Each request shall conform to the requirements of Paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon the Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed substitute item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

**SC-6.06 Add a new paragraph immediately after Paragraph 6.06.G:**

- H. The Contractor shall not award work valued at more than fifty (50%) percent of the Contract Price to Subcontractor(s), without prior written approval of the Owner.

~~{If OWNER qualifies for sales or use tax exemptions, language similar to the following should be inserted here and coordinated with the language of Article 22 of the Instructions to Bidders.~~

~~SC 6.10. Add a new paragraph immediately after Paragraph 6.10.A:~~

~~B. Owner is exempt from payment of sales and compensating use taxes of the [State] and of cities and counties thereof on all materials to be incorporated into the Work.~~

~~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 7.01.A. If the Owner is planning to have Work performed by more than one prime contractor, by Owner, or others, it should be specifically stated here.}~~

~~{When multiple prime contractors are working on a single Site, the following modification should be made.~~

~~SC-7.02.A.1. Delete paragraphs 7.02.A.1-3 in their entirety and insert the following:~~

~~1. The General Contractor shall have the authority and be responsible for coordination of the activities among the other prime contractors and subcontractors on the Site to ensure a safe, efficient working environment. This authority covers scheduling delivery of materials, storage of materials, sequencing of construction involving different crafts, resolving interface issues between crafts, scheduling testing, and all other aspects of the Work that do not impact the design or function of the Work.}~~

~~SC-9.03.A. Add the following language at the end of paragraph 9.03.A:~~

~~The Engineer will provide Resident Project Representative services for this project. The Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative will be as stated in Exhibit D of the Agreement Between Owner and Engineer, E-510, 2002 Edition, as amended and executed for this specific Project. {If anyone other than the Engineer is providing the Resident Project Representative, this language must be modified.}~~

~~SC-14.02.A.3 Add the following language at the end of paragraph 14.02.A.3:~~

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

~~SC-14.02.C.1. Delete Paragraph 14.02.C.1 in its entirety and insert the following in its place:~~

- ~~1. The Application for Payment with Engineer's recommendations will be presented to the Owner and Agency for consideration. If both the Owner and Agency find the Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 14.02.D will become due ten days after the Application for Payment is presented to the Owner, and the Owner will make payment to the Contractor.~~

~~{If the Project Owner is a Tribe, it is important to clarify that this agreement does not modify any relationships that the Tribe may have outside this Project. Recommend this language be added for Tribal construction contracts.~~

~~SC-17.05. Add a new paragraph immediately after Paragraph 17.05.A:~~

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

SC-18.08 Delete paragraph 18.08.A in its entirety and insert the following in its place:

- A. If this Contract exceeds \$100,000, the Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC §1857(h)), Section 508 of the Clean Water Act (33 USC §1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

ARTICLE 19-FEDERAL BUY AMERICAN PROVISIOSN- Add the following article in its entirety

SC-19.01 Add the following paragraph in its entirety under Article 19:

- A. This contract is expected to be funded in whole or in part using funds from the American Recovery and Reinvestment Act (ARRA). Section 1605 of the ARRA prohibits the use of these funds unless all iron, steel, and manufactured goods are produced in the United States. All iron and steel manufacturing processes must take place in the United States, except for metallurgical processes involving refinement of steel additives. There is no requirement for the origin of components and subcomponents of manufactured goods. Products listed at 48 CFR 25. 104 (a) have been determined to be unavailable in the United States and if required for the project may be purchased from foreign sources. No unauthorized use of foreign iron, steel, and/or manufactured goods will be allowed on this project.

ARTICLE 20-DAVIS-BACON WAGE REQUIRMENTS- Add the following article in its entirety

SC-20.01 Add the following paragraphs in its entirety under Article 20:

**TITLE 2, PART 5 - LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING**

**FEDERALLY FINANCED AND ASSISTED CONSTRUCTION**

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

**Sec. 5.5 Contract provisions and related matters.**

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

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or

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

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

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

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

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

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

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

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

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

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

(2) Withholding. The Village of Montpelier shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the United States Department of Agriculture may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the United States Department of Agriculture if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the United States Department of Agriculture. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under

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

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

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

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

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

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

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

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

(4) Apprentices and trainees--(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which

such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

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

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

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





# Contractor's Application

## Progress Estimate

Application Number:										
Application Date:										
A		B	C	D	E	F	G			
Bid Item No.	Description	Bid Quantity	Unit Price	Bid Value	Estimated Quantity Installed	Value	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (E) / B	Balance to Finish (B - F)
Totals										





# Change Order Instructions

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## **A. GENERAL INFORMATION**

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

## **B. COMPLETING THE CHANGE ORDER FORM**

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.

# Certificate of Substantial Completion

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

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

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

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\_\_\_\_\_ 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] [revised 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:

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Contractor's Amended Responsibilities:

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

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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.

\_\_\_\_\_  
Executed by Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Accepted by Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Accepted by Owner

\_\_\_\_\_  
Date

## SECTION C-900 SPECIAL CONDITIONS

### 1.01 SCOPE OF WORK

Work to be performed under this Project shall include but is not necessarily limited to the following:  
Construction of new ground water storage tank and new hydropneumatic pressure tank.

### TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Contractor shall begin work on or before the date stipulated in the Notice to Proceed. Due consideration has been given to normal bad weather and delays in specifying the contract times. By entering this Contract, each respective CONTRACTOR and the OWNER both mutually agree that failure to complete the Contract within time limits constitutes due cause for liquidated damages. Furthermore, both parties to the Contract hereby agree that the amount of liquidated damages is recognized as the amount of actual damage to the OWNER and is not assessed as a penalty.

<u>Contract</u>	<u>Consecutive Calendar Days</u>	<u>Liquidated Damages/ Day</u>
<b>Improvements to the Municipal Water System Contract No. 2 – New Ground Storage Tank and New Hydropneumatic Tank</b>	<b>180</b>	<b>\$400.00</b>

Reasonable anticipated days for bad weather shall not be cumulative and are as follows:

January	11 days	July	6 days
February	10 days	August	5 days
March	8 days	September	4 days
April	7 days	October	3 days
May	5 days	November	5 days
June	6 days	December	8 days

The Contractor shall ask for total adverse weather days; and shall only be allowed for the number days in excess of the days stated above.

### 1.02 LABOR

All skilled and unskilled labor, craftsmen and mechanics must be proficient in their respective trades as deemed satisfactory to the ENGINEER.

### 1.03 PERFORMANCE-PAYMENT BOND

It is a condition of these Contracts that the Performance-Payment Bond shall be countersigned by a properly licensed resident agent of the State in which the Contract is performed.

#### **1.04 HEALTH AND SAFETY**

The Contractor shall comply with the Department of Labor Safety and Health Regulations for construction, promulgated under the Occupational and Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54), and updated laws and acts.

#### **1.05 CHANGES IN SCOPE OF WORK**

The OWNER shall have the right to increase or diminish the amount of work to be done under the Contract at any time or times during the life of the Contract, provided that the total increase or diminution does not exceed twenty percent (30%) of the amount of the contract as bid on. The total increase or decrease may be applied to any one item or to any number of items, or any item or items may be entirely eliminated. No allowances will be made for real or supposed loss of anticipated profits on account of such increase or diminution. Any claim for an extension of time caused by additions to the work shall be adjusted at the time such addition is authorized. Charges or credits for the work covered by the approved change shall be determined by the method in the General Conditions.

#### **1.06 INSPECTION BY GOVERNMENT AGENCIES**

Representatives of Federal, state and local agencies, concerned directly or indirectly with the project, shall have access to the work wherever it is in preparation or progress, and the CONTRACTOR shall provide proper facilities for such access and inspection.

#### **1.07 WORK SCHEDULES**

The Contractor shall supply the ENGINEER with daily work schedules that give the type of work to be performed, location of work, and time the work will begin. This work schedule shall be given to the ENGINEER at least 24 hours prior to commencing the work so listed.

#### **1.08 MEASUREMENT AND PAYMENT**

Payment will be made only for the items of work listed in the PROPOSAL. The cost of all other work necessary shall be included in the items for which unit prices are requested.

Partial payment, cost breakdown, estimates, etc. shall be in accordance with Item No. 19 of Section 00700, General Conditions.

#### **1.09 "OR EQUAL" CLAUSE**

Where specific manufacturers' names are used to describe requirements of the Specifications, it is understood that an approved equal product will be considered.

#### **1.10 GUARANTEE**

The Contractor shall guarantee all workmanship and materials under this Contract for a period of twelve (12) months after FINAL ACCEPTANCE of the Contract and shall in the event of failure of any item due to faulty workmanship or materials replace same without cost to the OWNER.

### **1.11 PRECONSTRUCTION CONFERENCE**

The preconstruction conference will be held at a time and place as directed by the ENGINEER. The successful Bidder shall submit his construction schedule to the OWNER at least seven (7) days prior to the preconstruction conference for review and approval. The preconstruction conference will not be scheduled until the contractor submits his construction schedule.

### **1.12 PLANS AND SPECIFICATIONS**

The ENGINEER shall furnish to the CONTRACTOR without charge two (2) copies of the Plans and Specifications for the CONTRACTOR's use in constructing the project.

The ENGINEER shall provide to the CONTRACTOR additional copies of the Plans and Specifications at a cost of \$100.00 per set.

### **1.13 LOCATION, PROTECTION AND REPAIR OF ANY DAMAGE TO EXISTING UTILITIES**

The Contractor is advised that existing overhead and underground utilities such as (but not limited to) electrical lines and poles, telephone cables, gas lines, water lines, fiber optic cables, and sanitary sewers, exist in the rights-of-way where the proposed improvements are to be installed, all in accordance with the provisions of R.S. 38:2223. It shall be the Contractor's responsibility to protect these existing utilities during construction of the work to be installed under this Contract and any damage to existing utilities caused by negligent acts of the Contractor shall be repaired by the Contractor at his own expense. The Contractor shall contact Louisiana One Call a minimum of 48 hours prior to beginning construction in the work area.

### **1.14 SHOP DRAWINGS AND MATERIALS**

Prior to final acceptance, the CONTRACTOR shall furnish to the OWNER three (3) copies of diagrams, curves, data, operation and maintenance manuals, and spare parts lists for all pieces of equipment furnished.

Materials data, information, dimensions, and specifications, shall be submitted to the ENGINEER for review prior to ordering for major material items such as pipe, fittings, valves, prefabricated manholes and casing pipe.

### **1.15 RECORD DRAWINGS**

Contractor shall furnish all necessary field information to the Owner such as marked up drawings for completion of record drawings.

### **1.16 GENERAL AND SUPPLEMENTAL CONDITIONS OF RUS**

If any conflicts occur between the General and Supplemental Conditions of agencies funding this project and those of the Engineer, then the most stringent will govern.

### **1.17 CONFORMANCE TO MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES**

During performance of work within the right-of-way of interstate, state, or rural highways, the CONTRACTOR shall provide traffic control and warning devices in accordance with the latest revision of the "Manual on Uniform Traffic Control Devices" as adopted by the Louisiana Department of Transportation and Development."

### **1.18 AUTHORIZATION TO EXECUTE DOCUMENTS**

The successful BIDDER shall furnish a certified copy of the minutes of the corporation or partnership meeting which authorized the party executing the bid and contract to sign on behalf of the CONTRACTOR.

### **1.19 TOOLS, PLANT AND EQUIPMENT**

If at any time before the commencement or during the progress of the work, tools, plant, or equipment appear to the ENGINEER to be insufficient, inefficient, or inappropriate to secure the quality of work required or the proper rate of progress, the ENGINEER may order the CONTRACTOR to increase their efficiency to improve their character, to augment their number, or to substitute new tools, plant, or equipment as the case may be, and the CONTRACTOR must conform to such order; but the failure of the ENGINEER to demand such increase of efficiency number, or improvement shall not relieve the CONTRACTOR of his obligation to secure the quality of work and the rate of progress necessary to complete the work within the time required by this Contract to the satisfaction of the OWNER.

### **1.20 PLANS**

The word PLANS shall have the same meanings as the word DRAWINGS in the Specifications and Contract Documents.

### **1.21 LETTER OF SUBSTANTIAL COMPLETION**

The Letter of Substantial Completion will be issued by the ENGINEER to the CONTRACTOR for filing at the Parish Court House to initiate the final forty-five (45) day lien period for the Contract. There shall be attached to the Certificate of Substantial Completion a "tentative list of items" (with designated dollar values) to be completed or corrected prior to the final payment. This will be called the "Special Retainage Punch List" and the value of said punch list items times two will be withheld from the Contractor until all such items have been completed. No payment of the special retainage shall be made until all items on the "Special Retainage Punch List" have been completed unless specifically approve by the Owner, at his sole discretion. In no instance will the special retainage exceed the retainage authorized by state of five percent (5%) on contracts of \$500,000 and more or the ten percent (10%) retainage on contracts of less the \$500,000. If after the 45 day lien period the Contractor fails to address, to the satisfaction of the Owner and Engineer, the "tentative list of items", the Owner shall have the right to reinstate the liquidated damages provision of the Contract at a rate of \$400.00 per day.

### **1.22 USE OF CHEMICALS**

All chemicals used during construction or furnished for project operation, whether herbicide, pesticide, disinfectant, polymer, reactant, or other classification, must show approval of DNR or U.S.D.A. Use of such chemicals and disposal of residues shall be in strict conformance with the instructions.

### **1.23 BID ANALYSIS AND AWARD**

If the contract is to be awarded, it will be awarded to the lowest responsible responsive Bidder. Alternates, if accepted, shall be accepted in the order in which they appear on the bid form. Determination of the low bidder shall be on the basis of the base bid plus any alternates accepted, if any. The Owner reserves the right to reject any and all bids.

### **1.24 NOTIFICATION OF COMMENCEMENT OF WORK**

Prior to the CONTRACTOR starting the job, he shall notify the ENGINEER at least forty-eight (48) hours in advance of his proposed time of commencement.

### **1.25 WASTE MATERIALS**

All waste materials from excavations or removals shall be hauled from the site and shall be disposed of by the CONTRACTOR in a manner acceptable to the ENGINEER at no cost to the OWNER.

### **1.26 SEQUENCE OF CONSTRUCTION**

Before commencing work, the CONTRACTOR shall submit to the ENGINEER for approval his proposed sequence of construction. Subsequent to the ENGINEER'S approval, deviations from the approved sequence of construction shall not be made without written approval of the ENGINEER.

### **1.27 INTERRUPTION OF TRAFFIC**

The CONTRACTOR shall adhere to Section 01570 of these specifications. During construction, the CONTRACTOR shall under no circumstances block traffic at more than one end of the same block. Traffic will always be allowed entry and exit from blocks. Detours shall be provided where through traffic will be blocked. The CONTRACTOR shall provide a schedule and plan of work on street crossing to the Resident Project Representative or ENGINEER for approval prior to the start of construction.

### **1.28 PROJECT SIGN (NO DIRECT PAY ITEM)**

CONTRACTOR shall erect two (2) project signs. The signs shall be USDA Rural Development approved signs. These signs are to be a 8'0" wide x 4'0" high x 3/4" thick and erection shall conform to the city ordinances concerning the position of signs.

The project signs shall contain information as shown at the end of this specification section.

The lettering and placement of the signs are to be approved by the ENGINEER before sign construction and placement.

Work shall not commence until the sign(s) are approved and erected.

### **1.29 EROSION AND SILTATION**

The Contractor shall proceed with all construction activities in a manner that will minimize siltation and bank erosion during construction. Upon completion of all construction activities, all disturbed areas shall be returned to existing or better conditions.

### **1.30 AS BUILT DRAWINGS (NO DIRECT PAY ITEM)**

Record information concurrently with construction progress and do not conceal any work until required information is recorded.

- A. Legibly mark drawings to record actual construction.
  - 1. Elevations of various structure elements in relation to elevation datum.
  - 2. All underground piping and appurtenances, including service lines, sewer main, man holes,

service wyes, cleanouts, etc. with elevations and dimensions, changes to piping, locations, horizontal and vertical location of underground piping, utilities (including electrical) and appurtenances referenced to permanent surface improvements, actual installed pipe material, class, etc.

3. Location of internal utilities and appurtenances concealed in the construction by referencing to visible and accessible features of the structure.
  4. Field changes of dimensions and details.
  5. Changes made by field order or by change orders.
  6. Details not on original contract drawings.
  7. Equipment and piping relocations.
- B. Furnish certified site survey and line elevations and stationing at 100 foot increments at all points of change of directions of pipelines by a registered land surveyor.

### **1.31 AUDIO - VIDEO RECORDS (NO DIRECT PAY ITEM)**

Prior to commencement of any Contract or performance of any work, the Contractor shall provide a video tape of the entire site area. The video tape shall clearly show the existing conditions of the work area and adjacent to the work area and Contractor staging areas.

Each video tape shall begin at one end of the project site and proceed uninterrupted to the other end of the project site. Progression along the project site shall be recorded and referenced to a tape counter and the plans in respect to items and areas being viewed. The contractor shall provide one (1) copy of the tape to the Owner/Engineer and retain the original.

The video inspection and tape will be provided by the contractor at no direct pay.

### **1.32 SPECIAL INSTRUCTIONS**

Contractor shall file the contract agreement of this project at the St. Helena Parish Court House in Greensburg, Louisiana prior to the commencement of work under this contract (No Additional Payment).

### **1.33 PURCHASE OF EQUIPMENT AND/OR PRODUCTS (NO DIRECT PAY ITEM)**

In accordance with the FY 1997 Appropriations Act, all parties utilizing RUS funds are required to purchase only American-made equipment and products per Section 1.36.

### **1.34 STORMWATER PERMITS (NO DIRECT PAY)**

It shall be the Contractor's full responsibility to follow all applicable Best Management Practices as related to Stormwater Pollution Prevention and to obtain all required permits from the Louisiana Department of Environmental Quality (or any other Federal, State or Local Agency as applicable). If required by those agencies, the Contractor shall develop and maintain on site a Stormwater Pollution Prevention Plan. All such permits and/or plans shall be provided at no additional cost to the Owner.

### **1.35 DEMOBILIZATION NOTICE**

Contractor shall give the Owner and the Engineer a 72-hour notice prior to demobilization of significant equipment off the jobsite.

### **1.36 BUY AMERICAN REQUIREMENTS OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

The Contractor acknowledges to and for the benefit of the Village of Montpelier ("Purchaser") and the UNITED STATES DEPARTMENT OF AGRICULTURE ("USDA") that it understands the goods and services under this Agreement are being funded with monies made available by the federal American Recovery and Reinvestment Act of 2009 (ARRA) and such law contains provisions commonly known as "Buy American;" that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States ("Buy American Requirements") including iron, steel, and manufactured goods provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the USDA that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project will be and/or produced in the United States in a manner that complies with the buy American Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the Purchaser or the USDA. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or USDA to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Purchaser or USDA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the USDA by the Purchaser). While the Contractor has no direct contractual privity with the USDA, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the USDA is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the USDA.

### **1.37 MINIMUM INSURANCE COVERAGE REQUIREMENTS**

Contractor shall have and maintain, until final acceptance of the Work by the Owner and Council, the minimum insurance described herein with an insurance company authorized to do business in the State of Louisiana that has an industry rating of at least A-, Class VI, according to Best's Key Rating Guide. Contractor shall deliver to Owner certificates of insurance showing such insurance is in effect prior to execution of the Contract, which certificates shall incorporate a provision that no cancellation or change in such insurance shall be effected without at least 30 days prior written notice being given to the Owner and Engineer. These requirements shall not be construed to limit any obligations of indemnity and/or defense of the Contractor or Surety, but constitutes minimum insurance requirements, which must be provided and maintained.

- A. Standard Workmen's Compensation – Full statutory liability under Louisiana law with Employer's Liability Coverage.
- B. Commercial General Liability coverage (ISO form CG 00 01) when the Contract amount is as follows:

1. General Aggregate:

<u>CONTRACT AMOUNT</u>	<u>MINIMUM LIMITS OF INSURANCE</u>
Less than 1,000,000	\$1,000,000
\$1,000,000 to \$5,000,000	\$2,000,000
\$5,000,000 to \$10,000,000	\$3,000,000
Greater than \$10,000,000	\$4,000,000

2. Products – Completed Operations Aggregate:

<u>CONTRACT AMOUNT</u>	<u>MINIMUM LIMITS OF INSURANCE</u>
Less than 1,000,000	\$1,000,000
\$1,000,000 to \$5,000,000	\$2,000,000
\$5,000,000 to \$10,000,000	\$3,000,000
Greater than \$10,000,000	\$4,000,000

3. Personal and Advertising Injury:

<u>CONTRACT AMOUNT</u>	<u>MINIMUM LIMITS OF INSURANCE</u>
Less than 5,000,000	\$1,000,000
Greater than \$5,000,000	\$2,000,000

4. Each Occurrence:

<u>CONTRACT AMOUNT</u>	<u>MINIMUM LIMITS OF INSURANCE</u>
Less than \$5,000,000	\$1,000,000
Greater than \$5,000,000	\$2,000,000

The above Commercial General Liability coverage shall not be narrowed endorsement without the express written agreement of the Owner.

- C. Business Auto Policy – Combined single limit \$1,000,000.
- D. Umbrella Liability: Lower primary limits will be accepted if Umbrella Coverage is provided with limits of at least \$1,000,000 in excess of primary coverage shown on the certificate.
- E. The Village of Montpelier shall be named on all liability policies described above as "additional insured" as respects liability arising out of the Project; products and completed operations of the Contractor, as well as premises owned, occupied or used by the Contractor. The additional insured coverage shall contain no special limitations on the scope of protection afforded to any additional insured. It is understood that the business auto policy under "Who is and Insured" automatically provides liability coverage in favor of the Owner. Any failure of Contractor to comply with any reporting provision of any policy shall not affect coverage provided to an additional insured.
- F. Waiver of subrogation in favor of the City of Baton Rouge, Parish of East Baton Rouge is required on Worker's Compensation insurance.
- G. The certificate holder shall be listed as follows:

Village of Montpelier  
36400 La Hwy 16  
Montpelier, LA 70422

- H. The insurance to be provided by Contractor shall not include any exclusion or endorsement precluding coverage for claims between insureds and/or additional insureds.

END OF SECTION

For Water and Waste Disposal Projects add the following to the Advertisement for Bids, Information for Bidders, and Supplemental General Conditions:

The Secretary of Agriculture has determined that the following de minimis waiver may apply to this project if needed.

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Notice of Buy American Exception Under the American Recovery and Reinvestment Act of 2009

AGENCY: Rural Utilities Service, U.S. Department of Agriculture.

ACTION: Notice.

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SUMMARY: The Rural Utilities Service (RUS) hereby gives notice of a nationwide exception to the Buy American requirements of Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA) under the authority of Section 1605(b)(1) (public interest waiver) for de minimis incidental components of eligible water infrastructure projects using assistance provided under ARRA. This action permits the use of non-domestic iron, steel and manufactured goods when they occur in de minimis incidental components that may otherwise be prohibited under Section 1605(a). As used in this Notice, "de minimis incidental components" means those components otherwise prohibited under Section 1605(a) that cumulatively comprise no more than a total of 5 percent of the total cost of the materials used in a project funded in whole or in part with ARRA assistance.

DATES: Effective Date: September 25, 2009.

ADDRESSES: Send any correspondence regarding this notice to Jacqueline M. Ponti-Lazaruk, Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-1548.

FOR FURTHER INFORMATION CONTACT: Benjamin Shuman, Senior Environmental Engineer, Engineering and Environmental Staff, (202) 720-1784, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-1571.

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of ARRA and Section 176.80 of the rules of the Office of Management and Budget (OMB) (2 CFR 176.80), RUS hereby provides notice that it is granting a nationwide exception to Section 1605 of the Recovery Act with respect to de minimis incidental components of eligible water infrastructure projects funded under the ARRA. The basis for this waiver is a public

interest determination pursuant to Section 1605(b)(1) of ARRA.

## I. Background

The American Recovery and Reinvestment Act of 2009 made available \$3,672,475,732 to RUS to make direct loans and grants for rural water, wastewater and waste disposal programs authorized by Sections 306 and 310B and described in Section 381E(d)(2) of the Consolidated Farm and Rural Development Act. Section 1605(a) of ARRA, the "Buy American" provision, states that "none of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States."

Section 1605(b) of ARRA authorizes the head of a Federal department or agency to waive the Buy American provision by one of the following three determinations: (1) Applying the Buy American provision would be inconsistent with the public interest; (2) the iron, steel, and relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the iron, steel, and manufactured goods produced in the United States will increase the cost of the project by more than 25 percent. If a determination is made to waive the requirements of Section 1605(a) based on a finding under Section 1605(b), then Section 1605(c) requires the head of the department or agency to publish a detailed justification in the Federal Register as to why the provision is being waived. Finally, Section 1605(d) requires that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

## II. Public Interest Finding

RUS has determined that, as applied to water and wastewater projects, the application of the Buy American restrictions to de minimis situations would be inconsistent with the public interest.

Water and wastewater infrastructure projects typically contain a relatively small number of high-cost components incorporated into the project that are iron, steel and manufactured goods, such as pipe, tanks, pumps, motors, instrumentation and control equipment, treatment process equipment, and relevant materials to build structures for facilities such as treatment plants, pumping stations and pipe networks. In bid solicitations for water and wastewater projects, these high-cost components are generally described in detail in project-specific technical specifications, and utility owners and their contractors are generally familiar with the conditions of availability, the potential alternatives for each detailed specification, the approximate cost and, most relevant to this Notice, the country of manufacture of such components.

Every water or wastewater infrastructure project also involves the use of thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, construction of the project. During construction, these components (for example, nuts, bolts, fasteners, tubing, and gaskets), are incorporated into the physical structure of the project. For many of these incidental components, the

country of manufacture and the availability of alternatives are not always readily or reasonably identifiable. More importantly, the miscellaneous character of these components, together with their low cost (both individually and when procured in bulk), characterize them as incidental to the facility or project.

RUS finds that it would be inconsistent with the public interest to apply the Buy American requirement to incidental components when they in total comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project. While individual components may have the same function (e.g., brackets), the specific manufacturer and configuration may vary from project to project, making the analysis and consideration of individual waiver requests for them, including determining whether or not U.S. made products exist, is expected to be time-consuming and labor intensive far out of proportion to the percentage of total project materials they comprise. Further, since the specific use of these low-cost components can be expected to be widely varied, formulating categorical waivers for specific types of components would be impractical. Because the situations described above, i.e. a high number of low-cost, miscellaneous components, can be effectively addressed by a comprehensive application of a nationwide de minimis waiver, RUS finds that it would be inconsistent with the public interest to apply the Buy American requirement to incidental components when they in total comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project.

In some instances, the Rural Utilities Service and the Environmental Protection Agency's (EPA) Clean Drinking Water State Revolving Funds (SRF) program jointly fund water infrastructure projects. The EPA undertook inquiries to identify the approximate scope of incidental components within its SRF water infrastructure projects. The responses were consistent and indicated that the percentage of total costs for drinking water or wastewater treatment infrastructure projects represented by these incidental components is generally not in excess of 5 percent of the total costs of the materials used in and incorporated into a project.

As a result of its research and analysis, EPA published two Federal Register notices of de minimis waivers. The first was published on Tuesday, June 2, 2009 (FR Vol. 74, No. 104, pp. 26398 and 26399), and set forth the EPA's determination with respect to a public interest finding on de minimis. The second notice, which revised the first, was published on Monday, August 10, 2009 (FR Vol. 74, No. 152, pp. 39959 and 39960). By these waivers the EPA has also determined that imposing ARRA's Buy American requirements for the category of de minimis incidental components is not in the public interest.

While the authorizing statutes and funding sources for the EPA and RUS borrowers are different, the types of projects that EPA finances under its SRF program are substantially similar in size, scope and purpose as those funded by RUS and, as stated above, some projects are jointly funded by RUS and EPA. The Rural Utilities Service has decades of experience in financing water and wastewater projects in rural America and shares the EPA's rationale with respect to incidental components used in similar projects. With respect to jointly-funded projects, it is desirable to avoid disparate treatment of components based on whether or not ARRA funds come from EPA or RUS. Section 1605 should be administered consistently, both within a particular Federal

agency and, to the extent possible, between agencies. Promoting consistent treatment and avoiding unnecessary delays in committing ARRA financing to projects around the country are crucial to the success of ARRA. Requiring individual waivers for incidental components would be time prohibitive and overly burdensome for applicants and RUS. The purpose of ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are "shovel ready." Therefore, a de minimis waiver of incidental components totaling no more than 5 percent of total project costs is in the public interest.

### III. Waiver

Based on the public interest finding discussed above and pursuant to Section 1605(c), USDA hereby issues a national waiver from the requirements of ARRA Section 1605 for any incidental components of the type described above that comprise in total a de minimis amount of the project, specifically, for any such incidental components up to a limit of no more than 5 percent of the total cost of the materials used in and incorporated into a project.

Assistance recipients who elect to use this waiver shall, in consultation with their contractors, determine the items to be covered by this waiver, retain relevant documentation as to those items in their project files, and be able to summarize in reports to RUS, if so requested, the types and/or categories of items to which this waiver is applied, the total cost of incidental components covered by the waiver for each type or category, and the calculations by which they determined the total cost of materials used in and incorporated into the project.

In using this waiver, assistance recipients must consider that there may be circumstances where there are multiple types of low-cost components which, when combined with the incidental components described above, may total more than 5 percent.

Assistance recipients in such cases will have to choose which of these incidental components will be covered by the waiver and which will not. Components that the recipient is unable to include within the 5 percent limit of this waiver must comply with the requirements of section 1605 of ARRA by appropriate means other than reliance on this waiver.

Further, as described above, in some cases RUS and EPA jointly fund projects. Both RUS and EPA have issued de minimis waivers that have a cap of a total of 5 percent of project costs. In the case of a jointly funded project, these waivers shall not be combined to create a waiver of greater than 5 percent of total project costs.

This supplementary information constitutes the "detailed written justification" required by Section 1605(c) of ARRA and Section 176.80 of the Office of Management and Budget's rules for waivers of the Buy American provisions.

Authority: Public Law 111-5, Section 1605.

Dated: September 21, 2009.  
Thomas J. Vilsack,  
Secretary

For Community Facilities Projects add the following to the Advertisement for Bids, Information for Bidders, and Supplemental General Conditions:

The Secretary of Agriculture has determined that the following de minimis waiver may apply to this project if needed.

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Buy American Exception Under the American Recovery and Reinvestment Act of 2009

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

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SUMMARY: The Rural Housing Service (RHS) hereby gives notice of a nationwide exception to the Buy American requirements of Section 1605 of the American Recovery and Reinvestment Act of 2009 ("ARRA") under the authority of Section 1605(b)(1) (public interest waiver) for de minimis incidental components of eligible publicly owned essential community facilities projects using assistance provided under ARRA. This action permits the use of non-domestic iron, steel and manufactured goods when they occur in de minimis incidental components that may otherwise be prohibited under Section 1605(a). As used in this Notice, "de minimis incidental components" means those components otherwise prohibited under Section 1605(a) that cumulatively comprise no more than a total of 5 percent of the total cost of the materials used in a project funded in whole or in part with ARRA assistance.

DATES: Effective Date: June 18, 2010.

ADDRESSES: Send any correspondence regarding this notice to William R. Downs, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0761, Washington, DC 20250-0761.

FOR FURTHER INFORMATION CONTACT: William R. Downs, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0761, Washington, DC 20250-0761, Telephone: 202-720-1499, e-mail: [William.downs@wdc.usda.gov](mailto:William.downs@wdc.usda.gov).

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of ARRA and Section 176.80 of the rules of the Office of Management and Budget (OMB) (2 CFR 176.80), RHS hereby provides notice that it is granting a nationwide exception to Section 1605 the Recovery Act with respect to de minimis incidental components of eligible Community Programs projects funded under ARRA. The basis for this waiver is a public

interest determination pursuant to Section 1605(b)(1) of ARRA.

## I. Background

The American Recovery and Reinvestment Act of 2009 made funding available to RHS to make direct loans and grants for essential community facilities authorized by Sections 306(a)(1) and (a)(19) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(1) and (a)(19), respectively). Section 1605(a) of ARRA, the "Buy American" provision, states that "none of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States."

Section 1605(b) of ARRA authorizes the head of a Federal department or agency to waive the Buy American provision by one of the following three determinations: (1) Applying the Buy American provision would be inconsistent with the public interest; (2) the iron, steel, and relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the iron, steel, and manufactured goods produced in the United States will increase the cost of the project by more than 25 percent.

If a determination is made to waive the requirements of Section 1605(a) based on a finding under Section 1605(b), then Section 1605(c) requires the head of the department or agency to publish a detailed justification in the Federal Register as to why the provision is being waived. Finally, Section 1605(d) requires that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

## II. Public Interest Finding

RHS has determined that, as applied to Community Programs projects, the application of the Buy American restrictions to de minimis situations would be inconsistent with the public interest.

Community Programs projects typically contain a relatively small number of high-cost components incorporated into the project that are iron, steel and manufactured goods, such as electrical and mechanical equipment, concrete and masonry products, wood and steel framing products, interior and exterior materials and finishes, and specialty equipment as well as other relevant materials to build structures for facilities such as community hospitals and clinics, fire stations, police stations and schools. In bid solicitations for Community Programs projects, these high-cost components are generally described in detail in project-specific technical specifications, and public owners and their contractors are generally familiar with the conditions of availability, the potential alternatives for each detailed specification, the approximate cost and, most relevant to this Notice, the country of manufacture of such components.

Every Community Programs project also involves the use of thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, construction of the project. During construction, these components (for example, nuts, bolts, fasteners, screws and

nails), are incorporated into the physical structure of the project. For many of these incidental components, the country of manufacture and the availability of alternatives are not always readily or reasonably identifiable prior to procurement in the normal course of business. More importantly, even if for some of these incidental components the country of manufacture may be known, the miscellaneous character of these components, together with their low cost (both individually and when procured in bulk), characterize them as incidental to the facility or project.

RHS finds that it would be inconsistent with the public interest to apply the Buy American requirement to incidental components when they, in total, comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project. While individual components may have the same function (e.g. brackets), the specific manufacturer and configuration may vary from project to project; the analysis and consideration of individual waiver requests for them, including determining whether or not U.S. made products exist; therefore, is expected to be time-consuming and labor intensive far out of proportion to the percentage of total project materials they comprise. Further, since the specific use of these low-cost components can be expected to be widely varied, formulating categorical waivers for specific types of components would be impractical. Because the situations described above, i.e., a high number of low-cost, miscellaneous components, can be effectively addressed by a comprehensive application of a nationwide de minimis waiver.

Rural Development reviewed an industry-wide survey regarding these incidental components prepared by an independent contractor on behalf of the Environmental Protection Agency (EPA). The survey results indicated that the percentage of total costs represented by these incidental components is generally not in excess of 5 percent of the total cost of the materials incorporated into a project. Rural Development then took the added step to verify the EPA findings by making similar inquiries to likely Rural Development project construction contractors to identify the approximate scope and cost of incidental components within these projects. The responses received by Rural Development were consistent with the EPA data.

RHS has decades of experience in financing Community Programs projects in rural America and shares the rationale established by previous de minimis waivers authored by EPA and Rural Utilities Service, with respect to incidental components used in similar projects. Requiring individual waivers for incidental components would be time prohibitive and overly-burdensome for applicants and RHS. The purpose of ARRA is to stimulate economic recovery by funding current public construction. Therefore, a de minimis waiver of incidental components totaling no more than 5 percent of the total cost of the materials used in and incorporated into a project is in the public interest.

### III. Waiver

Based on the public interest finding discussed above and pursuant to Section 1605(c), USDA hereby issues a national waiver from the requirements of ARRA Section 1605 for any incidental components of the type described above that comprise in total a de minimis amount of the

project, specifically, for any such incidental components up to a limit of no more than 5 percent of the total cost of the materials used in and incorporated into a project.

Assistance recipients who elect to use this waiver shall, in consultation with their contractors, determine the items to be covered by this waiver, retain relevant documentation as to those items in their project files, and be able to summarize in reports to RHS, if so requested, the types and/or categories of items to which this waiver is applied, the total cost of incidental components covered by the waiver for each type or category, and the calculations by which they determined the total cost of materials used in and incorporated into the project.

In using this waiver, assistance recipients must consider that there may be circumstances where there are multiple types of low-cost components which, when combined with the incidental components described above, may total more than 5 percent. Assistance recipients in such cases will have to choose which of these incidental components will be covered by the waiver and which will not. Components that the recipient is unable to include within the 5 percent limit of this waiver must comply with the requirements of Section 1605 of ARRA by appropriate means other than reliance on this waiver.

This supplementary information constitutes the "detailed written justification" required by Section 1605(c) of ARRA and Section 176.80 of the Office of Management and Budget's rules for waivers of the Buy American provisions.

Dated: May 6, 2010.  
Dallas P. Tonsager,  
Under Secretary, Rural Development.

May 11, 2010.  
Thomas Vilsack,  
Secretary, Department of Agriculture.

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General Decision Number: LA120006 01/20/2012 LA6

Superseded General Decision Number: LA20100006

State: Louisiana

Construction Type: Heavy

Counties: Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St Helena, St Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, West Carroll, West Feliciana and Winn Counties in Louisiana.

HEAVY CONSTRUCTION PROJECTS (includes water wells, water & sewer lines, and flood control; excludes elevated storage tanks)

Modification Number	Publication Date
0	01/06/2012
1	01/20/2012

ELEC0130-007 12/01/2011

ASSUMPTION AND ST. MARY (Northeast of Atchafalaya River) PARISHES

	Rates	Fringes
ELECTRICIAN.....	\$ 27.30	9.21

ELEC0194-006 03/04/2010

BIENVILLE, CLAIBORNE, DE SOTO, NATCHITOCHEs (Northeast of the Red River), and RED RIVER PARISHES

	Rates	Fringes
ELECTRICIAN Lineman and Heavy Equipment Operator.....	\$ 24.50	8.74

ELEC0446-004 09/01/2011

CALDWELL, EAST CARROLL, FRANKLIN, JACKSON, LINCOLN, MADISON, MOREHOUSE, RICHLAND, TENSAS, UNION, and WEST CARROLL PARISHES

	Rates	Fringes
ELECTRICIAN.....	\$ 21.00	18+9.02

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 \* ELEC0576-002 12/01/2011

AVOUELLES, CATAHOULA, CONCORDIA, EVANGELINE, GRANT, LA SALLE,  
 NATCHITOCHE (Southwest of Red River), SABINE, VERNON, AND WINN  
 PARISHES

	Rates	Fringes
ELECTRICIAN.....	\$ 22.95	4.25%+5.55

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 ELEC0861-004 09/01/2011

ALLEN, BEAUREGARD, CAMERON, IBERIA, JEFFERSON DAVIS, ST. MARY  
 (Southwest of Atchafalaya River), AND VERMILION PARISHES

	Rates	Fringes
ELECTRICIAN.....	\$ 23.90	4%+9.69

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 \* ELEC0995-002 01/01/2012

EAST FELICIANA, IBERVILLE, POINTE COUPEE, ST. HELENA, AND WEST  
 FELICIANA PARISHES

	Rates	Fringes
ELECTRICIAN.....	\$ 22.68	8.82

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 ELEC1077-005 09/01/2011

TANGIPAHOA and WASHINGTON PARISHES

	Rates	Fringes
ELECTRICIAN.....	\$ 21.75	6.74

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 SULA2004-008 05/19/2004

	Rates	Fringes
CARPENTER (including formsetting/formbuilding).....	\$ 14.75	0.00
Laborers:		
Common.....	\$ 7.60	0.00
Pipelayer.....	\$ 8.47	0.00
PIPEFITTER (excluding pipelaying).....	\$ 18.75	4.05
Power equipment operators:		
Backhoe/Excavator.....	\$ 11.67	0.00
Boring Machine.....	\$ 10.25	0.00
Bulldozer.....	\$ 11.82	0.00
Crane.....	\$ 13.60	0.00
Dragline.....	\$ 13.12	0.00

Front End Loader.....	\$ 9.93	0.00
Mechanic.....	\$ 12.50	0.00
Trackhoe.....	\$ 11.99	0.00
Tractor.....	\$ 10.43	0.00
Water Well Driller.....	\$ 10.73	2.01

Truck drivers:		
Dump.....	\$ 10.00	0.00
Water.....	\$ 8.00	0.00

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

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

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

#### Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters, PLUM, indicate the international union and the four-digit number, 0198, that follows 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, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

#### Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA

indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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WAGE DETERMINATION APPEALS PROCESS

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

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

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

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

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

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

Title 29: Labor

Subtitle A: Office of the Secretary of Labor

PART 5: LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING  
FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS  
PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE  
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or

under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

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

(1) That the payroll for the payroll period contains the information required to be provided under ? 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under ? 5.5

(a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

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

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

determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved

in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

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

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

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

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

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

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

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

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

subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

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

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

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

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

Effective Date Note:

At 58 FR 58955, Nov. 5, 1993, ? 5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.





## Wage and Hour Division (WHD)

**Instructions For Completing Payroll Form, WH-347**

WH-347 (PDF)

OMB Control No. 1215-0149, Expires 12/31/2011.

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

**General:** Form WH-347 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Under the Davis-Bacon and related Acts, the contractor is required to pay not less than prevailing wage, including fringe benefits, as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies to each worker, whether as basic rates or as cash in lieu of fringe benefits, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

**Contractor or Subcontractor:** Fill in your firm's name and check appropriate box.

**Address:** Fill in your firm's address.

**Payroll No.:** Beginning with the number "1", list the payroll number for the submission.

**For Week Ending:** List the workweek ending date.

**Project and Location:** Self-explanatory.

**Project or Contract No.:** Self-explanatory.

**Column 1 - Name and Individual Identifying Number of Worker:** Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

**Column 2 - No. of Withholding Exemptions:** This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

**Column 3 - Work Classifications:** List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification provided an accurate breakdown of hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

**Column 4 - Hours worked:** List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as "overtime".

**Column 5 - Total:** Self-explanatory

**Column 6 - Rate of Pay (Including Fringe Benefits):** In the "straight time" box for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits paid. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, "\$12.25/.40" would reflect a \$12.25 base hourly rate plus \$0.40 for fringe benefits. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in the "overtime" box for each worker; otherwise, you may skip this box. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962 if the prime contract exceeds \$100,000. In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits. See "FRINGE BENEFITS" below.

**Column 7 - Gross Amount Earned:** Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus "\$163.00/\$420.00" would reflect the earnings of a worker who earned \$163.00 on a Federally assisted construction project during a week in which \$420.00 was earned on all work.

**Column 8 - Deductions:** Five columns are provided for showing deductions made. If more than five deduction are involved, use the first four columns and show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction(s) contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 C.F.R., Part 3. If an individual worked on other jobs in addition to this project, show actual deductions from his/her weekly gross wage, and indicate that deductions are based on his gross wages.

**Column 9 - Net Wages Paid for Week:** Self-explanatory.

**Totals** - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

**Statement Required by Regulations, Parts 3 and 5:** While the "statement of compliance" need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

**Items 1 and 2:** Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "See Deductions column in this payroll." See "FRINGE BENEFITS" below for instructions concerning filling out paragraph 4 of the statement.

**Item 4 FRINGE BENEFITS - Contractors who pay all required fringe benefits:** If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check paragraph 4(a) of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in section 4(c).

**Contractors who pay no fringe benefits:** If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the "straight time" of the "Rate of Pay" column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the application wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check paragraph 4(b) of the statement on page 2 the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in section 4(c).

**Use of Section 4(c), Exceptions**

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to section 4(a) or 4(b) in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less than the predetermined rate plus cash in lieu of fringe benefits as shown in section 4(c) to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the Federal or Federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

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

**Note:** In order to view, fill out, and print PDF forms, you need Adobe® Acrobat® Reader® version 5 or later, which you may download for free at [www.adobe.com/products/acrobat/readstep2.html](http://www.adobe.com/products/acrobat/readstep2.html). To save the completed forms on your workstation, you need to use the "Save As" method to save the file. For example, move your mouse cursor over the PDF link and click on your "RIGHT" mouse button. This will cause a menu to be displayed, from which you will select the proper save option -- depending upon which browser you are using:

- For Microsoft IE users, select "Save Target As"
- For Netscape Navigator users, select "Save Link As"

Once you've selected the proper save option for your browser, and have saved the file to a location you specified, go to your program menu and start the Adobe Acrobat® Reader. Once open, locate the PDF file you saved and open it directly in Acrobat®.

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# AMERICAN RECOVERY AND REINVESTMENT ACT TEMPORARY CONSTRUCTION SIGN FOR USDA RURAL DEVELOPMENT PROJECTS

PANTONE  
 SOLID  
 COATED

WHITE BACKGROUND

**Project Title**

**Sponsor / Developer**

**Official(s) or Sponsor Address**

**Architect or Engineer**  
 (second line)

**Contractor**  
 (second line)

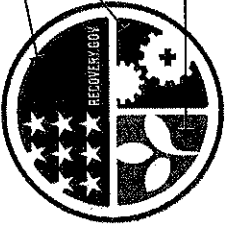
**Financed by United States Department of Agriculture (USDA) Rural Development**

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BLUE PMS 534C

RED PMS, 484C

GREEN, PMS 576

TOWNSCAPE  
 AND LETTER  
 FORMS  
 (BLUE, PMS 288)

ROLLING FIELDS  
 (GREEN, PMS 343)

LETTERING  
 (GREEN, PMS 343)

BLACK  
 LETTERING

BLACK LETTERING

**SIGN DIMENSIONS:** 1200 mm x 2400 mm x 19 mm (approx. 4' x 8' x 3/4")  
 PLYWOOD PANEL (APA RATED A-B GRADE-EXTERIOR)