



PATRICIA A. PESHKA

PURCHASING AGENT

FRANK J. PICOZZI

MAYOR

CITY OF WARWICK
PURCHASING DIVISION
3275 POST ROAD
WARWICK, RHODE ISLAND 02886
TEL (401)738-2013
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The following notice is to appear on the City of Warwick's website Monday, March 28, 2022. The website address is <http://www.warwickri.gov/bids>.

**CITY OF WARWICK
BIDS REQUESTED FOR**

Bid 2022-389 Buckeye Brook Restoration Project

Specifications are available in the Purchasing Division, Warwick City Hall, Monday through Friday, 8:30 AM until 4:30 PM on or after Monday, March 28, 2022.

Sealed bids will be received by the Purchasing Division, Warwick City Hall, 3275 Post Road, Warwick, Rhode Island 02886 up until 11:00 AM, Tuesday, April 26, 2022. The bids will be opened publicly commencing at 11:00 AM on the same day in the Lower Level Conference Room at Warwick City Hall.

Awards will be made on the basis of the lowest evaluated qualified or responsive bid price. Please note that no bids can be accepted via email or fax.

Individuals requesting interpreter services for the hearing impaired must notify the Purchasing Division at 401-738-2013 at least 48 hours in advance of the bid opening date.

Original Signature on File

Patricia A. Peshka
Purchasing Agent

PLEASE COMPLETE THIS PAGE & SUBMIT WITH YOUR BID

Acknowledgement of Addendum (if applicable)

Addendum Number	Signature of Bidder
_____	_____
_____	_____

COMPANY NAME: _____

COMPANY ADDRESS: _____

COMPANY ADDRESS: _____

BIDDER'S SIGNATURE: _____

BIDDER'S NAME (PRINT): _____

TITLE: _____ TEL. NO.: _____

EMAIL ADDRESS: _____*

*Please include your email address. Future bids will be emailed, unless otherwise noted.



II. AWARD AND CONTRACT:

The CITY OF WARWICK, acting as duly authorized through its Purchasing Agent/Finance Director/Mayor, accepts the above bid and hereby enters into a contract with the above party to pay the bid price upon completion of the project or receipt of the goods unless another payment schedule is contained in the specifications. All terms of the specifications, both substantive and procedural, are made terms of this contract.

DATE: _____

Bid 2022-389

Purchasing Agent

PLEASE COMPLETE THIS PAGE & SUBMIT WITH YOUR BID

CERTIFICATION & WARRANT FORM*

**This form must be completed and submitted with sealed bid.
Failure to do so will result in automatic rejection.**

Any and all bids shall contain a certification and warrant that they comply with all relevant and pertinent statutes, laws, ordinances and regulations, in particular, but not limited to Chapter 16- Conflicts of Interest, of the Code of Ordinances of the City of Warwick. Any proven violation of this warranty and representation by a bidder at the time of the bid or during the course of the contract, included, but not limited to negligent acts, either directly or indirectly through agents and/or sub-contractors, shall render the bidder's contract terminated and the bidder shall be required to reimburse the City for any and all costs incurred by the City, including reasonable attorney fees, to prosecute and/or enforce this provision.

Signature

Date

Company Name

Address

Address

***This form cannot be altered**

**CITY OF WARWICK
NOTICE TO BIDDERS**

Bid 2022-389 Buckeye Brook Restoration Project

If you received this document from our homepage or from a source other than the City of Warwick Purchasing Division, please check with our office prior to submitting your bid to ensure that you have a complete package. The Purchasing Division cannot be responsible to provide addenda if we do not have you on record as a plan holder.

The opening of bids will be in the order established by the posted agenda and the agenda will continue uninterrupted until completion.

Once an item has been reached and any bids on that item has been opened, no other bids on that item will be accepted and any such bid will be deemed late.

The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap for any position for which the employee or applicant is qualified and that in the event of non-compliance the City may declare the contractor in breach and take any necessary legal recourse including termination or cancellation of the contract.

A bidder filing a bid thereby certifies that no officer, agent, or employee of the City has a pecuniary interest in the bid or has participated in contract negotiations on the part of the City, that the bid is made in good faith without fraud, collusion, or connection of any kind with any other bidder for the same call for bids, and that the bidder is competing solely in his own behalf without connection with, or obligation to, any undisclosed person or firm.

All bids should be submitted with one (1) original and one (1) copy in a sealed envelope, which should read: *YOUR COMPANY NAME* plainly marked on the exterior of the envelope as well as “**Bid 2022-389 Buckeye Brook Restoration Project.**”

Bids received prior to the time of the opening will be securely kept, unopened. No responsibility will be attached to an officer or person for the premature opening of a bid not properly addressed and identified. No bids will be accepted via facsimile or email.

All proposals submitted become the property of the City and will not be returned. If the company intends to submit **confidential or proprietary information** as part of the proposal, **any limits on the use or distribution of that material should be clearly delineated in writing. This information should be submitted in a sealed envelope, clearly labeled confidential** and where it should be submitted in the response. Please be advised of the Freedom of Information Act as it may pertain to your submittal.

Should you have any questions, please contact Bill Facente 921-9688

All bids should be written in ink or typed. If there is a correction with whiteout, the bidder should initial the change.

Negligence on the part of the bidder in preparing the proposal confers no rights for the withdrawal of the proposal after it is open.

Any deviation from the specifications **MUST BE NOTED IN WRITING AND ATTACHED AS PART OF THE BID PROPOSAL**. The bidder should indicate the item or part with the deviation and indicate how the bid will deviate from specifications.

The IRS Form W-9 is available on www.warwickri.gov should be completed and submitted with the bid if the bidder falls under IRS requirements to file this form.

Prevailing Wages will apply to this bid. Current rates may be viewed at <http://www.beta.sam.gov>.

The successful bidder must comply with all Rhode Island Laws, applicable to public works projects, including, but not limited to provisions of Chapter 13 of Title 37 of the Rhode Island General Laws, pertaining to prevailing wage rates, and all other applicable local, state and federal laws.

The contractor must carry sufficient liability insurance and agree to indemnify the city against all claims of any nature, which might arise as a result of his operations or conduct of work.

The contractor must keep himself informed of and comply with all laws, ordinances and regulations of the federal, state and municipal governments which may apply and be in force during the life of the contract, in any manner which may affect himself/employees or the conduct of the work or the materials used or employed in the work. Before submitting bids, prospective bidders should examine the terms, covenants and conditions of all codes, permits and laws which may apply. By submitting a bid, the bidder agrees to comply with all pertinent laws/regulations if awarded a contract.

Every contractor and subcontractor awarded a contract for public works, construction, alteration and/or repair, including painting and decorating, or public buildings or public works must submit completed RI Certified Weekly Payroll forms listing employees employed on the project to the awarding authority on a monthly basis for all work completed in the preceding month. These forms may be found at: www.dlt.ri.gov/pw/pwFormsPubs.htm. Certified Payroll forms concerning RI Department of Transportation projects may be submitted on federal forms. However, when a complaint is being investigated by the RI Department of Labor & Training (DLT), the contractor must resubmit the payroll information on the RI Certified Weekly Payroll forms for the entire project.

Awarding authorities, contractors and subcontractors must provide any and all payroll records to the DLT within ten (10) days of any request that is made by the department.

The awarding authority of any public works project will withhold the next scheduled payment to any contractor or subcontractor who fails to comply with the above provisions, as well as any further payments until they comply. The DLT may also impose a penalty of up to \$500 for each calendar day of noncompliance.

Please refer to Rhode Island state laws Section 37-13 for more information.

The City of Warwick is not requiring a Bid Bond for this contract

The successful bidder must provide the City of Warwick with an original **Certificate of Insurance** for General Liability and Automobile Liability in a minimum amount of \$1 million, naming the **City of Warwick as the additional insured** and so stated on the certificate with the bid name and bid number. It is the vendor's responsibility to provide the City of Warwick with an updated Certificate of Insurance upon expiration of the original certificate.

Failure to provide adequate insurance coverage within the specified duration of time as set forth is a material breach of contract and grounds for termination of the contract.

The successful bidder must furnish a performance and payment bond in the amount of 100 percent of the total bid price.

SERVICE: For a bid to be awarded to a corporation, limited liability company or other legal entity, prior to commencing work under the awarded bid, that corporation, company or legal entity may be required to provide to the Purchasing Agent a **Certificate of Good Standing** from **The Rhode Island Secretary of State** dated no more than thirty (30) days prior to the date upon which the bid approval was made. **Please note that no other State's Certificate of Good Standing will be accepted.**

If required, the successful bidder will provide said **Certificate of Insurance, bonds and State of Rhode Island's Certificate of Good Standing** within ten (10) calendar days after notification or the City reserves the right to rescind said award.

Prices to be held firm one (1) year from date of award. Term contracts may be extended for one (1) additional term upon mutual agreement unless otherwise stated.

The City is exempt from the payment of the Rhode Island Sales Tax under the 1956 General Laws of the State of Rhode Island, 44-18-30, Paragraph I, as amended.

The contractor must carry sufficient liability insurance and agree to indemnify the City against all claims of any nature, which might arise as a result of his operations or conduct of work.

The Purchasing Agent reserves the right to reject any and all bids, to waive any minor deviations or informalities in the bids received, and to accept the bid deemed most favorable to the interest of the City.

The City reserves the right to terminate the contract or any part of the contract in the best interests of the City, upon 30-day notice to the contractor. The City will incur no liability for materials or services not yet ordered if it terminates in the best interests of the City. If the City terminates in the interests of the City after an order for materials or services has been placed, the contractor will be entitled to compensation upon submission of invoices and proper proof of claim, in that proportion which its

services and products were satisfactorily rendered or provided, as well as expenses necessarily incurred in the performance of work up to time of termination.

No extra charges for delivery, handling or other services will be honored. All claims for damage in transit will be the responsibility of the successful bidder. Deliveries must be made during normal working hours unless otherwise agreed upon.

All costs directly or indirectly related to the preparation of a response to this solicitation, or any presentation or communication to supplement and/or clarify any response to this solicitation which may be required or requested by the City of Warwick will be the sole responsibility of and will be borne by the respondent.

If the respondent is awarded a contract in accordance with this solicitation and fails or refuses to satisfy fully all of the respondents obligations thereunder, the City of Warwick will be entitled to recover from the respondent any losses, damages or costs incurred by the City as a result of such failure or refusal.

The City reserves the right to award in part or full and to increase or decrease quantities in the best interest of the City.

Any quantity reference in the bid specifications are estimates only, and do not represent a commitment on the part of the City of Warwick to any level of billing activity. It is understood and agreed that the agreement will cover the actual quantities ordered during the contract period.

The City reserves the right to rescind award for non-compliance to bid specifications.

The successful bidder must adhere to all City, State and Federal Laws, where applicable.

1. PROJECT/BID STRUCTURE AND COORDINATION

Work to conduct ecological restoration for Buckeye Brook site (the “site”) is being completed as a project administered by the City of Warwick (the City) with funding and technical support from a number of governmental agencies and public organizations.

2. ENVIRONMENTAL APPROVALS

Warwick has obtained the required approvals, permits, and assents (referred to as approvals) from the regulating agencies for the Project. These approvals are included as Exhibit A and include:

- Rhode Island Department of Environmental Management Office of Water Resources/Freshwater Wetlands Program - Freshwater Wetlands Permit including:
 - i. RIPDES Stormwater Construction Permit and Water Quality Certification
 - ii. U.S. Army Corps of Engineers Section 404 authorization
- Conditions of Federal Aviation Administration Determination of No Hazard to Air Navigation for Temporary Structure

Copies of the documents submitted to the regulating agencies are available for review at the contractor’s request.

3. MANDATORY PRE-BID CONFERENCE

A mandatory Pre-Bid Conference will be held at 10:00 AM on April 12, 2022 at the City of Warwick DPW Yard Access Gate on Range Road. A site walkover will be conducted immediately following the conference to review the Work and address questions.



4. SUBMISSION OF BIDS:

- Submit bids as indicated on the Invitation to Bid and in accordance with this document.
- The City will decide when the specified time has arrived to open bids and no bid thereafter will be considered.
- Any bidder may withdraw his bid by written request at any time prior to the advertised time for opening. Telephone bids, faxed bids, amendments or withdrawals will not be accepted.
- Unless otherwise specified, no bid may be withdrawn for a period of ninety (90) days from the time of bid opening.

5. QUALIFICATION OF BIDDERS:

The City may make such investigations, as it deems necessary to determine the ability of the bidder to perform the Work. The bidder shall furnish the City with all such information and data for the purpose as may be requested.

6. ADDENDA AND INTERPRETATIONS:

No interpretation on the meaning of the Plans, Specifications or other Contract Document will be made to any bidder orally. Every request for such interpretations should be in writing, addressed and emailed to Amy Hunt at ahunt@eaest.com. To be given consideration, questions must be received no later than 4:00 P.M. April 18, 2022. Questions shall not be submitted by phone or in person.

Any and all interpretations, and supplemental instructions which, if issued, will be emailed to all perspective bidders (at the respective email address furnished by the bidder for such purpose), not later than 48 hours prior to the date fixed for the opening of the bids. Interpretations and Addenda will also be posted on the City of Warwick's website at <https://www.warwickri.gov/bids> Failure of bidder to receive any such addenda or interpretations shall not relieve any bidder from obligation under his bid as submitted. All addenda so issued shall become part of the Contract Document.

7. PROJECT SCHEDULE AND MILESTONES

Bidders shall recognize and agree to Project milestone and completion dates and provisions specified on the bid form.

CITY OF WARWICK

BID AND CONTRACT FORM

TITLE OF SPECIFICATION: Bid 2022-389 Buckeye Brook Restoration Project

I. BID:

WHEREAS, the CITY OF WARWICK has duly asked for bids for performance of services and/or supply of goods in accordance with the above-indicated specifications.

The person or entity does irrevocably offer to perform the services and/or furnish the goods in accordance with the specifications, which are hereby incorporated by reference in exchange for the bid price.

This offer will remain open and irrevocable until the CITY OF WARWICK has accepted this bid or another bid on the specifications or abandoned the project.

The bidder agrees that acceptance by the CITY OF WARWICK will transform the bid into a contract. This bid and contract will be secured by Bonds, if required by the specifications.

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CONTRACTING REQUIREMENTS

**City of Warwick
Office of Housing & Community Development**

FEDERAL BID SUBMISSION

CERTIFICATIONS For Contracts of

\$200,000 & Over

The following documents need to be completed and submitted with original bid:

- Certification Regarding Debarment and Suspension (3 pages)
- Equal Opportunity Certification (4 pages)
- Anti-Lobbying Certification (1 page)
- Minority Contractor Participation (2 pages)
- Segregated Facilities Certification (1 page)
- Davis Bacon, Section 3, Minority & Woman Owned Business Certification (1 page)
- City of Warwick Community Development Program Affirmative action Plan for Utilizing Local Businesses (3 pages)
- Civil Rights, Employment and Contracting Opportunities and Other Federal Requirements (2 pages)
- Certification of Bidder - Federal Labor Standards Provisions - Davis Bacon Act and "Related Acts" (1 page)
- Section 3 Forms

As part of the final award of the contract, the contractor will be required to provide a DUNS#, a Sam.gov registration #, completed W-9 form, and certificate of insurance. In addition, for bids that exceed \$100,000, the following bonds will be required: material and labor & performance for 100% of the contract amount.

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, AND OTHER RESPONSIBILITY
MATTERS PRIMARY COVERED TRANSACTIONS**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contact under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
 - (d) Within a three-year period preceding this application/proposal, has not had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Contractor's Name (printed)

Contractor Name (signature)

Title

License # / Registration #

Company Name

Street Address

Mailing Address (if different)

City, State, Zip Code

City, State, Zip Code

Certification Regarding Debarment and Suspension

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal 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 entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. 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 this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. 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.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

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.

Instructions for Certification (B)

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
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 transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily 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 these regulations.

5. The prospective lower tier participant agrees by submitting this proposal 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 proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," 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 lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this 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.

Applicant		Date
Signature of Authorized Certifying Official	Title	

EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

I, the undersigned, understand that the following is applicable for contracts and sub-contracts that are funded in whole or in part with federal HUD funding:

I. Executive Order 11246:

Equal Employment Opportunity

Executive Order 11246, as amended by Executive Order 12066 (41 CFR Chapter 60), and the regulations at 24 CFR Part 130, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of HUD assisted **construction contracts**. Participating contractors and subcontractors must take affirmative action to ensure fair treatment in employment, upgrading, demotion, transfer, recruitment and recruitment advertising; layoff and termination; rates of pay and compensation; and selection for training and apprenticeship. This provision shall apply to all construction contracts of \$10,000.00 or more entered into by the Office of Housing and Community Development or Sub Recipient and specific affirmative actions including:

- A. Posting in a conspicuous place the “Equal Employment Opportunity (EEO) Poster;
- B. stating in all solicitations or advertisements for employees that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin;
- C. sending to each labor union or representative of workers with which there is a collective bargaining agreement a copy of the EEO poster for posting;
- D) and placing the “Equal Opportunity Clause” in all subcontracts for any project **which exceeds \$10,000.**

II. Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs)

The City of Warwick follows General Law 37-14.1 with regards to goals for MBE and WBE contracts:

- A. Minority Business Enterprises are encouraged to be awarded at least 11% of the total contract amount for construction/public works projects.

The City of Warwick through the Office of Housing and Community Development encourages contractors to work with the Rhode Island Office of Diversity, Equity & Opportunity to provide opportunities for participation by minority and women owned businesses in federal HUD funded projects.

The address and telephone number of the Rhode Island Office of Diversity, Equity & Opportunity:
RI Department of Administration, ODEO/Minority Business Enterprise Compliance Office, One Capitol Hill,
Providence, RI 02908, Phone (401) 574-8670, email - Jean.M.Heiss@doa.ri.gov

The following are some suggested actions contractors or subcontractors may be able to increase the participation of MBEs and WBEs:

- a) contact the Rhode Island Office of Diversity, Equity & Opportunity:
ODEO/Minority Business Enterprise Compliance Office, One Capitol Hill, Providence, RI 02908,
Phone (401) 574-8670, email - Jean.M.Heiss@doa.ri.gov , and request a listing of all area MBE/WBE firms.
- b) disseminate information on business opportunities for MBEs and WBEs through announcements in the local media and through local minority, women, business, professional trade groups;

The bidder hereby certifies that he/she shall comply with the Section 3 requirements and MBE/WBE affirmative action steps contained in the above, including submission of required reports with each payment request.

Authorized Signature

Date

Name (Please Print or Type)

Title

**Equal Employment
Opportunity Certification**
Excerpt From 41 CFR §60-1.4(b)

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

Department of Veterans Affairs
OMB Control No. 2502-0029
(exp. 9/30/2016)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

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

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

Firm Name and Address	By
	Title

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

Excerpt from HUD Regulations

200.410 Definition of term "applicant".

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph(a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

200.420 Equal Opportunity Clause to be included in contracts and subcontracts.

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

- (2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard race, creed, color, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

- (5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.

- (6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

- (7) The contractor will include the provisions of Paragraphs(1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference to the equal opportunity clause.

200.425 Modification in and exemptions from the regulations in this subpart.

- (a) The following transactions and contracts are exempt from the regulations in this subpart:

- (1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.

- (2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;

- (3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;

- (4) Contracts for the sale of Government property where no appreciable amount of work is involved; and

- (5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete 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 subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

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

If any 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement 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 statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

* APPLICANT'S ORGANIZATION

* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

Prefix: * First Name: Middle Name:

* Last Name: Suffix:

* Title:

* SIGNATURE: * DATE:

CITY OF WARWICK
SCHEDULE OF PARTICIPATION
MINORITY BUSINESS ENTERPRISES/WOMEN BUSINESS ENTERPRISES

TO BE COMPLETED AND SUBMITTED WITH BID

	MBE or WBE	Race/ Ethnicity	Name of Firm	Trade	Total Contract Award
1					
2					
3					
4					
5					

MBE/WBE CERTIFICATION: The bidder hereby certifies that the above-named Minority Business Enterprise and/or Women’s Business Enterprise is currently certified by the Rhode Island Office of Diversity, Equity & Opportunity (ODEO/Minority Business Enterprise Compliance Office)/ and such SOMWBA certification has not changed; and in the event of said status changing, it will immediately forward written notification to the City of Warwick.

The bidder further agrees to furnish implementation reports, as required by the awarding authority, to indicate the MBE/WBE, which it has used or intends to use. Breach of this commitment constitutes a breach of the contract.

General Bidder Name:

Authorized Signature: _____

Date: _____

**MINORITY/WOMAN BUSINESS ENTERPRISES
UNAVAILABILITY FORM**

To be completed by General Contractor

The undersigned contractor describes below all due diligence requirements known and making every possible effort to meet the minimum requirements for Minority/Women Business Enterprises (MBE/WBE/DBE) participation and said Contractor is seeking relief from these requirements by filing this form. A minimum of 10% of the total construction contract must be awarded to MBE/WBEs.

The General Contractor shall prepare additional copies of this information form in the quantity necessary to comply with the bidding requirements.

I, _____, _____
Name Title

Of _____ . Certify that on _____, I contacted the below listed
General Contractor Name Date

MBE/WBE(s) requesting a bid for Project _____ as an
Project Name

___ MBE or ___ WBE for the provision of ___ Goods & Services or ___ Labor to accomplish:

_____ Sub work offered to this MBE/WBE (plumbing, electrical, carpentry etc...)

_____ Name of Prospective Sub-Contractor Address, City and State

Contact was made by ___ Telephone ___ In Person

Said sub-contractor was unavailable for work on this project or unable to prepare a bid for the following reason(s): (check appropriate answer):

- MBW/WBE/DBE Firm Declined Job
- MBE/WBE/DBE Firm offered to do a job at the price of \$ _____, which was not acceptable because: _____.
- Other _____

The above information is accurate and complete, to the best of my knowledge and belief. Signed under the pains and penalties of perjury.

_____ Signature of Authorized Representative, General Contractor Date

CERTIFICATION OF CONTRACTOR REGARDING
SEGREGATED FACILITIES
(For Prime Contracts Exceeding \$100,000)

Name of Prime Contractor:

Project Name and Number:

The undersigned hereby certifies that:

- (a) No segregated facilities will be maintained as required by Title VI of the Civil Rights Act of 1964.

Contractor's Name (printed)

Contractor Name (signature)

Title

License # / Registration #

Company Name

Street Address

Mailing Address (if different)

City, State, Zip Code

City, State, Zip Code



CITY OF WARWICK

FRANK J. PICOZZI, MAYOR

Davis-Bacon Labor Relations Section 3, Minority and Woman-Owned Business Certification

The undersigned bidder/contractor certifies as part of its bid or contract that it is a Section 3 Business Concern as indicated below (check applicable box):

Family Size	Max Annual Income	Family Size	Max Annual Income
1	\$48,450	5	\$74,750
2	\$55,400	6	\$80,300
3	\$62,300	7	\$85,850
4	\$69,200	8	\$91,350

A Section 3 Resident is defined as any low or very low-income person residing within the City of Warwick. Low income is defined at 80% of the area median income based on family size.

Category 1 Business Concern: A business that is owned by 51% or more Section 3 Residents; OR

Category 2 Business Concern: Over 75% of the labor hours performed for the business over the prior three-month period was performed by Section 3 Workers; OR

Category 3 Business Concern: A business is 51% or more owned AND controlled by current public housing residents or residents who currently live in Section 8-assisted housing

Is not a Section 3 Business Concern

The undersigned bidder/contractor certifies as part of its bid or contract that it is a minority-owned business as indicated below (check applicable box):

Minority-Owned Business: A business that is owned by 51% or more by a minority resident.
Race: _____ AND Hispanic: Y / N

Is not a Minority-Owned Business

The undersigned bidder/contractor certifies as part of its bid or contract that it is a woman-owned business as indicated below (check applicable box):

Woman-Owned Business: A business that is owned 51% or more by a woman resident.

Is not a Woman-Owned Business

CERTIFICATION

Business Name

Project Name

Business Address

DUNS #

Tax ID #(EIN)

Signatory Name

Signature

Date

**OFFICE OF HOUSING & COMMUNITY DEVELOPMENT
3275 POST ROAD • WARWICK, RI 02886 • 401-738-2009**

City of Warwick
Community Development Program

Affirmative Action Plan
for
Utilizing Local Businesses

This plan sets forth the procedures by which the City of Warwick will assure that to the greatest extent feasible contracts for work in connection with the City's Community Development Program will be awarded to business concerns which are located in or owned in substantial part by persons residing in the City of Warwick. These procedures are set forth in compliance with the rules and regulations in Part 135 of Title 24 of the Code of Federal Regulations entitled "Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects" published on August 3, 1973. It is the intent of this plan that the City and its contractors follow these procedures in awarding any work financed under the City's Community Development Program.

1. At the beginning of each Community Development Program Year the City will prepare and make available to the public a list of contracts expected to be awarded and a description of the professional category or classification of each type of service or supplied to be provided in order to carry out the Community Development Program.
2. The City will prepare a list of businesses known to be located within the City which appear to be eligible to provide the services, supplies or construction work in order to determine the availability of local businesses for each contract listed in compliance with No. 1 above.
3. The City and its contractors shall, where feasible, award all contracts to local businesses. Reasons for awarding contracts to other firms shall be documented. Sufficient reason for awarding contracts to firms outside the City shall include non-competitive bids or the unavailability of local firms or individuals who can provide the services or supplies required.
4. The City and its contractors shall comply with the following procedures in order to assure that local businesses are afforded the opportunity to contract with the City or other contractors under the Community Development Program:
 - (a) The Community Development Program's Affirmative Action Plan for Utilizing Local Businesses shall be inserted into all bid documents for work funded under the Community Development Program.
 - b) Local businesses for the purpose of complying with these procedures shall be those located within the entire City of Warwick or owned in substantial part by residents of Warwick.
 - (c) All contractors and subcontractors shall certify their intent to comply with the objectives and procedures of this plan prior to signing a contract with the City. All contracts and subcontracts will be awarded in compliance with this plan and must be approved by the City of Warwick in writing.

(d) Opportunities or contracts under the Community Development Program shall be advertised in the metropolitan and local newspapers. A notice of the pending contract shall be posted on the site, where applicable, or in the City Hall. Notification of pending contractual opportunities shall be sent to the City's Purchasing Agent.

(e) All contracts for more than \$1,000 shall be awarded on the basis of competitive bids in conformance with City and Federal procedures.

(f) All bids or proposals must be accompanied by a list of all positions for employment or training by occupational category and a list of all subcontracts necessary to fulfill the contract. In addition, each bidder shall submit with the bid, a certification adopting this plan for utilizing local businesses.

City of Warwick
Community Development Program

Affirmative Action Plan
for
Utilizing Local Businesses

I, _____, certify that I have read and understand the Community Development
(Contractor)

Program's Affirmative Action Plan for Utilizing Local Businesses and further certify that all work let out under this contract shall be in conformance with its objectives and procedures. I understand that I am certifying that to the greatest extent feasible all sub-contracts or other work let out under this contract will be awarded to businesses located in Warwick or businesses which are owned in substantial part by residents of Warwick.

Witness: _____

By: _____
(Contractor)

Title: _____

Business Address: _____

Date: _____

Civil Rights, Employment and Contracting Opportunities, and Other Federal Requirements

Americans with Disabilities Act or 1990 (ADA): This Act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against a "qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

Architectural Barriers Act of 1968 (ABA)- (42 U.S.C. 4151-4157): This Act requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds, except privately owned residential structures. Covered buildings and facilities designed, constructed, or altered with COBO funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards.

Disadvantaged Business Enterprises (DBE): It is the policy of HUD to encourage the award of prime contracts valued at \$100,000 or more to small disadvantaged business (SOB) concerns (other than certified 8(a) firms) that are at least 51 percent owned and controlled by socially and economically disadvantaged individuals.

Fair Labor Standards Act (FLSA) as amended - 29 U.S.C. 201 et seq.: The U.S. Department of Labor (DOL) administers and enforces the minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

Immigration Reform and Control Act (IRCA) of 1986: Employers may hire only persons who may legally work in the U.S. i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9).

Minority and Women-Owned Business Enterprises (MBE/WBE) - 24CFR Part 85.36 (e) (1): It is the policy of HUD to actively encourage contractors to take all necessary affirmative steps to assure that small and minority firms, Women's business enterprise and labor surplus area firms as used as subcontractors when possible. A minority or women-owned small business concern is defined as owned by at least 51 percent minority group members or women.

Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. §301 et. seq., particularly 42 U.S.C. 6101 et. seq., and 29 U.S.C. 794): This section provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I of the Act.

Section 504 of the Rehabilitation Act of 1973, as amended (implemented at 24 CFR Part 135): It is unlawful to discriminate based on disability in federally assisted programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.

Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978: This manual applies to employee selection procedures in the areas of hiring, retention, promotions, transfer, demotions, dismissal, and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.

Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002): This Act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.

Violation or Breach of Contract: Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Termination for Cause and for Convenience: AH contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Rights to Inventions Made Under a Contract or Agreement: If the agreement with the contractor is for the performance of experimental, developmental, or research work, including any assignment, substitution of parties, or subcontract of any type entered into for such purpose, the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended: Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Procurement of Recovered Materials: A nonfederal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

HUD Lead-Based Paint Regulations, 24 CFR Part 35 Flood Disaster Protection Act of 1973 (P.L. 93-243)

Nondiscrimination under Title VI of the Civil Rights Act of 1964 (as Amended)

Acknowledgment of Bidding Firm to comply with the above referenced Federal Regulations where applicable:

Contractor/Bidder Signature

Print Name

Date

CERTIFICATION OF BIDDER

FEDERAL LABOR STANDARDS PROVISIONS- DAVIS BACON ACT AND “RELATED ACTS”

This certification is required to insure that the Bidder understands that the Project or Program to which the construction work covered by any construction greater than \$2,000, is being assigned by the United States of America and that the various Federal Labor Standards Provisions, summarized in the form HUD-4010, “Federal Labor Standards Provisions” are included in any such contract, pursuant to the provisions applicable to such Federal assistance.

The Bidder certifies receipt of form HUD-4010, “Federal Labor Standards Provisions”, must be included and attached to each and every construction bid document and/or construction contract greater than \$2,000, that is subject to the Davis-Bacon Act and “Related Acts.”

Wage Determination – The Wage Determination applicable to this project is:

Determination Number:

Modification Number:

Date:

A hard copy of this Determination must be included within these bid specifications.

Wage Determination Posting – Contractors and sub-contractors shall post the prevailing wage rates for each craft and classification in a prominent and easily accessible place at the site of the work, or at such places as are used by them to pay workers.

The undersigned is required to ensure that all specifications and/or contracts include all applicable Federal wage rate determinations and the required labor standards provisions summarized by form **HUD-4010, “Federal Labor Standards Provisions.”**

Weekly Certified Payrolls – It is the responsibility of each contractor and sub-contractor to submit weekly certified payrolls for project work (<http://www.dol.gov/whd/forms/wh347.pdf>). **It is the responsibility of the undersigned (prime contractor) to review payrolls submitted by subcontractors to ensure that there are no discrepancies or underpayments.**

CERTIFICATION BY BIDDER

Name and Address of Bidder (Include ZIP Code):

Name and Title of Signer (Please print or type below:)

Signature

Date

SECTION 3 AFFIRMATIVE REQUIREMENT

[For Prime and Subcontracts that exceed \$200,000]

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 75] is HUD's legislative directive for providing preference to low- and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects. As a condition of receiving HUD assistance recipients certify that they will comply with the requirements of Section 3 annually pursuant to 24 CFR 570.607(b).

Section 3 projects are those where HUD program assistance is used for housing rehabilitation, housing construction and other public construction projects that generally exceed a \$200,000 project threshold or any Section 3 project funding from HUD's Lead Hazard Control and Healthy Homes programs.

Applicability of Section 3 to Community Planning & Development Assistance:

Contractors or subcontractors on a project in excess of **\$200,000** for Section 3 covered projects are **required to comply** with Section 3. Accordingly, the recipient must attempt to reach the **Section 3 minimum numerical goals** found at 24 CFR Part 75, Subpart C:

- (1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

$$\frac{\text{Section 3 Worker Labor Hours}}{\text{Total Labor Hours}} = 25\%$$

And

- (2) Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at § 75.21.

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 5\%$$

Recipients that fail to meet the minimum numerical goals above bear the burden of demonstrating why it was not possible to do so. Such justifications should describe the efforts that were taken, barriers encountered, and other relevant information that will enable the Department to make a compliance determination.

Contractor Responsibilities Pursuant to Section 3

- The Prime Contractor (Over \$200,000) must submit a Section 3 plan (attached) to the Sub-Recipient outlining Section 3 hiring and employment opportunities.
- The Prime Contractor must notify all sub-contractors (Over \$200,000) of their responsibilities under Section 3
- The Prime Contractor must provide a permeant workforce breakdown of all current employees and identify those Section 3 workers that were hired within the last five years.

- The Prime Contractor must provide an estimated breakdown of potential hires for the awarded project and timeline of anticipated hiring
- Maintain records that document a **good faith effort** to utilize Section 3 workers and Target Section 3 workers as trainees and employees. (Required of both contractor and sub- contractor.) and any other qualitative efforts to comply with Section 3.

Section 3 Workers are:

HUD defines a Section 3 worker for both public housing financial assistance and Section 3 projects as a worker that meets one of the following requirements:

- The worker's income is below the income limit established by HUD for the project area.
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant.

For § 75.21, Section 3 projects, a Targeted Section 3 worker includes any worker who is employed by a Section 3 business concern or is a Section 3 worker who is:

- Living within the service area or neighborhood of the project; or
- A YouthBuild participant.

Section 3 Businesses are:

HUD defines a Section 3 business concern as a business concern that meets one of the following requirements:

- It is at least 51 percent owned by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or
- It is a business at least 51 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing.

Some examples include: proof of residency in a public housing authority; proof of federal subsidies for housing, food stamps, or unemployment benefits; and payroll data or other relevant business information.

For additional information, please visit the Section 3 website at: www.hud.gov/section3.

SECTION 3 CLAUSE

All Section 3 covered contracts shall include the following clause (referred to as the “Section 3 Clause”):

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected by before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

F. Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

SECTION 3 AFFIRMATIVE ACTION PLAN
(Prime Contractor)
[For Projects that exceed \$200,000]

_____, Contractor, agrees to implement the following specific affirmative action steps directed at increasing the utilization of Section 3 Residents' and Section 3 Business Concerns within the City of Warwick.

- A.** To ascertain from the City the exact boundaries of the Section 3 Covered Project Area and where advantageous, seek the assistance of City of Warwick in preparing and implementing the affirmative action plan.
- B.** To attempt to recruit from within the City of Warwick the necessary individuals to fill employment opportunities generated by Section 3 covered assistance through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area and providing preference for these opportunities in the following order:
 - (i) Section 3 Residents residing in the service area or neighborhood in which the Section 3 covered project is located;
 - (ii) Participants in HLJD Youthbuild Programs, and
 - (iii) Other Section 3 Residents.
- C.** To maintain a list of all lower income area residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and a vacancy exists.
- D.** To insert this Section 3 Affirmative Action Plan in all bid documents for contracts over \$200,000, and to require all bidders on subcontracts over \$200,000 to submit a Section 3 Affirmative Action Plan, including utilization goals and the specific steps planned to accomplish these goals.
- E.** To ensure that subcontracts over \$200,000 which are typically let on a negotiated rather than bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F.** To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G.** To notify Section 3 residents and Section 3 business concerns about economic opportunities generated by Section 3 covered assistance and to award Section 3 covered contracts, to the greatest extent feasible, to Section 3 business concerns in the following order of preference:
 - (i) Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area or neighborhood in which the Section 3 covered project is located;
 - (ii) Applicants selected to carry out HUD Youthbuild projects;
 - (iii) Other Section 3 business concerns.
- H.** To notify potential contractors about Section 3 requirements of this part and incorporating the Section 3 clause in all solicitations and contracts.



CITY OF WARWICK

FRANK J. PICOZZI, MAYOR

Section 3 Business Concern Certification

Instructions: Enter the following information and select the criteria that applies to certify your business' Section 3 Business Concern status.

Business Information

Name of Business _____

Address of Business _____

Name of Business Owner _____

Phone Number of Business Owner _____

Email Address of Business Owner _____

Preferred Contact Information

Same as above

Name of Preferred Contact _____

Phone Number of Preferred Contact _____

Type of Business (select from the following options):

Corporation

Partnership

Sole Proprietorship

Joint Venture

Select from *ONE* of the following three options below that applies:

At least 51 percent of the business is owned and controlled by low- or very low-income persons (Refer to income guidelines on page 4).

At least 51 percent of the business is owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers (Refer to definition on page 2).

SECTION 004113 – BID FORM

CONTRACT IDENTIFICATION:

Buckeye Brook
2000 Post Road #8
Warwick, Rhode Island 02886

ARTICLE 1 – BID RECIPIENT

1.1 This Bid shall be submitted to:

City of Warwick – Purchasing Division

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

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.1 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 90 calendar days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of the City of Warwick, Rhode Island.

2.2 Bidder accepts that the City of Warwick, Rhode Island, shall have the sole right and discretion to accept any Base Bid, if any. Such decision of acceptance by the City of Warwick, Rhode Island, will evaluate the sum of the Base Bids and any accepted extended Unit Bids in determining the successful low bidder.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.1 In submitting this Bid, Bidder represents that:

A. Bidder has examined 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.

B. Bidder 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.

C. Bidder has obtained and carefully studied (or accepts the 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 the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- D. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- E. Bidder has correlated 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.
- F. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- G. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- H. Bidder will submit written evidence of its authority to do business in the state where the Project is located not later than the date of its execution of the Agreement.
- I. Bidder ensures compliance with all federal regulations, laws, statues, and authorities contained in Exhibit D. – *Federal Construction Contract Provisions*.
- J. Bidder shall submit, along with this completed Bid Form, all required documents, completed and signed as needed, that are contained in the bidding documents. – *Completed with Bid Submittal – Prevailing Wage*.

ARTICLE 4 – FURTHER REPRESENTATIONS

4.1 Bidder further represents that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation.
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.

- C. Bidder has not solicited or induced any individual or entity to refrain from bidding.
- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over EA Engineering, Science, and Technology, Inc., PBC.

ARTICLE 5 – BASIS OF BID

5.1 Bidder will complete the Work in accordance with the Contract Documents for the following lump sum prices:

- A. The following lump sum bid prices form the project’s base contract price.

LUMP SUM BASE BID ITEMS

LUMP SUM BID ITEM NO.	LUMP SUM BASE BID PRICE IN WORDS	LUMP SUM BASE BID PRICE IN FIGURES
1.	MOBILIZATION/DEMOBILIZATION _____ (Lump Sum)	\$ _____
2.	TEMPORARY EXCAVATION SHUTDOWN PERIOD _____ (Lump Sum)	\$ _____
3.	TEMPORARY EROSION AND SEDIMENTATION CONTROLS _____ (Lump Sum)	\$ _____
4.	SITE CLEARING _____ (Lump Sum)	\$ _____
5.	HERBICIDE APPLICATION _____ (Lump Sum)	\$ _____
6.	CONTROL OF WATER _____ (Lump Sum)	\$ _____

7.	<i>PHRAGMITES AUSTRALIS</i> EXCAVATION	\$ _____
	(Lump Sum)	
8.	SITE RESTORATION	\$ _____
	(Lump Sum)	
9.	ALLOWANCES	
	Thirty Thousand and 00/100 _____	\$ 30,000
	(Lump Sum)	

UNIT PRICE BID ITEMS

UNIT PRICE BID ITEM NO.	QUANTITY	UNIT PRICE BASE BID PRICE IN WORDS	UNIT PRICE BASE BID PRICE IN FIGURES
10	5,390	<i>PHRAGMITES AUSTRALIS</i> TRANSPORTATION AND DISPOSAL (BASE)	
	(Unit Price Per Ton)		\$ _____
11	6	FRAC TANK	
	(Unit Price Per Week)		\$ _____

TOTAL BASE BID PRICE FOR ITEMS 1 THROUGH 11:

\$ _____ (Amount in Figures)

_____ (Amount in Words)

- A. The following add/deduct unit bid prices are for add/deduct purposes only in variance from the stated estimated quantities, the costs for which shall be included in Lump Sum Bid Item 7 – *Phragmites Australis* Excavation, as noted above.

1. Payment under add/deduct unit bid items listed below would only be made for the quantity of work completed and accepted in variance to the indicated quantities, respectively.
2. Any such work in variance to the respective base quantities will only be approved and accepted by the Engineer under written authorization of respective variance quantities prior to completion of the work items. Actual quantities will be measured and verified in the field by the Engineer. As such, respective base quantities shown below are for bidder's reference in preparing the lump sum price for Sum Bid Item 6 – *Phragmites Australis* Excavation, as noted above.

ADD / DEDUCT UNIT BID ITEMS

ADD/ DEDUCT UNIT BID ITEM NO.	BASE QUANTITY IN LUMP SUM BID ITEM NO. 7	ADD/DEDUCT UNIT BID PRICE IN WORDS	ADD/DEDUCT UNIT BID PRICE IN FIGURES
AD-7A.	5,390	PHRAGMITES EXCAVATION	
		<hr style="width: 50%; margin: 0 auto;"/> (Unit Price per Ton)	<hr style="width: 50%; margin: 0 auto;"/> \$

- B. The following unit price alternate bid price will be added to the project's base contract price only if sediment is not allowed to be disposed of at RIRRC.

ALTERNATE BID ITEMS

BID ITEM NO.	BID PRICE IN WORDS	BID PRICE IN FIGURES
ALT-1	PHRAGMITES AUSTRALIS TRANSPORTATION AND DISPOSAL (TURNKEY OR SIMILAR)	
	_____	\$ _____
	(Unit Price per Ton)	
ALT-2	PHRAGMITES AUSTRALIS TRANSPORTATION AND DISPOSAL (HAZARDOUS)	
	_____	\$ _____
	(Unit Price per Ton)	

ARTICLE 6 – TIME OF COMPLETION

6.1 Bidder agrees that the Work will be substantially complete within approximately 80 calendar days after the date when the Contract Times commence to run, or by 31 October 2022, whichever occurs sooner, and no in-water work shall occur after this 31 October 2022.

Substantial completion for in-water work shall be no later than October 22, 2022 and final completion for in-water work no later than October 31, 2022 (not including the vegetation establishment period). Timing is governed by outside funding sources that are not flexible. Failure to achieve these deadlines may result in the loss of funds and additional costs incurred by the Contractor so time is of the essence. By submitting a bid for this project, you agree to the project schedule time requirements and acknowledge failure to meet the deadlines may result in out of pocket expenses fully incurred by the Contractor.

Substantial completion shall include, but not be limited to, herbicide application, excavation of *Phragmites australis*, its root wad, and adhered sediment, the legal transportation and disposal of waste from the Site, removal of soil erosion and sediment control devices from the Site, removal of all temporary cofferdam(s), and site restoration as indicated on the Contract Drawings.

ARTICLE 7 – DEFINED TERMS

7.1 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders.

ARTICLE 8 – BID SUBMITTAL

8.1 This Bid submitted by:

If Bidder is:

AN INDIVIDUAL

Name (typed or printed): _____

By: _____

(SEAL)

(Individual's signature)

Doing business as: _____

Business address: _____

Phone No.: _____ Fax No.: _____

A PARTNERSHIP

Partnership Name: _____

(SEAL)

By: _____

(Signature of general partner – attach evidence of authority to sign)

Name (typed or printed): _____

Business address: _____

Phone No.: _____ Fax No.: _____

A CORPORATION

Corporation Name: _____

(SEAL)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability): _____

By: _____

(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(CORPORATE SEAL)

Attest _____
(Signature of Corporate Secretary)

Business address: _____

Phone No.: _____ Fax No.: _____

Date of Qualification to do business is _____.

A JOINT VENTURE

Joint Venturer Name: _____

(SEAL)

By: _____
(Signature of joint venture partner – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Business address: _____

Phone No.: _____ Fax No.: _____

Joint Venturer Name: _____

(SEAL)

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

Name (typed or printed): _____

Title: _____

Business address: _____

Phone No.: _____ Fax No.: _____

Phone and Fax Number, and Address for receipt of official communications:

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

SUBMITTED on _____, 20____.
State Contractor License No. _____

QUALIFICATIONS of BIDDER FORM

Bidder's Name: _____

Each Bidder is required to submit information that exemplifies their qualifications to successfully implement the scope of work required by the Contract Documents. Bids submitted without demonstration of the minimum required project experience and accompanying required descriptions thereof, will not be accepted. At a minimum, the information submitted shall include information requested on the forms below. Attach additional sheets if necessary.

Previous Experience Similar to this Bid

Provide written descriptions of at least 3 and no more than 10 previous riverbank or wetland restoration projects, including diversion of river flows and associated control of water and similar dollar value. Project descriptions shall include the following (attach additional sheets if necessary):

1. Project Name: _____
Project Location: _____
Brief Scope of Work: _____

Date Completed: _____
Approximate Dollar Value: _____
Owner's Representative: _____
Owner's Telephone: _____

2. Project Name: _____
Project Location: _____
Brief Scope of Work: _____

Date Completed: _____
Approximate Dollar Value: _____
Owner's Representative: _____
Owner's Telephone: _____

3. Project Name: _____
Project Location: _____
Brief Scope of Work: _____

Date Completed: _____
Approximate Dollar Value: _____
Owner's Representative: _____
Owner's Telephone: _____

4. Project Name: _____
Project Location: _____
Brief Scope of Work: _____

Date Completed: _____
Approximate Dollar Value: _____
Owner's Representative: _____
Owner's Telephone: _____

5. Project Name: _____
Project Location: _____
Brief Scope of Work: _____

Date Completed: _____
Approximate Dollar Value: _____
Owner's Representative: _____
Owner's Telephone: _____

List of Subcontractors

1. Name: _____
Address: _____
Contact Person: _____ Phone: _____
Work Efforts by Subcontractor for this Bid: _____

2. Name: _____
Address: _____
Contact Person: _____ Phone: _____
Work Efforts by Subcontractor for this Bid: _____

3. Name: _____
Address: _____
Contact Person: _____ Phone: _____
Work Efforts by Subcontractor for this Bid: _____

2. Name: _____
Address: _____
Contact Person: _____ Phone: _____
Work Efforts by Subcontractor for this Bid: _____

Bank Reference:

Name: _____
Address: _____
Contact: _____
Phone: _____

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

Prepared by



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

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

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

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

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: _ herbicide application, excavation, removal/disposal of Phragmites australis, and restoration of the site as indicated in the Contract Documents █

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by EA Engineering, Science, and Technology, Inc., PBC
3.02 The Owner has retained EA Engineering, Science and Technology, Inc., PBC (“Engineer”) 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.

NOTE(S) TO USER:

If an entity or individual other than the design engineer will serve as Owner’s representative during construction, then make appropriate revisions and additions to this Agreement, the General Conditions, the Supplementary Conditions, and other Contract Documents regarding the construction-phase roles and duties of the design engineer and such other entity or individual.

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.

NOTE(S) TO USER:

1. Select one of the two alternative Paragraphs 4.02 below, and delete the other. The first uses dates for the time of completion; the second uses number of days.

2. *If Owner elects to predetermine fixed dates or fixed number of days for completion of the Work, such dates or number of days should be inserted in the appropriate Paragraph 4.02 below prior to the bidding or other contractor selection process. If the time for completion will be determined through negotiation or a bidding process that allows bidders to specify the time for completion, then leave the blanks below open until the Contract is finalized (e.g., until after the Successful Bidder has been determined and its proposed completion time accepted).*

4.02 *Contract Times: Dates*

- A. The Work will be substantially completed on or before 22 October, 2020, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before 31 October 2020.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. 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):
 1. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently, how.

4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), 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 the amounts that follow, subject to adjustment under the Contract:
 - A. For all Work other than Unit Price Work, a lump sum of: \$.

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

- B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) \$.
- D. For all Work, at the prices stated in Contractor’s Bid, attached hereto as an exhibit.

NOTE(S) TO USER:

1. *If adjustment prices for variations from stipulated Base Bid or other baseline quantities have been agreed to, insert appropriate provisions.*
2. *Depending upon the particular project’s pricing structure, use 5.01.A alone; 5.01.A, 5.01.B, and 5.01.C together; 5.01.B alone; or 5.01.D alone, deleting those not used and renumbering accordingly. If 5.01.D is used, Contractor’s Bid is attached as an exhibit and listed as a Contract Document in Article 9 below.*

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 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 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that

such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to [REDACTED] percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less [REDACTED] percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of [REDACTED] percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, 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 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 adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no 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.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to █, inclusive).
 - 2. Performance bond (pages █ to █, inclusive).
 - 3. Payment bond (pages █ to █, inclusive).
 - 4. Other bonds.
 - a. █ (pages █ to █, inclusive).
 - 5. General Conditions (pages █ to █, inclusive).
 - 6. Supplementary Conditions (pages █ to █, inclusive).
 - 7. Specifications as listed in the table of contents of the Project Manual.
 - 8. Drawings (not attached but incorporated by reference) consisting of █ sheets with each sheet bearing the following general title: █ [or] the Drawings listed on the attached sheet index.
 - 9. Addenda (numbers █ to █, inclusive).
 - 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages █ to █, inclusive).
 - 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.

- 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 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. Unless expressly agreed to elsewhere in the Contract, 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, money that may become due and money that is 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 successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

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

10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

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

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

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

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____

(where applicable)

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

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

SECTION 00800 - SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C-700, 2018 Edition) and other provisions of the Contract Documents as indicated below. All provisions which 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.

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Amend Paragraph 1.01.A.33 to read as follows:

“33. *Resident Project Representative* – The authorized representative of Engineer or Owner who may be assigned to the Site or any part thereof.”

ARTICLE 2 - PRELIMINARY MATTERS

2.02 *Copies of Documents*

A. Delete Paragraph 2.02.A in its entirety and insert the following in its place:

“A. Owner shall furnish to Contractor up to **2** printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.”

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.03 *Reporting and Resolving Discrepancies*

A. Add the following new paragraph immediately after Paragraph 3.03.B.1.b.

“2. In resolving conflicts, errors, and discrepancies, the documents shall be given precedence in the following order: Agreement, Specifications, and Drawings. Within the specifications the order of precedence shall be as follows: Supplementary Conditions, General Conditions, and Technical Provisions. Figure dimensions on Drawings shall govern over scaled dimensions, and detailed Drawings shall govern over general Drawings.”

ARTICLE 6 - BONDS AND INSURANCE

6.03 *Contractor's Insurance*

A. Add the following new Paragraphs immediately after Paragraph 6.03.B:

“6. By requiring such insurance and insurance limits herein, Owner does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor’s liability under the indemnities granted to Owner in the Contract Documents.”

B. Add the following new Paragraphs immediately after Paragraph 6.03.C.5

“D. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Worker’s Compensation, and related coverages under Paragraphs 6.04.A of the General Conditions:
 - a. State: Statutory
 - b. Applicable Federal (e.g., Longshoreman’s): Statutory
 - c. Employer’s Liability: \$100,000 Each Accident
\$500,000 Disease-Policy Limit
\$100,000 Disease-Each Employee
2. Contractor’s General Liability under Paragraphs 6.03.A through C of the General Conditions which shall include Contractors Protective, Products, and Completed Operations and Contractual Liability (c.u., collapse and underground coverage to be included):
 - a. General Aggregate: \$2,000,000
 - b. Products and Completed Operations Aggregate \$2,000,000
 - c. Personal and Advertising Injury \$1,000,000
 - d. Each Occurrence Limit: \$1,000,000
 - e. Fire Damage Limit: \$50,000
 - f. Medical Payments: \$5,000
3. Automobile Liability under Paragraph 6.03.C of the General Conditions:
 - a. Combined Single Limit for Bodily Injury and Property Damage: \$1,000,000
4. Owner’s Protective Liability coverage required by Paragraph 6.02.G of the General Conditions shall provide coverage for not less than the following amounts:
 - a. Each occurrence: \$1,000,000
 - b. Aggregate: \$2,000,000

5. Builder's Risk and Installation Floater Coverage: Limit equal to the total insurable value of all materials and equipment to be built and/or installed.
6. Insurance Carrier Requirements: Financial Performance Rating "A" by A.M. Best Company.
7. Additional Insured: The City of Warwick, Rhode Island, and the Rhode Island Department of Transportation"

6.04 *Builder's Risk and Other Property Insurance*

A. Delete Paragraph 6.04.A in its entirety and insert the following in its place:

"A. Contractor shall purchase and maintain Builder's Risk insurance upon the Work at the Site in the amount of the full replacement cost thereof.

1. The insurance shall:
 - a. include the interests of Owner, Contractor, Subcontractors, Engineer and any other individuals or entities identified herein, and the officers, directors, partners, employees, agents, and other 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;
 - b. in addition to the individuals and entities specified, include as additional insureds, the following:

The City of Warwick, Rhode Island and Rhode Island Department of Transportation.

- c. 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 and 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;
 - d. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

- e. 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;
 - f. allow for partial utilization of the Work by Owner;
 - g. include testing and startup; and
 - h. 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.
2. Contractor shall be responsible for any deductible or self-insured retention.”

ARTICLE 7 - CONTRACTOR’S RESPONSIBILITIES

7.05 “Or-Equals”

A. Add the following new paragraph after 7.05.B.

- “1. “Or-Equal” Evaluation. Engineer will record time required by Engineer in evaluating “or-equal” proposed or submitted by Contractor pursuant to paragraph 7.05.A.1. Whether or not Engineer approves an “or-equal” item so proposed or submitted by Contractor, Contractor shall reimburse Owner for charges of Engineer and Engineer’s Consultants for evaluating each such proposed “or-equal.” Submittal of “or-equal” request shall be construed as evidence of Contractor’s agreement to pay such charges, with no added cost to Owner.”
2. Substitution Evaluation. Engineer will record time required by Engineer and Engineer’s Consultants in evaluating substitute proposed or submitted by Contractor pursuant to Paragraphs 7.06.A.2 and 7.06.B and in making changes in the Contract Documents (or in the provisions of any other direct contact with Owner for work on the Project) occasioned thereby. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for charges of Engineer and Engineer’s Consultants for evaluating each such proposed substitute.
3. Charges shall be \$175.00 for each staff-hour spent by Engineer and Engineer’s Consultants for evaluating each “or equal” or substitute.”

7.07 *Concerning Subcontractors, Suppliers, and Others*

A. After the last sentence of Paragraph 7.07.A insert the following:

“Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
2. shall create any obligation on the part of Owner or Engineer. Owner or Engineer may furnish to any such Subcontractor, Supplier, or other individual or entity, to the extent practicable, information about amounts paid to Contractor on account of work performed for Contractor by a particular Subcontractor, Supplier, or other individual or entity.”

7.10 *Taxes*

A. Add the following new paragraph immediately after Paragraph 7.10.A:

“B. The Owner is exempt from State Sales Tax.”

7.12 *Record Documents*

A. Add the following new paragraph immediately after Paragraph 7.12.A:

“B. Progress payments will not be made to Contractor unless Record Document requirements are met.”

ARTICLE 8 – OTHER WORK

8.03 *Legal Relationships*

A. Add the following new paragraph immediately after Paragraph 8.03.C and renumber following paragraphs:

“D. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, Engineer’s Consultants, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor

against Owner, Contractor, Engineer, Engineer's Consultants, or the construction coordinator to the extent said claim is based on or arises out of the Contractor's performance of the Work. Should a separate contractor cause damage to the Work or property of Contractor or should the performance of work by any separate contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, Engineer's Consultants, or the construction coordinator or permit any action against any of them to be maintained or continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, Engineer's Consultants or the construction coordinator on account of any such damage or Claim."

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.11 *Evidence of Financial Arrangements*

A. Add the following new paragraph immediately after Paragraph 9.11.A:

"B. On request of Contractor prior to execution of any Change Order involving a significant increase in the Contract Price, Owner shall furnish to Contractor reasonable evidence that adequate financial arrangements have been made by Owner to enable Owner to fulfill the increased financial obligations to be undertaken by Owner as a result of such Change Order."

ARTICLE 10 - ENGINEER'S STATUS DURING CONSTRUCTION

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Add the following new paragraph immediately after Paragraph 10.07.E:

"F. Resident Project Representative shall be authorized to observe all or any part of the Work, and to observe the preparation or manufacture of materials to be used. In case of any dispute arising between Contractor and Resident Project Representative as to materials furnished or the acceptability of the Work, the Resident Project Representative shall have the authority to disapprove or reject Work which Resident Project Representative believes to be defective, or that Resident Project Representative believes will not produce a completed Project that conforms to the Contract Documents. Resident Project Representative shall not be authorized to stop or suspend Work on the Project. Resident Project Representative shall not be authorized to revoke, alter, enlarge, relax or release any requirements of these Specifications, nor to approve or to accept any portion of the Work, nor issue instructions contrary to the Drawings and Specifications. Resident Project Representative shall in no case act as foreman or perform other duties for Contractor, or interfere with the management of the Work by Contractor. Any advice given by Resident Project Representative given to Contractor shall in no circumstances be construed as binding Owner, Engineer, or

Engineer’s Consultants in any way or releasing Contractor from fulfillment of the terms of the Agreement.”

ARTICLE 13 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

A. Add the words “project managers” after the words “general managers,” in Paragraph 13.01.C.1.

B. *Cost of the Work*

Add the following new paragraphs immediately after Paragraph 13.01.B.5.c.3):

“4) For any Contractor-owned machinery, trucks or equipment, or equipment authorized by the Engineer for use the Engineer will allow the Contractor will be allowed a rate that does not exceed the rental rate set forth in the current edition of the “Rental Rate Blue Book”, as published by K III Directory Corporation of San Jose, California (referred to herein as the rental Rate Blue Book). All Rate Adjustment Tables and amendments will be applied. If the Contractor submits a lower rate, it will be accepted by the Engineer.

i. Should the proper completion of the Work require equipment of a type not covered by the above-mentioned schedule, the Engineer will allow the Contractor a reasonable rental rate based on that prevailing in the area of the Work and shall be incorporated in the Contract before the Work is begun. However, the Contractor must disclose to the Engineer the specific sources of any rates it proposes in this connection.

ii. For machinery, trucks or equipment, which the Contractor must obtain by rental, the Contractor shall inform the Engineer of its need to rent the equipment and of the rental rate for that equipment prior to using it on the Work. If that use and rate are acceptable to the Engineer, the Contractor shall be paid the actual rental for the equipment, provided that rate does not exceed the rental rate set forth in the Rental Rate Blue Book, including all Rate Adjustment Tables and amendments. The Contractor shall provide the Engineer with a copy of the paid receipt for the rental expense incurred.

iii. The estimated operating cost per hour will apply only to the actual time the equipment is operating. Operators will be paid as stated hereinbefore for labor except for certain trucks listed in the Rental Rate Blue Book as to which trucks said Rental Rate Blue Book indicates that the cost of the operators is included in the pertinent rates.

iv. For equipment which is already on the Project, OWNER will pay the applicable hourly rate for the actual time the equipment is assigned to the Cost-Plus Work. The period of assignment for each piece of equipment shall start when the equipment commences to be used for the Work ordered by the Engineer, and shall continue until the time which the Engineer designates for termination of that work.

v. For equipment which has to be brought to the Project exclusively for use on Cost-Plus Work, Owner will pay all loading and unloading costs and all transportation costs to and from the Project Site; provided, however, the cost of return transportation from the Project Site shall not exceed that of moving the equipment to that Site. If such a piece of equipment is self-propelled, and is driven to the Project Site under its own power, then the Owner will pay only operating costs and labor costs for the transportation to and from the Project Site. The Owner will not pay for loading, unloading, and transportation costs, however, if the equipment is used for other than cost-plus work while on the Project Site, with the exceptions stated herein.

vi. The Owner will pay the applicable rental rate for a minimum of 8 hours in each 24 hour day, excluding Saturdays, Sundays, and legal holidays during which the Contractor does no work. The daily usage period shall start at the time the Contractor begins to use the equipment for cost-plus work and when the equipment is released by the Engineer from use for such work. The Owner will make payment to the Contractor at the applicable hourly rate for the actual time the equipment is being used for cost-plus work in excess of the minimum 8 hours per day. If, however, certain pieces of equipment remain idle during any day or portion of a day within such a rental period, the Owner will pay for those periods at 50 percent of the applicable rate (exclusive of operating costs) set forth in the Rental Rate Blue Book.

vii. For rented equipment not owned by the Contractor or a subsidiary, affiliate or parent company (no matter how far up the chain of ownership) of the Contractor, the following maximum rates shall apply:

a. The daily rate per hour shall apply when the equipment is specifically assigned to the Work by the Engineer for a period of 7 consecutive calendar days or less.

b. The weekly rate per hour shall apply when the assigned time exceeds 7 consecutive calendar days but does not exceed 21 consecutive calendar days.

c. The monthly rate per hour shall apply when the assigned time exceeds 21 consecutive calendar days.

viii. The applicable daily, weekly, or monthly rate will be determined at the expiration of 21 calendar days or upon release of the equipment, whichever occurs first. Interruptions of the rental period, when equipment is used on other than

assigned cost-plus work, will not constitute a warrant for a rental rate applicable to shorter periods occasioned by such interruptions.

ix. For equipment owned by the Contractor or a subsidiary, affiliate, or parent company (no matter how far up the chain of ownership) of the Contractor, the maximum hourly rate to be used shall be the monthly rate as set forth in the current edition of the Rental Rate Blue Book, including all Rate Adjustment Tables and amendments divided by 176 (176 working hours per month).

x. All equipment used must, in the judgment of the Engineer, be in good working condition and suitable for the purpose intended; and the Engineer reserves the right to determine the size and number of units of equipment to be used. The manufacturer's ratings shall be the basis for all classifications. Trucks will be classified by cubic yard capacity to be determined by water level volume of the body as measured from the length, width, and height, without sideboards.

11. No percentage will be added to the amounts charged for equipment rental, whether based on the Rental Rate Blue Book, including all Rate Adjustment Tables and amendments, or on the agreed-upon rental rates for equipment not covered in the aforesaid schedule.”

13.03 *Unit Price Work*

A. Delete Paragraph 13.03.E and subparagraphs in their entirety and insert the following in its place:

“ E. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:

1. if the total cost of a particular item of Unit Price Work amounts to **10** percent or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than **25** percent from the estimated quantity of such item indicated in the Agreement; and
2. if there is no corresponding adjustment with respect to any other item of Work; and
3. if Contractor believes that Contractor has incurred additional expense as a result thereof; or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, either Owner or Contractor may make a claim for an adjustment in the Contract Price in accordance with Article 10 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

E. Items that are noted on the Bid Form as “Indeterminate Quantity; Engineer's Estimate is solely for comparison of Bids” will not be considered in any claim.”

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR
ACCEPTANCE OF DEFECTIVE WORK

14.02 *Tests, Inspections, and Approvals*

A. Delete Paragraph 14.02.B and subparagraphs in their entirety and insert the following in its place:

“B. Contractor 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 as otherwise provided in the Contract Documents.”

ARTICLE 15 - PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION;
CORRECTION PERIOD

15.01 *Progress Payments*

A. Add the following language to the end of Paragraph 15.01.B.3:

“a. Contractor shall include with Application for Payment proof that all employee, subcontractor, and vendor obligations have been met from the previous Progress Payment. Contractor shall submit subcontractor and vendor release forms; and certified payroll reports which include labor classifications, pay rates, and fringe benefit rates for employees. The Certified Payrolls must be submitted on the Federal Certified Payroll Form (WH-347) with “live ink” original signatures. Submittal of payroll forms shall be consecutive covering all weeks from the 1st day on the job for each of the Subcontractors and Contractor even if no work was performed during the covered week (indicate as such on the form).”

END OF SECTION 007314

PERFORMANCE BOND

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

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

OWNER (*Name and Address*):

CONTRACT

Effective Date of Agreement:
Amount:
Description (*Name and Location*):

BOND

Bond Number:
Date (*Not earlier than Effective Date of Agreement*):
Amount:
Modifications to this Bond Form:

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

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal (Seal)

Surety's Name and Corporate Seal (Seal)

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

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

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

1. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.
2. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 2.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
 - 2.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
 - 2.3 Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract; or
 2. Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.
3. When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:
 - 3.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
 - 3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
 2. Deny liability in whole or in part and notify Owner citing reasons therefor.
4. If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.

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

- 5.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
- 5.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and
- 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.

6. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.

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

8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located, and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

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

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

11. Definitions.

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

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

Surety Agency or Broker:

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

PAYMENT BOND

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

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*):

CONTRACT

Effective Date of Agreement:

Amount:

Description (*Name and Location*):

BOND

Bond Number:

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

Amount:

Modifications to this Bond Form:

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

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal (Seal)

Surety's Name and Corporate Seal (Seal)

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: 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. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:
 - 6.1 Send an answer to that Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the

Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.

9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

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

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

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

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

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

15. Definitions

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

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

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

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

Surety Agency or Broker:

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*
 - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

- requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
 21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
29. *Notice to Proceed*—A written notice 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.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *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.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *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, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *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.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *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 of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, 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 a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *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; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - 1. does not conform to the Contract Documents;
 - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - 3. 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 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, means 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, means 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, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 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.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *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 the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will 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 the component parts of the Work.
 - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document 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.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will 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.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract 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, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer 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 part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); 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 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

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

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract 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 Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

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

4.03 *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.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 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 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, 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 Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing 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.

- 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 permanent improvements are to be made 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.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all 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 directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will 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 and adjacent areas 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 of 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 structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

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

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 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 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, 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 fall within any one or more of the categories described in Paragraph 5.04.A;
 - 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 Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
- a. Contractor knew of the existence of such condition at the time Contractor made a 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 otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. 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 Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

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

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
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 removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. 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, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. 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, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

- Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
 - F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
 - G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
 - H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
 - I. If either party does not purchase or maintain the insurance required of such party by the Contract, 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.
 - J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
 - K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is 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; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
 - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, 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 Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights 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 insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *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.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *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 maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. 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 will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *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, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will 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 must 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.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item 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 is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) 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) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

- A. *Contractor's Request; Governing Criteria:* Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

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

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. 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 the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *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.

7.11 *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. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

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

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. 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, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.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 at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. 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.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as 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.

7.15 *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 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 by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must 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 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall 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 7.16.C.
 3. 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. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. 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, comply with the requirements of 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, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.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 will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

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.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *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 is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, or improper modification, 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.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
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;
 6. The issuance of a notice of acceptability by Engineer;
 7. The end of the correction period established in Paragraph 15.08;
 8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (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 from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will 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.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, 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.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all 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 damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

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

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

- 9.05 *Lands and Easements; Reports, Tests, and Drawings*
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
 - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
 - C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 *Insurance*
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 *Change Orders*
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 *Inspections, Tests, and Approvals*
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 *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.
- 9.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.
- 9.11 *Evidence of Financial Arrangements*
- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).
- 9.12 *Safety Programs*
- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
 - B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *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.

10.02 *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 10.07. 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.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

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

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, 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, will 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 Contractor under Paragraph 15.06.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 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in 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;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
 - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes 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. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *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, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. 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, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will 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 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will 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 accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will 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, which 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 will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
 5. Other costs consisting of 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, 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.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), 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 include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will 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 communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

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

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general 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 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
- 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 5. 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.
- 6. Expenses incurred in preparing and advancing Claims.
- 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 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*: Contractor agrees that:
 - 1. 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
 - 2. 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 for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's 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 for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 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. Payments to Contractor for Unit Price Work will be based on actual quantities.
- 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. 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, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- 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, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then 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, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages 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 pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. 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, 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, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *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, then 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 will 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.

14.07 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 defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, 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, 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 incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. 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 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *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.
 - 2. 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 must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; 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 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

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

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. 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; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, 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, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *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 and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- 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. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work 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 15.03 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 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *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, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* 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 have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. 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. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *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 Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, 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. Contractor shall pay all 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). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. 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.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, 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.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *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 written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and 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);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, 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 complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.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 the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds 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.

- F. 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, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 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; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 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 16.03.
- 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, 7 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 are not intended to preclude Contractor from submitting a Change Proposal 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 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 2. agree with the other party to submit the dispute to another dispute resolution process; or
 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract 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.

18.03 *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. 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.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is 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.

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

DIVISION 1 – GENERAL REQUIREMENTS

SECTION 011000 – SUMMARY

PART 1 – GENERAL

1.1 SUMMARY

A. Section includes, but is not limited to, the following:

1. Contract description
2. Engineer's authority
3. Contractor's use of site
4. Work sequence
5. Work schedule
6. Order of precedence
7. Permits
8. Specification conventions
9. Herbicide application, excavation, removal/disposal of *Phragmites australis*, and restoration of the site
10. Construction inspection.

B. Related Sections:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions, general specifications, and technical specifications.

1.2 DEFINITIONS

A. Definitions of contractual or associated parties, referenced herein on the Contract Drawings and in the Specifications, are listed below:

1. Application for Payment—The form acceptable to Owner, 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.

2. Change Order—A document recommended by Owner, which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work.
3. Contact—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.
4. Contract Documents—Those items so designated in the Agreement. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
5. Contractor—A person, company, or organization who has contracted with the Owner and is directly responsible for performance of the Work referenced in the Specifications, Contract Drawings, or as included herein.
6. Drawings—That part of the Contract Documents prepared by Owner, which graphically shows the scope, extent, and character of Work to be performed by the Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
7. Engineer—Owner’s representative.
8. Owner—City of Warwick.
9. Property Owner— Rhode Island Department of Transportation (Property is Leased to Rhode Island Airport Corporation.)
10. Project—The total construction of which the Work to be performed under the Contract Document may be the whole, or a part.
11. Restoration Construction Area (RCA): Area affected by the physical construction activities where soil disturbances shall occur.
12. 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.
13. 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. Generally, the Site includes land within the RCA.
14. 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.

15. Subcontractor—A person, company, or organization who has contracted with the Contractor for the purpose of supplying services, materials, assemblies, or other items as required to perform the Work referenced in the Specifications, Contract Drawings, or as included herein.
16. Substantial Completion—The time at which the Work (or a specified portion thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified portion thereof) can be utilized for 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.
17. 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.

1.3 CONTRACT DESCRIPTION

- A. The "Work" of this contract is titled Buckeye Brook Restoration and is described in the Contract Documents including the Contract Drawings and Specifications and shall be referred to for detailed requirements of the Work involved.
 1. Project Location: 2000 Post Road, Plat 321, Lot 0004 Warwick, Rhode Island
 2. Project Sponsor: City of Warwick
 3. Property Owner: Rhode Island Department of Transportation.
- B. The "Work" generally includes, but is not limited to, the following: herbicide application, excavation, removal/disposal of *Phragmites australis*, and restoration of the site.
- C. The Work shall include in the base bid all necessary labor, work, and equipment for the herbicide application, excavation, removal/disposal of *Phragmites australis*, and restoration of the site as indicated in the Contract Documents.
- D. The contractor will be required to complete the herbicide application by 30 September 2022 and the remainder of Work by 31 October 2022.

1.4 ENGINEER'S AUTHORITY

- A. The Engineer does not have contractual authority between the Owner and Contractor.
- B. The Engineer will review submittals and make recommendations to Owner for approval, rejection, or approval as noted.
- C. The Engineer will observe Contractor's field activities and report activity to Owner.

1.5 CONTRACTOR'S USE OF SITE AND PREMISES

- A. Limit use of site and premises to areas shown on the Contract Drawings. Additional area may be available with prior approval of Property Owner and Engineer.
- B. Maximum limits of disturbance (RCA) are shown on the Contract Drawings. Contractor shall minimize areas of disturbance within the RCA to the maximum extent possible. Disturbance outside of the RCA is not permitted.

1.6 WORK SEQUENCE

- A. Construct Work in phases to minimize construction schedule. Contractor may propose an alternate work sequence subject to Engineer and regulatory approval.

1.7 WORK SCHEDULE

- A. The Contractor shall perform all work on the site Monday to Friday between the hours of 7:30 a.m. and 7:30 p.m. The Contractor may perform work at times other than listed above with permission of the Engineer. The Contractor shall notify the Engineer a minimum of 48 hours in advance prior to performing any work outside the times listed.

1.8 ORDER OF PRECEDENCE

- A. In the event of a conflict in the execution of work, the following order of precedence shall apply:
 - 1. Contract Drawing Plan Views
 - 2. Contract Drawing Details
 - 3. Specifications.

1.9 PERMITS

- A. Owner will provide the following documents/permits (attached as Exhibit A):

1. Rhode Island Department of Environmental Management Office of Water Resources/Freshwater Wetlands Program - Freshwater Wetlands Permit:
 - a. Includes RIPDES Stormwater Construction Permit and Water Quality Certification:
 - i. Includes Soil Erosion and Sedimentation Control Plan.
 - b. Includes U.S. Army Corps of Engineers Section 404 authorization.
 2. Conditions of Federal Aviation Administration Determination of No Hazard to Air Navigation for Temporary Structure.
- B. Contractor shall obtain any additional permits necessary for construction of Work.
- C. Contractor shall comply with and execute requirements in all permits.
- D. It is the Contractor's responsibility to get all required inspections by the state, county, or city, including, but not limited to:
- a. Rhode Island Department of Environmental Management Permit to Control Aquatic Nuisance Species Using Pesticides.

1.10 PROPERTY ACCESS

- A. Owner will provide the following access agreements (attached as Exhibit B):
1. Temporary Access Agreement.

1.11 SPECIFICATIONS CONVENTIONS

- A. These Specifications are written in imperative mood and streamlined form. This imperative language is directed to the Contractor unless specifically noted otherwise. The words "shall be" are included by inference where a colon (:) is used within sentences or phrases.

PART 2 – PRODUCTS

Not Used.

PART 3 – EXECUTION

3.1 HERBICIDE APPLICATION, EXCAVATION, REMOVAL/DISPOSAL OF *PHRAGMITES AUSTRALIS*, AND RESTORATION OF THE SITE

- A. Contractor shall provide all labor, supervision, equipment, tools, testing devices, materials and material handling, security and accountability, and each and every item of expense necessary for the herbicide application, excavation, removal/disposal of *Phragmites australis*, and restoration of the site (regardless of weather conditions). The Contractor shall provide all required submittals. No extension of the schedule will be allowed.

3.2 CONSTRUCTION INSPECTION

- A. Contractor's Work shall be monitored periodically by the Engineer:

1. The Engineer does not anticipate that a full-time inspector will be assigned to this Work. The Engineer will inspect the Work at various times throughout the course of construction. In addition to the random Engineer inspections, the Contractor shall observe construction "hold points" to permit the Engineer to inspect the Work of certain key elements of construction. The scope of each hold point inspection shall be discussed with the Contractor prior to the request for inspection. Hold point inspections will permit the Engineer to inspect the Work of certain key elements of construction, as follows:

- a. Construction of access road(s) and temporary storage areas
- b. Construction stakeout
- c. Installation of erosion and sediment control structures
- d. Installation of Phragmites Dewatering Area and frac tank(s)
- e. Installation of temporary stream bypass piping and associated cofferdam diversion structures
- f. Soil sampling on the first day of excavation
- g. Final inspection (punch list development)
- h. Completion verification inspection.

- B. Contractor shall keep the Engineer informed concerning the work status and projected work schedule through regular communications. The Engineer shall be notified by the Contractor in writing 2 to 3 calendar days prior to reaching each hold point previously designated by the Contractor. The Contractor shall reconfirm the inspection date 24 hours (not including Saturday, Sunday, and legal holidays) before the scheduled hold point.

- C. Rescheduling of a hold point, and cancellation shall also be given in writing by the Contractor. The Contractor shall not cover any work related to the designated hold point until one of the following occurs:
 - 1. Contractor is authorized in writing to proceed after inspection by the Engineer.
 - 2. The hold point inspection is rescheduled by the Engineer to a later construction event.
 - 3. The hold point inspection is waived in writing by the Engineer.
- B. Contractor shall submit a written request for Final Inspection 7 calendar days in advance of the planned completion date. After review of the Notice of Completion, the Engineer may reject the Notice for cause or schedule the Final Inspection. The Engineer will perform its Final Inspection on all phases of the Work and develop a comprehensive punch list, which will be provided to the Contractor.
- C. The Completion Verification Inspection will be scheduled when the punch list items discovered during the Final Inspection have been corrected. The Engineer may add new items to the punch list at this inspection.
- D. Contractor is advised that the Engineer will not accept the Work until the Engineer determines substantial completion has been achieved. Therefore, to minimize its risk of assessment of Liquidated Damages, the Contractor should schedule its Work to be substantially complete in time to allow Final Inspection, punch list work, and Completion Verification Inspection to occur in advance of the Contract Completion Date.
- E. Nothing in this Section shall be construed to limit the Engineer's or Owner's right to inspect the Work at any time.

END OF SECTION 011000

SECTION 012000 – PRICE AND PAYMENT PROCEDURES

PART 1 – GENERAL

1.1 SCOPE

- A. This Section describes the measurement and payment for the Work to be completed under each item in the Bid Form. The descriptions may not reference all of the associated Work. Work specified but not designated as a separate Bid item is considered incidental to all Bid items. The Contractor shall review all work associated with each Work item and shall have no claim for being unfamiliar with the requirements of these specifications.

1.2 DEFINITIONS

- A. Payment Items: the Owner's distribution of the Contract Sum through listed work items, as outlined in this Section, reviewed, and accepted by the Engineer.
 - 1. Each item is specified to include a defined scope of services. The payment items have been established for the Owner's convenience only, and not all materials, labor, equipment, or services of a payment item are guaranteed to be listed or specified herein.
 - 2. Include costs associated with items of work required to complete the defined scope of services within the appropriately specified payment item.
 - 3. Payment items include all necessary products, materials, equipment, plus costs for delivery, handling, storage, installation, all applicable fees and taxes (where applicable), administrative over-site, tools, labor, incidentals, research and testing, overhead, and profit.
 - 4. All work and associated costs described in the Contract Documents shall be included in the payment items described herein.
 - 5. The Contractor shall include, in the Total Lump Sum Base Bid, the cost associated with securing a performance bond and a labor and material payment bond in the amount of 100 percent of the Total Lump Sum Base Bid Price.
 - 6. The price so-stated on the bid form for the payment items below, constitutes full and complete compensation for all products, materials, equipment, tools labor, overhead and profit, and incidentals required to finish the Work and accepted by the Engineer.

1.3 DESCRIPTION OF BASE BID LUMP SUM PRICE PAY ITEMS

- A. The payment items listed below include references to Specification Sections of work to be completed under the payment item; however, not all Sections of related work are guaranteed to be listed.
- B. Bid Price Item No. 1 – Mobilization/Demobilization:
1. Work associated with this item will be paid for at the stated price including respective portions of work under all specifications necessary to initiate, sustain and conclude Contractor's activities at the project site:
 - a. Includes, but is not limited to, all labor, equipment, tools, and materials necessary to complete the work associated with the mobilization and demobilization of temporary utilities, materials, personnel, and equipment to and from the project site. Also includes restoring all incidental areas inside or outside the project limits disturbed by Contractor's activities or traffic control, by seeding and establishing satisfactory vegetation to existing condition or better. Mobilization shall be considered complete when the Contractor has commenced the work onsite. Demobilization shall be considered to be complete when the Contractor has achieved final completion of the Work and removed all equipment and materials from the site.
 - b. This work also includes Contractor's general requirements for completing the Work, including temporary measures not specified elsewhere and miscellaneous costs associated with the Work including construction stakeout, survey, and as-built drawings.
 - c. This work shall also include all costs required for the installation of temporary access bridges as shown on the contract drawings including, but not limited to, material, construction, relocation, deconstruction, and demobilization costs.
 2. Payment: Lump Sum.
 3. Measurement: This item will not be measured for payment. This bid item shall be paid at 20 percent upon the complete mobilization/demobilization to the site for herbicide application, and 30 percent upon the complete mobilization to the site for Phragmites australis Excavation. The remaining 50 percent payment will be made upon the complete demobilization from the site. Billing for this Work will be permitted upon the completion, inspection, and

acceptance (by the Engineer) for this Work. Progress billing will not be allowed.

C. Bid Price Item No. 2 – Temporary Excavation Shutdown Period

1. Work associated with this item will be paid for at the stated price including, but not limited to, work under the following:
 - a. All or portions of Division 1 specifications, as applicable
 - b. Section 312316 – Excavation
 - c. Laboratory analysis will be required on material stockpiled from the first day of excavation with laboratory results received prior to the commencement of additional excavation as detailed in specification 312316 – Excavation. As such, this bid item is intended to include costs for contractor work stoppages up to, but not exceeding three working days. Payment for this bid item shall not include any costs incurred by the contractor for work that is included in any other bid items.
2. Payment: Lump Sum.
3. Measurement: This item will not be measured for payment. Billing for this Work will be permitted upon the completion, inspection and acceptance (by the Engineer) for this Work. Progress billing will not be allowed.

D. Bid Price Item No. 3 – Temporary Erosion and Sedimentation Controls:

1. Work associated with this item will be paid for at the stated price including, but not limited to, work under the following:
 - a. Section 015700 – Temporary Erosion and Sediment Control
 - b. Includes, but is not limited to, installing, maintaining, and removing all temporary erosion and sedimentation control measures, and practices for completion of all Work associated with the project. Includes construction access, staging areas, and installing/maintaining controls or establishing temporary vegetation in areas to remain dormant for extended periods as indicated on the Contract Drawings.
2. Payment: Lump Sum.
3. Measurement: This item will not be measured for payment. This bid item shall be paid at 40 percent upon the successful installation of all temporary erosion and sedimentation controls. The remaining 60 percent payment

will be made upon the complete removal of these controls from the site. Proper maintenance of controls is expected throughout the Project. Billing for this Work will be permitted upon the completion, inspection and acceptance (by the Engineer) for this Work. Progress billing will not be allowed.

E. Bid Price Item No. 4 – Site Clearing

1. Work associated with this item will be paid for at the stated price including, but not limited to, Work under the following:

a. Section 311000 – Site Clearing

b. Includes, but is not limited to, protecting existing trees and vegetation, utilities, and other items to remain, clearing and grubbing, selective clearing and/or trimming of trees and vegetation as indicated on Contract Drawings. Item also includes tree and stump removal, selective clearing, grubbing, removal of tree limbs as required to complete Work. Includes offsite disposal of tree limbs, trees, and stumps.

2. Payment: Lump Sum.

3. Measurement: Payment is based on total completion of this bid item. Billing for this Work will be permitted upon the completion, inspection and acceptance (by the Engineer) for this Work. Progress billing will not be allowed.

F. Bid Price Item No. 5 – Herbicide Application:

1. Work associated with this item will be paid for at the stated price including, but not limited to, Work under the following:

a. Section 317200 – Herbicide Application

b. Includes, but is not limited to, mark-out of the area to receive herbicide application and the herbicide application itself.

2. Payment: Lump Sum.

3. Measurement: Payment is based on total completion of this bid item. Billing for this Work will be permitted upon the completion, inspection and acceptance (by the Engineer) for this Work. Progress billing will not be allowed.

G. Bid Price Item No. 6 – Control of Water:

1. Work associated with this item will be paid for at the stated price including, but not limited to, Work under the following:
 - a. Section 312319 – Control of Water
 - b. Includes, but is not limited to, temporary water control measures including cofferdams and water bypass/diversion conveyances (Water Control System) for normal water control including design and sequencing, construction, installation, maintenance, and removal of temporary protective facilities and appurtenances required to convey surface water beyond or around project work areas. Temporary measures and appurtenances may include, but are not limited to, control of surface water, cofferdams, and pipes. Also includes safe conveyance of water and flood flows and protection of existing features, constructed improvements, work-in-progress, and downstream areas during abnormally high stormwater runoff events.
2. Payment: Lump Sum.
3. Measurement: Payment is based on total percent completion of this bid item. Billing for this Work will be permitted upon the completion, inspection, and acceptance (by the Engineer) for this Work.

H. Bid Price Item No. 7 – *Phragmites australis* Excavation

1. Work associated with this item will be paid for at the stated price including, but not limited to, Work under the following:
 - a. Section 312316 – Excavation
 - b. Includes, but is not limited to, excavation, dewatering, disposal of dewatered fraction at Warwick Sewer Authority (excluding the cost of frac tanks), and stockpiling as required for *Phragmites australis* removal; this Work shall consist of excavation of *Phragmites australis* and its root wad and adhered sediment as specified in the Contract Drawings.
2. Payment – Lump Sum.
3. Measurement: Payment is based on total percent completion of this bid item. Billing for this Work will be permitted upon the completion, inspection, and acceptance (by the Engineer) for this Work.

I. Bid Price Item No. 8 – Site Restoration

1. Work associated with this item will be paid for under the allowance stated including, but not limited to, Work under the following:
 - a. All or portions of Division 1 specifications, as applicable
 - b. Section 329219 – Site Restoration
 - c. Includes, but is not limited to, replacing onsite stockpiled topsoil, furnishing, storing, protecting and installing plantings where indicated on the drawings.
 - d. Includes permanent seeding and vegetative restoration of the project site. Includes all costs associated with maintenance, reseeding, and replanting necessary to achieve vegetation success criteria establishing in the technical specifications.
2. Payment – Lump Sum.
3. Measurement: Payment is based on total completion of this bid item. Billing for this Work will be permitted upon the completion, inspection and acceptance (by the Engineer) for this Work. Progress billing will not be allowed.

I. Bid Price Item No. 9 – Allowances

1. In addition to the "Lump Sum Base Bid Items" all bidding Contractors are required to carry specified dollar allowances to cover items that could not be adequately detailed, quantified, or require input from the Contractor to determine the most responsible, reasonable, and cost effective method of installation. If the Contractor is instructed to conduct work outside of the basic project scope outlined herein s/he shall immediately provide a written description of the modified scope and pricing for work to be conducted. The Owner reserves the right to accept, negotiate, or reject stated Contractor pricing. If work is authorized, the Contractor shall commence with the additional work immediately so as not to delay the project completion date. Adjustments to the completion date may be made by the Owner upon request, but must be stated in writing. If the Owner elects not to accept the proposed Contractor pricing for work covered by an allowance, the Owner may seek additional outside bids to conduct the work by other qualified contractors. Any allowance funds carried in the project bid, but not expended or obligated by the conclusion of the project, shall remain property of the Owner and may not be invoiced by the Contractor. Contractor is instructed to add the to-

tal amount of allowances to the base bid and provide a "Total Lump Sum Base Bid Cost".

2. Payment – Lump Sum
3. Measurement: Payment is based on total percent completion of this bid item. Billing for this Work will be permitted upon the completion, inspection and acceptance (by the Engineer) for this Work.

1.4 DESCRIPTION OF UNIT PRICE BID PRICE PAY ITEMS

A. Bid Price Item No. 10 – *Phragmites australis* Transportation and Disposal (Base)

1. Waste characterization sampling and analysis has not been performed (to be completed by the Contractor during excavation); therefore, the required landfill disposition of excavated *Phragmites australis* and its root wad and the adhered sediment are not currently known. This bid item assumes the excavated *Phragmites australis* and its root wad and the adhered sediment can be disposed of at Rhode Island Resource Recovery (RIRRC) as solid waste. Alternate disposal locations will be approved; however, acceptance by RIRRC as solid waste will be the basis for determining if this bid item will be utilized for measurement and payment. Regardless of classification, waste profiling and disposal facility approval are considered to be incidental for this item. This bid item may be removed and replaced with ALT-1 or ALT-2 after characterization sampling if the excavated *Phragmites australis* and its root wad and the adhered sediment are found to be contaminated at concentrations that exceed RIRRC solid waste disposal criteria. Work associated with this item will be paid for at the stated price including, but not limited to, Work under the following:
 - a. All or portions of Division 1 specifications, as applicable.
 - b. Section 312316 – Excavation
 - c. Includes, but is not limited to, transportation and disposal of excavated *Phragmites australis* and its root wad and the adhered sediment (if characterization finds materials to be non-contaminated).
2. Payment – Unit price: per Ton
3. Measurement: The excavated *Phragmites australis* and its root wad, and the adhered sediment must be dewatered sufficient to pass the paint filter test (EPA Method 9095B) prior to disposal. Payment shall be made on the

number of tons measured by certified weight receipts and material shipping and disposal records.

B. Bid Price Item No. 11 – Frac Tank Costs

1. Work associated with this item will be paid for at the stated price including, but not limited to, Work under the following:
 - a. All or portions of Division 1 specifications, as applicable.
 - b. Section 312316 – Excavation
 - c. Includes, but is not incurred rental fees associated with the use of frac tanks including delivery maintenance, and removal by the vendor.
2. Payment – Unit price: per unit per week
3. Measurement: Payment shall be made based on a weekly basis.

1.5 DESCRIPTION OF ADD/DEDUCT BID PRICE PAY ITEMS

A. Add/Deduct Bid Price Item No. AD-7A – *Phragmites australis* Excavation

1. Work associated with this item will be paid for at the stated price including, but not limited to, Work under the following
 - a. Section 312316 – Excavation
 - b. Includes, but is not limited to, excavation, dewatering, and stockpiling as required for *Phragmites australis* removal; this Work shall consist of excavation of *Phragmites australis* and its root wad and adhered sediment as specified in the Contract Drawings.
4. Payment – Per Ton
5. Measurement: Payment is based on number of tons measures by certified weight receipts and documented in accordance with the Project Manual and as directed in writing by the Engineer.

1.6 DESCRIPTION OF ALTERNATE BID PRICE PAY ITEMS

A. Alternate Bid Price Item No. ALT-1– *Phragmites australis* Transportation and Disposal (Turnkey or Similar):

1. Waste characterization sampling and analysis has not been performed (to be completed by the Contractor); therefore, the required landfill disposition of excavated *Phragmites australis* and its root wad and the adhered sediment are not currently known. This alternative bid item assumes the excavated *Phragmites australis* and its root wad and the adhered sediment contain contaminant(s) at concentrations that prevent acceptance at RIRRC as solid waste, but comply with the disposal criteria of Turnkey Landfill in Rochester, NH. Alternate disposal locations will be approved; however, acceptance by Turnkey Landfill as solid waste will be the basis for determining if this bid item will be utilized for measurement and payment. Regardless of classification, waste profiling and disposal facility approval are considered to be incidental for this item. This bid item may replace Bid Item No. 9 after characterization sampling if the excavated *Phragmites australis* and its root wad, and the adhered sediment are found to be contaminated. Work associated with this item will be paid for at the stated price including, but not limited to, Work under the following:
 - a. All or portions of Division 1 specifications, as applicable.
 - b. Section 312316 – Excavation
 - c. Includes, but is not limited to, transportation and disposal of excavated *Phragmites australis* and its root wad and the adhered sediment (if characterization finds materials to be not acceptable for disposal at RIRRC and is non hazardous).
 2. Payment – Unit price: per ton.
 3. Measurement: The excavated *Phragmites australis* and its root wad, and the adhered sediment must be dewatered sufficient to pass the paint filter test (EPA Method 9095B) prior to disposal. Payment shall be made on the basis of material shipping and disposal records.
- B. Alternate Bid Price Item No. ALT-2– *Phragmites australis* Transportation and Disposal (Hazardous):
4. Waste characterization sampling and analysis has not been performed (to be completed by the Contractor); therefore, the required landfill disposition of excavated *Phragmites australis* and its root wad and the adhered sediment are not currently known. This alternative bid item will be utilized if the excavated *Phragmites australis* and its root wad and the adhered sediment meet the definition of a hazardous waste as defined in 40 CFR 261.24 requiring the waste to be disposed of at a RCRA Subtitle C Landfill. Regardless of classification, waste profiling and disposal facility approval are considered to

be incidental for this item. This bid item may replace Bid Item No. 9 after characterization sampling if the excavated *Phragmites australis* and its root wad, and the adhered sediment are found to be contaminated. Work associated with this item will be paid for at the stated price including, but not limited to, Work under the following:

- a. All or portions of Division 1 specifications, as applicable.
 - b. Section 312316 – Excavation
 - c. Includes, but is not limited to, transportation and disposal of excavated *Phragmites australis* and its root wad and the adhered sediment (if characterization finds materials to be hazardous).
5. Payment – Unit price: per ton.
6. Measurement: The excavated *Phragmites australis* and its root wad, and the adhered sediment must be dewatered sufficient to pass the paint filter test (EPA Method 9095B) prior to disposal. Payment shall be made on the basis of material shipping and disposal records.

PART 2 – PRODUCTS

Not Used.

PART 3 – EXECUTION

Not Used.

END OF SECTION 012000

SECTION 012500 – SUBSTITUTION PROCEDURES

PART 1 – GENERAL

1.1 SUMMARY

A. Scope:

1. Section includes administrative and procedural requirements for substitutions. This Section does not apply to equipment specifications that state “or equivalent” or “or approved equal”. Under that condition, the Contractor should submit an equivalent product using the submittal process defined in Section 013300 - Submittal Procedures.

B. Related Sections:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions
2. Section 013300 – Submittal Procedures.

1.2 SUBMITTALS

A. Value Engineering or Substitution Requests: Submit one electronic copy of each request for consideration. Identify product of fabrication or installation method to be replaced. Include Specification section numbers and titles, and Contract Drawing numbers and titles.

1. Documentation: The more information provided, the better chance of adoption:
 - a. Statement explaining why specified product or fabrication, or installation cannot be provided, or why Contractor wants to provide a substitution.
 - b. Coordination information, including a list of changes or modifications needed to other parts of the work and to construction performed by other separate contractors that will be necessary to accommodate proposed substitution.
 - c. Detailed comparison of significant characteristics of proposed substitution with those of the work specified. Include annotated copy of applicable Specification section. Significant characteristics may include attributes such as performance, weight, size, durability, visual effect, warranties, specific features, purchase price, and any environmental benefits. Indicate all deviations from the Work as specified.

- d. Product Data, including drawings and descriptions of products and fabrication and installation procedures.
 - e. Samples, as required by the Specification.
 - f. Certificates, material test reports, and qualification data, where applicable.
 - g. Research reports evidencing compliance with building code in effect for Project.
 - h. Detailed comparison of Contractor's construction schedule using proposed substitution with products specified for the work, including effect on the overall Contract Time. If specified product or method of construction cannot be provided within the Contract Time, include letter from manufacturer, on manufacturer's letterhead, stating date of receipt of purchase order, lack of availability, or delays in delivery.
 - i. Cost information that includes purchase, replacement, consumables, and a total cost of Ownership comparison. If the Contract Sum will change, include a change proposal.
 - j. Contractor's certification that proposed substitution complies with requirements in the Contract Documents except as indicated in substitution request, is compatible with related materials and is appropriate for applications indicated.
 - k. Contractor's waiver of rights to additional payment or time that may subsequently become necessary because of failure of proposed substitution to produce indicated results.
2. Transmission by Contractor: Transmit the request for substitution to the Engineer with copy.
 3. Owners Action: If necessary, Engineer will request additional information or documentation for evaluation within 5 workdays of receipt of a request for substitution. Owner will notify Contractor of acceptance or rejection of proposed substitution within 10 workdays of receipt of request, or receipt of additional information, whichever is later.

1.3 DEFINITIONS

- A. Substitution: A change proposed by the Contractor to products, materials, equipment, or methods of construction that differ from those required by the Contract Documents and that maintain equal value.

- B. Value Engineering: A systematic method to improve the "value" of goods and services by using an examination of function. Value, as defined, is the ratio of function to cost. Value can; therefore, be increased by either improving the function or reducing the cost. The goal of Value Engineering is to achieve the desired function at the lowest overall cost consistent with required performance.
- C. Specified Product or Manufacturer (SPR): Required product or manufacturer. Because SPR constructs, owns, and maintains its facilities, SPR achieves significant cost savings by standardizing on types and manufacturers of equipment. SPR achieves our savings in training, stocking of parts, and shorter time to repair by standardizing on certain products or manufacturers.

1.4 QUALITY CONTROL BY THE CONTRACTOR

- A. Compatibility of Substitutions: Investigate and document compatibility of proposed substitution with related products, materials, and specification.

PART 2 – PRODUCTS

2.1 SUBSTITUTIONS

- A. Substitutions for cause: Submit requests for substitution immediately upon discovery of need for change.
- B. Substitutions for convenience: Owner will consider requests for substitution if received within 60 days after commencement of work.

PART 3 – EXECUTION

Not Used.

END OF SECTION 012500

SECTION 012600 – CONTRACT MODIFICATION PROCEDURES

PART 1 – GENERAL

1.1 SUMMARY

- A. This Section includes administrative and procedural requirements for handling and processing Contract modifications.
- B. Related Sections:
 - 1. Drawings and general provisions of the Contract, including General and Supplementary Conditions.

1.2 FIELD ORDER

- A. Engineer will issue written supplemental instructions authorizing minor changes in the Work, not involving adjustment to the Contract Price or the Contract Time, on EJCDC Form C-942. A sample copy of a Field Order is included at the end of the Section.

1.3 PROPOSAL REQUESTS

- A. Owner-Initiated Proposal Requests: Engineer will issue a detailed description of proposed changes in the Work that may require adjustment to the Contract Price or the Contract Time. If necessary, the description will include supplemental or revised Contract Drawings and Specifications.
 - 2. Proposal Requests issued by Engineer are for information only. Do not consider them instructions either to stop work in progress or to execute the proposed change.
 - 3. Within time specified in Proposal Request after receipt of Proposal Request, submit a quotation estimating cost adjustments to the Contract Price and the Contract Time necessary to execute the change.
 - a. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.
 - b. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.

- c. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of the Contract Time.
- B. Contractor-Initiated Proposals: If latent or unforeseen conditions require modifications to the Contract, Contractor may propose changes by submitting a request for a change.
 4. Include a statement outlining reasons for the change and the effect of the change on the Work. Provide a complete description of the proposed change. Indicate the effect of the proposed change on the Contract Price and the Contract Time.
 5. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.
 6. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.
 7. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of the Contract Time.
 8. Comply with requirements in Division 1 Section "Product Requirements" if the proposed change requires substitution of one product or system for product or system specified.

1.4 CHANGE ORDER PROCEDURES

- A. On Owner's approval of a Proposal Request, Engineer will issue a Change Order for signatures of Owner and Contractor on EJCDC Document C-941.

1.5 WORK CHANGE DIRECTIVE

- A. Work Change Directive: Engineer may issue a Work Change Directive on EJCDC Document C-940. Work Change Directive instructs Contractor to proceed with a change in the Work, for subsequent inclusion in a Change Order.
 9. Work Change Directive contains a complete description of change in the Work. It also designates method to be followed to determine change in the Contract Price or the Contract Time.

B. Documentation: Maintain detailed records on a time and material basis of work required by the Work Change Directive.

10. After completion of change, submit an itemized account and supporting data necessary to substantiate cost and time adjustments to the Contract.

PART 2 – PRODUCTS

Not Used.

PART 3 – EXECUTION

3.1 ATTACHED FORMS

- A. Proposal Request
- B. Field Order (EJCDC Form C-942)
- C. Work Change Directive (EJCDC Form C-940)
- D. Change Order (EJCDC Form C-941).

PART 4 – MEASUREMENT AND PAYMENT

4.1 MEASUREMENT

A. This work will not be measured for payment.

4.2 PAYMENT

A. This work shall be paid for as part of the lump sum prices, unit bid prices and alternate bid prices, if any, for respective bid items under the work of this Section, including all products, materials, equipment, tools, labor and incidentals thereto, complete and accepted by the Engineer.

END OF SECTION 012600

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PROPOSAL REQUEST

Proposal Request No. _____

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

Please submit an itemized quotation for changes in the Contract Price or Contract Time incidental dental to the proposed modifications to the Contract Documents described herein.

Description:

Attachments: (List documents supporting description)

By:

ENGINEER

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Attachments:

Engineer: _____

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

Copy to Owner

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Work Change Directive

No. _____

Date of Issuance: _____ Effective Date: _____

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

You are directed to proceed promptly with the following change(s):

Item No.	Description

Attachments (list documents supporting change):

Purpose for Work Change Directive:

- Authorization for Work described herein to proceed on the basis of Cost of the Work due to:
- Nonagreement on pricing of proposed change.
- Necessity to expedite Work described herein prior to agreeing to changes on

Estimated change in Contract Price and Contract Times:

Contract Price \$ _____ (increase/ decrease) Contract Time _____ (increase/ decrease) days

If the change involves an increase, the estimated amounts are not to be exceeded without further authorization.

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

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Change Order

No. _____

Date of Issuance: _____

Effective Date: _____

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

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

Description:

Attachments: (List documents supporting change):

CHANGE IN CONTRACT PRICE:

Original Contract Price:

\$ _____

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

\$ _____

Contract Price prior to this Change

\$ _____

[Increase] [Decrease] of this Change

\$ _____

Contract Price incorporating this Change

\$ _____

CHANGE IN CONTRACT TIMES:

Original Contract Working Calendar days
Times: _____ days
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

[Increase] [Decrease] from previously approved Change Orders
No. _____ to No. _____
Substantial completion (days): _____
Ready for final payment (days): _____

Contract Times prior to this Change Order:
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

[Increase] [Decrease] of this Change Order:
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

Contract Times with all approved Change Orders:
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

RECOMMENDED: By: _____ Engineer (Authorized Signature) Date: _____	ACCEPTED: By: _____ Owner (Authorized Signature) Date: _____	ACCEPTED: By: _____ Contractor (Authorized Signature) Date: _____
Approved by Funding _____	_____	Date: _____

Change Order Instructions

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.

SECTION 012900 – PAYMENT PROCEDURES

PART 1 – GENERAL

1.1 SUMMARY

A. Scope

1. This Section includes administrative and procedural requirements necessary to prepare and process Applications for Payment.

B. Related Sections

2. Drawings and general provisions of the Contract, including General and Supplementary Conditions.

1.2 SCHEDULE OF VALUES

A. Coordination: Coordinate preparation of the Schedule of Values for Base Bid items with preparation of Contractor's Construction Schedule.

1. Correlate line items in the Schedule of Values with other required administrative forms and schedules, including the following:
 - a. Application for Payment forms with Continuation Sheets.
 - b. Submittals/Shop Drawings Schedule.
2. Submit three copies of the Schedule of Values to Engineer 10 days after effective date of Agreement. No payment will be made to Contractor before Schedule of Values has been submitted and accepted by Engineer.

B. Format and Content: Use the Project Manual table of contents as a guide to establish line items for the Schedule of Values. Provide at least one line item for each Specification Section.

3. Identification: Include the following Project identification on the Schedule of Values:
 - a. Project name and location.
 - b. Name of Engineer.
 - c. Engineer's project number: 6329301.
 - d. Contractor's name and address.
 - e. Date of submittal.

4. Arrange the Schedule of Values in tabular form with separate columns to indicate the following for each item listed:
 - f. Related Specification Section or Division.
 - g. Description of the Work.
 - h. Change Orders (numbers) that affect value.
 - i. Dollar value.
 - 1) Percentage of the Contract Price to nearest one-hundredth percent, adjusted to total 100 percent.
 - 2) Contractor's estimated quantity and unit prices.
 - 3) For unit price items, the quantity provided on the bid form and unit prices.
5. Provide a breakdown of the Contract Price in enough detail to facilitate continued evaluation of Applications for Payment and progress reports. Coordinate with the Project Manual table of contents. Provide several line items for principal subcontract amounts, where appropriate.
6. Round amounts to nearest whole dollar; total shall equal the Contract Price.
7. Provide a separate line item in the Schedule of Values for each part of the Work where Applications for Payment may include materials or equipment purchased or fabricated and stored, but not yet installed.
 - a. Differentiate between items stored onsite and items stored offsite. Include evidence of insurance or bonded warehousing if required.
8. Where items are not broken down sufficiently to accurately determine the value of Work completed, Engineer will estimate the value of the Work completed and deduct a conservative value that will allow the Owner to easily complete the Work with the unpaid balance.
 - a. When the required detail in the Schedule of Values is not provided by the Contractor, the Contractor agrees to accept the Engineer's determination.
9. Each item in the Schedule of Values and Applications for Payment shall be complete. Include total cost and proportionate share of general overhead and profit for each item.

- a. Temporary facilities and other major cost items that are not direct cost of actual work-in-place may be shown either as separate line items in the Schedule of Values or distributed as general overhead expense, at Contractor's option.

10. Schedule Updating: Update and resubmit the Schedule of Values before the next Applications for Payment when Change Orders or Work Change Directives result in a change in the Contract Sum.

1.3 SCHEDULE OF PAYMENTS

A. Coordination: Coordinate preparation of the Schedule of Payments with preparation of Contractor's Construction Schedule and Schedule of Values.

1. Such schedule shall be broken down by monthly pay period through Project completion and reflect items listed in the Schedule of Values.
2. Submit three copies of the Schedule of Payments to Engineer 10 days after effective date of Agreement.

1.4 APPLICATIONS FOR PAYMENT

A. Each Application for Payment shall be consistent with previous applications and payments as certified by Engineer and paid for by Owner.

1. Initial/Monthly Application for Payment, Application for Payment at time of Substantial Completion, and final Application for Payment involve additional requirements.

B. Payment Application Times: The date for each progress payment is the 15th day of each month. The period covered by each Application for Payment starts on the day following the end of the preceding period and ends 15 days before the date for each progress payment.

C. Payment Application Forms: AIA Document G 702 or an approved equal.

D. Application Preparation: Complete every entry on form. Notarize and execute by a person authorized to sign legal documents on behalf of Contractor. Engineer will return incomplete applications without action.

2. Entries shall match data on the Schedule of Values and Contractor's Construction Schedule. Use updated schedules if revisions were made.

3. Include amounts of Change Orders and Work Change Directives issued before last day of construction period covered by application.
 4. Itemized data and format provided on continuation sheets shall include schedules, line items, values as stipulated in the Schedule of Values as accepted by Owner.
 - a. Continuation sheets shall include a total list of all scheduled component items of work with item number and scheduled dollar value for each item. Dollar values to be included in each column for each scheduled line item when Work has been performed or products stored. Round off values to nearest dollar or as may be specified for Schedule of Values.
 - b. List each Change Order executed prior to date of submission at end of continuation sheets. List by Change Order number and description as to original component item of Work.
- E. Transmittal: Submit 4 signed and notarized original copies of each Application for Payment to Engineer.
1. Transmit each copy with a transmittal form listing attachments and recording appropriate information about application.
 2. Submit Applications to Engineer by means ensuring receipt within 24 hours.
- F. Ownership: All Work covered by Progress Payments shall, at the time of payment, become the property of Owner.
- G. Processing: With each Application for Payment the Contractor shall certify such Application for Payment represents a just estimate of costs reimbursable to Contractor under terms of the Contract and shall certify there are no Mechanic's or Materialmen's Liens outstanding at the date of that Application for Payment, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of that Application for Payment, that there is no known basis for the filing of any Mechanic's or Materialmen's Lien against the Surety in connection with the Work, that Waivers and Bills Paid Affidavit forms from all Subcontractors and Materialmen have been, or will be, obtained in the form agreeable to the Owner, and that amount of the contract remaining to be expended is sufficient to complete the project.
- H. Waivers and Mechanics Liens
1. Monthly Applications for Payment shall include Waivers of Mechanic's Liens and Claims for all Work included in the period of construction covered by the

Application for Payment and the previous month's Application. Waivers of Liens and Claims from Subcontractors or Subcontractors and suppliers shall include the period of construction covered by the Application for Payment, the total amount paid prior to and including the previous month's Application.

2. Partial Waivers of Liens shall be submitted on each item of work for the amount requested, prior to deduction for retainage, for each item.
 3. Contractor shall submit final or full Waivers of Liens and Claims for completed items of work shown on the monthly Application for Payment.
 4. Owner reserves the right to designate which entities involved in the Work must submit Waivers of Liens.
 5. The Contractor's final Application for Payment shall be submitted with or preceded by final Waivers from every entity involved with the performance of work, supplying of materials or the providing of professional services covered by the Application who could lawfully be entitled to a Lien.
 6. Waivers of Liens shall be provided on forms and executed in a manner acceptable to the Owner.
- I. Initial/Monthly Application for Payment: Administrative actions and submittals that must precede or coincide with submittal of first Application for Payment include the following, which shall be updated for Monthly Applications for Payment, as applicable:
1. List of subcontractors with current MBE certification forms, as applicable.
 2. Schedule of Values.
 3. Contractor's Construction Schedule (preliminary if not final), updated weekly.
 4. Schedule of unit prices.
 5. Submittals Schedule (preliminary if not final).
 6. Name of Contractor Superintendent.
 7. Copies of building permits.
 8. Copies of authorizations and licenses from governing authorities for performance of work.

9. Any material stored off site must carry additional insurance (All Risk Ryder) stating Owner as insured. All material is to be inspected by Engineer personnel before billing can be approved. Bill of Sale and receipts for items being billed at cost only are required and 25% retainage will be held for off-site stored materials. Paperwork must accompany request two weeks prior to billing to ensure adequate time to schedule inspection.
 10. Certificates of insurance and insurance policies.
- J. Application for Payment at Substantial Completion: After issuing the Certificate of Substantial Completion, submit an Application for Payment showing 100 percent completion for portion of the Work claimed as substantially complete.
1. Include documentation supporting claim that the Work is substantially complete and a statement showing an accounting of changes to the Contract Sum.
 2. Submit Warranties and maintenance agreements, as applicable.
 3. This application shall reflect Certificates of Partial Substantial Completion issued previously for Owner occupancy of designated portions of the Work.
- K. Final Payment Application: Submit final Application for Payment with releases and supporting documentation not previously submitted and accepted, including, but not limited, to the following:
1. Check with Owner about the need for additional affidavits and other requirements.
 2. Evidence of completion of Project closeout requirements.
 3. Completion of items specified by the Engineer for correction after Substantial Completion.
 4. Required Project Records including permit drawings, as-built drawings both on hard copy and in electronic format.
 5. Insurance certificates for products and completed operations where required and proof that taxes, fees, and similar obligations were paid.
 6. Updated final statement, accounting for final changes to the Contract Sum.
 7. AIA Document G706, "Contractor's Affidavit of Payment of Debts and Claims."
 8. AIA Document G706A, "Contractor's Affidavit of Release of Liens."

9. AIA Document G707, "Consent of Surety to Final Payment."
10. List of unsettled claims, if any.
11. Evidence that claims have been settled, if any.
12. Final, liquidated damages settlement statement, if any.
13. Removal of all temporary facilities and services
14. Removal of all surplus materials, rubbish, and similar elements.

PART 2 – PRODUCTS

Not Used.

PART 3 – EXECUTION

Not Used.

END OF SECTION 012900

SECTION 013300 – SUBMITTAL PROCEDURES

PART 1 – GENERAL

1.1 SUMMARY

A. Scope:

1. This section specifies the requirements related to submittals. This section is to be used with the requirements contained in all other sections. The Contractor shall provide all labor, materials, equipment, and incidentals to complete the Work specified in this section.

B. Related Sections

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions.

1.2 DEFINITIONS

A. Action Submittals: Written and graphic information and physical samples that require Owner's responsive action. Unless noted otherwise, submittals shall be classified as Action Submittals.

B. Informational Submittals: Written and graphic information and physical samples that do not require Owner's responsive action. Submittals may be rejected for not complying with requirements.

1.3 SUBMITTALS

A. Schedule of Submittals.

1.4 SUBMITTAL PROCEDURES

A. Owner has provided a Draft Submittal List as Attachment A to aid in Contractor's development of the submittal register. Additional submittals may be required to comply with Contract Documents. The Contractor is required to submit his/her own register. Omissions on the draft submittal prepared as an aid will not constitute an omission of any submittal by the Contractor.

B. With the first submittal or 30 days after Notice of Award (whichever is sooner), submit a Contractor's submittal register by Specification section number; all submittals required and approximate date the submittal will be forwarded.

Contractor's submittal register shall be similar to U.S. Army Corps of Engineers (USACE) ER 415-1-10, Engineering Form 4288, or equivalent as approved by Owner.

http://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_415-1-10.pdf

- C. Transmit each submittal with Owner accepted form.
- D. Sequentially number transmittal forms. Mark revised submittals with original number and sequential alphabetic suffix.
- E. Identify: Project, Contractor, Subcontractor and supplier, pertinent Contract Drawing and detail number, and Specification section number appropriate to submittal.
- F. Apply Contractor's stamp, signed or initialed, certifying that review, approval, verification of products required, field dimensions, adjacent construction work, and coordination of information is according to requirements of the Work and Contract Documents.
- G. Schedule submittals to expedite Project.
- H. For each submittal for review, allow 7 days excluding delivery time to and from Contractor.
- I. Identify variations in Contract Documents and product or system limitations that may be detrimental to successful performance of completed work.
- J. Allow space on submittals for Contractor, Owner, and Engineer review stamps.
- K. When revised for resubmission, identify changes made since previous submission.
- L. Distribute copies of reviewed submittals as appropriate. Instruct parties to promptly report inability to comply with requirements.
- M. Submittals not requested will not be recognized nor processed.
- N. Incomplete Submittals: Owner will not review. Complete submittals for each item are required. Delays resulting from incomplete submittals are not the responsibility of Owner.

1.5 PRODUCT DATA

- A. Submit to Owner for review for assessing conformance with information given and design concept expressed in Contract Documents.

- B. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information specific to this Project.
- C. After review, produce copies and distribute according to Section 013300 – Submittal Procedures and for record documents described in Section 017000 – Execution and Closeout Submittals.

1.6 USE OF ELECTRONIC CAD FILES OF PROJECT CONTRACT DRAWINGS

- A. Electronic CAD Files of Project Contract Drawings: May only be used to expedite production of Shop Drawings, Record Drawings, and to determine coordinates for stake-out limits of RCA, limits of herbicide application, and Phragmites Excavation and Removal. Use for other projects or purposes is not allowed.
- B. Electronic CAD Files of Project Contract Drawings: Distributed only under the following conditions:
 - 1. Use of files is solely at receiver's risk. Engineer does not warrant accuracy of files. Receiving files in electronic form does not relieve receiver of responsibilities for measurements, dimensions, and quantities set forth in Contract Documents. In the event of ambiguity, discrepancy, or conflict between information on electronic media and that in Contract Documents, notify Engineer of discrepancy and use information in hard copy Contract Drawings and Specifications.
 - 2. CAD files do not necessarily represent the latest Contract Documents, existing conditions, and as-built conditions. Receiver is responsible for determining and complying with these conditions, and for incorporating addenda and modifications.
 - 3. User is responsible for removing information not normally provided on Shop Drawings and removing references to Contract Documents. Shop Drawings submitted with information associated with other trades or with references to Contract Documents will not be reviewed and will be immediately returned.
 - 4. Receiver shall not hold Engineer responsible for data or file cleanup required to make files usable; nor for error or malfunction in translation, interpretation, or use of this electronic information.
 - 5. Receiver shall understand that even though Engineer has computer virus scanning software to detect presence of computer viruses, there is no guarantee that computer viruses are not present in files or in electronic media.
 - 6. Receiver shall not hold Engineer responsible for such viruses or their consequences; and shall hold Engineer harmless against costs, losses, or damage caused by presence of computer virus in files or media.

1.7 SHOP DRAWINGS

- A. Action Submittal: Submit to Owner for assessing conformance with information given and design concept expressed in Contract Documents.
- B. When required by individual Specification sections, provide Shop Drawings signed and sealed by a Professional Engineer licensed in the State of Rhode Island responsible for designing components shown on Shop Drawings.
 - 1. Include signed and sealed calculations to support design.
 - 2. Submit Shop Drawings and calculations in form suitable for submission to and approval by authorities having jurisdiction.
 - 3. Make revisions and provide additional information when required by authorities having jurisdiction.
- C. After review, produce copies and distribute according to "Submittal Procedures" Article and for record documents described in Section 017000 – Execution and Closeout Submittals.

1.8 CERTIFICATES

- A. Informational Submittal: Submit certification by manufacturer, installation/application Subcontractor, or Contractor to Owner, in quantities specified for Product Data.
- B. Indicate material or product conforms to or exceeds specified requirements. Submit supporting reference data, affidavits, and certifications as appropriate.

1.9 CONTRACTOR REVIEW

- A. Review for compliance with Contract Documents and approve submittals before transmitting to Owner.
- B. Contractor shall be responsible for:
 - 1. Determination and verification of materials including manufacturer's catalog numbers.
 - 2. Determination and verification of field measurements and field construction criteria.
 - 3. Checking and coordinating information in submittal with requirements of Work and of Contract Documents.

4. Determination of accuracy and completeness of dimensions and quantities.
 5. Confirmation and coordination of dimensions and field conditions at site.
 6. Construction means, techniques, sequences, and procedures.
 7. Safety precautions.
 8. Coordination and performance of work of all trades.
- C. Stamp, sign or initial, and date each submittal to certify compliance with requirements of Contract Documents.
- D. Do not fabricate products or begin work for which submittals are required until approved submittals have been received from Owner.

1.10 OWNER REVIEW

- A. Do not make "mass submittals" to Owner. "Mass submittals" are defined as six or more submittals or items in one day, or fifteen (15) or more submittals or items in one week. If "mass submittals" are received, Owner's review time stated above will be extended as necessary to perform proper review. Owner will review "mass submittals" based on priority.
- B. Engineer will review submittals and provide recommendations and comments to Owner comparing submittals to Contract Documents.
- C. Informational submittals and other similar data are for Owner's information, do not require Owner's responsive action, and will not be reviewed or returned with comment.
- D. Submittals made by Contractor that are not required by Contract Documents may be returned without action.
- E. Submittal approval does not authorize changes to Contract requirements unless accompanied by Contract Modification from Owner.

PART 2 – PRODUCTS

Not Used.

PART 3 – EXECUTION

Not Used.

END OF SECTION 01330

Attachment A – Draft Submittal List

Item	Specification Section	Description of Submittal	Timing
	Section 012000 – Price and Payment Procedures	Schedule of Supplies and Services	During bid process
	Section 012000 – Price and Payment Procedures	Application of Payment (including updated Construction Schedule and Progress Report)	Monthly throughout Contract
	Section 012500 – Substitution Procedures	Value Engineering or Substitution Requests	As necessary
	Section 012900 – Payment Procedures	Schedule of Values	10 days after effective date of Agreement
	Section 012900 – Payment Procedures	Schedule of Payments	10 days after effective date of Agreement
	Section 015700 – Temporary Erosion and Sediment Controls	Product Data (temporary erosion and sediment controls)	Prior to start of onsite construction activity
	Section 015700 – Temporary Erosion and Sediment Controls	Soil Erosion and Sediment Control Inspection Logs	At Final Completion
	Section 017000 – Execution and Closeout Requirements	Construction Photographs	With each application for payment
	Section 017000 – Execution and Closeout Requirements	Substantial Completion Certificate and Inspection Request	At Substantial Completion
	Section 017000 – Execution and Closeout Requirements	Substantial Completion Punch List	At Substantial Completion
	Section 017000 – Execution and Closeout Requirements	Final Completion Certificate and Inspection Request	At Final Completion
	Section 017000 – Execution and Closeout Requirements	Record Documents	With Final Application for Payment
	Section 026100 – Transportation and Disposal of Material	Disposal Facility Qualification	Prior to the transportation and disposal of <i>Phragmites australis</i> or dewatered fraction
	Section 026100 – Transportation and Disposal of Material	Transporter Certifications	Prior to the transportation and disposal of <i>Phragmites australis</i> or dewatered fraction
	Section 026100 – Transportation and Disposal of Material	Certificates of Disposal and Weight Tickets	With application for payment and within 30 days of shipment date
	Section 026100 – Transportation and Disposal of Material	Waste Manifests	With application for payment and within 30 days of shipment date
	Section 311000 – Site Clearing	Photographs or Videotape of Existing Conditions	Prior to start of onsite construction activity
	Section 312316 - Excavation	Product Data (Phragmites Dewatering Area materials)	Prior to excavation activities
	Section 312319 – Control of Water	Water Control Plan	Prior to excavation activities
	Section 312319 – Control of Water	Shop Drawings	Prior to excavation activities
	Section 312319 – Control of Water	Product Data (Water Control System materials)	Prior to excavation activities
	Section 329219– Site Restoration	Product Data (seed mix data, fertilizer, mulch, and soil amendments)	Prior to delivery to site
	Section 329219– Site Restoration	Information Submittal – certification for amendments and fertilizers	Prior to delivery to site

Attachment A – Draft Submittal List

Item	Specification Section	Description of Submittal	Timing
	Section 329219– Site Restoration	Information Submittal – Certification of grass seed	Prior to delivery to site
	Section 317200 – Herbicide Application	Material Safety Data Sheets	During bid process
	Section 317200 – Herbicide Application	Applicator Name, License Number, and Company Information	During bid process
	Section 317200 – Herbicide Application	Narrative (describing method of protection to prevent overspray and minimize pesticide drift)	Prior to herbicide application

SECTION 015000 – TEMPORARY FACILITIES AND CONTROLS

PART 1 – GENERAL

1.1 SUMMARY

A. Scope:

1. Section includes requirements for temporary facilities and controls. This section is to be used with the requirements contained in all other sections. The Contractor shall provide all labor, materials, equipment, and incidentals to complete the work specified in this section.
2. Temporary facilities shown on Drawings are for illustration purposes only. Contractor shall determine the temporary facilities required to execute the Work in addition to those required by the contract documents and coordinate the location of the facilities with the Engineer and Rhode Island Airport Corporation.

B. Related Sections:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions.

1.2 TEMPORARY ELECTRICITY

- A. Provide and pay for power service required from utility source as needed for construction operation.

1.3 TEMPORARY LIGHTING FOR CONSTRUCTION PURPOSES

- A. Provide and maintain lighting for construction operations to continue at work schedule as approved by Owner.
- B. Maintain lighting and provide routine repairs.

1.4 TEMPORARY SANITARY FACILITIES

- A. Provide and maintain required facilities and enclosures. Provide facilities from the time of project mobilization, until demobilization. Locate sanitary facilities at a location approved by the Engineer.

1.5 VEHICULAR ACCESS

- A. Lock gate at Range Road construction access location when all Contractor's personnel have left the site, whether during the workday or at the end of the workday.
- B. Provide unimpeded access for emergency vehicles. Maintain 20 foot wide driveways with turning space between and around combustible materials.
- C. Construct stabilized construction entrances as shown on the Contract Drawings.
- D. Surface water flowing or diverted toward construction entrances shall be piped across the entrance. If piping is impractical, a mountable berm with 5:1 slopes will be permitted.
- E. Maintain construction entrances in a condition that will prevent tracking or flowing of sediment onto adjacent public roads. This may require periodic topdressing with additional stone as conditions demand and repair and/or cleanout of any measures used to trap sediment. All sediment spilled, dropped, washed, or tracked onto roads must be removed immediately.
- F. Periodic inspection and required maintenance shall be provided after each rain and other times when stone voids have been filled with soil or sediment.
- G. Provide means of removing mud from vehicle wheels before entering streets.
- H. The contractor must keep public roads in the construction area clean and promptly remove all tracked dirt.

1.6 TEMPOPRAY ACCESS BRIDGE

- A. Temporary access bridge shall conform to the Contract Drawings.

1.7 PARKING

- A. Parking will not be allowed on grassed or soft areas. Parking shall be on paved or hardpacked dirt surfaces.
- B. Maintenance:
 - 1. Maintain traffic and parking areas in sound condition free of excavated material, construction equipment, products, mud, snow, ice, and the like.

2. Maintain existing and permanent paved areas used for construction; promptly repair breaks, potholes, low areas, standing water, and other deficiencies, to maintain paving and drainage in original condition.
- C. Removal, Repair:
1. Remove temporary materials and construction before Substantial Completion.
 2. Repair existing facilities damaged by use, to original condition.
- 1.8 PROGRESS CLEANING AND WASTE REMOVAL.
- A. Maintain areas free of waste materials, debris, and rubbish. Maintain site in clean and orderly condition.
 - B. Collect and remove waste materials, debris, and rubbish from site periodically and dispose offsite.
 - C. All materials spilled, dropped, washed, or tracked from vehicles onto roadways shall be removed immediately.
- 1.9 PROJECT IDENTIFICATION
- A. Furnish, install, and maintain temporary Project Identification Sign. One sign shall be installed in each park near the park entrances. The sign shall be at least 12 inches wide and 18 inches long, which boldly identifies “DEM” and the permit number 18-0144. The sign must be maintained at a conspicuous location until such time that the project is complete.
 - B. No signs, except those specified, shall be displayed unless approved by Engineer and Owner.
 - C. Maintenance:
 1. Maintain sign so it is clean, legible, and upright.
 2. Keep grass and weeds cut away from sign.
 3. Repair and repaint damaged or deteriorated sign.
 - D. Removal: Remove signs, framing, supports, and foundations at completion of project and restore area.
- 1.10 SECURITY
- A. Security will not be provided by Owner. The Contractor shall, at all times, take reasonable precautions in conducting all operations under this contract in a manner to

avoid the risk of loss, theft or damage to the equipment and supplies. Owner will not be responsible for the loss, theft, or damage of the Contractor's equipment.

1.11 WATER CONTROL

A. Protect site from puddles or running water.

1.12 DUST CONTROL

- A. Execute work by methods to minimize raising dust from construction operations.
- B. Provide positive means to prevent air-borne dust from dispersing into atmosphere.

1.13 NOISE CONTROL

A. Provide methods, means, and facilities to minimize noise produced by construction operations.

1.14 POLLUTION CONTROL

A. Provide methods, means, and facilities to prevent contamination of soil, water, and atmosphere from discharge of noxious, toxic substances and pollutants produced or disturbed by construction operations.

1.15 REMOVAL OF UTILITIES, FACILITIES, AND CONTROLS

- A. Remove temporary utilities, equipment, facilities, and materials before Final Construction Inspection.
- B. Clean and repair damage caused by installation or use of temporary work.
- C. Restore areas disturbed during construction to original condition.

PART 2 – PRODUCTS

Not used.

PART 3 – EXECUTION

Not used.

END OF SECTION 015000

SECTION 015100 - MOBILIZATION

PART 1 - GENERAL

1.1 SUMMARY

- A. This Section includes work necessary for the movement of personnel and equipment to and from the Project site.

1.2 SUBMITTALS

- A. Submit site-specific Health and Safety Plan for informational purposes.

1.3 QUALITY ASSURANCE

- A. Not used.

PART 2 - PRODUCTS

Not Used.

PART 3 - EXECUTION

3.1 SAFETY

- A. The Contractor shall prepare a site-specific Health and Safety Plan (HASP) in accordance with 29 CFR Part 1910.120: Hazardous Waste Operations and Emergency Response of the Occupational Safety and Health Administration.
- B. The Contractor shall comply with all requirements of the most recent version of the Occupational Safety and Health Act (OSHA).
- C. When any support system is used that requires design by an engineer, copies of the design stamped by a Professional Engineer registered in the State of Rhode Island shall be submitted to the Engineer.
- D. The Contractor has full responsibility to comply with all provisions of the State of Rhode Island Public General Statutes concerning Occupational Safety and Health. Any fines levied against the Contractor for violations shall be the Contractor's responsibility.

3.2 PROTECTION

- A. The Contractor shall assume full responsibility for the protection of all public or private buildings, structures and utilities in the streets, gas pipes, water pipes, hydrants, sewers, drains and electric and telephone cables, whether or not they are shown on the Drawings. The Contractor shall carefully support and protect all such structures and utilities from damage of every description and any such damage thereto shall be repaired or otherwise made good by the Contractor, at his expense, in a manner acceptable to the Engineer.
- B. All open excavations shall be adequately safeguarded by providing temporary barricades, caution signs, lights and other means to prevent accidents to persons and damage to property. The Contractor shall, at the Contractor's own expense, provide suitable and safe bridges and other crossings for accommodating travel by pedestrians and workmen. The length or size of excavation will be controlled by the particular surrounding conditions, but shall always be confined to the limits prescribed by the Engineer.

PART 4 - MEASUREMENT AND PAYMENT

4.1 MEASUREMENT

- A. This work will not be measured for payment.

4.2 PAYMENT

- A. This work shall be paid for as part of the lump sum prices, unit bid prices and alternate bid prices, if any, for respective bid items under the work of this Section, including all products, materials, equipment, tools, labor and incidentals thereto, complete and accepted by the Engineer.

END OF SECTION 015100

SECTION 015700 – TEMPORARY EROSION AND SEDIMENT CONTROL

PART 1 – GENERAL

1.1 SUMMARY

- A. Work included in this Section consists of furnishing and placing temporary erosion and pollution control devices, specified herein, and/or shown on the Contract Drawings, and as needed for a complete and proper installation.
- B. Related Sections:
 - 1. Drawings and general provisions of the Contract, including General and Supplementary Conditions
 - 2. Section 023100.00 – Transportation and Disposal of Material
 - 3. Section 311000.00 – Site Clearing
 - 4. Section 312316.00 – Excavation
 - 5. Section 312319.00 – Control of Water
 - 6. Section 317200.00 – Herbicide Application
 - 7. Section 329219.00 – Site Restoration.

1.2 DEFINITIONS

- A. Restoration Construction Area (RCA): Area affected by the physical construction activities where soil disturbances shall occur.

1.3 SUBMITTALS

- A. Product Data: Temporary Erosion and Sediment Controls
- B. Soil Erosion and Sediment Control Inspection logs.

1.4 QUALITY ASSURANCE

- A. Preconstruction Meeting: Conduct meeting with Engineer and onsite supervisor and review the following:
 - 1. Erosion and sediment controls.

- B. All erosion and sediment control work shall comply with applicable requirements of governing authorities having jurisdiction.
- C. The Contractor shall be responsible for adhering to the Soil Erosion and Sediment Control (SESC) Plan for Buckeye Brook Restoration, approved by the Rhode Island Department of Environmental Management:
 - 1. It is the responsibility of the site owner and the site operator to maintain the SESC Plan at the site, including all attachments, amendments and inspection records, and to make all records available for inspection by Rhode Island Department of Environmental Management during and after construction.
- D. The Contractor shall be responsible for adhering to the Soil Management Plan.
- E. Erosion and sediment control measures shall be established at the beginning of construction and maintained during the entire period of construction. Onsite areas that are subject to severe erosion, and offsite areas that are especially vulnerable to damage from erosion and/or sedimentation, shall be identified and receive special attention.
- F. All land-disturbing activities shall be planned and conducted to minimize the size of the area to be exposed at any one time and the length of the time of exposure.
- G. Surface water runoff originating upgrate of exposed areas shall be controlled to reduce erosion and sediment loss during the period of exposure.
- H. All land-disturbing activities shall be planned and conducted to minimize offsite sedimentation.
- I. Same-day stabilization will be required in many locations adjacent to natural resources.
- J. Where “Standard Specification” is used, it shall mean “State of Rhode Island Department of Transportation Standard Specifications for Road and Bridge Construction,” 2004 Edition and all amendments.
- K. Where “SESC Handbook” is used, it shall mean “Rhode Island Soil Erosion and Sediment Control Handbook,” issued 1989, updated 2014, and revised 2016 and all amendments.

PART 2 – PRODUCTS

2.1 GENERAL

- A. All erosion and sediment control materials shall conform to the requirements of the Standard Specifications, the SESC Handbook, and the Contract Drawings.

2.2 STRAW BALES

- A. Straw bales shall conform to the requirements of Subsection 206.02.1 of the Standard Specifications.
- B. The bales shall be straw and not hay.
- C. Bale weight shall be not less than 50 pounds and shall be bound with no less than two strings or wires and contain a minimum 5 cubic feet of material.
- D. They shall be free from primary noxious weed seeds and rough or woody materials.

2.3 SILT FENCE

- A. Filter fabric shall conform to the requirements of Subsection 206.02.2 of the Standard Specifications.

2.4 STABILIZED CONSTRUCTION ACCESS

- A. Crushed stone shall conform to the requirements of Subsection M.01.09 of the Standard Specifications.
- B. Filter fabric shall conform to the requirements of Subsection 206.02.2 of the Standard Specifications.

2.5 TURBIDITY CURTAIN

- A. Shall be a sediment containment barrier meeting the following requirements:
 - 1. Comprised of a filter fabric composed of woven polypropylene allowing the passage of water but retaining soil particles.
 - 2. Fabric comprised of vinyl coated nylon or polyester, having a weight of 22 ounces per square yard.
 - 3. Ballast provided by galvanized chain having a weight of 1.1 pounds per foot.
 - 4. On load carrying components, a 7,600 pound break strength.

5. A cylindrical flotation boom with a 6-inch diameter minimum.

2.6 SILT BAG

- A. Such bags shall be used to filter dewatered fraction of stockpiled soil if water is sampled and found to be uncontaminated. The silt bag shall be made from permeable non-woven geotextile fabric into which water is pumped. Sediment is filtered on the inside of the bag and water diffuses out. Dewatering bags must be sized appropriately for flow rates entering the bags. The apparent opening size of the geotextile shall be suitable for the sediment grain size distribution. Bags must be placed on gravel bedding. Full dewatering bags must be removed from site and disposed of in a lawful manner.

2.7 SPILL KIT

- A. Skimming Spill Kit, packed in a 65-gallon container, capable of absorbing 40 gallons of oil, containing at a minimum, the following:
 1. Nine 10-foot socks
 2. Two 10-foot booms
 3. Forty skimming mat pads
 4. Miscellaneous: Disposal bags and ties; labels; emergency response guidebook, and instruction manual.

2.8 DUST CONTROL

- A. Water used for dust control shall be fresh and free from injurious amounts of oil, acid, salt, alkali, organic matter, or other deleterious substances.

PART 3 – EXECUTION

3.1 EXTENT OF WORK

- A. Contractor shall implement additional erosion and sediment controls as required by the designated site inspector (defined by the SESC Plan) or Owner to remain in compliance with applicable local and state regulations and Permit. Field changes and minor adjustments from the Contract Drawings are permissible as long as the installation functions and conforms to this Specification.

3.2 INSTALLATION

- C. Straw Bales: Shall conform to the requirements of Subsection 206.03.1 of the Standard Specifications and the Contract Drawings.
- D. Silt Fences: Shall conform to the requirements of Subsection 206.03.2 of the Standard Specifications and the Contract Drawings.
- E. Stabilized Construction Access: Shall conform to the requirements of Subsection 211.03 of the Standard Specifications and the Contract Drawings.
- F. Silt Sack: Install in accordance with manufacturer's written instructions.
- G. Turbidity Curtain: Install as indicated on the Contract Drawings and in accordance with the manufacturer's written instructions.
- H. Spill Kit: Maintain spill kit onsite for duration of construction.

3.3 INSPECTIONS

- A. Perform routine inspections to determine condition and effectiveness of temporary erosion and sediment control measures in accordance with the SESC Plan for Buckeye Brook Restoration and Standard Specifications:
 - 1. General: Inspect disturbed areas of the construction site; areas that have not been finally stabilized; areas used for storage of materials; areas exposed to precipitation, stabilization practices, structural practices, other controls; and areas where vehicles exit the site at least once every 7 calendar days and within 24 hours of the end of any storm that produces 0.25 inches or more rainfall at the site and/or a significant amount of runoff. Once disturbed areas have been stabilized, the inspection schedule may be relaxed to once every month with the Engineer's approval.
 - 2. Inspection Details: Inspect disturbed areas and areas used for material storage that are exposed to precipitation for evidence of, or the potential for, sediment entering the drainage system. Observe erosion and sediment control measures identified in the SESC Plan to ensure that they are operating correctly. Inspect discharge locations or points to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Inspect locations where vehicles exit the site for evidence of offsite sediment tracking.
 - 3. Inspection Reports: For each inspection conducted, prepare a report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SESC Plan, maintenance performed, and actions taken. A

copy of the inspection report shall be maintained on the job site and furnished to Engineer upon request. Use the inspection report template provided with the SESC Plan.

3.4 MAINTENANCE

- A. Maintain the temporary erosion and sediment control measures in good and effective operating condition by performing through the maintenance and repair of erosion and sediment control measures in accordance with the SESC Plan for Buckeye Brook Restoration and Standard Specifications.

3.5 REMOVAL OF MATERIALS

- A. Erosion Control Measures: Following completion of the project, all materials shall be removed from the site. The removal of any erosion and sediment control measure shall only be performed upon receiving permission from the Engineer. Prior to removal, all upstream contributing drainage areas to the individual controls shall be vegetatively stabilized, and healthy and vigorous vegetative cover shall be present as described in Section 329219 – Site Restoration.
- B. Stabilized Construction Entrance: Following site stabilization, dispose of stone, fabric and accumulated sediment offsite. Restore disturbed area using to pre-construction conditions as shown on the Contract Drawings.

END OF SECTION 015700

SECTION 017000 – EXECUTION AND CLOSEOUT REQUIREMENTS

PART 1 – GENERAL

1.1 SUMMARY

A. Scope:

1. This section specifies the requirements for execution and closeout requirements, including but not limited to, field engineering, construction photographs, restoration, closeout requirements, inspection procedures, record documents, and final cleaning. This section is to be used with the requirements contained in all other sections, including the related sections listed below. The Contractor shall provide all labor, materials, equipment, and incidentals to complete the Work specified in this section.

B. Related Sections:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions.

1.2 DEFINITIONS

- A. Restoration Construction Area: Area affected by the physical construction activities where soil disturbances shall occur.

1.3 SUBMITTALS

- A. Construction photographs
- B. Substantial completion certificate and inspection request
- C. Substantial completion punch list
- D. Final completion certificate and inspection request
- E. Record documents.

1.4 FIELD ENGINEERING

- A. Contractor shall verify with the Engineer locations of site, benchmarks, survey control, and reference points prior to starting Work. Locate and protect these points. Promptly notify Engineer of discrepancies discovered. Contractor shall also verify layouts periodically during Work.
- B. Control datum for survey is indicated on Contract Drawings.
- C. Verify setbacks and easements; confirm Contract Drawing dimensions and elevations.

- D. Provide field engineering services. Establish elevations, lines, and levels using recognized engineering survey practices.
- E. Contractor shall develop and make all detail surveys and measurements needed for construction.
- F. Contractor shall provide all materials as required to properly perform the surveys, including, but not limited to, instruments, tapes, rods, measures, mounts and tripods, stakes and hubs, nails, ribbons, other reference markers, and all else required. All material shall be of sound professional quality.
- G. All lasers, transits, and other instruments shall be calibrated and maintained in accurate calibration throughout the execution of the Work. Calibration certificates shall be submitted to the Engineer prior to use of any instrument.
- H. Contractor shall establish additional control, including baselines, as is required for performance of the Work. These shall be tied into the site reference points.
- I. Maintain complete and accurate log of control and survey work as work progresses.
- J. Protect survey control points prior to starting site work; preserve permanent reference points during construction.
- K. Promptly report to Engineer loss or destruction of reference point or relocation required because of changes in grades or other reasons.
- L. Replace dislocated survey control points based on original survey control. Make no changes without prior written notice to Engineer.
- M. It shall be the duty of the Contractor to keep the Engineer informed of the times and places at which work will be conducted in order that the Engineer may have an ample opportunity to furnish and/or check the lines and elevations with a minimum of inconvenience to the Engineer or delay to the Contractor.
- N. All surveys shall be plus or minus 0.1 feet, and for horizontal control angles shall be to the nearest 20 seconds plus or minus 10 seconds and measured distances shall be to plus or minus 0.1 feet.
- O. Final As-Built Survey: Prior to Substantial Completion, prepare final as-built survey illustrating locations of Work that have resulted from construction indicating their relationship to permanent benchmarks and property lines.
 - 1. Show significant features (real property) for project.

2. Include certification on survey, signed by surveyor, that principal metes, bounds, lines, levels, and elevations of project are accurately shown.

1.5 CONSTRUCTION PHOTOGRAPHS

- A. Provide photographs of site and construction throughout progress of work produced by an experienced photographer acceptable to Engineer.
- B. Each month submit photographs with Application for Payment.
- C. Take photographs as evidence of existing project conditions prior to initiating onsite work. Notable items include the existing light towers and their foundations as well as overhead wires.
- D. Progress Photographs. Digital color photographs shall be used to document progress of the Work. A minimum of four views of the site showing the location, entrance/exit road, and any other notable site conditions shall be taken before Work begins. After Work has been started, construction activities shall be photographically recorded weekly indicating relative progress of Work.
- E. Digital Images: Deliver complete set of digital image electronic files to Engineer with Project record documents. Identify electronic media with date photographs were taken. Submit images that have same aspect ratio as sensor, uncropped.
 1. Digital Images: Uncompressed TIFF format, produced by digital camera with minimum sensor size of 12.0 megapixels, and image resolution of not less than 1600 × 1200 pixels.
 2. Date and Time: Include date and time in filename for each image.

1.6 RESTORATION

- A. Prior to final acceptance of the project, the site shall be restored to its original condition prior to construction, unless otherwise indicated on the Contract Drawings and in the Specifications. This shall include, but not be limited to, staging areas, Phragmites Dewatering Areas, construction access roads, and all areas within the limits of work/ Restoration Construction Area.
- B. Final restoration shall include seeding as included in Section 329219 – Site Restoration. The Contractor shall be responsible for a minimum of 85% vegetative coverage after one growing season.
- C. Disassemble and remove all temporary construction facilities constructed by the Contractor and leave the site in an orderly and restored condition.

- D. Repair or replace damaged items as directed by the Engineer, at no additional cost to Owner.
- E. Gravel surfaces shall be restored to condition as shown in plans, or as directed by Engineer.
- F. All turfed areas disturbed during construction shall be re-seeded in accordance with Section 329219 – Site Restoration, unless otherwise specified or directed by the Engineer.
- G. Temporary berms, roads, and other temporary facilities shall be removed prior to final acceptance of the Work, unless otherwise specified or directed by the Engineer.
- H. Asphalt roads shall be returned to preconstruction conditions.
- I. Any fencing or posts removed during construction shall be replaced to its original condition.

1.7 CLOSEOUT PROCEDURES

- A. Prerequisites to Substantial Completion: Complete following items before requesting Certification of Substantial Completion, either for entire Work or for portions of Work:
 - 1. Submit project record documents, digital images of construction photographs, and other similar final record data in compliance with this section.
 - 2. Conduct inspection to establish basis for request that Work is substantially complete. Create comprehensive list (initial punch list) indicating items to be completed or corrected, value of incomplete or nonconforming work, reason for being incomplete, and date of anticipated completion for each item. Include copy of list with request for Certificate of Substantial Completion.
 - 3. Discontinue or change over and remove temporary facilities and services from project site along with construction tools and similar elements.
 - 4. Perform final cleaning according to this section.
- B. Substantial Completion Inspection:
 - 1. When Contractor considers Work to be substantially complete, submit to Engineer:
 - a. Written certificate that Work, or designated portion, is substantially complete.
 - b. List of items to be completed or corrected (initial punch list).

2. Within 7 days after receipt of request for Substantial Completion, Engineer will make inspection to determine whether Work or designated portion is substantially complete.
 3. Should Engineer determine that Work is not substantially complete:
 - a. Engineer will promptly notify Contractor in writing, stating reasons for its opinion.
 - b. Contractor shall remedy deficiencies in Work and send second written request for Substantial Completion to Engineer.
 - c. Engineer will re-inspect Work.
 - d. Redo and Inspection of Deficient Work: Repeated until Work passes Engineer's inspection.
 4. When Engineer finds that Work is substantially complete, Engineer will:
 - a. Prepare Certificate of Substantial Completion, accompanied by Contractor's list of items to be completed or corrected as verified and amended by Owner and Engineer (final punch list).
 - b. Submit Certificate to Owner and Contractor for their written acceptance of responsibilities assigned to them in Certificate.
 5. After Work is substantially complete, Contractor shall:
 - a. Allow Owner occupancy of project under provisions stated in Certificate of Substantial Completion.
 - b. Complete Work listed for completion or correction within time period stipulated.
- C. Prerequisites for Final Completion: Complete following items before requesting final acceptance and final payment.
1. The Vegetation Establishment Period shall be complete and approved by the Owner as discussed in Section 329219 – Site Restoration prior to the Contractor submitting request for final inspection.
 2. When Contractor considers Work to be complete, submit written certification that:
 - a. Contract Documents have been reviewed.

- b. Work has been examined for compliance with Contract Documents.
 - c. Work has been completed according to Contract Documents.
 - d. Work is completed and ready for final inspection.
3. Submittals: Submit following:
- a. Final punch list indicating all items have been completed or corrected.
 - b. Final payment request with final releases and supporting documentation not previously submitted and accepted. Include certificates of insurance for products and completed operations where required.
 - c. Specified warranties, workmanship/maintenance bonds, maintenance agreements, and other similar documents.
 - d. Accounting statement for final changes to Contract Sum.
 - e. Contractor's affidavit of payment of debts and claims.
 - f. Contractor affidavit of release of liens.
 - g. Consent of surety to final payment.
4. Perform final cleaning for Contractor-soiled areas according to this section.
- D. Final Completion Inspection:
1. Within 5 days after receipt of request for final inspection, Engineer will make inspection to determine whether Work or designated portion is complete.
 2. Should Engineer consider Work to be incomplete or defective:
 - a. Engineer will promptly notify Contractor in writing, listing incomplete or defective Work.
 - b. Contractor shall remedy stated deficiencies and send second written request to Owner that Work is complete.
 - c. Engineer will re-inspect Work.
 - d. Redo and Inspection of Deficient Work: Repeated until Work passes Engineer's inspection.

1.8 PROJECT RECORD DOCUMENTS

- A. Maintain onsite one set of the following record documents; record actual revisions to the Work:
 - 1. Contract Drawings
 - 2. Specifications
 - 3. Addenda
 - 4. Change Orders and other modifications to the Contract
 - 5. Reviewed Contract Drawings, product data, and samples
 - 6. Manufacturer's instruction for assembly, installation, and adjusting.
- B. Ensure entries are complete and accurate, enabling future reference by Engineer.
- C. Store record documents separate from documents used for construction.
- D. Record information concurrent with construction progress, not less than weekly.
- E. Specifications: Legibly mark and record, at each product section, description of actual products installed, including the following:
 - 1. Manufacturer's name and product model and number
 - 2. Product substitutions or alternates used
 - 3. Changes made by Addenda and modifications.
- F. Record Drawings and Contract Drawings: Legibly mark each item to record actual construction as follows:
 - 1. Include Contract modifications such as Addenda, supplementary instructions, change directives, field orders, minor changes in the Work, and change orders.
 - 2. Identify actual excavation and final grades and limits.
 - 3. Include locations of concealed elements of the Work.
 - 4. Identify and locate existing buried or concealed items encountered during project.

5. Measured horizontal and vertical locations of any underground utilities and appurtenances encountered, referenced to permanent surface improvements.
 6. Field changes of dimension and detail.
 7. Details not on original Contract Drawings.
 8. Scale Contract Drawings showing limits of excavation. Onsite staging, Phragmites Dewatering Areas, and locations of frac tanks shall also be shown on the Contract Drawings.
- G. Final as-built surveys shall include a licensed professional surveyor's stamp.
- H. Submit marked-up paper copy documents to Engineer before Substantial Completion.
- I. Submit PDF electronic files of final documents to Engineer prior to final application of payment.

PART 2 – PRODUCTS

Not Used.

PART 3 – EXECUTION

3.1 EXAMINATION

- A. Verify that existing site conditions and surfaces are acceptable for subsequent Work. Beginning new Work means acceptance of existing conditions.
- B. Verify that existing conditions are capable of structural support or attachment of new Work being applied or attached.
- C. Examine and verify specific conditions described in individual Specification sections.
- D. Verify that utility services are available with correct characteristics and in correct locations.

3.2 EXECUTION

- A. Where applicable, comply with manufacturer's installation instructions, performing each step in sequence. Maintain one set of manufacturer's installation instructions at project site during installation and until completion of construction.

- B. When manufacturer's installation instructions conflict with Contract Documents, request clarification from Owner before proceeding.
- C. Verify that field measurements are as indicated on approved Contract Drawings or as instructed by manufacturer.

3.3 PROTECTING INSTALLED CONSTRUCTION

- A. Protect installed Work and provide special protection where specified in individual Specification sections.
- B. Control activity in immediate work area to prevent damage.

3.4 FINAL CLEANING

- A. Complete the following cleaning operations before requesting inspection for certification of Substantial Completion for entire Project or for a portion of Project:
 - 1. Clean areas disturbed by construction activities of rubbish, surplus soil, waste material, litter, and other foreign substances.
 - 2. Sweep paved areas broom clean. Remove petrochemical spills, stains, and other foreign deposits.
 - 3. Rake grounds that are neither planted nor paved to a smooth, even-textured surface.
 - 4. Remove tools, construction equipment, machinery, and surplus material from Project site.
 - 5. Remove debris from limited access spaces, including trenches, equipment vaults, manholes, and similar spaces.
 - 6. Leave Project clean and ready for occupancy.
- B. Comply with safety standards for cleaning. Do not burn waste materials. Do not bury stumps, debris or excess materials brought to the site on Owner's property. Do not discharge volatile, harmful, or dangerous materials into drainage systems. Remove waste materials from Project site and dispose of lawfully.
- C. If the Contractor fails to clean up, the Owner may do so and the cost thereof will be charged to the Contractor.

END OF SECTION 017000

SECTION 026100 - TRANSPORTATION AND DISPOSAL OF MATERIAL

PART 1 – GENERAL

1.1 SUMMARY

- A. Section includes but is not limited to handling, storage, offsite transportation, and disposal of all waste materials generated during the Work.
 - 1. Proper transportation and disposal of non-contaminated and contaminated *Phragmites australis* (includes root wad and adhered sediment); dewatered fraction; ancillary waste (disposable personal protection equipment (PPE), plastic sheeting and sampling equipment); and site trash.
 - 2. *Phragmites australis* dewatering is covered in Section 312316 – Excavation.
 - 3. Temporary stockpiling of *Phragmites australis*, its root wad, and adhered sediment dewatering is covered in Section 312316 – Excavation.

1.2 DEFINITIONS

- A. Dewatered fraction: Liquid separated from excavated *Phragmites australis* during dewatering process.
- B. Excavation: Removal of material encountered above subgrade elevations and to lines and dimensions indicated.
- C. Hazardous – *Phragmites australis* (includes root wad and adhered sediment) and dewatered fraction is considered to be hazardous if laboratory analyses results for sediment samples meet the definition of a hazardous waste as defined in 40 CFR 261.24 requiring the waste to be disposed of at a RCRA Subtitle C Landfill.
- D. *Phragmites australis* – invasive common reed; includes root wad and adhered sediment.
- E. Restoration Construction Area: Area affected by the physical construction activities where soil disturbances shall occur.
- F. Root wad: *Phragmites australis* are assumed to have a root wad of an approximate 2 foot depth; the root wad includes adhered sediment.
- G. Sediment: Sediment excavated during *Phragmites australis* removal.

- H. Waste – shall mean *Phragmites australis*, sediment, and dewatered fraction excavated as part of the Project and any ancillary waste generated onsite.

1.3 SUBMITTALS

- A. Disposal facility qualifications
- B. Transporter certifications
- C. Certificates of disposal and disposal weigh tickets
- D. Waste manifests.

1.4 QUALITY ASSURANCE

- A. Contractor will be responsible for adhering to Soil Management Plan (Exhibit C).
- B. Provide the Engineer with disposal facility qualifications and transporter certifications prior to the transportation and disposal of *Phragmites australis* or dewatered fraction.
- C. Provide the Engineer with certificates of disposal and disposal weigh tickets with Application for Payment and within 30 days from shipment date.
- D. Provide the Engineer with waste manifests with Application for Payment and within 30 days from shipment date.

1.5 HANDLING REQUIREMENTS

- A. The Contractor shall be responsible for proper onsite management of wastes generated in compliance with all federal, state and local regulations and the Contract Documents. Management shall include handling, segregating, processing (as required), and storing all wastes generated during the Contractor's Work.

1.6 *PHRAGMITES AUSTRALIS* TRANSPORTATION AND DISPOSAL

- A. If deemed to be non-hazardous, *Phragmites australis* shall be disposed of at the Rhode Island Resource Recovery Corporation's Central Landfill in Johnston, Rhode Island.
- B. If deemed to be hazardous, *Phragmites australis* shall be disposed of at a facility licensed to accept sediment at hazardous levels, in accordance with the analytical reporting results for sediment samples. (May be different facilities.)

1.7 DEWATERED FRACTION TRANSPORTATION AND DISPOSAL

- A. If deemed to be non-hazardous, the dewatered fraction shall be released in a controlled manner, not resulting in erosion and satisfactory to the Engineer, onsite.

- B. If deemed to be hazardous, the dewatered fraction shall be disposed of at a facility licensed to accept water at hazardous levels, in accordance with the analytical reporting results for water samples. (May be different facilities.)

1.8 OTHER WASTES

- A. Other wastes produced onsite including PPE will be bagged in plastic bags and taken to landfill for proper disposal.
- B. Construction debris from the Phragmites Dewatering Areas shall be taken to landfill for proper disposal.

PART 2 – PRODUCTS

2.1 STORAGE AND TRANSPORTATION EQUIPMENT

- A. All materials and equipment used to store and transport hazardous or potentially hazardous materials (*Phragmites australis*, dewatered fraction, and waste) shall be water-tight.

PART 3 – EXECUTION

3.1 TRANSPORTATION OF *PHRAGMITES AUSTRALIS*, DEWATERED FRACTION, AND WASTE TO LANDFILL

- A. Inspect transportation equipment for leaks and forward copies of inspection reports to the Engineer.
- B. Contractor shall collect laboratory samples of excavated media from material stockpiles in accordance with required disposal requirements including analysis and frequency. Following the first day of excavation, laboratory analysis must be performed with results made reviewable by the Engineer prior to the commencement of excavation by the contractor. Bid item 2 has been included to account for contractor costs incurred due to shut-down times not to exceed three (3) working days. The contractor shall submit samples for analysis with a 24-hour turn-around time. Costs incurred as the result of the stoppage of work exceeding three (3) days will not be paid by the Owner.
- C. Contractor shall be responsible for the transportation of all waste specified in the Contract Drawings or generated as a result of the Work.
- D. Contractor shall be responsible for loading waste containers, trucks, etc. with removed waste generated.

- E. Furnish labor, materials, and equipment necessary to store, transport, and dispose of waste in accordance with federal, state, and local requirements. Prepare and maintain waste shipment records and manifests required by the Resource Conservation Recovery Act, U.S. Federal Department of Transportation, and State transportation department.
- F. Transportation:
 - 1. Transport waste in water-tight (e.g., lined and covered) vehicles in accordance with all federal, state, and local requirements.
 - a. Inspect and document vehicles/containers for proper operation and covering. Repair or replace damaged containers.
 - b. All trucks should be covered prior to departure.
 - c. Inspect vehicles and containers for proper markings, manifest documents, and other requirements for waste shipment.
 - d. Perform and document decontamination procedures prior to leaving the Work site and again before leaving the disposal site.
- G. Shipping Documentation:
 - 1. 40 Code of Federal Regulations 761. Before transporting the waste, Owner will sign and date the manifests. Ensure that the manifest accompanies the waste at all times. Submit transporter certification of notification to U.S. Environmental Protection Agency (EPA) of their waste activities and EPA identification numbers. Within 35 days from shipment date, the transporter shall provide a copy of the manifest signed and dated by the disposer.
- H. Certificate of Disposal:
 - 1. Manifests and certified weight slips for all transported waste loads must be obtained and provided as documentation for payment.
 - 2. Submit certificate of disposal to the Engineer within 30 calendar days of the date that the disposal of the contaminated sediment and debris waste identified on the manifest was completed. Include:
 - a. The identity of the disposal facility, by name, address, and EPA identification number.
 - b. The identity of the waste affected by the Certificate of Disposal including reference to the manifest number for the shipment.

- c. A statement certifying the fact of disposal of the identified waste, including the date(s) of disposal, and identifying the disposal process used.
 - d. A certification as defined in 40 Code of Federal Regulations 761, Section 3.
- I. Dispose of all waste at the facilities approved by the Engineer.

END OF SECTION 026100

DIVISION 2 - SITE CONSTRUCTION

SECTION 311000 – SITE CLEARING

PART 1 – GENERAL

1.1 SUMMARY

- A. Section includes, but is not limited to, the following:
 - 1. Protecting existing trees and vegetation, utilities, and other items to remain within and outside the Restoration Construction Area (RCA)
 - 2. Clearing and grubbing
 - 3. Selective clearing and/or trimming of trees and vegetation
 - 4. Removing existing trees, stumps, brush, and other vegetation and rubbish
 - 5. Offsite disposal of above items.
- B. Limits of Work: Minimize disturbance within limits of clearing. Perform only as much clearing as required to complete the Work. Limit of clearing for access is depicted on the Contract Drawings.
- C. Related Sections:
 - 1. Drawings and general provisions of the Contract, including General and Supplementary Conditions
 - 2. Section 023100.00 – Transportation and Disposal of Waste
 - 3. Section 312316.00 – Excavation
 - 4. Section 317200.00 – Herbicide Application
 - 5. Section 329219.00 – Site Restoration.

1.2 DEFINITIONS

- A. Diameter at breast height (DBH)
- B. Flood Reduction Area: Area impacted by the proposed change in water surface elevation – predominantly comprised of Warwick Pond

- C. RCA: Area affected by the physical construction activities where soil disturbances shall occur.

1.3 MATERIAL OWNERSHIP

- A. Except for materials indicated to remain within RCA, all material removed from the site shall become the property of the Contractor, who shall bear all responsibility for its proper disposal in accordance with this Section.

1.4 SUBMITTALS

- A. Preconstruction photographs or videotape, sufficiently detailed, of existing conditions of trees and plantings, airport infrastructure, adjoining construction, and site improvements that might be misconstrued as damage caused by site clearing.

1.5 QUALITY ASSURANCE

- A. Preconstruction Meeting: Conduct meeting with Engineer and onsite supervisor and review the following:
 - 1. Limit of clearing for access
 - 2. Tree removal marking system and requirements
 - 3. Identification and location of trees to be removed
 - 4. Trees and other on-site improvements to be protected.
- B. Where “Standard Specification” is used, it shall mean “State of Rhode Island Department of Transportation Standard Specifications for Road and Bridge Construction,” 2004 Edition and all amendments.
- C. Where “FAA Obstruction Marking and Lighting Guidelines” is used, it shall mean “FAA Advisory Circular 70/7460-1L Change 2, Obstruction Marking and Lighting”.

1.6 PROJECT CONDITIONS

- A. The following restrictions apply to tree clearing:
 - 1. Unless indicated otherwise on the Contract Drawings or approved by the Engineer, all trees 3 inches DBH or greater are scheduled to remain. Protect trees to remain.
 - 2. Clearing of trees greater than 3 inches DBH shall not commence between 1 May and 31 August.

1.7 EQUIPMENT OPERATIONS

- A. Operate equipment with care to prevent injury to overhanging branches and limbs of trees to remain within RCA and avoid overhead wires as depicted on the Contract Drawings.
- B. Equipment shall not exceed 20 feet in height.
- C. Equipment shall not be used after dark without the prior permission of the Engineer.
- D. Equipment shall be marked/lighted in accordance with FAA Obstruction Marking and Lighting Guidelines – Chapters 3.5.2(Flag Markers), 4(Lighting Guideline), 5(Red Lights), & 12(Marking and Lighting Equipment and Information).
 - 1. Flag Markers: Flags are used to mark certain structures or objects when it is technically impractical to use spherical markers or paint. Some examples are temporary construction equipment, cranes, derricks, oil and other drilling rigs. Catenaries should use spherical markers.
 - a. Minimum Size: Each side of the flag marker should be at least 2 feet (0.6 meters [m] in length.
 - b. Color Patterns: Flags should be colored as follows:
 - i. Solid: aviation orange
 - ii. Orange and white: arrange two triangular sections, one aviation orange, and the other white to form a rectangle.
 - iii. Checkerboard: flags 3 feet (0.9 m) or larger should be a checkerboard pattern of aviation orange and white squares, each 1 foot (0.3 m) plus or minus 10 percent.
 - c. Shape: Flags should be rectangular in shape and have stiffeners to keep them from drooping in calm wind.
 - d. Display: Flag markers should be displayed around, on top, or along the highest edge of the obstruction. When flags are used to mark extensive or closely grouped obstructions, they should be displayed approximately 50 feet (15 m) apart. The flag stakes should be strong enough to support the flags and be higher than the surrounding ground, structures, and/or objects of natural growth.

2. Aviation Red Obstruction Lights: Use a single level of steady-burning lights (L-810) during night-time. Tower structures are typically marked with flashing red lights.
 - a. Double Obstruction Light: A double steady-burning (L-810) light should be installed when used as a top light, at each end of a row of single obstruction lights, and in areas or locations where the failure of a single unit could cause an obstruction to be totally unlighted.
 - i. Structures 150 feet (46 m) AGL or less. Two or more steady-burning red (L810) lights should be installed in a manner to ensure an unobstructed view of one or more lights by a pilot.
 - ii. Appurtenances 40 feet (12 m) or less. If a rod, antenna, or other appurtenance 40 feet (12 m) or less in height is incapable of supporting a red flashing light then it may be placed at the base of the appurtenance. If the mounting location does not allow an unobstructed view of the light by a pilot, then additional lights should be added.
 - b. Red obstruction lights should be operated by an acceptable control device (e.g., photocell, timer, etc.) adjusted so the lights will be turned on when the northern sky illuminance reaching a vertical surface falls below a level of 60-foot candles (645.8 lux) but before reaching a level of 35-foot candles (376.7 lux). The control device should turn the lights off when the northern sky illuminance rises to a level of not more than 60-foot candles (645.8 lux). The lights may also remain on continuously. The sensing device should, if practical, face the northern sky in the Northern Hemisphere. (See AC 150/5345-43.)
 - c. Inspection, Repair, and Maintenance: To ensure the proper candela output for fixtures with incandescent lamps, the voltage provided to the lamp filament should not vary more than plus or minus 3% of the lamp's rated voltage. The input voltage should be measured at the closest disconnecting means to the lamp fixture with the lamp operating during the hours of normal operation. (For strobes, the input voltage of the power supplies should be within 10% of rated voltage.) Lamps should be replaced after being in operation for approximately 75% of their rated life or immediately upon failure. Flashtubes in a light unit should be replaced immediately upon failure, when the peak effective intensity falls below specification limits or when the fixture begins skipping flashes, or at the manufacturer's recommended intervals. Due to the effects of harsh environments, light fixture lenses should be visually inspected every 24 months, or when the light fixture fails, for ultraviolet (UV) damage,

cracks, crazing, dirt buildup, etc., to ensure the certified light output has not deteriorated. (See Chapter 2 Paragraph 2.4 of the FAA Obstruction Marking and Lighting Guidelines for reporting requirements in case of failure.) Lenses that have cracks, UV damage, crazing, or excessive dirt buildup should be cleaned or replaced.

- d. **Monitoring Obstruction Lights:** Obstruction lighting systems should be closely monitored by visual or automatic means. It is extremely important to visually inspect obstruction lighting in all operating intensities at least once every 24 hours on systems without automatic monitoring. In the event a structure is not readily accessible for visual observation, a properly maintained automatic monitor should be used. This monitor should be designed to register the malfunction of any light on the obstruction regardless of its position or color. When using remote monitoring devices, the system's communication and operational status should be confirmed at least once every 24 hours. The monitor (aural or visual) should be located in an area generally occupied by the responsible personnel. In some cases, this may require a remote monitor in an attended location. For each structure, a log should be maintained in which the lighting system's daily operations status is recorded. Light fixture lenses should be replaced if serious cracks, hazing, dirt buildup, etc., has occurred.
 - e. In general, light shields are not permitted because of the adverse effects they have on the obstruction light fixture's photometrics. In addition, these shields can promote undesired snow accumulation, bird nesting, and wind loading.
- E. **Traffic:** Minimize interference with adjoining roads, streets, walks, driveways, and other adjacent occupied or used facilities during site-clearing operations.
- F. **Protect-In-Place Existing Site Improvements:** Support and protect in place existing site improvements designated by the Engineer to be preserved in place or to remain. Notable items include the existing light towers and their foundations as well as overhead wires and underground electrical utilities. Restore items promptly; do not leave until end of construction. Restore items damaged by the Contractor, at a minimum, to the condition in which the item was found immediately before beginning the Work. Restore items promptly; do not leave until end of construction.
- G. **Call Dig Safe service at 811 not less than three working days before performing Work:**
- 1. Request underground utilities to be located and marked within and surrounding RCA.

- H. Contractor to locate sewer utility prior to the start of work.
- I. Contractor to locate underground electrical utility field markings and confirm utility presence/location(s) prior to the start of work
- J. Do not commence site clearing operations until temporary erosion and sedimentation control measures are in place.

PART 2 – PRODUCTS

2.1 FLAGS MARKERS AND AVIATION RED OBSTRUCTION LIGHTS

- A. Lighting and associated equipment shall conform to the latest edition of one of the following specifications, as applicable:
 - 1. Obstruction Lighting Equipment:
 - a. AC 150/5345-43, FAA Specification for Obstruction Lighting Equipment
 - b. Military Specifications MIL-L-6273, Light, Navigational, Beacon, Obstacle or Code, Type G-1
 - c. Military Specifications MIL-L-7830, Light Assembly, Markers, Aircraft Obstruction.
 - 2. Certified Equipment:
 - a. AC 150/5345-53, Airport Lighting Certification Program, lists the manufacturers that have demonstrated compliance with the specification requirements of AC 150/5345-43
 - b. Other manufacturers' equipment may be used provided the equipment meets the specification requirements of AC 150/5345-43.
 - 3. Airport Lighting Installation and Maintenance:
 - a. AC 150/5340-30, Design and Installation Details for Airport Visual Aids.
 - 4. Vehicles:
 - a. AC 150/5210-5, Painting, Marking, and Lighting of Vehicles Used on an Airport, contains provisions for marking vehicles principally used on airports.

- b. FAA Facilities. Obstruction marking for FAA facilities shall conform to FAA Drawing Number D-5480, referenced in FAA Standard FAA-STD-003, Paint Systems for Structures.

PART 3 – EXECUTION

3.1 SITE PREPARATION

- A. Erosion and Sedimentation Control: Examine the site to verify that temporary erosion- and sedimentation-control measures are in place.
- B. Identify utilities and perform site clearing in accordance with Section 311100 – Site Clearing.
- C. Protect and maintain benchmarks and survey control points from disturbance during construction.
- D. Protect existing site improvements to remain from damage during construction.
- E. Locate and clearly identify trees to be removed. Engineer to review trees to be removed in the field prior to Contractor commencing with cutting.
- F. Selectively clear and carefully trim trees and vegetation in the locations indicated on the Contract Drawings as necessary for access.

3.2 TREE- AND PLANT-PROTECTION ZONES

- A. Do not cut or damage trees to remain.
- B. Do not store construction materials, debris, or excavated material within drip line of trees to remain. Maintain area within drip line free of weeds and trash.
- C. Do not cut branches, limbs or roots except where approved by the Engineer or indicated on the Contract Drawings.
- D. Repair or replace trees, shrubs, and other vegetation indicated to remain that are damaged by construction operations, in a manner approved by Engineer.

3.3 CLEARING AND GRUBBING

- A. Remove obstructions, trees, shrubs, grass, and other vegetation within limits of clearing for access as indicated on the Contract Drawings:

1. Do not remove trees, shrubs, and other vegetation to remain.
 2. Cut minor roots and branches of trees to remain in a clean and careful manner where such roots and branches obstruct access and the excavation of *Phragmites australis*.
 3. Completely remove stumps, roots, obstructions, and debris extending to the proposed depth of excavation of *Phragmites australis*.
 4. Use only hand methods for grubbing within drip line of remaining trees.
- B. All trees and brush removed during the site clearing shall be stockpiled within the designated staging area and disposed of offsite.

3.4 ROOT PRUNING

- A. Prune roots that are affected by temporary and permanent construction. Prune roots as follows:
1. Cut roots manually by digging a trench and cutting exposed roots with sharp pruning instruments; do not break, tear, chop, or slant the cuts. Do not use a backhoe or other equipment that rips, tears, or pulls roots.
 2. Many plant authorities do not consider it beneficial to paint cut root ends.
 3. Cut Ends: Do not paint cut root ends.
 4. Temporarily support and protect roots from damage until they are permanently redirected and covered with soil.
 5. Cover exposed roots with burlap and water regularly.
 6. Backfill exposed roots with excavated material free of *Phragmites australis*.
- B. All pruned roots shall be stockpiled within the designated staging area and disposed of offsite.

3.5 CROWN PRUNING

- A. Prune branches that are affected by temporary and permanent construction. Prune branches as follows:

1. Prune trees to remain to compensate for root loss caused by damaging or cutting root system.
 - a. Pruning Standards: Prune trees according to ANSI A300 (Part 1).
 2. Cut branches with sharp pruning instruments; do not break or chop.
 3. Do not apply pruning paint to wounds.
- B. All removed branches shall be stockpiled within the designated staging area and disposed of offsite.

3.6 DISPOSAL

- A. Disposal: Remove obstructions, demolished materials, and waste materials including trash and debris, and legally dispose of them off Owner's property.

END OF SECTION 311000

SECTION 312316 – EXCAVATION

PART 1 – GENERAL

1.1 SUMMARY

A. Section includes, but is not limited to, the following:

1. Excavation, dewatering, and stockpiling as required for *Phragmites australis* removal; this work shall consist of excavation of *Phragmites australis* and its root wad and adhered sediment as specified in the Contract Drawings.

B. Related Sections:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions
2. Section 311000.00 – Site Clearing
3. Section 312319.00 – Control of Water
4. Section 317200.00 – Herbicide Application
5. Section 329219.00 – Site Restoration.

1.2 DEFINITIONS

- A. Diameter at breast height (DBH).
- B. Dewatered fraction: Liquid separated from excavated *Phragmites australis* during dewatering process.
- C. Excavation: Removal of material encountered above subgrade elevations and to lines and dimensions indicated.
- D. Hazardous – *Phragmites australis* (includes root wad and adhered sediment) and dewatered fraction is considered to be hazardous if laboratory analyses results for sediment samples meet the definition of a hazardous waste as defined in 40 CFR 261.24 requiring the waste to be disposed of at a RCRA Subtitle C Landfill.
- E. High density polyethylene (HDPE).

- F. *Phragmites australis* – invasive Common reed; includes root wad and adhered sediment.
- G. Restoration Construction Area (RCA): Area affected by the physical construction activities where soil disturbances shall occur.
- H. Rock: Rock material in beds, ledges, unstratified masses, and conglomerate deposits and boulders of rock material that cannot be removed by excavating equipment, without systematic drilling, ram hammering, ripping, or blasting, when permitted; and that when tested by an independent geotechnical testing agency, according to ASTM D 1586, exceeds a standard penetration resistance of 100 blows/2 inches.
- I. Root wad: *Phragmites australis* are assumed to have a root wad of an approximate 2 foot depth; the root wad includes adhered sediment. The actual cut depth of the root wad will be determined by field conditions.
- J. Sediment: Sediment excavated during *Phragmites australis* removal.
- K. Structures: Buildings, (light tower) footings, foundations, retaining walls, slabs, tanks, curbs, mechanical and electrical appurtenances, or other man-made stationary features constructed above or below the ground surface.
- L. Subgrade: Uppermost surface of an excavation.
- M. Utilities: Onsite underground or aboveground pipes, conduits, ducts, and cables/wires, as well as underground services within buildings.
- N. Waste – shall mean *Phragmites australis*, sediment, and dewatered fraction excavated as part of the Project and any ancillary waste generated onsite.

1.3 MATERIAL OWNERSHIP

- A. Except for materials indicated to remain within RCA, all material removed from the site shall become the property of the Contractor, who shall bear all responsibility for its proper disposal in accordance with this Section.

1.4 SUBMITTALS

- A. Preconstruction Submittals: Water Control Plan (covered in Section 312319 – Control of Water) shall be submitted at least two (2) weeks prior to the start of excavation.
- B. Product Data: *Phragmites* Dewatering Area materials.

C. Copies of all material shipping and disposal records (covered in Section 026100 – Transportation and Disposal of Material).

D. QUALITY ASSURANCE

E. Preconstruction Meeting: Conduct meeting with Engineer and onsite supervisor and review the following:

1. Stake-out of Limits of Phragmites Excavation and Removal.
2. Erosion and sediment controls (covered in Section 015000.00 – Temporary Facilities and Controls)

F. Where “Standard Specification” is used, it shall mean “State of Rhode Island Department of Transportation Standard Specifications for Road and Bridge Construction,” 2004 Edition and all amendments.

G. Where “SESC Handbook” is used, it shall mean “Rhode Island Soil Erosion and Sediment Control Handbook,” issued 1989, updated 2014, and revised 2016 and all amendments.

H. Local utility standards shall apply when working within 24 inches of utility lines.

I. The publication(s) listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only:

1. ASTM INTERNATIONAL (ASTM) D 1586 Standard Test Method for Standard Penetration Test (SPT) and Split-Barrel Sampling of Soils.
2. ASTM C 825 – Standard Specification for Precast Concrete Barriers.

1.5 PROJECT CONDITIONS

A. An EA biologist will be available for consultation during the root mass removal process.

B. Excavation shall not begin until one month after herbicide has been applied and be completed by 31 October.

- C. The excavation and dewatering of excavated soils and *Phragmites australis*, root wad, and adhered sediment shall be in strict accordance with all Federal, State, and local regulations and Contract Documents.
- D. Sediment testing shall be submitted for a three (3) day turn-around time. **Excavated sediment must be tested on the first day of excavation, regardless of the volume of material excavated.**

1.6 EQUIPMENT OPERATIONS

- A. Refer to Section 0311000 – Site Clearing for requirements for marking and lighting equipment in accordance with “FAA Advisory Circular 70/7460-1L Change 2, Obstruction Marking and Lighting”.
- B. Traffic: Minimize interference with adjoining roads, streets, walks, driveways, and other adjacent occupied or used facilities during excavation operations.
- C. Protect-In-Place Existing Site Improvements: Support and protect in place existing site improvements designated by the Engineer to be preserved in place or to remain. Notable items include the existing light towers and their foundations as well as overhead wires and underground electrical utilities. Restore items promptly; do not leave until end of construction. Restore items damaged by the Contractor, at a minimum, to the condition in which the item was found immediately before beginning the Work. Restore items promptly; do not leave until end of construction.
- D. Restore items and finished surfaces that have been damaged by Contractor’s operations to a condition at least equal to condition before work began. Notable finished surfaces include the asphalt road that extends from Range Road where the construction access is located and runs parallel to the RCA.
- E. Repair all rutting, or damage to the site as a result of the repetitive passage of heavy equipment on existing substrate.

PART 2 – PRODUCTS

2.1 PHRAGMITIES DEWATERING AREA MATERIALS

- A. Concrete Jersey Barrier: Equivalent to ASTM C 825 Shall conform to the applicable requirements of RIDOT Standard Specifications Section 909.
- B. Sandbags for Anchoring: The sandbags and the sand material shall be of a quality acceptable to the Engineer.

C. Coarse Aggregate: Coarse aggregate shall be either crushed ledge, crushed granite or crushed gravel and shall meet the following gradation in the following table.

Test Sieve (inches)	Percent Passing (%)
3	—
2.5	100
2	—
1.5	95-100
1	—
3/4	35-100
1/2	—
3/8	10-55
3/16	0-10

D. Sand Base: Shall conform to the requirements of Column Subsection M.01.09 of the Standard Specifications, Table I, Column Ia for Bank Run Proc. Sand/Gravel.

E. Nonwoven Geotextile: 8-ounce:

1. Grab Tensile Strength: 225 pounds
2. Puncture Strength: 600 pounds
3. Opening Size: .18 millimeters (mm)
4. Permittivity: 1.26 (second -1)
5. Flow Rate: 80-90 (gallons per minute per square foot)

F. Perforated HDPE Riser: greater than 6 inches in diameter.

G. HDPE Geomembrane: 60 millimeter:

1. Thickness: 1.5 mm
2. Sheet density: 0.034 pounds per cubic inch
3. Tensile strength: 228 pounds per inch
4. Puncture resistance: 108 pounds
5. Carbon black content: 2-3%
6. UV resistance: 50%.

H. Sump: Shall be of sufficient capacity to dewater the Phragmites Dewatering Area and discharge the dewatered fraction to the Frac tank while maintaining six (6) inches of freeboard on the Concrete Jersey Barriers.

I. Straw bales: Shall conform to the applicable requirements of RIDOT Standard Specifications Section 206.02.1.

J. Frac Tank:

1. Type: Closed top
2. Capacity: 21,000 gallons
3. Epoxy lined interior
4. Meets Occupational Safety and Health Administration (OSHA) guidelines.

PART 3 – EXECUTION

3.1 SITE PREPARATION

- A. Erosion and Sedimentation Control: Examine the site to verify that temporary erosion- and sedimentation-control measures are in place.
- B. Identify utilities and perform site clearing in accordance with Section 311100 – Site Clearing.
- C. Identify required lines, levels, contours, and datum:
 1. Protect utilities and other infrastructure indicated to remain from damage.
 2. Protect benchmarks, survey control points, and existing finished surfaces from excavating equipment and vehicular traffic.
- D. Stake-out Limits of Phragmites Excavation and Removal for review and approval by Engineer.
- E. Construct the Phragmites Dewatering Area in accordance with the Contract Drawings, ensuring that the sump is properly connected to pump the dewatered fraction from the Phragmites Dewatering Area to the Frac Tanks.
- F. See Section 317200 – Herbicide Application for the minimum number of days to wait following herbicide application to *Phragmites australis* before excavating.

3.2 GRADING

- A. The layout of the grading shall be as shown on the Contract Drawings.

3.3 SITE CLEANUP

- A. Prior to excavation, the site shall be cleaned of all non-desirable items such as waste concrete, metal, vegetation debris, and rubbish prior to stockpiling. The Contractor shall be responsible for removing as much unnatural or undesirable material as

possible prior to salvaging and stockpiling of the suitable onsite materials. Disposal of non-desirable material shall be the responsibility of the Contractor.

3.4 EXCAVATION

- A. The Contractor shall excavate all types of material encountered within the horizontal limits of Phragmites Removal as indicated in the Contract Drawings, with exception of any trees 3 inches DBH or greater and rock. The Contractor shall excavate to bottom of the root system. It is anticipated that the root system of *Phragmites australis* will extend 2 feet +/- below grade; however, the actual cut depth of the root wad will be determined by field conditions.
- B. Rough grading shall be in accordance with the typical section as indicated in the Contract Drawings.
- C. During construction, the Contractor shall perform excavation in a manner and sequence that will provide proper drainage at all times. Excavations should be performed in accordance with OSHA regulations.
- D. Excavation within Buckeye Brook and its floodplain will require an adequate Water Control System to control water inflow into the work area and reduce excessive sedimentation upstream and downstream of the Work in accordance with Section 312319 – Control of Water.
- E. Notify Engineer of unexpected subsurface conditions.
- F. Repair or replace items indicated to remain damaged by excavation.
- G. All excavated materials shall be temporarily stored in the Phragmites Dewatering Area to allow for dewatering and sample collection and testing, to be performed by the Contractor. Following the first day of material excavation and stockpiling, the contractor shall submit samples from collected from the stockpile for laboratory analysis in accordance with section 026100.00 - Transportation and Disposal of Material. The contractor shall not excavate or stockpile any additional material until laboratory analysis is performed and made reviewable by the Engineer following the first day of excavation. Care shall be taken to prevent soil and/or biomass from reaching areas outside the RCA excavation limits as shown on the Contract Drawings and the Phragmites Dewatering Area. Excessively wet excavated materials shall be allowed to freely drain from the bucket (or similar excavation equipment) prior to being transported.
- H. Soil disturbance shall temporarily be ceased during any high flow vent as directed by the Engineer.

- I. The adequacy of *Phragmites australis* removal shall be performed to the Engineer's approval. Success criteria for the complete removal of *Phragmites australis* shall be confirmed by an EA biologist through visual inspection and the verification that there are no visible rhizomes.

3.5 PHRAGMITES DEWATERING AREAS

- A. Stockpile excavated *Phragmites australis* in one of the three Phragmites Dewatering Areas as indicated in the Contract Drawings. Minimization/alterations to the sizes/orientations of Phragmites Dewatering Areas may be allowed as approved by the Engineer.
 1. Construct Phragmites Dewatering Areas in accordance with the detail as indicated in the Contract Drawings.
 2. At no point, shall there be more than 1,800 Cubic Yards of untested, excavated material on site.
- B. Contractor to collect and analyze samples prior to disposal of *Phragmites australis* offsite.
- C. Following receipt of analytical reports for biomass and sediment samples, stockpiled material will be transported for proper offsite disposal/recycling at a licensed disposal facility in accordance with all federal, state, and local regulations, and requirements and in accordance with Section 026100 – Transportation and Disposal of Material. Copies of all material shipping and disposal records will be maintained by the site owner.
- D. The Contractor shall collect and analyze water samples from Frac Tanks prior to disposal of the dewatered fraction offsite. Water sample(s) shall be analyzed for parameters as required by Warwick Sewer Authority or alternate disposal facility.
- E. Following receipt of analytical reports for water samples, the dewatered fraction will be transported for proper offsite disposal/recycling at a licensed disposal facility in accordance with all federal, state, and local regulations, and requirements and in accordance with Section 026100 – Transportation and Disposal of Material. Copies of all material shipping and disposal records will be maintained by the site owner (covered in Section 026100 – Transportation and Disposal of Material).
- F. Untested stockpiled material will be covered and secured with 6-mil polyethylene sheeting during periods of inactivity while waiting for sampling results.

- G. Excavated material will not be stockpiled in the floodway for longer than a 24-hour period, or when there is a potential for flooding.

3.6 USE OF EXCAVATED MATERIALS

- A. Reuse of excavated material is only permitted to correct areas over excavated as directed by the Engineer and must be free from *Phragmites australis*.

3.7 DISPOSAL OF UNSUITABLE MATERIALS

- A. Existing debris, concrete, waste (excluding *Phragmites australis*, root wad, and adhered sediment), and other unsuitable materials, as determined by these Specifications or by the Owner, shall be removed from the site and shall be disposed of at a properly permitted disposal facility. Contractor is responsible for characterization of all materials for disposal in compliance with the disposal facility's requirements and local, state, and federal rules and regulations.

3.8 STABILIZATION

- A. The Contractor shall be responsible for temporary and permanent stabilization of all excavation areas. The Contractor shall perform all care and remediation work required to maintain stable stream banks, including erosion and sediment control.

3.9 PROTECTION

- A. Prevent displacement or loose soil from falling into excavation; maintain soil stability.
- B. Protect bottom of excavations and soil adjacent to and beneath foundation from freezing.
- C. Protect structures, utilities and other facilities from damage caused by settlement, lateral movement, undermining, washout, and other hazards created by earth operations.

3.10 WORKER HEALTH AND SAFETY

- A. To ensure the health and safety of onsite workers, persons involved in the excavation and handling of the material on site are required to wear a minimum of modified Level D personal protection equipment, including gloves, work boots, and eye protection. Workers are also required to wash their hands with soap and water prior to eating, drinking, smoking, or leaving the site.

3.11 CONDITIONS

- A. The Contractor should anticipate adverse excavation conditions. Saturated soils, contact with groundwater, woody debris and organic muck are anticipated. No additional payment shall be made for adverse conditions of excavation, or delay or work associated with those conditions.

- B. The Contractor shall be aware that the ground surface within the RCA may be comprised of peat and be extremely unstable. Low ground pressure equipment shall be used. Marsh/timber matting for access within wetland recommended and may be required if deemed necessary by the Engineer.

END OF SECTION 312316

SECTION 312319 – CONTROL OF WATER

PART 1 – GENERAL

1.1 SUMMARY

A. This section includes, but is not limited to, the following:

1. Temporary water control measures including cofferdams and water bypass/diversion conveyances (Water Control System) for normal water control including design and sequencing, construction, installation, maintenance, and removal of temporary protective facilities and appurtenances required to convey surface water beyond or around project work areas. Temporary measures and appurtenances may include but are not limited to:
 - a. Control of surface water
 - b. Cofferdams
 - c. Piping
 - d. Trash rack.
2. Safe conveyance of water and flood flows.
3. Protection of existing structures and features, constructed improvements, work in progress, and downstream areas during abnormally high stormwater runoff events.

B. Related Sections:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions
2. Section 023100.00 – Transportation and Disposal of Material
3. Section 102000.00 – Price and Payment Procedures
4. Section 312316.00 – Excavation.

1.2 SUBMITTALS

A. Preconstruction Submittals: Water Control Plan shall be submitted at least 2 weeks prior to the start of excavation:

1. Shop Drawings: The Contractor shall submit to the Engineer details of the Water Control Plan, which includes the anticipated arrangement, locations, and details of stream bypass piping, trash rack, outlet protection/stable velocity dissipator, and methods to control of turbidity within the brook during construction and when the cofferdams are removed.
2. The submittal shall include a narrative or plans showing all equipment, proposed procedures, and sequences of construction to be used to sufficiently control water to perform excavation.
3. The Water Control Plan shall conform to all requirements of the Contract Drawings.

B. Product Data: Water Control System materials.

1.3 QUALITY ASSURANCE

A. Preconstruction Meeting: Conduct meeting with Engineer and on-site supervisor and review the following:

1. Water Control Plan:

- a. Location of bypass/diversion pipe
- b. Alignment and construction of bypass piping including necessary bends and fittings
- c. Monitoring and relief of potential stress to river herring
- d. Controlled removal of cofferdam to reduce turbidity in the brook.

B. Where “Standard Specification” is used, it shall mean “State of Rhode Island Department of Transportation Standard Specifications for Road and Bridge Construction,” 2004 Edition and all amendments.

C. Regulatory Requirements: Comply with governing Rhode Island Department of Environmental Management (RIDEM) notification regulation or permitting requirements before beginning control of water. Comply with hauling and disposal regulations of authorities having jurisdiction.

1.4 PERFORMANCE REQUIREMENTS

A. Water Control Performance: Furnish, install, test, operate, monitor, and maintain water control system of sufficient scope, size, and capacity to comply with Contract Drawings and to control surface water within proposed excavation limits and permit excavation and construction to proceed:

1. Continuously monitor and maintain Water Control System to ensure erosion control and stability of excavations and constructed slopes.
 2. Prevent surface water from entering excavation via proposed stream bypass piping as identified on the Contract Drawings.
 3. Accomplish water control without damaging existing buildings, structures, subgrade, and site improvements adjacent to excavation. Notable items include the existing light towers, their foundations, and underground electrical utilities.
 4. Remove Water Control System in a controlled manor to not allow a sediment plume downstream, when no longer required for construction.
 5. Maintain a suitable working condition within the coffer-dammed working area (no sediment plume).
- B. Abnormally High Stormwater Runoff Event (2-year storm):
1. If a suitable working condition cannot be maintained with the use of the proposed stream bypass, disturbance in the watercourse must temporarily cease.
 2. Soil disturbance activities will be temporarily ceased in the event of a forecasted 2 year or greater storm event, corresponding to a flow of 21.2 cubic feet per second.
 - a. The Contractor is responsible for tracking weather conditions. The website weather.gov is a reliable website. The National Oceanic and Atmospheric Administration 14 Atlas Rainfall Precipitation amount at Buckeye Brook is 5.03 inches. Conservatively, the Contractor can use a moderate rainfall event of 3.0 inches as the “Trigger” storm for temporarily ceasing work and exiting the river.
- C. Location and Materials on Contract Drawings: The locations for the Water Control System shown on the Contract Drawings are for reference only. The actual location of the stream bypass pipe shall be approved by the Engineer.
- D. All materials used in the stream bypass system must be clean and free of contaminants, debris and trash or other materials that may pollute the brook:
1. No material may be used in the stream bypass system that may be harmful to plant growth or aquatic life.

2. All materials shall be stable when subjected to expected brook flows such that they will not migrate within the brook channel and not be removable in its entirety following construction.
3. Liners used shall consist of a continuous, flexible, liner membrane that provides a complete barrier to brook flows when positioned. Liners shall extend adequately into the upstream and downstream sections and be anchored in place to provide a complete, firm seal during the work by hydrostatic pressure of the overlying water column.

1.5 PROJECT CONDITIONS

- A. Comply with local noise ordinances and variances.
- B. This is a performance specification. Except as otherwise specified or indicated, selection of equipment, materials, and methods shall be Contractor's responsibility. The control of water/dewatering of any excavation areas shall be in strict accordance with all local and state rules and regulations and Contract Documents.

PART 2 – PRODUCTS

2.1 WATER CONTROL SYSTEM MATERIALS

- A. Furnish Water Control Systems to divert surface water flow around excavation area to permit work to be completed to the satisfaction of the Engineer.
- B. Piping: Watertight piping. Protect pipe from breakage due to freezing. Supply smooth interior HDPE piping with a minimum inside diameter of 36 inches to bypass/divert water around the excavation area, meet the performance requirements, and comply with Contract Drawings.

PART 3 – EXECUTION

3.1 SITE PREPARATION

- A. Erosion and Sedimentation Control: Examine the site to verify that temporary erosion- and sedimentation-control measures are in place.
- B. Identify utilities and perform site clearing in accordance with Section 311100 – Site Clearing.
- C. Protect structures and other facilities from damage caused by settlement, lateral movement, undermining, washout, and other hazards created by Water Control

System operations. Notable items include the existing light towers, their foundations, and underground electrical utilities.

1. Prevent surface water from entering excavations and from flooding site and surrounding area.
- D. Provide temporary grading to facilitate control of water.
- E. Monitor Water Control System continuously.
- F. Promptly repair damages to adjacent facilities caused by dewatering.
- G. Do not begin excavation until Water Control System is in place and operating as intended such that water levels in active work area have been lowered to required water depths that do not cause damage to subgrades, constructed features, or adjacent properties, structures and features.

3.2 INSTALLATION

- A. Install Water Control System utilizing appropriate equipment, trash rack, appurtenances, and surface-water controls in accordance with design and installation requirements.

3.3 OPERATION

- A. Operate Water Control System in accordance with permits, Contract Drawings, and manufacturer's recommendations.

3.4 MAINTENANCE

- A. Monitor Water Control System daily. Promptly correct seepage, breakage, or other evidence of movement to ensure that temporary cofferdams remain stable and functioning as intended.
- B. Protect adjacent structures from damage caused by settlement, lateral movement, undermining, washout, and other hazards created by coffer-damming operations.
- C. Promptly repair damages to adjacent areas or structures caused by water control activities.
- D. Perform inspections three times a day of upstream trash rack. Remove and accumulated debris from trash rack immediately upon discovery and dispose offsite. Inform Engineer immediately if fish are seen congregating around the trash rack area.

3.5 REMOVAL AND REPAIRS

- A. Remove Water Control System from Project site on completion of excavation and in accordance with the Contract Drawings.
- B. Repair or replace adjacent work damaged or displaced by construction operations at no additional cost.

END OF SECTION 312319

SECTION 317200 – HERBICIDE APPLICATION

PART 1 – GENERAL

1.1 SUMMARY

- A. Section includes, but is not limited to, the following:
 - 1. Herbicide application.
- B. Related Sections:
 - 1. Drawings and general provisions of the Contract, including General and Supplementary Conditions
 - 2. Section 311000.00 – Site Clearing
 - 3. Section 312316.00 – Excavation.

1.2 DEFINITIONS

- A. Flood Reduction Area: Area impacted by the proposed change in water surface elevation - predominantly comprised of Warwick Pond.
- B. *Phragmites australis* – invasive Common reed; includes root wad and adhered sediment.
- C. Restoration Construction Area (RCA): Area affected by the physical construction activities where soil disturbances shall occur.

1.3 SUBMITTALS

- A. Narrative describing method of protection to prevent overspray and minimize pesticide drift.
- B. Product data: Aquapro and/or Clearcast Materials Safety Data Sheets. Specify herbicide to be used during bid process.
- C. Applicator name, license number, and company information: To be provided during bid process.

1.4 QUALITY ASSURANCE

- A. Preconstruction Meeting: Conduct meeting with Engineer and on-site supervisor and review the following:
 - 1. Limits of herbicide application.
 - 2. Herbicide selection – Aquapro or Clearcast.
- B. Where “Standard Specification” is used, it shall mean “State of Rhode Island Department of Transportation Standard Specifications for Road and Bridge Construction,” 2004 Edition and all amendments.
- C. Where “FAA Obstruction Marking and Lighting Guidelines” is used, it shall mean “FAA Advisory Circular 70/7460-1L Change 2, Obstruction Marking and Lighting”.

1.5 PROJECT CONDITIONS

- 1. There will be an EA biologist on site during the herbicide application. The applicator will have sufficient *Phragmites australis* control experience and will be trained in plant identification and licensed in herbicide application.
- 2. Herbicide application shall occur between 1 July and 30 September.

1.6 EQUIPMENT OPERATIONS

- A. Refer to Section 0311000 – Site Clearing for requirements for marking and lighting equipment in accordance with “FAA Advisory Circular 70/7460-1L Change 2, Obstruction Marking and Lighting”.
- B. The use of an aquatic vehicle for herbicide application is required unless prior approval is received from the Engineer.
- C. Do not commence herbicide application operations until temporary erosion and sedimentation control measures are in place.
- D. Restore items and finished surfaces that have been damaged by Contractor’s operations to a condition at least equal to condition before work began. Notable finished surfaces include the asphalt road that extends from Range Road where the construction access is located and runs parallel to the RCA.
- E. Repair all rutting, or damage to the site as a result of the repetitive passage of heavy equipment on existing substrate.

PART 2 – PRODUCTS

A. Herbicide: Either Aquapro or Clearcast products may be used:

1. Aquapro:

- a. Active ingredient: Glyphosate
- b. EPA Registration Number: 62719-324-67690.

2. Clearcast:

- a. Active ingredient: Imazamox
- b. EPA Registration Number: 241-437-67690.

PART 3 – EXECUTION

3.1 SITE PREPARATION

- A. Erosion and Sedimentation Control: Examine the site to verify that temporary erosion and sedimentation control measures are in place.
- B. Identify utilities and perform site clearing in accordance with Section 311100 – Site Clearing.
- C. Stake-out limits of herbicide application for review and approval by Engineer.

3.2 HERBICIDE APPLICATION

- A. Set-up towers for aerial spraying.
- B. Apply one or the other herbicide at the following rates:
 1. Aquapro: 4–6 quarts per acre
 2. Clearcast: 96–128 ounces per acre.
- C. Aquapro or Clearcast herbicide will be diluted with water from Buckeye Brook aboard a treatment vessel and applied foliarly using a low-pressure pump system.

3.3 DISPOSAL OF UNSUITABLE MATERIALS

- A. Existing debris, concrete, waste (excluding *Phragmites australis*, root wad, and adhered sediment), and other unsuitable materials, as determined by these Specifications or by the Owner, shall be removed from the site and shall be disposed

of at a properly permitted disposal facility. Contractor is responsible for characterization of all materials for disposal in compliance with the disposal facility's requirements and local, state, and federal rules and regulations.

3.4 PROTECTION

- A. Protect and maintain benchmarks and survey control points from disturbance during construction.
- B. Protect existing site improvements to remain from damage during construction.

3.5 CONDITIONS

- A. The Contractor should anticipate adverse excavation conditions. Saturated soils, contact with groundwater, woody debris and organic muck are anticipated. No additional payment shall be made for adverse conditions of excavation, or delay or work associated with those conditions.

END OF SECTION 317200

SECTION 329219 – SITE RESTORATION

PART 1 – GENERAL

1.1 SUMMARY

A. Section includes, but is not limited to, the following:

1. Fertilization
2. Temporary seeding
3. Permanent seeding
4. Hydroseeding
5. Mulching
6. Maintenance.

B. Related Sections:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions
2. Section 026100.00 – Transportation and Disposal of Material
3. Section 311000.00 – Site Clearing
4. Section 312316.00 – Excavation.

1.2 DEFINITIONS

- A. Flood Reduction Area: Area impacted by the proposed change in water surface elevation – predominantly comprised of Warwick Pond.
- B. Invasive species: invasive plants in Rhode Island freshwater wetlands include, but are not limited to, Glossy Buckthorn (*Frangula alnus*); Multiflora Rose (*Rosa multiflora*); Japanese Barberry (*Berberis thunbergii*); Oriental Bittersweet (*Celastrus orbiculatus*); Japanese Knotweed (*Polygonum cuspidatum*); Reed Canary Grass (*Phalaris arundinacea*); Purple Loosestrife (*Lythrum salicaria*); and Common Reed (*Phragmites australis*).
- C. Restoration Construction Area (RCA): Area affected by the physical construction activities where soil disturbances shall occur.

1.3 SUBMITTALS

- A. Product data: Seed mixes.
- B. Certification of Grass Seed: From seed vendor for each grass-seed monostand or mixture stating the botanical and common name, percentage by weight of each species and variety, and percentage of purity, germination, and weed seed. Include the year of production and date of packaging.
- C. Product Certificates for Amendments and Fertilizers: For soil amendments and fertilizers, from manufacturer.

1.4 QUALITY ASSURANCE

- A. Vegetation Establishment Period: The Contractor shall be responsible for a minimum of 85% vegetative coverage after one growing season.
- B. Seed and Other Packaged Materials: Deliver packaged materials in original, unopened containers showing weight, certified analysis, name and address of manufacturer, and indication of conformance with state and federal laws, as applicable.
- C. Where “Standard Specification” is used, it shall mean “State of Rhode Island Department of Transportation Standard Specifications for Road and Bridge Construction,” 2004 Edition and all amendments.

1.5 QUALIFICATIONS

- A. Seed Supplier: Company specializing in manufacturing Products specified in this section with minimum 3 years documented experience.
- B. Installer: Company specializing in performing work of this section with minimum 3 years documented experience.

1.6 DELIVERY, STORAGE, AND HANDLING

- A. Deliver grass seed mixture in sealed containers. Seed in damaged packaging is not acceptable.
- B. Deliver fertilizer in waterproof bags showing weight, chemical analysis, and name of manufacturer.

1.7 PROJECT CONDITIONS

- A. Seeding Restrictions: Install permanent seed during one of the following periods. Coordinate seeding periods with initial maintenance periods to provide required maintenance from date of planting completion.
 - 1. Spring Planting: April 1 to June 1
 - 2. Fall Planting: August 15 to October 15.
- B. Weather Limitations: Proceed with seeding only when existing and forecasted weather conditions permit planting to be performed when beneficial and optimum results may be obtained. Apply products during favorable weather conditions according to manufacturer's written instructions.
- C. If permanent seeding cannot be completed within the dates specified above, install temporary seeding. Temporary seeding may be installed from March 15 to November 15 upon approval by Engineer. If neither permanent nor temporary seeding can be installed within the recommended seeding periods, use temporary straw mulch, free of weed seed, to protect the site and delay seeding until the next recommended seeding period. Depending on site conditions, Engineer may require the use of anchoring.

1.8 MAINTENANCE SERVICE

- A. Initial Turf Maintenance Service: Provide full maintenance by skilled employees under the supervision of a qualified supervisor demonstrating a background in seeding and landscape operations and whose work has resulted in successful turf establishment. Maintain as required in Part 3. Begin maintenance immediately after each area is planted and continue until acceptable turf is established but for not less than the following periods:
 - 1. Seeded Turf: 60 days from date of planting completion:
 - a. When initial maintenance period has not elapsed before end of planting season, or if turf is not fully established, continue maintenance during next planting season.

PART 2 – PRODUCTS

2.1 SEED MIXTURE

A. Furnish materials as follows:

1. Native Seed Mix (Type 4): proportioned by weight as specified on the Contract Drawings and in accordance with Standard Specifications M.18.10.6.
2. Wetland Seed Mix (Type 5): Same or equivalent to New England Wetmix (Wetland Seed Mix) as produced by New England Wetland Plants, Inc.
3. Temporary Seeding/Cover (Type 3): proportioned by weight as specified on the Contract Drawings and in accordance with Standard Specifications M.18.10.5.

2.2 ACCESSORIES

- A. Straw mulch: Provide air-dry, clean, mildew- and seed-free, salt hay or threshed straw of wheat, rye, oats, or barley.
- B. Fiber mulch: Shall comply with Standard Specifications M.18.08.1 and be free of fertilizers, biodegradable, dyed-wood, cellulose-fiber mulch; nontoxic and free of plant-growth or germination inhibitors; with a maximum moisture content of 15 percent and a pH range of 4.5 to 6.5.
- C. Fertilizer: Shall comply with Standard Specifications M.18.06.1.b for seeding outside the RCA. No fertilizer to be used inside the RCA.
- D. Water: Clean, fresh and free of substances or matter capable of inhibiting vigorous growth of grass.

PART 3 – EXECUTION

3.1 EXAMINATION AND SOIL PREPARATION

- A. Prepare areas for seeding in accordance with Standard Specification L.02.03.2 as outlined per seed type.
- B. Examine areas to be seeded for compliance with requirements and other conditions affecting performance.
 1. Verify that no foreign or deleterious material or liquid such as paint, paint washout, concrete slurry, concrete layers or chunks, cement, plaster, oils,

gasoline, diesel fuel, paint thinner, turpentine, tar, roofing compound, or acid has been deposited in soil within a planting area.

2. Do not mix or place soil amendments in frozen, wet, or muddy conditions.
 3. Suspend soil spreading, grading, and tilling operations during periods of excessive soil moisture until the moisture content reaches acceptable levels to attain the required results.
 4. Uniformly moisten excessively dry soil that is not workable, and which is too dusty.
- C. Proceed with installation only after unsatisfactory conditions have been corrected.
- D. If contamination by foreign or deleterious material or liquid is present in soil within a seeding area, remove the soil and contamination as directed by Engineer and replace with new planting soil.
- E. Verify prepared soil base is ready to receive the work of this section.

3.2 FERTILIZING

- A. Apply fertilizer in accordance with Standard Specification L.02.03.4 as outlined per seed type. Fertilizer shall be used outside of the RCA only.

3.3 SEEDING

- A. Sow seed in accordance with Standard Specification L.02.03.5 as outlined per seed type. Sow seed with spreader or seeding machine.
- B. Do not seed areas in excess of that which can be mulched on same day.
- C. Do not sow immediately following rain, when ground is too dry, or when winds are over 12 miles per hour.
- D. Do not use wet seed or seed that is moldy or otherwise damaged.
- E. Do not seed against existing trees. Limit extent of seed to outside edge of planting saucer.
- F. Apply seed at rate as specified on the Contract Drawings evenly in two intersecting directions. Rake in lightly.

- G. Rake seed lightly into top 1/8 inch (3 mm) of soil, roll lightly, and water with fine spray.

3.4 HYDROSEEDING

- A. Hydroseeding: Mix specified seed, fertilizer, and fiber mulch in water, using equipment specifically designed for hydroseed application. Continue mixing until uniformly blended into homogeneous slurry suitable for hydraulic application:
 - 1. Mix slurry with fiber-mulch manufacturer's recommended tackifier.
 - 2. Apply slurry uniformly to all areas to be seeded in a one-step process. Apply slurry at a rate so that mulch component is deposited at not less than 1,500 pounds per acre (15.6 kilograms [kg] per 92.9 square miles) dry weight, and seed component is deposited at not less than the specified seed-sowing rate.
- B. After application, apply water with fine spray immediately after each area has been hydroseeded. Saturate to 4 inches of soil and maintain moisture levels 2 to 4 inches.

3.5 MULCHING

- A. Apply mulch in accordance with Standard Specification L.02.03.6.

3.6 MAINTENANCE

- A. Care for seeded areas during construction in accordance with Standard Specification L.02.03.7.

END OF SECTION 329219

EXHIBIT A

PERMITS



RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF WATER RESOURCES
235 Promenade Street
Providence, Rhode Island 02908

CERTIFIED MAIL & Via E-mail

July 19, 2019

RI Department of Transportation
Brian Moore, Administrator
Office of Stormwater Management
360 Lincoln Avenue
Warwick, RI 02888

PERMIT TO ALTER FRESHWATER WETLANDS

Re: Wetlands Application No. 18-0144 in reference to the location below:

Along portions of Buckeye Brook adjacent to TF Green Airport, south of Warwick Pond, north of the terminus of Cedar Swamp Road, Assessor's Plat 321, Lot 4, Warwick, RI.

Dear Mr. Moore:

The Department of Environmental Management's ("DEM") Freshwater Wetlands Program ("Program") has completed its review of your **Application to Alter a Freshwater Wetland** regarding the proposed invasive species removal (Common Reed, *Phragmites australis*) along portions of Buckeye Brook to improve flow capacity to reduce upgradient flooding in Warwick Pond and to improve fish passage for migratory river herring as described and detailed in the material and information submitted in support of your application and on site plans received by the DEM on March 6, 2019. These site plans describing the project were made available for public comment as part of the forty-five (45) day public notice period required in accordance with the Freshwater Wetlands Act (R.I. Gen. Laws § 2-1-18 et seq.) and the procedures set forth in the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, 250-RICR-150-15-1, specifically in 250-RICR-150-15-1.10.

The Program did not receive any written comments relating to this application during the public notice period.

Pursuant to the Program's review and evaluation of your application including all supporting information and material, as well as the record to date, the Program has determined that this project does not represent a random, unnecessary or undesirable alteration of freshwater wetlands. Therefore, this Program hereby issues this permit to alter freshwater wetlands **subject to all controlling Rules and the Terms and Conditions set forth herein.**

Permit Terms and Conditions for Wetlands Application No. 18-0144; RIPDES No. RIR101766:

1. This letter is the DEM's permit for this project under the R.I. Fresh Water Wetlands Act, R.I. Gen. Laws § 2-1-18 et seq. This application review has also included review related to the RIPDES "General Permit for Storm Water Discharge Associated with Construction Activity."

2. This permit is specifically limited to the project, site alterations and limits of disturbance as detailed on the site plans submitted with your application and received by the DEM on March 6, 2019. A copy of the site plans stamped approved by the DEM is enclosed. Changes or revisions to the project which would alter freshwater wetlands are not authorized without a permit from the DEM.
2. Where the terms and conditions of the permit conflict with the approved site plans, these terms and conditions shall be deemed to supersede the site plans.
3. You must notify this Program in writing immediately prior to the commencement of site alterations and again upon completion of the project.
5. In addition to the above required written notifications for start of site work and completion of the project, the following written notifications will be required:
 - a. Immediate notification of any unauthorized alterations to freshwater wetlands resulting from either non-compliance with this Permit or from unanticipated failure of construction management measures (e.g. erosion controls, temporary diversion dams, dewatering measures), together with a written description of any corrective action taken.
 - b. Upon commencement of flow diversion operations in support of *Phragmites* removal operations;
 - c. Immediate notification of the occurrence of any significant mortality of river herring, with a description of what steps were taken to resolve any issue identified as a cause;
 - d. Upon request by this Program, copies of written inspection reports performed for reporting required under the Soil Erosion and Sediment Control Plan.
6. A copy of the stamped approved site plans and a copy of this permit must be kept at the site at all times during site preparation, construction, and final stabilization. Copies of this permit and the stamped approved plans must be made available for review by any DEM or City representative upon request.
4. The effective date of this permit is the date this letter was issued. This permit expires one (1) year from the date of this letter unless renewed pursuant to 250-RICR-150-15-1.10(G)(6).
5. Any material utilized in this project must be clean and free of matter that could pollute any freshwater wetland.
6. Prior to commencement of site alterations, you shall erect or post a sign resistant to the weather and at least twelve (12) inches wide and eighteen (18) inches long, which boldly identifies the initials "DEM" and the application number of this permit. This sign must be maintained at the site at the anticipated construction entrance from Range Road or at any alternative construction entrance from adjacent public rights-of-way until such time that the project is complete or the DEM issues a Notice of Completion of Work for the project.
7. Temporary erosion and sediment controls detailed or described on the approved site plans shall be properly installed at the site prior to or commensurate with site alterations. Such controls shall be properly monitored, maintained, replaced, supplemented, or modified as necessary throughout the life of this project to minimize soil erosion and to prevent sediment from being deposited in any wetlands not subject to disturbance under this permit, consistent with the Soil Erosion & Sediment Control Plan.

8. Upon permanent stabilization of all disturbed soils, temporary erosion and/or sediment controls consisting of silt fence or other non-biodegradable materials must be removed.
9. You are responsible for the proper installation, operation, maintenance and stability of any mitigative features such as dewatering cells, stormwater treatment facilities, and systems of treatment and control that are installed or used in compliance with this permit to prevent harm to adjacent wetlands.
10. You are obligated to install, utilize and follow all best management practices detailed or described on the approved site plans in the construction of the project to minimize or prevent adverse impacts to any adjacent freshwater wetlands and the functions and values provided by such wetlands.
11. All construction activities involving soil disturbances within watercourses (**i.e. for installation and removal of temporary sandbag/membrane cofferdams or porta-dams**) must be limited to the low flow period (*i.e.*, the period from July 1 to October 31 of any calendar year). Soil disturbance in these watercourses must temporarily cease in the event of any abnormally high stormwater runoff event during the low flow period.
12. All native and wetland seed mixes as shown or detailed on the approved plans, or detailed in this permit, must be installed as soon as possible after completion of final grading; weather and season permitting.
136. Buffer zone seeded areas outside of the maintained grassed portions of the Airport property must be allowed to develop naturally without being subjected to mowing or manicuring. Invasive species can be removed if in accordance with Rule 250-RICR-150-15-1.6Bk.
17. This Program has made specific revisions to the approved site plans. These revisions are clearly marked in red on the approved plans and include the following:
 - Note No. 10 under “Phragmites Australis Construction Notes”, on sheet 2 of 12, is modified in red to specify that the bypass pumps be sized for a 2-year storm (21.2 CFS).
 - Under General Sequence of Construction Note 6” on Sheet 9 of 12, the last sentence has been crossed off in red and removed. The sentence reads “The downstream coffer dam shall not be removed until three (3) days after work has ceased within the designated area to allow sediment to settle,” which contradicts other statements and would result in blockage of the passage of river herring.

This project must take place in compliance with these revisions.

18. The use of turbidity curtains across flowing watercourses is inconsistent with the latest version of the RI Soil Erosion & Sediment Control Handbook and would present an unacceptable barrier to fish movement and is therefore prohibited. To the extent that conditions may warrant (a wide enough and deep enough channel), turbidity curtain use is encouraged parallel to the riverbanks, in the water, to allow turbidity control by working on one side of the channel at a time.
19. If at any time during this project there is evidence of a “Recognized Environmental Concern” as defined in ASTM E-1527-13, soils must be sampled to determine if they exceed the soil objectives outlined in 250-RICR-140-30-1, “*Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases*”, Rule 1.6.1(C) effective 1-8-19, (“Remediation Regulations”). If the soil sampling exceeds Table 1 or Table 2 in Rule 1.9.2 of the Remediation Regulations, the RIDEM Office of Water Resources and Office of Waste Management must be notified.

20. Sheet 9 of 12 on the approved site plans, under “General Sequence of Construction Note No. 3 indicates the requirement for a contractor to provide a detailed water control plan. In recognition of the need to allow flexibility to deal with on-site conditions, DEM will allow such flexibility to the extent that all the following parameters are satisfied:
- The plan is consistent with the “General Sequence of Construction Notes” provided on Sheet 9 of 12 of the approved site plans;
 - The plan provides for unhindered downstream movement of juvenile river herring for a minimum of 14 of every 24-hour period, and provisions for either immediate removal of channel cofferdams or manual transference of herring downstream at any signs that fish are stressed while staged upstream of any cofferdam;
 - The plan minimizes downstream turbidity to the greatest extent feasible in light of the need to provide unhindered downstream movement of river herring. Consideration should be given to either use of a diversion culvert placed within the existing channel, between cofferdams, to allow free flow and fish movement through the work area of each cell; or use of turbidity curtains parallel to riverbanks and isolating sections of riverbank to capture sediment plumes on one side of the channel (the work side) while allowing flow along the other side of the channel.
21. An environmental consultant familiar with habitat requirements of river herring shall be on site during all flow diversion operations to ensure that movement of juvenile herring is accommodated consistent with the requirements of this permit. This Program must be notified in writing of the consultant chosen.
22. An environmental consultant familiar with identification of *Phragmites*, as well as native vegetation that occurs within and adjacent to the “Phragmites removal area”, shall be on site during all treatment and removal operations to ensure that native vegetation is protected and left in place to the greatest extent possible. This is particularly important between the river channel and wetland flags WE-10-East and WE-11-East. This Program must be notified in writing of the consultant chosen.

RIDEM encourages you the applicant and/or the City of Warwick to monitor the site and maintain it under the exemption provisions of the Rules for removal of invasive species to prevent the re-establishment of *Phragmites* at this location. Failure to monitor and maintain the *Phragmites* such that it becomes re-established to the extent that it again impedes flow or fish passage would likely result in the need to submit a new permit application in the future.

Additionally, **the Program has reviewed this project in accordance with the standards of the RIPDES General Permit for Storm Water Discharge Associated with Construction Activity (“CGP”).** Construction Activities which disturb one (1) or more acres of land and where storm water runoff is directed, via a point source, into a separate storm sewer system or into the waters of the State, are required to seek coverage under the Rhode Island Pollutant Discharge Elimination System (RIPDES) storm water permit. Our review has determined that the project has been designed to meet the requirements of the 2018 CGP. This determination therefore includes your final authorization to discharge storm water associated with construction activity under the CGP. For future references and inquiry, your permit authorization number is RIPDES No. **RIR 101766.**

Both the owner and the contractor retained to undertake the construction activity are required to comply with all terms and conditions of the CGP. This includes maintaining the Soil Erosion and Sediment Control (SESC) Plan, performing the required inspections and maintenance of the selected Best Management

Practices (BMPs), and retaining inspection records. Further information on the requirements of the CGP is available at: <http://www.dem.ri.gov/programs/benviron/water/permits/swcoord/pdf/cpg092618.pdf>.

Please be aware that the RIDEM's Rules and Regulations Governing the Establishment of Various Fees (250-RICR-30-00-1) require that RIPDES CGP permit holders pay an Annual Fee of \$100.00. An invoice will be sent to the owner on record in May/June of each year if the construction was still active as of December 31st of the previous year. The owner will be responsible for the Annual Fee until the construction activity has been completed, the site has been properly stabilized, and a completed Notice of Termination (NOT) has been received by the RIPDES Program. A copy of the NOT can be found attached to the CGP on the web page referenced above.

This Permit also constitutes your authorization from the U.S. Army Corps of Engineers ("Corps") under Section 404 of the Clean Water Act for the work proposed. Your project qualifies as Pre-Construction Notification (PCN) under **General Permit # 10** of the Rhode Island General Permit NAE-2016-2264), (RI GP). You can view this permit at:

http://www.nae.usace.army.mil/Portals/74/docs/regulatory/StateGeneralPermits/RI/Rhode_Island_General_Permits_2017.pdf. **You are, therefore, not required to file a separate application with the Corps.**

Please note that the RI GP conditions outlined in the General Permit noted above apply to all activities authorized under the RI GP. Please review them carefully to thoroughly familiarize yourself with their contents. You may wish to discuss all permit conditions with your contractor to ensure that the work can be accomplished in a manner that conforms to all requirements.

You are required to comply with the terms and conditions of this permit and to carry out this project in compliance with the Rules at all times. Failure to do so may result in an enforcement action against you by the DEM and/or subject you to the enforcement provisions of the Corps' regulations.

In permitting the proposed alterations, the Department assumes no responsibility for damages resulting from faulty design or construction. This permit does not remove your obligation to obtain any local, state, or federal approvals or permits required by ordinance or law and does not relieve you from any duties owed to adjacent landowners with specific reference to any changes in drainage.

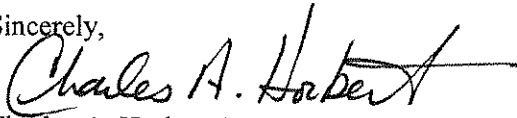
If you are aggrieved by this decision, you may, within thirty (30) days of the receipt of this letter, request an adjudicatory hearing in writing. This request must be sent directly to the DEM Administrative Adjudication Division ("AAD"), One Capitol Hill, Second Floor, Providence, RI 02903. A copy of the request should also be forwarded to this Program and to the Office of Legal Services, at the same address. Your written request for an adjudicatory hearing must be timely filed and should conform to the requirements of 250-RICR-10-10-1.7(B) of the DEM Rules and Regulations for the Administrative Adjudication Division, 250-RICR-10-00-1. Section 250-RICR-10-00-1.7(B) provides:

"The request for a hearing shall state clearly and concisely the specific issues which are in dispute, and the facts in support thereof, the relief sought, if any, the license or permit sought or involved, and any additional information required by applicable statutes and regulations."

The written request must be accompanied by an adjudicatory hearing fee of two thousand dollars (\$2,000.00); in the form of a certified bank check or money order made payable to the Rhode Island General Treasurer; however, in the event that the cost of the hearing exceeds the fee paid, the Program through the AAD will require an additional fee which the applicant must submit prior to the DEM's issuance of any final decision regarding this application. The adjudicatory hearing will be held before a Hearing Officer from the AAD. Such hearing will be held in compliance with 250-RICR-10-00-1, R.I. Gen. Laws Chapter 42-35-1 *et seq.*, and other governing laws, rules, and regulations adopted by the DEM. Please note that you have the right to be represented by legal counsel in any proceeding which may be held in this matter.

If you have any questions regarding this matter, you may contact Nancy Freeman of my staff at this office (telephone: 401-222-6820, ext. 7408).

Sincerely,



Charles A. Horbert, Program Supervisor
Office of Water Resources
Freshwater Wetlands Program
CAH/NLF/nlf

Enclosure: Approved Site Plans

cc: Philip Edwards, RIDEM Fish and Wildlife
 Mary Dalton, Administrative Clerk, Administrative Adjudication Division
 Eric Beck, P.E., Administrator, DEM Groundwater and Wetland Protection
 Neal Personcus, DEM Water Quality Certification
 Stephen Tyrell, DEM Office of Compliance and Inspection
 Mary Kay, Executive Counsel, DEM Office of Legal Services
 Joshua Helms, U.S. Army Corps of Engineers, New England District
 Eric Hindinger, City of Warwick, Engineering Program Manager
 Jay Brolin, RI Airport Corporation
 Amy Hunt, PE, EA Engineering Science & Technology
 Michael Zarum, President, Buckeye Brook Coalition
 Philip D'Ercole



RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF WATER RESOURCES
235 Promenade Street
Providence, Rhode Island 02908

March 18, 2022

Rhode Island Department of Transportation
Alisa Diaz Richardson, PE, Managing Engineer, Environmental Division
360 Lincoln Avenue
Warwick, RI 02888

REVISED PERMIT

Re: Application No. 18-0144 in reference to the property and proposed project located:

Along portions of Buckeye Brook adjacent to TF Green airport, south of Warwick Pond, north of the terminus of Cedar Swamp Road, Assessor's Plat 321, Lot 4, Warwick, RI.

Dear Ms. Richardson:

The Department of Environmental Management's ("DEM") Freshwater Wetlands Program ("Program") has completed its review of your **Application for Permit Modification** and has evaluated your proposed modifications to the permitted invasive species removal project along portions of Buckeye Brook to improve flow capacity, to reduce flooding in Warwick Pond, and to improve fish passage for migratory river herring with modifications to water flow management as illustrated and detailed on revised site plans submitted with your application. The revised site plans were received on March 16, 2022.

Based upon the Program's evaluation of the revised project and pursuant to 250-RICR-150-15-1.11(C) of the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, 250-RICR-150-15-1, it is the Program's determination that a revised permit for the modified project may be issued under the following terms and conditions:

1. This letter is the DEM's revised permit for this project under the R.I. Fresh Water Wetlands Act, R.I. Gen. Laws § 2-1-18 et seq.
2. This revised permit is specifically limited to the project, site alterations and limits of disturbance as detailed on the site plans submitted with your application and received by the DEM on March 16, 2022. A copy of the site plans stamped approved by the DEM is enclosed. Changes or revisions to the project, which would alter freshwater wetlands are not authorized without a permit from the DEM.
3. Where the terms and conditions of the revised permit conflict with the approved site plans, these terms and conditions shall be deemed to supersede the site plans.
4. A copy of the stamped approved site plans and a copy of this revised permit must be kept at the site at all times during site preparation, construction, and final stabilization. Copies of this revised permit and the stamped approved plans must be made available for review by any DEM representative upon request.
5. This revised permit expires July 19, 2022 unless renewed pursuant to the Rules.

6. A trash rack must be installed at the upstream end of the bypass pipe with openings sized to permit downstream fish passage while preventing larger debris from entering. Specifically, the trash rack must have vertical bars with (6)-inch vertical slots between bars to allow for outgoing fish migration, including both river herring and resident fish. Trash racks with mesh squares are to be avoided. It is recommended the trash racks are substantially larger than the diameter of the pipe to better collect debris.
7. The bypass pipe and trash rack must be checked pre and post work, and multiple times daily to ensure there are no clogs or debris to prevent passage of transient fish.
8. The environmental scientist to be hired per Condition No. 21 of the original permit, must notify this Program of any issues such as clogging that arise during bypass operations and the measures employed to resolve the problem to ensure fish passage with provisions for manual transference of river herring downstream if necessary.
9. In the event that an additional gravity bypass pipe is used in response to a storm event greater than the 2-year storm, a trash rack as described in No. 6 above (with 6" vertical slots/bars) must be incorporated. **If a bypass pump is utilized (not preferred) and to prevent the entanglement of fish migrating downstream in the fall, barrier netting shall be placed around the bypass inlet. Barrier netting shall be equivalent or better than the box jellyfish protection netting from BoomSwim. Barrier netting is to be UV resistant, HDPE woven in small mesh size without knots. The opening size shall be no greater than 15mm.** If installed, apparatus associated with any additional piping must be within the approved limit of disturbance.
10. Any changes to the dewatering areas or configuration must be within previously disturbed areas within the approved limit of disturbance, and not requiring any additional clearing of vegetation.
11. Water levels in Warwick Pond must be monitored throughout the duration of the project.

Except as authorized in this revised permit pursuant to revised and approved site plans (enclosed), all terms and conditions previously specified in the Program's permit dated July 19, 2019 (copy enclosed) remain in effect.

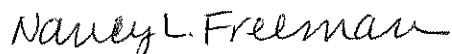
You are required to comply with the terms and conditions of this revised permit and to carry out this project in compliance with the Rules at all times. Failure to do so may result in an enforcement action by the Program.

In permitting the proposed alterations, the DEM assumes no responsibility for damages resulting from faulty design or construction.

This revised permit does not remove your obligation to obtain any local, state, or federal approvals or permits required by ordinance or law and does not relieve you from any duties owed to adjacent landowners with specific reference to any changes in drainage.

Please contact me (telephone: 401-222-6820, ext. 277-7408) should you have any questions regarding this letter.

Sincerely,



Nancy L. Freeman, Principal Environmental Scientist
Freshwater Wetlands Program
Office of Water Resources

NLF/nlf

Enclosure: Approved revised site plans
 Original permit letter dated July 19, 2019

cc: Martin D. Wencek, Program Supervisor, Freshwater Wetlands Program
 Phillip Edwards, DEM Fish & Wildlife
 Patrick McGee, DEM Fish & Wildlife
 Amy Hunt, PE, EA Engineering, Science & Technology
 Jay Brolin, RI Airport Corporation
 Kevin R. Kotelly, PE, ACOE, New England District

EXHIBIT B

RIAC TEMPORARY ACCESS AGREEMENT

TEMPORARY ACCESS AGREEMENT

THIS TEMPORARY ACCESS AGREEMENT (this "Agreement") is made as of _____, 2022, by and between the RHODE ISLAND AIRPORT CORPORATION ("RIAC" and/or "Grantor") and _____ ("Grantee").

RECITALS

WHEREAS, Grantor, through its Articles of Incorporation and/or the Lease and Operating Agreement with the State of Rhode Island dated June 25, 1993, leases, maintains and operates T.F. Green State Airport, located in Warwick, Rhode Island ("Airport").

WHEREAS, Grantee would like to access Airport property for the purposes of supervising phragmite removal in and around Buckeye Brook (respectively, the "Access Purpose" and "Access Location", all as further described and depicted on Exhibit A and Exhibit B hereto.

WHEREAS, Grantor desires to grant Grantee temporary access across and to the Access Location to achieve the Access Purpose, and Grantee desires to accept and assume said right of limited temporary access, all upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. GRANT OF ACCESS.

A. Temporary Access. Grantor hereby grants to Grantee, and Grantee hereby accepts from Grantor, a temporary, non-exclusive access to the Access Location so Grantee may conduct the Access Purpose. Grantee acknowledges that Grantor has made no representations that the Access Location is suitable for the Access Purpose and Grantee accepts the Access Location "as-is". The term of this Agreement is from June 1, 2022 through December 31, 2022.

B. Conditions of Access.

1. Grantee's access to the Access Location is subject to and dependent upon its compliance with all applicable Federal, State, and Local laws, ordinances, statutes, and codes, including all proper permitting to carry out the Access Purpose and Grantor's rules and regulations (including all badging requirements if applicable).

2. Grantee shall conduct its activities so as to maintain a friendly, cooperative relationship with others at the Airport, and shall not impair the orderly, safe and efficient operation of the Airport, nor conduct its activity in a manner disruptive to the safety of the public, or incompatible with the best interest of the public at the Airport.
3. The Grantee shall not, by either its activities upon or use of the Airport, interfere with radio communications, instrument landing systems, navigational aids or flight operations of the Airport, or telecommunications equipment or other devices located at the Airport, whether or not related to Airport operations
4. Upon termination of the Agreement, Grantee shall ensure that the Access Location is restored to its original condition (i.e. removal of staging areas, equipment etc.) within calendar thirty (30) days.

C. **Obstruction.** The Grantee shall not conduct any activity on the Access Location that creates an obstruction or hazard to aviation flight, maintenance of facilities, communication or to interfere with the use of the Airport by others.

II. **INSURANCE.**

A. **Coverages.** During the term of this Agreement, Grantee shall obtain and maintain in effect, or cause to be obtained and maintained in effect by its contractors, the following insurance policies at its expense: (i) comprehensive general liability insurance for bodily injury to persons or property damage in a sum of not less than \$1,000,000 per occurrence and not less than \$2,000,000 general aggregate; (ii) umbrella/excess liability coverage in the amount of \$10,000,000; (iii) professional liability coverage with minimum limits of \$1,000,000 per occurrence; and (iv) workers' compensation at applicable statutory limits. All liability policies are to name the Rhode Island Airport Corporation and the State of Rhode Island as additional insureds.

B. **Evidence of Insurance.** Grantee shall provide Grantor with certificates of insurance or other evidence reasonably acceptable to Grantor that the insurance required to be obtained and maintained has been obtained and is in full force and effect.

C. **General Indemnification.** From and after the date hereof and throughout the term of this Agreement, to the fullest extent permitted by law, Grantee shall protect, defend, indemnify and save harmless RIAC and the State of Rhode Island, and their respective officers, directors, employees, agents, affiliates, successors and assigns, from and against any and all loss, costs (including, without limitation, attorney's fees), claims, demands, actions, causes of action, awards, penalties, damages or liabilities, whether to person or property, arising out of or related to the Access Purpose and any breach of this Agreement. Grantee's indemnity and defense

obligations under this Agreement shall survive the expiration or sooner termination of this Agreement.

III. NO WAIVER. No waiver of any default in the performance of any term, provision or covenant contained in this Agreement by any party shall be implied from any omission by the other party, to take any action in response to such default. No express waiver of any such default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any such default shall not be deemed to be a waiver of any subsequent default.

IV. NOTICE.

A. Notice Procedure and Addresses. Any notice, demand, election, or other communication (referred to individually as a “Notice” or collectively as “Notices”) which any Party shall give pursuant to the provisions of this Agreement shall be in writing and delivered personally or by overnight courier service or sent certified or registered mail, return receipt requested. Notice shall be deemed to have been duly given upon receipt. Notices to each party shall be addressed to such party at such address as a party may from time to time designate by written Notice to the other party given pursuant to the provisions of this paragraph. Initially, Notices to Grantor shall be addressed to:

Notices to Grantor shall be addressed to:

Rhode Island Airport Corporation
Department of Commercial Programs
2000 Post Road
Warwick, RI 02886
(401) 691-2246

Notices to Grantee shall be addressed to:

CONTRACTOR’S CONTACT INFO

V. MISCELLANEOUS.

A. No Relationship of Principal and Agent. Neither anything contained in this Agreement nor any acts of any party shall be deemed or construed by the other party or by any third party to create the relationship of principal and agent or of limited or general partners or of any association between or among the parties. Grantee further acknowledges that Grantor has no legal or contractual obligation to compensate Grantee for any work associated with the Access Purpose or Access Improvements.

B. No Third-Party Beneficiaries. Except as otherwise provided for in this Agreement, no rights, privileges or immunities of any party shall inure to the benefit of any third party, nor shall any third party be deemed to be a third-party beneficiary of any of the provisions contained herein.

C. Governing Law. This Agreement shall be governed by the laws of the State of Rhode Island, exclusive of its choice-of-law rules. Grantee also consents to submit to the personal jurisdiction of the federal and state courts situated in Rhode Island.

D. Amendment. This Agreement may be amended only by a written instrument signed by the parties hereto.

E. Termination. This Agreement may be terminated by Grantor upon 30 days' advance written notice to Grantee.

F. Counterparts. This Agreement may be executed in multiple counterparts which, when taken together, shall constitute one agreement binding on all the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Access Agreement as an instrument under seal as of the date first set forth above.

GRANTEE

GRANTOR

Rhode Island Airport Corporation Approved By:

Approved By:

Name: _____
Title: _____

Iftikhar Ahmad
President & CEO

Approved as to Substance and Form By:

Brittany Morgan Esq.
Assistant Vice President, HR & Internal Legal Affairs

Recommended By:

Name: _____
Title: _____

EXHIBIT A

Access Purpose: Grantee shall supervise the phragmite removal process to ensure the removal is conducted in accordance with the Permitting Drawings (subject to final approval) attached hereto as Exhibit B.

Access Location: The Access Location are those areas in and around Buckeye Brook on Airport property as depicted in Permitting Drawings (subject to final approval) attached hereto as Exhibit B (see specifically Permitting Drawings C-105 and C-107).

EXHIBIT C

SOIL MANAGEMENT PLAN



TECHNICAL MEMORANDUM

TO: Kelly Owens, Office of Waste Management

FROM: Amy Hunt, EA Project Manager

DATE: 25 May 2018

SUBJECT: Post Remediation Soil Management Plan - Buckeye Brook Restoration, 2000 Post Road #8, Plat/Lot: 321/0004

This Soil Management Plan (SMP) has been prepared, as requested by the Rhode Island Department of Environmental Management (RIDEM), Office of Waste Management, to establish procedures that will be followed for the Buckeye Brook Restoration project to manage soils excavated from the subsurface (coincident with *Phragmites australis* removal in the form of sediment attached to the plant's root mat). The plan serves to supplement the Application to Alter a Freshwater Wetland and Stormwater Construction/Water Quality Certification application, which will be submitted to the RIDEM Office of Water Resources. No Environmental Land Use Restriction (ELUR) will be filed for this site.

1. BACKGROUND

The project is located at T. F. Green Airport, in the southeastern portion of the property located at 2000 Post Road #8 in Warwick, Rhode Island, (the site). The site contains a portion of Buckeye Brook, which originates at Spring Green Pond in Warwick, Rhode Island, flows through Warwick Pond, joins Old Mill Creek, and outlets into Narragansett Bay at Mill Cove Beach. The project entails remediation/restoration of an approximate 975 linear foot long portion of the channel and surrounding wetlands of Buckeye Brook that over time has become overgrown with the invasive common reed *Phragmites australis*. The purpose of this project is to restore fish passage for local anadromous fish populations, reduce the amount of the invasive common reed (*Phragmites australis*) allowing native flora to flourish, improve the Brook's flow capacity, and reinstate the active floodplain area at the project site; thereby reducing surface water elevations in Warwick Pond. No known RIDEM regulated soil or groundwater has been identified on this site and therefore no associated health risks have been identified. For this project we are assuming excavated soil is contaminated and will be handled accordingly. This SMP has been prepared at the request of RIDEM, Office of Waste Management and Office of Water Resources. Soil management described in this SMP is consistent with the procedures and protocols described in the associated Application to Alter a Freshwater Wetland and Stormwater Construction/Water Quality Certification application.

2. APPLICABLE AREA

No ELUR is associated with this SMP. The limits of soil disturbance (LOD) and proposed soil management activities for the project are outlined on Sheet C-108 of the Engineering Drawing Set (attached) submitted with the Application to Alter a Freshwater Wetland and Stormwater Construction/Water Quality Certification application).

3. SOIL MANAGEMENT

Although no soil contamination has been identified, the following soil management activities will be implemented to ensure proper handling and disposal of site soil/sediment, minimize soil erosion, and minimize offsite tracking of soils/sediments.

- Perimeter erosion and sediment control best management practices will be installed prior to the start of construction. Construction shall not begin until all erosion and sediment control measures have been installed and approved by the Engineer. Perimeter erosion and sediment controls are shown on Sheet C-108 of the Engineering Drawing Set (attached).
- During site work, appropriate precautions will be taken to restrict unauthorized access to the property.
- The existing construction entrance located off Range Road, where an existing access gate enabling vehicular access from the Warwick City Yard to T.F. Green property, is to be maintained in proper working condition to prevent the off-site tracking of sediment. The construction entrance is to be inspected on an as-needed basis (at a minimum weekly) to ensure proper functioning and maintenance will be conducted if required.
- During all site work, soils excavated from the Buckeye Brook channel as part of *Phragmites australis* removal shall be staged and temporarily stockpiled in a designated area within the project limit of disturbance – denoted as “Phragmites Dewatering Areas” depicted on the “Phragmites Removal, Erosion Control, and Construction Sequencing Plan” (shown on Sheet C-108 attached). The storage locations were selected close to the point of excavation to limit handling of the material.
- The Phragmites Dewatering Area will be constructed in accordance with the detail on the “Erosion and Sediment Control and Water Control Details” plan (shown on Sheet C-502 attached). A woven geotextile shall be laid on the ground and a perimeter barrier of staked straw bales will form the enclosed Phragmites Dewatering Area. The straw bales will overlap the layer of woven geotextile by a minimum of 1 foot. The straw bales and woven geotextile shall be overlaid with a layer of non-woven filter fabric, secured by tucking the edges under the staked straw bales.

- Best management practices including the installation of straw bales and perimeter silt fencing will be installed and maintained during the duration of site work.
- Stockpiled material will be covered and secured with 6-mil polyethylene sheeting during periods of inactivity and at the end of every work day.
- Excavated material will not be stockpiled in the floodway for longer than a 24-hour period, or when there is a potential for flooding.
- Prior to off-site disposal of any sediment, the material will be sampled as required by the off-site disposal facility. Following receipt of analytical reports, stockpiled material will be transported for proper off-site disposal/recycling at a licensed disposal facility in accordance with all local, state, and federal laws, rules, regulations, and requirements. Copies of all material shipping and disposal records will be maintained by the site owner.
- After construction, all disturbed areas within the *Phragmites australis* removal limits will be stabilized with a seed mix appropriate to encourage growth and stabilize the temporarily disturbed soils. Temporarily disturbed soils outside of the *Phragmites australis* removal limits will be stabilized with a seed mix appropriate for the area's proximity to an active runway (i.e. does not encourage wildlife). The seed mixes are shown on Sheet C-109 of the Engineering Drawing Set (New England Wet Mix [Wetland Seed Mix] and Park Seed Mix).
- Erosion controls and best management practices will be inspected by the contractor daily and after each storm event for damage.

4. GROUNDWATER MANAGEMENT

No management of groundwater is anticipated at the site to complete the project.

5. WORKER HEALTH AND SAFETY

To ensure the health and safety of on-site workers, persons involved in the excavation and handling of the material on site are required to wear a minimum of modified Level D personal protection equipment, including gloves, work boots and eye protection. Workers are also required to wash their hands with soap and water prior to eating, drinking, smoking, or leaving the site.

6. DEPARTMENT APPROVAL

No RIDEM regulated soils or groundwater have been identified in association with this site. Because the project is a restoration project, if soil samples collected for disposal criteria are found to be contaminated, it is not anticipated that additional soil excavation will be required.

Attachments

Sheet C-108 of the Engineering Drawing Set: Phragmites Removal, Erosion Control, and Construction Sequencing Plan

Sheet C-109 of the Engineering Drawing Set: Restoration Plan

Sheet C-502 of the Engineering Drawing Set: Erosion and Sediment Control and Water Control Details

Attachments

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EXHIBIT D

FEDERAL CONSTRUCTION CONTRACT PROVISIONS

Community Development Block Grant Program

FEDERAL CONTRACT PROVISIONS

This project is funded by means of a Grant Agreement between the United States Department of Housing and Urban Development (HUD) and the City of Warwick, for the provision of Federal financial assistance under Title 1 of the Housing and Community Development Act of 1974, and any amendments or supplements thereto, and Bidders must comply with the requirements of that Act and regulations issued by the Secretary of HUD.

CONTENTS:

- ❑ FEDERAL CONTRACT PROVISIONS
- ❑ FEDERAL SECTION 3 (24 CFR 75)
- ❑ FEDERAL PREVAILING WAGE RATE PROVISIONS
- ❑ DUNS# REGISTRATION
- ❑ SAM.GOV REGISTRATION
- ❑ FEDERAL BID SUBMISSION CERTIFICATIONS/FORMS

City of Warwick
Office of Housing & Community Development
3275 Post Road
Warwick, RI 02886
Contact: William R. Facente, Acting Program Coordinator / Housing Officer
Phone & Email: (401) 921-9688 / william.r.facente@warwickri.com

FEDERAL CONTRACT PROVISIONS

1. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

(P.L. 88-352), as amended, (42 USC 2000d) and the requirements imposed by the Regulations of the Department of Commerce (15 CFR Part 8) issued pursuant to that

Title. In accordance, therewith no person in the United States shall, on the grounds of race, handicap, color, sex, national origin or familial status be excluded from participation in, be denied the benefits or be otherwise subjected to discrimination under any program or activity which is paid for with federal funds. The Owner further adds that there shall not be any form of discrimination by any party in any CDBG contract on the basis of familial status, sexual orientation or sex.

2. REHABILITATION ACT OF 1973

29 USC 794, Executive Order 11914, Section 504. No otherwise qualified handicapped individual shall, solely by reason of his/her handicap, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity receiving federal financial assistance.

3. SECTION 202 OF EXECUTIVE ORDER 11246

A. Activities and contracts not subject to Section 202 (Applicable to Federally assisted construction contracts and related subcontracts of \$10,000 and under.) The City of Warwick follows Rhode Island General Law 37-14.1, Minority Business Enterprises (MBEs) are targeted for participation in all procurement and construction projects and shall be awarded a minimum of ten percent (10%) of the contract's dollar amount which should be subcontracted out to construction firms owned by minorities or women, or by firms serving in the capacity of a supplier, material provider, consultant, architect or engineer. In order to ensure that the contractor and grantee have made a good faith effort to reach these goals, they are required to provide the City of Warwick documentation of their efforts to meet the goals prior to the start of construction.).

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

1. The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of

Compensation; and selection for training, including apprenticeship.

2. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3. Contractors shall incorporate foregoing requirements in all subcontracts.

B. Activities and contracts subject to Section 202

Applicable to Federally assisted construction contracts and related subcontracts exceeding \$10,000.

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

1. (a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representative of the contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The contractor will include the provisions of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provision, including sanctions for non-compliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a

subcontractor or vendor as a result of such direction by the Department the contractor may request the United States to enter into such litigation to protect the interest of the United States.

2. The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on -the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

(a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor; state that all qualified applicants shall receive considerations for employment without regard to race, color, religion, sex, or national origin.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract of understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into -such litigation to protect the interests of the United States.

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

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

The applicant further agrees that it will refrain from entering into any contract. Or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of labor pursuant to Part IL Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply within these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. CERTIFICATION OF NONSEGREGATED FACILITIES AS REQUIRED BY THE MAY 19, 1967, ORDER (32 F.R. 74390 ON ELIMINATION OF SEGREGATED FACILITIES, BY THE SECRETARY OF LABOR.

Prior to the award of any construction contract or subcontract exceeding \$10,000, the Contractor shall submit signed Certification of Nonsegregated Facilities Forms for him/herself and all subcontractors.

5. THE AGE DISCRIMINATION ACT OF 1975

No person in the United States shall, on the basis of age, be excluded from participation or be denied the benefits of, or be subjected to discrimination under, any program or activity undertaken with federal funds.

6. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under Title I of the Housing and Community Development Act of 1974.

7. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 75] is HUD’s legislative directive for providing preference to low- and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects.

As a condition of receiving HUD assistance recipients certify that they will comply with the requirements of Section 3 annually pursuant to 24 CFR 570.607(b).

Applicability of Section 3 to Community Planning & Development Assistance:

Contractors or subcontractors on a project in **excess of \$200,000** for Section 3 covered projects are **required to comply** with Section 3. Accordingly, the recipient must attempt to reach the **Section 3 minimum numerical goals** found at 24 CFR Part 75, Subpart C:

- (1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

$$\frac{\text{Section 3 Worker Labor Hours}}{\text{Total Labor Hours}} = 25\%$$

Total Labor Hours

And

- (2) Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at § 75.21.

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 5\%$$

Total Labor Hours

Recipients that fail to meet the minimum numerical goals above bear the burden of demonstrating why it was not possible to do so. Such justifications should describe the efforts that were taken, barriers encountered, and other relevant information that will enable the Department to make a compliance determination.

And that this contract, or any subcontracts, must adhere to and contain what is referred to as the Section 3 Clause, and which follows in its entirety:

Section 3 Clause:

A. The work to be performed under this contract, subcontract, memorandum of understanding, cooperative agreement, or similar legally binding agreement, is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968 (Section 3). The purpose of Section 3 is to ensure, to the greatest extent feasible, that training, employment, contracting, and other economic opportunities generated by Section 3 covered financial assistance shall be directed to low- and very low-income residents of the neighborhood where the financial assistance is spent, particularly to those who are recipients of government assistance for housing, and to businesses that are either owned by low- or very low-income residents of the neighborhood where the financial assistance is spent, or substantially employ these persons.

B. The parties to this contract, subcontract, memorandum of understanding, cooperative agreement, or similar legally binding agreement agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by execution of this contract or subcontract memorandum of understanding, cooperative agreement or similar legally binding agreement the parties certify that they are under no contractual or other impediment that would prevent them from complying with the requirements of 24 CFR Part 75.

C. The contractor agrees to identify current employees on its payroll when the contract or subcontract was awarded who will be working on the Section 3 covered project or activity and certify that any vacant employment opportunities, including training positions, that are filled:

1. After the contractor is selected; and
2. With persons other than those that meet the definition of a Section 3 resident, were not filled to circumvent the contractor's Section 3 obligations.

D. The contractor agrees to maintain records documenting Section 3 residents that were hired to work on previous Section 3 covered projects or activities that were retained by the contractor for subsequent Section 3 covered projects or activities.

E. The contractor agrees to post signs advertising new employment, training, or Sub-contracting opportunities that will be available as a result of the Section 3 covered projects and activities in conspicuous places at the work site where potential applicants can review them.

F. The contractor agrees to hire, to the greatest extent feasible, Section 3 residents as new hires, or provide written justification to the recipient that is consistent with 24 CFR Part 75, describing why it was unable to meet minimum numerical hiring goals, despite its efforts to comply with the provisions of this clause.

G. The contractor agrees that in order for a Section 3 resident to be counted as a new hire, the resident must work a minimum of 50 percent of the average staff hours worked for the category of work for which they were hired throughout the duration of time that the category of work is performed on the covered project.

H. The contractor agrees to award, to the greatest extent feasible, 10 percent of the total dollar amount of subsequent subcontracts awarded in connection with the Section 3 covered project or activity to Section 3 businesses, or provide written justification that is consistent with 24 CFR Part 75 describing why it was unable to meet that goal, despite their efforts to comply with the provisions of this clause.

I. The contractor agrees to notify Section 3 residents and businesses about the availability of new employment, training, or contracting opportunities created as a result of the receipt of Section 3 covered financial assistance, as stipulated by the awarding agency.

J. The contractor agrees to verify the eligibility of prospective Section 3 residents and businesses for employment, training, or subcontracting opportunities, in accordance with the recipient's policies and procedures.

K. The contractor agrees to provide priority consideration to eligible residents and businesses in accordance with 24 CFR Part 75, as applicable.

L. The contractor agrees to notify potential bidders on subcontracts that are associated with Section 3 covered projects and activities about the requirements of Section 3 and include this Section 3 clause in its entirety into every subcontract awarded.

M. The contractor agrees to impose sanctions upon any subcontractor that has violated the requirements of this clause in accordance with the awarding agency's Section 3 policies and procedures.

N. The contractor agrees to comply with all monitoring, reporting, recordkeeping, and other procedures specified by the awarding agency.

O. If applicable, the contractor agrees to notify each labor organization or representative of workers with which the recipient, sub-recipient, or contractor has a collective bargaining or similar labor agreement or other understanding, if any, about its obligation to comply with the requirements of Section 3 and ensure that new collective bargaining or similar labor agreements provide employment, registered apprenticeship, training, subcontracting, or other economic opportunities to Section 3 residents and businesses, and to post notices in conspicuous places at the work site advising the labor union, organization, or workers' representative of the contractor's commitments under this part.

P. Failure to comply with this clause shall result in the imposition of sanctions. Appropriate sanctions for noncompliance may include: Requiring additional certifications or assurances of compliance; termination or cancelation of the contract, subcontract, memorandum of understanding, cooperative agreement, or similar legally binding arrangement for default; refraining from entering into subsequent contracts, subcontracts, memoranda of understanding, cooperative agreements, or similar legally binding arrangement; repayment of funds, and withholding a portion of contract awards, subcontracts, memoranda of understanding, cooperative agreements, or similar legally binding arrangements.

8. LABOR STANDARDS

A. Davis-Bacon Act as amended (40 U.S.C 276a - 276a-5.) All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

B. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333). All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to these acts and with other applicable Federal laws and regulations pertaining to labor standards.

C. Copeland Anti-Kickback Act requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions.

9. TITLE IV OF THE LEAD BASED PAINT POISONING PREVENTION ACT

LEAD-BASED PAINT HAZARDS -The use of lead-based paint, that is any paint containing more than 1%-lead by weight, is strictly prohibited from use on any interior surface or exterior surface in any building being rehabilitated with funding from the Community Development program. Additionally, any evidence of a health hazard, which is, defined as cracking, scaling, peeling and loose lead-based paint must be treated to prevent the ingestion of the contaminated paint. It is further necessary to assume that any of the above conditions constitute an immediate or potential hazard and must be corrected using appropriate methods.

10. THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (P.L. 91-646 as amended), 15 CFR Part 916 including amendments thereto and regulations there under, as provided by 1. M.R.SA 901 et seq. The Contractor and Grantee will ensure that all work performed under this Agreement will be done in accordance with this act.

11. THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (P.L. 90-190); THE NATIONAL HISTORIC PRESERVATION ACT OF 1966 (80 Stat 915, 16 USC 470); AND EXECUTIVE ORDER NO. 11593 OF MAY 31, 1971.

The chief executive officer of the Grantee consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 (NEPA) and other provisions of Federal law, as specified in 24 CTR 58, which further the purposes of NEPA in the areas of historic preservation, noise control floodplains, coastal zones and wetlands, air quality, water quality, wildlife, endangered species, solid waste disposal, and environmental effects abroad.

The chief executive officer is authorized and consents on behalf of the Grantee and himself to accept the jurisdiction of the federal courts for the purpose of enforcement of his responsibilities as such an official.

12. THE FLOOD DISASTER PROTECTION ACT OF 1963 (P.L 93-234), AS AMENDED. e Grantee will fulfill any flood insurance requirements under this Act and any regulations issued there under which NOAA may issue.
13. ARCHITECTURAL BARRIERS ACT (P.L 90-480), 42 USC 4151, AS AMENDED, and the regulations issued or to be issued there under, prescribing standards for the design and construction of any building or facility intended to be accessible to the public or which may result in the employment of handicapped persons therein.
14. THE CLEAN AIR ACT AS AMENDED, 42 USC 1857 ED SEQ.9 THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED, 33 USC 1251 et seq. and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time. In no event shall any amount of the assistance provided under this Agreement be utilized with respect to a facility, which has given rise to a conviction under section 113(c) (1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act.

15. MINORITY BUSINESS ENTERPRISES

Referenced in Executive Order #11625, OMEB Circular A-102 Attachment 0 Procurement Standards. Grantees are to give priority to Minority Business Enterprises in purchase of supplies, equipment, construction, and services.

16. CDBG CERTIFICATION

Grantee shall provide any certification required under Sections 104(b), 106(d)(5) or under any other provision of Title I of the Housing and Community Development Act of

1974 as amended through 1983, including Amendments made by the Housing and Urban Rural Recovery Act of 1983, and shall comply with the terms of such certifications.

17. SECTION 319 OF PUBLIC LAW 101-121

The grantee shall comply with the requirements of Section 319 of Public Law 101-121 regarding government wide restrictions on lobbying.

SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS AND ACCIDENT PREVENTION

A. Lead-Based Paint Hazards

(Applicable to contracts for construction or rehabilitation of residential structures) The construction or rehabilitation of residential structures is subject to the HUD Lead-

Based Paint regulations, 24 CFR Part 35. The contractor and Subcontractors shall comply with the provisions for the elimination of lead-based paint hazards under sub-part B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14(f) thereof.

B. Use of Explosives

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats. The Contractor shall notify all owners of public utility property of intention to use explosives at least eight hours before blasting is done, close to such property. Any supervision or direction of use of explosives by the Engineer does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

C. Danger Signals and Safely Devices

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

SECTION 3 FEDERAL REQUIREMENTS

For Contracts Exceeding \$200,000

- 1. SECTION 3 AFFIRMATIVE REQUIREMENTS**
- 2. SECTION 3 CLAUSE**
- 3. SECTION 3 AFFIRMATIVE ACTION PLAN**
- 4. SECTION 3 CERTIFICATION FOR BUSINESS CONCERNS**
- 5. SECTION 3 INCOME CERTIFICATION FORM**
- 6. SECTION 3 UTILIZATION REPORT (SUBMITTAL REQUIRED PRIOR TO FINAL PAYMENT)**

SECTION 3 AFFIRMATIVE REQUIREMENT

[For Prime and Subcontracts that exceed \$200,000]

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 75] is HUD's legislative directive for providing preference to low- and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects. As a condition of receiving HUD assistance recipients certify that they will comply with the requirements of Section 3 annually pursuant to 24 CFR 570.607(b).

Section 3 projects are those where HUD program assistance is used for housing rehabilitation, housing construction and other public construction projects that generally exceed a \$200,000 project threshold or any Section 3 project funding from HUD's Lead Hazard Control and Healthy Homes programs.

Applicability of Section 3 to Community Planning & Development Assistance:

Contractors or subcontractors on a project in excess of **\$200,000** for Section 3 covered projects are **required to comply** with Section 3. Accordingly, the recipient must attempt to reach the **Section 3 minimum numerical goals** found at 24 CFR Part 75, Subpart C:

- (1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

$$\frac{\text{Section 3 Worker Labor Hours}}{\text{Total Labor Hours}} = 25\%$$

And

- (2) Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at § 75.21.

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 5\%$$

Recipients that fail to meet the minimum numerical goals above bear the burden of demonstrating why it was not possible to do so. Such justifications should describe the efforts that were taken, barriers encountered, and other relevant information that will enable the Department to make a compliance determination.

Contractor Responsibilities Pursuant to Section 3

- The Prime Contractor (Over \$200,000) must submit a Section 3 plan (attached) to the Sub-Recipient outlining Section 3 hiring and employment opportunities.
- The Prime Contractor must notify all sub-contractors (Over \$200,000) of their responsibilities under Section 3
- The Prime Contractor must provide a permeant workforce breakdown of all current employees and identify those Section 3 workers that were hired within the last five years.

- The Prime Contractor must provide an estimated breakdown of potential hires for the awarded project and timeline of anticipated hiring
- Maintain records that document a **good faith effort** to utilize Section 3 workers and Target Section 3 workers as trainees and employees. (Required of both contractor and sub- contractor.) and any other qualitative efforts to comply with Section 3.

Section 3 Workers are:

HUD defines a Section 3 worker for both public housing financial assistance and Section 3 projects as a worker that meets one of the following requirements:

- The worker's income is below the income limit established by HUD for the project area.
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant.

For § 75.21, Section 3 projects, a Targeted Section 3 worker includes any worker who is employed by a Section 3 business concern or is a Section 3 worker who is:

- Living within the service area or neighborhood of the project; or
- A YouthBuild participant.

Section 3 Businesses are:

HUD defines a Section 3 business concern as a business concern that meets one of the following requirements:

- It is at least 51 percent owned by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or
- It is a business at least 51 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing.

Some examples include: proof of residency in a public housing authority; proof of federal subsidies for housing, food stamps, or unemployment benefits; and payroll data or other relevant business information.

For additional information, please visit the Section 3 website at: www.hud.gov/section3.

SECTION 3 CLAUSE

All Section 3 covered contracts shall include the following clause (referred to as the “Section 3 Clause”):

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected by before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

F. Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

SECTION 3 AFFIRMATIVE ACTION PLAN
(Prime Contractor)
[For Projects that exceed \$200,000]

_____, Contractor, agrees to implement the following specific affirmative action steps directed at increasing the utilization of Section 3 Residents' and Section 3 Business Concerns within the City of Warwick.

- A.** To ascertain from the City the exact boundaries of the Section 3 Covered Project Area and where advantageous, seek the assistance of City of Warwick in preparing and implementing the affirmative action plan.
- B.** To attempt to recruit from within the City of Warwick the necessary individuals to fill employment opportunities generated by Section 3 covered assistance through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area and providing preference for these opportunities in the following order:
 - (i) Section 3 Residents residing in the service area or neighborhood in which the Section 3 covered project is located;
 - (ii) Participants in HLJD Youthbuild Programs, and
 - (iii) Other Section 3 Residents.
- C.** To maintain a list of all lower income area residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and a vacancy exists.
- D.** To insert this Section 3 Affirmative Action Plan in all bid documents for contracts over \$200,000, and to require all bidders on subcontracts over \$200,000 to submit a Section 3 Affirmative Action Plan, including utilization goals and the specific steps planned to accomplish these goals.
- E.** To ensure that subcontracts over \$200,000 which are typically let on a negotiated rather than bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F.** To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G.** To notify Section 3 residents and Section 3 business concerns about economic opportunities generated by Section 3 covered assistance and to award Section 3 covered contracts, to the greatest extent feasible, to Section 3 business concerns in the following order of preference:
 - (i) Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area or neighborhood in which the Section 3 covered project is located;
 - (ii) Applicants selected to carry out HUD Youthbuild projects;
 - (iii) Other Section 3 business concerns.
- H.** To notify potential contractors about Section 3 requirements of this part and incorporating the Section 3 clause in all solicitations and contracts.

SECTION 3 UTILIZATION REPORT

(To be Completed by contractors and subs for all Projects at or Exceeding \$200,000)

A. SECTION 3 EMPLOYEE LABOR INFORMATION

Name of Contractor: _____

Name of Project: _____

Total number of Labor Hours on the project _____

Total number of Section 3 Labor Hours on the project _____ = _____ % of total labor hours.

Number of Section 3 Employees Utilized on Project by Prime Contractor: _____

Number of Section 3 Employees Utilized on Project by Subcontractors: _____

Total Number of Section 3 Employees Utilized on Project: _____

B. CERTIFICATION OF PRIME CONTRACTOR

As officer and representative of: _____

Name of Prime Contractor

Address: _____

Telephone Number: _____

On behalf of the Company, I hereby certify that the above information is true and accurate and is reported fully as required by the Section 3 Affirmative Action Plan as part of the contract for this CDBG assisted construction project. It is further understood that final payment from the City of Warwick for this project cannot be made until this Report is submitted to the City.

Name and Title of Authorized Representative (print or type)

Signature of Authorized Representative

Date

**DIRECTIONS FOR COMPLETION OF
SECTION 3 UTILIZATION REPORT
(For Projects at or Exceeding \$200,000)**

1. Determine the level Section 3 participation in the construction project.
 - a. All employees of the General Contractor and all employees of any and all subs must fill out the one-page Section 3 Income Worksheet and return it to you. If you hire new employees who reside in the county where the construction is taking place to work on the CDBG project, have them complete the one-page Section 3 Income Worksheet and return it to you. Compare the Worksheet to the Section 3 Income Schedule provided you at the pre-construction conference to determine if the employee is Section 3 eligible.
 - b. Distribute copies of the Section 3 Income Worksheet to all subcontractors you engage for the project. All employees of any and all subs must fill out the one-page Section 3 Income Worksheet and return it to you. Instruct all subs to have any new employees they hire who reside in the county where the construction is taking place complete the worksheet and have the subcontractors return the forms to you. Compare as in (a.), above to determine Section 3 eligibility.
2. Retain all Section 3 Income Worksheets with your project records.
3. Complete (A) Section 3 Employee Information area of the report.
 - a. Enter name of the Contractor.
 - b. Enter project name.
 - c. Enter the total number of labor hours on the project.
 - e. Enter the number of Section 3 labor hours on the project and calculate what percentage it is of the total labor hours on the project (using the number entered in d)
 - f. Enter number of Section 3 Employees you utilized on project.
 - g. Enter number of Section 3 Employees utilized by subcontractors on project
 - h. Enter total number (f + g) of Section 3 Employees utilized on project
4. Complete (B) Certification by Prime Contractor area of Report
 - a. List your name, address and telephone number of your company.
 - b. Print or type name and title of authorized company representative.
 - c. Have authorized representative sign and date Report.



CITY OF WARWICK

FRANK J. PICOZZI, MAYOR

Section 3 Business Concern Certification

Instructions: Enter the following information and select the criteria that applies to certify your business' Section 3 Business Concern status.

Business Information

Name of Business _____

Address of Business _____

Name of Business Owner _____

Phone Number of Business Owner _____

Email Address of Business Owner _____

Preferred Contact Information

Same as above

Name of Preferred Contact _____

Phone Number of Preferred Contact _____

Type of Business (select from the following options):

Corporation

Partnership

Sole Proprietorship

Joint Venture

Select from *ONE* of the following three options below that applies:

At least 51 percent of the business is owned and controlled by low- or very low-income persons (Refer to income guidelines on page 4).

At least 51 percent of the business is owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers (Refer to definition on page 2).

Business Concern Affirmation

I affirm that the above statements are true, complete, and correct to the best of my knowledge and belief. I understand that businesses who misrepresent themselves as Section 3 business concerns and report false information to the City of Warwick and their Subrecipient may have their contracts terminated as default and be barred from ongoing and future considerations for contracting opportunities. I hereby certify, under penalty of law, that the following information is correct to the best of my knowledge.

Print Name: _____

Signature: _____ Date: _____

Information regarding Section 3 Business Concerns can be found at [24 CFR 75.5](#)

FOR ADMINISTRATIVE USE

Is the business a Section 3 business concern based upon their certification?

YES NO

EMPLOYERS MUST RETAIN THIS FORM IN THEIR SECTION 3 COMPLIANCE FILE FOR FIVE YEARS.

The City of Warwick Eligibility Guidelines Section 3 Worker

The worker's income must be at or below the amount provided below for an individual (household of 1) regardless of actual household size.

Individual Income Limits

Income Category	FY 2022 Income Limits
Extremely Low Income (30%)	\$18,200
Very Low Income (50%)	\$30,300
Low Income (80%)	\$48,450

See <https://www.huduser.gov/portal/datasets/il.html> for most recent income limits.

Section 3 Worker Definition:

- A low or very low-income resident (the worker's income for the previous or annualized calendar year is below the 80% income limit established by HUD); or
- Employed by a Section 3 business concern; or
- A Youth Build participant.

Targeted Section 3 Worker Definition:

- Employed by a Section 3 business concern or
- Currently meets or when hired met at least one of the following categories as documented within the past five years:
 - Living within the service area or the neighborhood of the project, as defined in 24CFR 75.5
 - A Youth Build participant.



CITY OF WARWICK

FRANK J. PICOZZI, MAYOR

Section 3 Worker Self-Certification

The purpose of HUD's Section 3 program is to provide employment, training and contracting opportunities to low-income individuals, particularly those who are recipients of government assistance for housing or other public assistance programs. **Your response is voluntary, confidential, and has no effect on your employment.**

Eligibility for Section 3 Worker or Targeted Section 3 Worker Status

A Section 3 worker seeking certification shall self-certify and submit this form to the recipient contractor or subcontractor, that the person is a Section 3 worker or Targeted Section 3 Worker as defined in 24 CFR Part 75.

Instructions: Enter/select the appropriate information to confirm your Section 3 worker or Targeted Section 3 Worker status.

Employee Name: _____

1. Are you a resident of public housing or a Housing Choice Holder (Section 8)? YES NO Voucher
2. Are you a resident of the [City/County of insert name] YES NO
3. In the field below, select the amount of individual income you believe you earn on an annual basis. *The grantee should confirm that their state and local laws do not prohibit this question.

- | | | |
|--|--|---|
| <input type="checkbox"/> Less than \$10,000 | <input type="checkbox"/> \$30,001 - \$40,000 | <input type="checkbox"/> More than \$60,000 |
| <input type="checkbox"/> \$10,001 - \$20,000 | <input type="checkbox"/> \$40,001 - \$50,000 | |
| <input type="checkbox"/> \$20,001 - \$30,000 | <input type="checkbox"/> \$50,001 - \$60,000 | |

Select from **ONE** of the following two options below:

I qualify as a:

- Section 3 Worker (as defined on page 4 of Section 3 Worker Certification Form)
- Targeted Section 3 Worker (as defined on pages 4-5 of Section 3 Worker Certification Form)

Employee Affirmation

I affirm that the above statements are true, complete, and correct to the best of my knowledge and belief. I hereby certify, under penalty of law, that the following information is correct to the best of my knowledge.

Employee Address: _____

Print Name: _____ Date Hired: _____

Signature: _____ Date: _____

FOR ADMINISTRATIVE USE

Is the employee a Section 3 worker based upon their self-certification? YES NO

Is the employee a Targeted Section 3 worker based upon their self-certification? YES NO

Was this an applicant who was hired as a result of the Section 3 project? YES NO

If Yes, what is the name of the company? _____

What was the date of hire?

EMPLOYERS MUST RETAIN THIS FORM IN THEIR SECTION 3 COMPLIANCE FILE FOR FIVE YEARS.

The City of Warwick Eligibility Guidelines Section 3 Worker

The worker's income must be at or below the amount provided below for an individual (household of 1) regardless of actual household size.

Individual Income Limits

Income Category	FY 2021 Income Limits
Extremely Low Income (30%)	\$18,200
Very Low Income (50%)	\$30,300
Low Income (80%)	\$48,450

See <https://www.huduser.gov/portal/datasets/il.html> for most recent income limits.

Section 3 Worker Definition:

- A low or very low-income resident (the worker's income for the previous or annualized calendar year is below the 80% income limit established by HUD); or
- Employed by a Section 3 business concern; or
- A Youth Build participant.

Targeted Section 3 Worker Definition:

- Employed by a Section 3 business concern or
- Currently meets or when hired met at least one of the following categories as documented within the past five years:
 - Living within the service area or the neighborhood of the project, as defined in 24CFR 75.5
 - A Youth Build participant.



CITY OF WARWICK

FRANK J. PICOZZI, MAYOR

Davis-Bacon Labor Relations Section 3, Minority and Woman-Owned Business Certification

The undersigned bidder/contractor certifies as part of its bid or contract that it is a Section 3 Business Concern as indicated below (check applicable box):

Family Size	Max Annual Income	Family Size	Max Annual Income
1	\$48,450	5	\$74,750
2	\$55,400	6	\$80,300
3	\$62,300	7	\$85,850
4	\$69,200	8	\$91,350

A Section 3 Resident is defined as any low or very low-income person residing within the City of Warwick. Low income is defined at 80% of the area median income based on family size.

Category 1 Business Concern: A business that is owned by 51% or more Section 3 Residents; OR

Category 2 Business Concern: Over 75% of the labor hours performed for the business over the prior three-month period was performed by Section 3 Workers; OR

Category 3 Business Concern: A business is 51% or more owned AND controlled by current public housing residents or residents who currently live in Section 8-assisted housing

Is not a Section 3 Business Concern

The undersigned bidder/contractor certifies as part of its bid or contract that it is a minority-owned business as indicated below (check applicable box):

Minority-Owned Business: A business that is owned by 51% or more by a minority resident.
Race: _____ AND Hispanic: Y / N

Is not a Minority-Owned Business

The undersigned bidder/contractor certifies as part of its bid or contract that it is a woman-owned business as indicated below (check applicable box):

Woman-Owned Business: A business that is owned 51% or more by a woman resident.

Is not a Woman-Owned Business

CERTIFICATION

Business Name

Project Name

Business Address

DUNS #

Tax ID #(EIN)

Signatory Name

Signature

Date



Section 3 New Rule - 24 CFR 75

About Section 3

Section 3 is not just a grantee "requirement." It's a path toward economic uplift and self-sufficiency

The Section 3 program requires that recipients of certain HUD funding, to the greatest extent possible, provide training, employment, contracting and other economic opportunities to low- and very low-income persons, especially those living in federally subsidized housing, and to businesses that provide economic opportunities to low- and very low-income persons.

The intent of Section 3 is to promote economic uplift and self-sufficiency among low-income persons, level the playing field for Section 3 residents/workers and businesses and strengthen local economies. Section 3 is not about compliance. It's about investing in good partners for an economic benefit and giving them the opportunity to benefit with you.

Section 3 Final Rule

Section 3 has been around almost as long as HUD has existed. As part of the ladder into economic uplift and self-sufficiency, the rule was revised September 28, 2020.

The Section 3 new rule will allow more HUD-assisted households to secure long-term employment and put them on a path towards economic uplift and self-sufficiency.

The final rule seeks to improve effectiveness by:

- ▶ Focusing reporting on key outcome metrics
- ▶ Promoting sustained employment and career development
- ▶ Aligning reporting with standard business practices
- ▶ Changing thresholds for Section 3-covered assistance

Section 3 Worker

What is a Section 3 Worker?

Section 3 worker means any resident who fits one of the following categories:

- A worker whose income for the previous or annualized calendar year is below the income limit established by HUD
- Employed by a Section 3 business concern
- A YouthBuild participant

Targeted Section 3 Worker

What is a Targeted Section 3 Worker?

Targeted Section 3 is a Section 3 worker who is also:

- A worker employed by a Section 3 business concern
- A worker who currently is or who was when hired by the worker's current employer, as documented within the past five years:
 - o Public Housing resident or HCV participant
 - o Resident of other housing assisted by the PHA or in the PHA's property management portfolio
 - o Living within the service area or the neighborhood of the project; or
 - o A YouthBuild participant

Section 3 Business

What is a Section 3 Business?

Section 3 business means any business that meets at least one of the following criteria, documented within the last six-month period:

- 51% or more owned and controlled by low-very low-income persons
- 75% or more labor hours are performed by low or very low-income persons
- 51% or more owned and controlled by current residents of public housing or HCV assisted housing

The final rule changes the definition of a Section 3 business by focusing on how many hours employees work rather than number of employees. Rather than limiting businesses to low- or very low-income residents of the metropolitan statistical area where Section 3 funds are spent, it emphasizes low- or very-low income persons, including those living in public housing or Section 8.

The rule focuses on tracking and reporting of labor hours instead of new hires. The focus on labor hours would measure total actual employment and the proportion of the total employment performed by low- and very low-income workers. In addition, the focus on labor hours emphasizes continued employment.

New Rule Benchmarks

The new Section 3 performance benchmarks are still under consideration by HUD and will be published in the near future.

Opportunity Portal

Helps match Section 3 workers to jobs and training opportunities, and Section 3 businesses to contracting opportunities.

<https://hudapps.hud.gov/OpportunityPortal/>

Business Registry

A listing of firms that have self-certified that they meet one of the regulatory definitions of a Section 3 business and are included in a searchable online database that can be used by agencies that receive HUD funds, developers, contactors and others to facilitate the awareness of certain HUD-funded contracts.

<https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome>



Section 3 Business Registry and Opportunity Portal

Frequently Asked Questions

What is Section 3

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that preference for employment, training and contracting opportunities generated from the expenditure of certain HUD funds is directed to local low- and very low-income persons, particularly those who receive federal housing assistance, and businesses that are owned by or substantially employ such persons.

Section 3 Opportunity Portal

The Section 3 Opportunity Portal is intended to help HUD grantees and Section 3 businesses meet their Section 3 obligations for employment and contracting. The site is to be used by either Section 3 workers or employers. Section 3 residents may use the site to search for Jobs and post their profile/employment history for companies to search. Employers may use the site for posting jobs/contract opportunities or search for residents to fill positions.

<https://hudapps.hud.gov/OpportunityPortal/>

Section 3 Worker

What is a Section 3 Worker?

Section 3 worker means any resident who fits one of the following categories:

- A worker whose income for the previous or annualized calendar year is below the income limit established by HUD
- Employed by a Section 3 business concern
- A YouthBuild participant

Targeted Section 3 Worker

What is a Targeted Section 3 Worker?

Targeted Section 3 is a Section 3 worker who is also:

- A worker employed by a Section 3 business concern
- A worker who currently is or who was when hired by the worker's current employer, as documented within the past five years:
 - o Public Housing resident or HCV participant
 - o Resident of other housing assisted by the PHA or in the PHA's property management portfolio
 - o Living within the service area or the neighborhood of the project; or
 - o A YouthBuild participant

Section 3 Business

What is a Section 3 Business?

Section 3 business means any business that meets at least one of the following criteria, documented within the last six-month period:

- 51% or more owned and controlled by low-very low-income persons
- 75% or more labor hours are performed by low or very low-income persons
- 51% or more owned and controlled by current residents of public housing or HCV assisted housing

The final rule changes the definition of a Section 3 business by focusing on how many hours employees work rather than number of employees. Rather than limiting businesses to low- or very low-income residents of the metropolitan statistical area where Section 3 funds are spent, it emphasizes low- or very-low income persons, including those living in public housing or Section 8.

The rule focuses on tracking and reporting of labor hours instead of new hires. The focus on labor hours would measure total actual employment and the proportion of the total employment performed by low- and very low-income workers. In addition, the focus on labor hours emphasizes continued employment.

HUD's Section 3 Business Registry

The Section 3 Business Registry is a registry of businesses that have self-certified their status as Section 3 businesses. Businesses who self-certify that they meet one of the regulatory definitions of a Section 3 business will be included in a searchable online database. The database can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the award of covered construction and non-construction contracts to Section 3 businesses. Section 3 workers are also encouraged to use the registry to identify businesses that may have HUD-funded employment opportunities.

<https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome>

How does my firm submit a self-certification application for Section 3?

www.hud.gov/Sec3Biz

When does a business certification expire?

Businesses must recertify after 3 years

Where do I find the database of businesses that have self-certified for Section 3?

www.hud.gov/Sec3Biz

How can I change or update my contact information?

Email: Sec3biz@hud.gov

Business Registry Required Documentation

For inclusion in the registry, businesses must submit the online application and are not initially required to submit any additional documentation to HUD. Additional documentation may be requested if HUD receives complaints alleging that any business in its registry has misrepresented their firm's status to the Department. Businesses may also be required to submit supporting documentation as evidence of their eligibility to recipients prior to the award of the HUD-funded contract.

Verification of Business Authenticity

While the Department maintains the business registry database, it has not verified the information submitted by the businesses and does not endorse the services they provide. Accordingly, it is recommended that users perform due diligence before awarding contracts to businesses that have self-certified their status as a Section 3 business.

The Department will periodically conduct random audits of the Section 3 businesses in its registry.

Are Section 3 Businesses Automatically Entitled to HUD-funded Contracts?

Section 3 businesses are not entitled to a contract simply by being listed in the HUD Section 3 Business Registry Database. Section 3 businesses may need to demonstrate to the satisfaction of the recipient agency (i.e., Public Housing Authority, local government agency, developer, etc.) that they are a responsible bidder with the ability to perform successfully under the terms and the conditions of prospective contracts.

The Section 3 regulation at 24 CFR Part 135.36 provides preference to Section 3 businesses that submit responsible bids for contracts and subcontracts, but does not guarantee the award of contracts.

Will My Business Be Contacted After it is Listed on the Section 3 Business Registry?

HUD grantees and their developers are required to do so. Businesses should proactively reach out to recipients or area or Nonmetropolitan Country. for contracts, but they are not covered HUD funding in their metropolitan

How to Report a Firm That is Not Section 3

The Department strongly encourages anyone that believes that a firm in this registry does not meet the eligibility criteria of a Section 3 business to notify the HUD Office of Inspector General at <http://www.hudoig.gov/report-fraud>. HUD's Office of Inspector General is responsible for investigating claims of fraudulence. In such situations, the HUD Office of Inspector General may request documentation and additional information from the business to verify that they qualify for inclusion in the database. Businesses found to have misrepresented themselves will be removed from the database and penalized as appropriate by the HUD Office of Inspector General.

Wage and Hour Division

Instructions For Completing Payroll Form, WH-347

- o [WH-347](#) (PDF)
OMB Control No. 1235-0008, Expires 07/31/2024.

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 or 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 land 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, 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.htm.

[Worker Rights](#) [For Employers](#) [Resources](#) [Interpretive Guidance](#) [State Laws](#)



Wage and Hour Division

An agency within the U.S. Department of Labor

200 Constitution Ave NW
Washington, DC 20210
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"General Decision Number: RI20220001 02/25/2022

Superseded General Decision Number: RI20210001

State: Rhode Island

Construction Types: Building, Heavy (Heavy and Marine) and Highway

Counties: Rhode Island Statewide.

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

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<p>. Executive Order 14026 generally applies to the contract.</p> <p>. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.</p>
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<p>. Executive Order 13658 generally applies to the contract.</p> <p>. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.</p>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	01/21/2022
2	02/18/2022
3	02/25/2022

ASBE0006-006 12/01/2019

	Rates	Fringes
HAZARDOUS MATERIAL HANDLER (Includes preparation, wetting, stripping, removal scrapping, vacuuming, bagging & disposing of all insulation materials, whether they contain asbestos or not, from mechanical systems).....	\$ 36.60	22.40

ASBE0006-008 09/01/2021

	Rates	Fringes
Asbestos Worker/Insulator Includes application of all insulating materials, protective coverings, coatings & finishes to all types of mechanical systems.	\$ 45.00	32.89

BOIL0029-001 01/01/2021

	Rates	Fringes
BOILERMAKER.....	\$ 45.87	29.02

BRR0003-001 06/01/2020

	Rates	Fringes
Bricklayer, Stonemason, Pointer, Caulker & Cleaner.....	\$ 42.55	28.02

BRR0003-002 03/01/2020

	Rates	Fringes
Marble Setter, Terrazzo Worker & Tile Setter.....	\$ 40.78	28.92

BRR0003-003 03/01/2020

	Rates	Fringes
Marble, Tile & Terrazzo Finisher.....	\$ 34.10	27.88

CARP0330-001 01/01/2021

	Rates	Fringes
CARPENTER (Includes Soft Floor Layer).....	\$ 39.72	28.66
Diver Tender.....	\$ 40.72	28.66

DIVER.....	\$ 51.47	28.66
Piledriver.....	\$ 39.72	28.66
WELDER.....	\$ 40.72	28.66

FOOTNOTES:

When not diving or tending the diver, the diver and diver tender shall receive the piledriver rate. Diver tenders shall receive \$1.00 per hour above the pile driver rate when tending the diver.

Work on free-standing stacks, concrete silos & public utility electrical power houses, which are over 35 ft. in height when constructed: \$.50 per hour additional.

Work on exterior concrete shear wall gang forms, 45 ft. or more above ground elevation or on setback: \$.50 per hour additional.

The designated piledriver, known as the ""monkey"": \$1.00 per hour additional.

CARP1121-002 01/06/2020

	Rates	Fringes
MILLWRIGHT.....	\$ 39.07	29.15

ELEC0099-002 06/02/2021

	Rates	Fringes
ELECTRICIAN.....	\$ 43.61	54.71%
Teledata System Installer.....	\$ 32.71	12.57%+14.93

FOOTNOTES:

Work of a hazardous nature, or where the work height is 30 ft. or more from the floor, except when working OSHA-approved lifts: 20% per hour additional.

Work in tunnels below ground level in combined sewer outfall: 20% per hour additional.

ELEV0039-001 01/01/2022

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 56.91	36.885+a+b

FOOTNOTES:

A. PAID HOLIDAYS: New Years Day; Memorial Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; the Friday after Thanksgiving Day; and Christmas Day.

B. Employer contributes 8% basic hourly rate for 5 years or more of service of 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.

ENGI0057-001 12/01/2021

	Rates	Fringes
--	-------	---------

Operating Engineer: (power plants, sewer treatment plants, pumping stations, tunnels, caissons, piers, docks, bridges, wind turbines, subterranean & other marine and heavy construction work)

GROUP 1.....	\$ 43.55	28.25+a
GROUP 2.....	\$ 41.55	28.25+a
GROUP 3.....	\$ 37.17	28.25+a
GROUP 4.....	\$ 34.32	28.25+a
GROUP 5.....	\$ 40.60	28.25+a
GROUP 6.....	\$ 31.40	28.25+a
GROUP 7.....	\$ 25.40	28.25+a
GROUP 8.....	\$ 37.25	28.25+a
GROUP 9.....	\$ 41.17	28.25+a

a. BOOM LENGTHS, INCLUDING JIBS:

150 feet and over + \$ 2.00
 180 feet and over + \$ 3.00
 210 feet and over + \$ 4.00
 240 feet and over + \$ 5.00
 270 feet and over + \$ 7.00
 300 feet and over + \$ 8.00
 350 feet and over + \$ 9.00
 400 feet and over + \$10.00

a. PAID HOLIDAYS:

New Year's Day, President's Day, Memorial Day, July Fourth, Victory Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day. a: Any employee who works 3 days in the week in which a holiday falls shall be paid for the holiday.

a. FOOTNOTES:

Hazmat work: \$2.00 per hour additional.
 Tunnel/Shaft work: \$5.00 per hour additional.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Cranes, lighters, boom trucks and derricks

GROUP 2: Digging machine, Ross Carrier, locomotive, hoist, elevator, bidwell-type machine, shot & water blasting machine, paver, spreader, graders, front end loader (3 yds. and over), vibratory hammer & vacuum truck, roadheaders, forklifts, economobile type equipment, tunnel boring machines, concrete pump and on site concrete plants.

GROUP 3: Oilers on cranes.

GROUP 4: Oiler on crawler backhoe.

GROUP 5: Bulldozer, bobcats, skid steer loader, tractor, scraper, combination loader backhoe, roller, front end loader (less than 3 yds.), street and mobile-powered sweeper (3-yd. capacity), 8-ft. sweeper minimum 65 HP).

GROUP 6: Well-point installation crew.

GROUP 7: Utility Engineers and Signal Persons

GROUP 8: Heater, concrete mixer, stone crusher, welding machine, generator and light plant, gas and electric driven pump and air compressor.

GROUP 9: Boat & tug operator.

 ENGI0057-002 11/01/2021

	Rates	Fringes
Power Equipment Operator (highway construction projects; water and sewerline projects which are incidental to highway construction projects; and bridge projects that do not span water)		
GROUP 1.....	\$ 36.70	28.25+a
GROUP 2.....	\$ 31.40	28.25+a
GROUP 3.....	\$ 25.40	28.25+a
GROUP 4.....	\$ 31.98	28.25+a
GROUP 5.....	\$ 35.68	28.25+a
GROUP 6.....	\$ 35.30	28.25+a
GROUP 7.....	\$ 30.95	28.25+a
GROUP 8.....	\$ 32.33	28.25+a
GROUP 9.....	\$ 34.28	28.25+a

a. FOOTNOTE: a. Any employee who works three days in the week in which a holiday falls shall be paid for the holiday.

a. PAID HOLIDAYS: New Year's Day, President's Day, Memorial Day, July Fourth, Victory Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day & Christmas Day.

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 1: Digging machine, crane, piledriver, lighter, locomotive, derrick, hoist, boom truck, John Henry's, directional drilling machine, cold planer, reclaimer, paver, spreader, grader, front end loader (3 yds. and over), vacuum truck, test boring machine operator, veemere saw, water blaster, hydro-demolition robot, forklift, economobile, Ross Carrier, concrete pump operator and boats

GROUP 2: Well point installation crew

GROUP 3: Utility engineers and signal persons

GROUP 4: Oiler on cranes

GROUP 5: Combination loader backhoe, front end loader (less than 3 yds.), forklift, bulldozers & scrapers and boats

GROUP 6: Roller, skid steer loaders, street sweeper

GROUP 7: Gas and electric drive heater, concrete mixer, light plant, welding machine, pump & compressor

GROUP 8: Stone crusher

GROUP 9: Mechanic & welder

 ENGI0057-003 12/01/2021

BUILDING CONSTRUCTION

	Rates	Fringes
Power Equipment Operator		
GROUP 1.....	\$ 42.82	28.25+a
GROUP 2.....	\$ 40.82	28.25+a
GROUP 3.....	\$ 40.60	28.25+a
GROUP 4.....	\$ 36.60	28.25+a
GROUP 5.....	\$ 33.75	28.25+a
GROUP 6.....	\$ 39.90	28.25+a
GROUP 7.....	\$ 39.47	28.25+a
GROUP 8.....	\$ 36.79	28.25+a

a. BOOM LENGTHS, INCLUDING JIBS:

150 ft. and over: + \$ 2.00
 180 ft. and over: + \$ 3.00
 210 ft. and over: + \$ 4.00
 240 ft. and over: + \$ 5.00
 270 ft. and over: + \$ 7.00
 300 ft. and over: + \$ 8.00
 350 ft. and over: + \$ 9.00
 400 ft. and over: + \$10.00

a. PAID HOLIDAYS: New Year's Day, President's Day, Memorial Day, July Fourth, Victory Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day & Christmas Day. a: Any employee who works 3 days in the week in which a holiday falls shall be paid for the holiday.

a. FOOTNOTE: Hazmat work: \$2.00 per hour additional.
 Tunnel/Shaft work: \$5.00 per hour additional.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Cranes, lighters, boom trucks and derricks.

GROUP 2: Digging machine, Ross carrier, locomotive, hoist, elevator, bidwell-type machine, shot & water blasting machine, paver, spreader, front end loader (3 yds. and over), vibratory hammer and vacuum truck

GROUP 3: Telehandler equipment, forklift, concrete pump & on-site concrete plant

GROUP 4: Fireman & oiler on cranes

GROUP 5: Oiler on crawler backhoe

GROUP 6: Bulldozer, skid steer loaders, bobcats, tractor, grader, scraper, combination loader backhoe, roller, front end loader (less than 3 yds.), street and mobile powered sweeper (3 yds. capacity), 8-ft. sweeper (minimum 65 hp)

GROUP 7: Well point installation crew

GROUP 8: Heater, concrete mixer, stone crusher, welding machine, generator for light plant, gas and electric driven pump & air compressor

 IRON0037-001 09/16/2021

	Rates	Fringes
IRONWORKER.....	\$ 38.21	30.58

 LABO0271-001 05/30/2021

BUILDING CONSTRUCTION

	Rates	Fringes
LABORER		
GROUP 1.....	\$ 33.55	26.15
GROUP 2.....	\$ 33.80	26.15
GROUP 3.....	\$ 34.30	26.15
GROUP 4.....	\$ 34.55	26.15
GROUP 5.....	\$ 35.55	26.15

LABORERS CLASSIFICATIONS

GROUP 1: Laborer, Carpenter Tender, Mason Tender, Cement Finisher Tender, Scaffold Erector, Wrecking Laborer, Asbestos Removal [Non-Mechanical Systems]

GROUP 2: Asphalt Raker, Adzemen, Pipe Trench Bracer, Demolition Burner, Chain Saw Operator, Fence & Guard Rail Erector, Setter of Metal Forms for Roadways, Mortar Mixer, Pipelayer, Riprap & Dry Stonewall Builder, Highway Stone Spreader, Pneumatic Tool Operator, Wagon Drill Operator, Tree Trimmer, Barco-Type Jumping Tamper, Mechanical Grinder Operator

GROUP 3: Pre-Cast Floor & Roof Plank Erectors

GROUP 4: Air Track Operator, Hydraulic & Similar Self-Powered Drill, Block Paver, Rammer, Curb Setter, Powderman & Blaster

GROUP 5: Toxic Waste Remover

 LABO0271-002 05/30/2021

HEAVY AND HIGHWAY CONSTRUCTION

	Rates	Fringes
LABORER		
COMPRESSED AIR		
Group 1.....	\$ 53.45	24.15
Group 2.....	\$ 50.98	24.15
Group 3.....	\$ 40.50	24.15
FREE AIR		
Group 1.....	\$ 44.05	24.15
Group 2.....	\$ 43.05	24.15
Group 3.....	\$ 40.50	24.15
LABORER		
Group 1.....	\$ 33.55	24.15
Group 2.....	\$ 33.80	24.15
Group 3.....	\$ 34.55	24.15
Group 4.....	\$ 27.05	24.15
Group 5.....	\$ 35.55	24.15
OPEN AIR CAISSON, UNDERPINNING WORK AND		

BORING CREW		
Bottom Man.....	\$ 39.55	24.15
Top Man & Laborer.....	\$ 38.60	24.15
TEST BORING		
Driller.....	\$ 40.00	24.15
Laborer.....	\$ 38.60	24.15

LABORER CLASSIFICATIONS

GROUP 1: Laborer; Carpenter tender; Cement finisher tender; Wrecking laborer; Asbestos removers [non-mechanical systems]; Plant laborer; Driller in quarries

GROUP 2: Adzeperson; Asphalt raker; Barcotype jumping tamper; Chain saw operators; Concrete and power buggy operator; Concrete saw operator; Demolition burner; Fence and guard rail erector; Highway stone spreader; Laser beam operator; Mechanical grinder operator; Mason tender; Mortar mixer; Pneumatic tool operator; Riprap and dry stonewall builder; Scaffold erector; Setter of metal forms for roadways; Wagon drill operator; Wood chipper operator; Pipelayer; Pipe trench bracer

GROUP 3: Air track drill operator; Hydraulic and similar powered drills; Brick paver; Block paver; Rammer and curb setter; Powderperson and blaster

GROUP 4: Flagger & signaler

GROUP 5: Toxic waste remover

LABORER - COMPRESSED AIR CLASSIFICATIONS

GROUP 1: Mucking machine operator, tunnel laborer, brake person, track person, miner, grout person, lock tender, gauge tender, miner: motor person & all others in compressed air

GROUP 2: Change house attendant, powder watchperson, top person on iron

GROUP 3: Hazardous waste work within the ""HOT"" zone

LABORER - FREE AIR CLASSIFICATIONS

GROUP 1: Grout person - pumps, brake person, track person, form mover & stripper (wood & steel), shaft laborer, laborer topside, outside motorperson, miner, conveyor operator, miner welder, heading motorperson, erecting operator, mucking machine operator, nozzle person, rodperson, safety miner, shaft & tunnel, steel & rodperson, mole nipper, concrete worker, form erector (wood, steel and all accessories), cement finisher (this type of work only), top signal person, bottom person (when heading is 50' from shaft), burner, shield operator and TBM operator

GROUP 2: Change house attendant, powder watchperson

GROUP 3: Hazardous waste work within the ""HOT"" zone

PAIN0011-005 06/01/2021

Rates Fringes

PAINTER

Brush and Roller.....	\$ 36.42	22.90
Epoxy, Tanks, Towers, Swing Stage & Structural Steel.....	\$ 38.42	22.90
Spray, Sand & Water Blasting.....	\$ 39.42	22.90
Taper.....	\$ 37.17	22.90
Wall Coverer.....	\$ 36.92	22.90

PAIN0011-006 06/01/2021

Rates Fringes

GLAZIER.....	\$ 39.98	22.90
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FOOTNOTES:

SWING STAGE: \$1.00 per hour additional.

PAID HOLIDAYS: Labor Day & Christmas Day.

PAIN0011-011 06/01/2021

Rates Fringes

Painter (Bridge Work).....	\$ 54.00	22.90
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PAIN0035-008 06/01/2011

Rates Fringes

Sign Painter.....	\$ 24.79	13.72
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PLAS0040-001 06/03/2019

BUILDING CONSTRUCTION

Rates Fringes

CEMENT MASON/CONCRETE FINISHER...	\$ 36.00	27.15
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FOOTNOTE: Cement Mason: Work on free swinging scaffolds under 3 planks width and which is 20 or more feet above ground and any offset structure: \$.30 per hour additional.

PLAS0040-002 07/01/2019

HEAVY AND HIGHWAY CONSTRUCTION

Rates Fringes

CEMENT MASON/CONCRETE FINISHER...	\$ 32.85	22.20
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PLAS0040-003 07/01/2019

Rates Fringes

PLASTERER.....	\$ 37.55	27.50
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PLUM0051-002 08/30/2021

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 46.49	31.40

ROOF0033-004 12/01/2021

	Rates	Fringes
ROOFER.....	\$ 40.40	29.06

SFRI0669-001 01/01/2022

	Rates	Fringes
SPRINKLER FITTER.....	\$ 47.55	27.14

SHEE0017-002 12/01/2020

	Rates	Fringes
Sheet Metal Worker.....	\$ 38.58	36.73

TEAM0251-001 05/01/2019

HEAVY AND HIGHWAY CONSTRUCTION

	Rates	Fringes
TRUCK DRIVER		
GROUP 1.....	\$ 27.96	26.8525+A+B+C
GROUP 2.....	\$ 27.61	26.8525+A+B+C
GROUP 3.....	\$ 27.66	26.8525+A+B+C
GROUP 4.....	\$ 27.71	26.8525+A+B+C
GROUP 5.....	\$ 27.81	26.8525+A+B+C
GROUP 6.....	\$ 28.21	26.8525+A+B+C
GROUP 7.....	\$ 28.41	26.8525+A+B+C
GROUP 8.....	\$ 27.91	26.8525+A+B+C
GROUP 9.....	\$ 28.16	26.8525+A+B+C
GROUP 10.....	\$ 27.96	26.8525+A+B+C

FOOTNOTES:

A. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, plus Presidents' Day, Columbus Day, Veteran's Day & V-J Day, providing the employee has worked at least one day in the calendar week in which the holiday falls.

B. Employee who has been on the payroll for 1 year or more but less than 5 years and has worked 150 Days during the last year of employment shall receive 1 week's paid vacation; 5 to 10 years - 2 weeks' paid vacation; 10 or more years - 3 week's paid vacation.

C. Employees on the seniority list shall be paid a one hundred dollar (\$100.00) bonus for every four hundred (400) hours worked, up to a maximum of five hundred dollars (\$500.00)

All drivers working on a defined hazard material job site shall be paid a premium of \$2.00 per hour over applicable rate.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Pick-up trucks, station wagons, & panel trucks

GROUP 2: Two-axle on low beds

GROUP 3: Two-axle dump truck

GROUP 4: Three-axle dump truck

GROUP 5: Four- and five-axle equipment

GROUP 6: Low-bed or boom trailer.

GROUP 7: Trailers when used on a double hook up (pulling 2 trailers)

GROUP 8: Special earth-moving equipment, under 35 tons

GROUP 9: Special earth-moving equipment, 35 tons or over

GROUP 10: Tractor trailer

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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)).

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 a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

 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 National Office because National Office has 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.

=====

END OF GENERAL DECISIO"

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)



Rev. Dec. 2008

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

OMB No.:1235-0008
Expires: 07/31/2024

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>				ADDRESS				OMB No.:1235-0008 Expires: 07/31/2024											
PAYROLL NO.		FOR WEEK ENDING			PROJECT AND LOCATION				PROJECT OR CONTRACT NO.										
(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
				HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX		OTHER	TOTAL DEDUCTIONS	
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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) 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.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, 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, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

Date _____

I, _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the
(Contractor or Subcontractor)

_____ ; that during the payroll period commencing on the
(Building or Work)

_____ day of _____, _____, and ending the _____ day of _____,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

— in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

— Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE

SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 3729 OF TITLE 31 OF THE UNITED STATES CODE.

EMPLOYEE RIGHTS

UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd



Obtaining a DUNS Number

A Guide for Federal Grant and Cooperative Agreement Applicants

The Federal government requires that all applicants for Federal grants and cooperative agreements with the exception of individuals other than sole proprietors, have a DUNS number. (See policy at: http://www.omb.gov/grants/grants_docs). The Federal government will use the DUNS number to better identify related organizations that are receiving funding under grants and cooperative agreements, and to provide consistent name and address data for electronic grant application systems.

Data Universal Number System (DUNS) Number

- The Data Universal Numbering System (DUNS) number is a unique nine-digit identification number provided by Dun & Bradstreet (D&B).
- The DUNS Number is site-specific. Therefore, each distinct physical location of an entity (such as branches, divisions, and headquarters) may be assigned a DUNS number. Organizations should try and keep DUNS numbers to a minimum. In many instances, a central DUNS number with a DUNS number for each major division/department/agency that applies for a grant may be sufficient.
- In order to provide on-the-spot DUNS number assignment, the requestor should do this by telephone. (See telephone number below.)

Obtaining a DUNS Number

- You should verify that you have a DUNS number or take the steps needed to obtain one as soon as possible, if there is a possibility you will be applying for future Federal grants or cooperative agreements. There is no need to wait until you are submitting a particular application.
- *If you already have a DUNS number.* If you, as the entity applying for a Federal grant or cooperative agreement, previously obtained a DUNS number in connection with the Federal acquisition process or requested or had one assigned to you for another purpose, you should use that number on all of your applications. It is not necessary to request another DUNS number from D&B. You may request D&B to supply a family-tree report of the DUNS numbers associated with your organization. Organizations should work with D&B to ensure the right information is on the report. Organizations should not establish new numbers, but use existing numbers and update/validate the information associated with the number.
- *If you are not sure if you have a DUNS number.* Call D&B using the toll-free number, **1-866-705-5711** and indicate that you are a Federal grant applicant/prospective applicant. D&B will tell you if you already have a number. If you do not have a DUNS number, D&B will ask you to provide the information listed below and will immediately assign you a number, free of charge.
- *If you know you do not have a DUNS number.* Call D&B using the toll-free number, **1-866-705-5711** and indicate that you are a Federal grant applicant/prospective applicant. D&B will ask you to provide the information listed below and will immediately assign you a number, free of charge.

Managing Your DUNS Number

- D&B periodically contacts organizations with DUNS numbers to verify that their information is current. Organizations with multiple DUNS numbers may request a free family tree listing from D&B to help determine what branches/divisions have numbers and whether the information is current. Please call the dedicated toll-free DUNS Number request line at **1-866-705-5711** to request your family tree.
- D&B recommends that organizations with multiple DUNS numbers have a single point of contact for controlling DUNS number requests to ensure that the appropriate branches/divisions have DUNS numbers for Federal purposes.
- As a result of obtaining a DUNS number you have the option to be included on D&B's marketing list that is sold to other companies. If you do not want your name/organization included on this marketing list, request to be de-listed from D&B's marketing file when you are speaking with a D&B representative during your DUNS number telephone application.

Obtaining a DUNS number is absolutely **Free** for all entities doing business with the Federal government. This includes grant and cooperative agreement applicants/prospective applicants and Federal contractors. Be certain that you identify yourself as a Federal grant applicant/prospective applicant.

To Obtain Your DUNS Number

- Please call the dedicated toll-free DUNS Number request line for Federal grant and cooperative agreement applicants or prospective grant applicants at:

1-866-705-5711

The number is staffed from 8 a.m. to 6 p.m. (local time of the caller when calling from within the continental United States) Calls placed to the above number outside of those hours will receive a recorded messages requesting the caller to call back between the operating hours.

- The process to request number takes about 5-10 minutes.
- A DUNS number will be assigned at the conclusion of the call.
- You will need to provide the following information:
 - Legal Name
 - Headquarters name and address for your organization
 - Doing business as (DBA) or other name by which your organization is commonly known or recognized
 - Physical Address, City, State and Zip Code
 - Mailing Address(is separate from Headquarters and/or physical address)
 - Telephone Number
 - Contact Name and Title
 - Number of Employees at your physical location

Register your Business with the System of Award Management (SAM)

You need to register your business with the federal government's SAM, the primary database of vendors doing business with the federal government. This registration is sometimes referred to as "self-certifying" your small business. Federal Acquisitions Regulations (FAR) require all prospective vendors to be registered in SAM prior to the award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement.

Using SAM you will be able to register your business size and socio-economic status while completing the required solicitation clauses and certification. By completing your required solicitation clauses and certifications you certify that the information provided about your company and its business activities are correct.

SAM is also a marketing tool for businesses. SAM allows Government agencies and contractors to search for your company based on your ability, size, location, experience, ownership and more. SAM also informs searchers of firms certified by the SBA under the 8(a) Development and HUBZone Programs.

www.sam.gov

ALERT: SAM IS FREE TO REGISTER

There is NO FEE to register, or maintain your registration, in the System for Award Management (SAM.gov). If you receive an email from a company claiming to represent SAM.gov, be cautious. If you get an e-mail from a company offering to help you register in SAM.gov asking you to contact them and pay them money, be cautious. These messages are not from the Federal Government. It is FREE TO REGISTER in SAM.gov for any entity. It is also free to get help with your registration.

To create an account and access SAM as a new user:

Step 1: Go to www.sam.gov.

Step 2: Click on "Create a User Account."

Step 3: Choose Account Type:

Create an Individual User Account to perform tasks such as register/update your entity, create and manage exclusion records or to view FOUO level data for entity records.

Create a System User Account if you need system-to-system communication or if performing data transfer from SAM to your government database system. Complete the requested information, and then click “Submit.”

Step 4: Click “DONE” on the confirmation page. You will receive an email confirming you have created a user account in SAM.

Step 5: Click the validation link in the email that contains the activation code within 48 hours to activate your user account. If the email link is not hyperlinked (i.e., underlined or appearing in a different color), please copy the validation link and paste it into the browser address bar. You can now register an entity. If you are a designated government official you can search For Official Use Only (FOUO) information and enter exclusions into the system.

Step 6: If you are an organization, business, government agency or grantee (known in SAM as an “entity”), you must also register your entity in SAM. NOTE: Creating a user account does not create a registration in SAM, nor will it update/renew an existing registration in SAM.

To register in SAM as an entity:

Step 1: Login to SAM with your user ID and password.

Step 2: Gather all of the required information needed to complete your registration.

Step 3: Click on "Register New Entity" from the left side navigation pane. Then click “Start Registration” near the bottom of the registration overview page.

Step 4: Complete and submit the online registration. It is estimated that it will take approximately 45 minutes to complete registration if you already have all the necessary information on hand, depending upon the size and complexity of your entity.

Step 5: You will receive a “congratulations message” from SAM.gov after registration has been successfully submitted and an email confirming that your registration is in process. Note that new registrations can take an average of 7-10 business days to process in SAM. SAM must send out some information for validation with outside parties before your registration can be activated; this includes TIN validation with the IRS and CAGE validation/assignment with DoD. This timeframe may be longer if the information you provide is flagged for manual validation by either party. If you notice your registration has had a ‘Submitted’ status for longer than 10 business days, and you have not otherwise been contacted to correct or update information, please contact the Federal Service Desk at 866-606-8220 or <https://www.fsd.gov>.

To update your entity's SAM registration, follow the below steps:

Step 1. Go to the SAM Homepage: www.sam.gov.

Step 2. Login first by entering your username and password in the top right-hand corner and then click the "Log In" button.

Step 3. Select "Register/Update Entity" on the left-side of your screen.

Step 4. You will see options for "Complete Registrations", "Incomplete Registrations" and "Inactive Registrations." Click on "Complete Registrations" if your registration is noted as Active.

Step 5. Click on "Incomplete or Inactive," if you have changes that you want to enter. Please select the entity record that you want to update from the Entity List box and click the "Update" button.

For SAM Customer Service, contact:

Federal Service Desk

URL: www.fsd.gov

Hours: 8am - 8pm (Eastern Time)

866-606-8220

If you press the HELP tab, you will find:

- [Quick User Guides](#)
- [Full User Guide](#)
- [Helpful Hints](#)
- [Demonstration Videos](#)
- [Exclusions Information](#)
- [External Resources](#)

If you are unable to find an answer to your question using search, you can select



Web Form

to

submit a ticket or you can select



Live Chat

to chat with the FSD Service Desk.