



City of Nampa Wastewater Treatment Plant Phase I Upgrades: Group A—Liquid Stream Upgrades

Volume 1—Specifications
(Division 00 through Division 01)

CH2MHILL[®]
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CONTRACT DOCUMENTS

CITY OF NAMPA

NAMPA, IDAHO

BIDDING REQUIREMENTS
AND
CONTRACT DOCUMENTS

VOLUME 1
DIVISION 00 THROUGH DIVISION 01

for the construction of the

Nampa WWTP Phase I Upgrades:
Group A—Liquid Stream Upgrades

Project No. 06.1-1305

CH2M HILL

Boise, Idaho

January 2015

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Project No. 480770

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- Geotechnical Engineering Evaluation, Proposed Primary Clarifier No. 3, Nampa WWTP, Nampa, Idaho, December 6, 2005
- Geotechnical Engineering Evaluation, Proposed Clarifier and RAS Pump Station, Nampa WWTP, Nampa, Idaho, May 18, 2004
- Selected Nampa WWTP Record Drawings for Facilities to be Demolished
- Drainage Report, Nampa WWTP, Nampa, Idaho, December 2014

END OF SECTION

PART 1

PROCUREMENT REQUIREMENTS

SECTION 00 11 00
ADVERTISEMENT FOR BIDS

Sealed Bids for the construction of the Phase 1 Project Group A – Liquids Stream Upgrades, will be received, by the City of Nampa, at the City of Nampa Public Works Department (411 3rd Street South, Nampa, ID 83651), until 2:00 p.m. local time on April 2, 2015, at which time the Bids received will be publicly opened and read.

The Project consists of constructing:

The Work consists of the construction of a new Primary Effluent Pump Station (PEPS) and an associated PEPS electrical building, a new Aeration Basin 3 and upgrades to the existing Aeration Basins 1 and 2, demolition of existing Trickling Filter 1, Secondary Clarifier 1, Secondary Effluent Pump Station and Secondary Sludge Pump Station to make room for the aforementioned PEPS and Aeration Basin 3, yard piping demolition and new yard piping to support the new PEPS and Aeration Basin 3, civil grading and roadways, site and equipment electrical work to support the new process facilities, and instrumentation and controls to support the new process facilities and begin the conversion of the site control network from a radial to a looped system.

Bids will be received for a single prime Contract. Bids shall be on a lump sum and unit price basis, with additive alternate bid items as indicated in the Bid Form.

The Issuing Office for the Bidding Documents is:

City of Nampa
Office of the Public Works Director
City Hall
411 3rd Street South
Nampa, ID 83651

All questions and requested clarification shall be made in writing via email to David Bergdolt, City Wastewater Final Design Manager, at the following address: NampaWWProgram@brwncald.com with a copy to Michael Fuss and Sheri Murray at ebids@cityofnampa.us no later than **5:00 p.m., March 20, 2015**. Include “Nampa WWTP Phase I Upgrades: Group A - Liquid Stream Upgrades” in the subject line of the email. All questions and clarifications will be shared, along the response, in a Final Bid Addendum no later than **5:00 p.m., March 25, 2015**.

Prospective Bidders may examine the Bidding Documents at the Wastewater Program Manager’s office (Brown and Caldwell, 950 West Bannock Street, Suite 350, Boise, ID 83702) on Mondays through Fridays between the hours of **8:00 a.m. to 5:00 p.m.**, and may obtain copies of the Bidding Documents from the Issuing Office as described below.

Bidding Documents may be viewed and ordered online at <http://www.findrfp.com/State-RFP-Bid/Government-RFPS-bids-Idaho-ID.aspx>. Following registration, complete sets of Bidding Documents may be downloaded from the website as portable document format (PDF) files. The cost of website registration and printing the Bidding Documents is the sole responsibility of the prospective Bidder and is non-refundable. Partial sets of the Bidding Documents will not be available from the Issuing Office.

A pre-bid conference will be held at **10:00 a.m.** local time on **February 18, 2015** at the Nampa City Hall Council Chambers, 411 3rd Street South, Nampa, ID 83651. Project site visits and tours of the Nampa Wastewater Treatment Plant, 340 West Railroad Street, Nampa, ID 83687 will be held between **9:00 a.m. – 12:00 p.m.** local time on **February 25, 2015 and March 4, 2015**. Prospective Bidders are strongly encouraged to attend both the pre-bid conference and one project site visit and tour of the Nampa Wastewater Treatment Plant.

Bid security shall be furnished in accordance with the Instructions to Bidders.

This project is funded in part by a loan from the State of Idaho Clean Water State Revolving Fund. The loan agreement includes federal and state contract requirements that will be incorporated into the construction contract.

The Prospective Bidders shall comply with Executive Order 12549, which precludes any contractors or subcontractors that have been suspended or debarred from programs that receive federal funding from being selected. The Owner will verify excluded parties at www.sam.gov.

Executive Order 11246 requires the Successful Bidder to comply with all federal equal employment opportunity requirements. SRF Form 6-I is a statement of compliance that the Successful Bidder shall execute, agreeing to comply with this executive order.

All laborers and mechanics employed by the contractor and all subcontractors for this project shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the labor standards, including prevailing wage rates and instructions for reporting, as established by the United States Department of Labor (subchapter IV) of Chapter 31 of title 40, Davis-Bacon Act, United States Code.

Bids will be evaluated in accordance with the Instructions to Bidders.

Owner: City of Nampa

By: Michael Fuss, P.E.

Title: Public Works Director

Date: February 2, 9 and 23, 2015

SECTION END

SECTION 00 20 00
INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS

1.1. Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:

1.1.1. *Issuing Office* – The office from which the Bidding Documents are to be issued.

2. COPIES OF BIDDING DOCUMENTS

2.1. Complete sets of the Bidding Documents may be obtained from the Issuing Office in the number and format stated in the Advertisement or Invitation to Bid.

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

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

3. QUALIFICATIONS OF BIDDERS

3.1. To demonstrate Bidder's qualifications to perform the Work, after submitting its Bid and within 5 days of Owner's request, Bidder shall submit (a) written evidence establishing its qualifications such as financial data, previous experience, and present commitments, and (b) the following additional information:

3.1.1. Evidence of Bidder's Idaho Public Works License prior to bidding.

3.1.2. Evidence of all subcontractors appropriate Idaho Public Works License prior to bidding.

3.1.3. Information as defined in the Qualification Statement.

3.2. A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.

3.3. No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.

3.4. Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

4. SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

4.1. Site and Other Areas:

4.1.1. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

4.2. Existing Site Conditions:

4.2.1. Subsurface and Physical Conditions; Hazardous Environmental Conditions:

4.2.1.1. The Supplementary Conditions identify:

4.2.1.1.1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.

4.2.1.1.2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

4.2.1.1.3. reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.

4.2.1.1.4. Technical Data contained in such reports and drawings.

4.2.1.2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.2.1.3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.

4.2.2. Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

4.2.3. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

4.3. Site Visit and Testing by Bidders:

4.3.1. Bidder shall conduct the required Site visit during the specified time(s) stated in the Advertisement for Bids.

4.3.2. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.

4.3.3. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site.

4.3.4. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.

4.3.5. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.4. Owner's Safety Program:

4.4.1. Site visits and work at the Site may be governed by an Owner safety program. As the General Conditions indicate, if an Owner safety program exists, it will be noted in the Supplementary Conditions.

4.5. Other Work at the Site:

4.5.1. Reference is made to Article 8 of the Supplementary Conditions for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

5. BIDDER'S REPRESENTATIONS

5.1. It is the responsibility of each Bidder before submitting a Bid to:

5.1.1. Examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;

5.1.2. Visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

5.1.3. Become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;

5.1.4. Carefully study 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;

5.1.5. Consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs;

5.1.6. Agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;

5.1.7. Become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;

5.1.8. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder;

5.1.9. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and

5.1.10. Agree that the submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

6. PRE-BID CONFERENCE

6.1. A pre-bid conference will be held at the time and location stated in the Invitation or Advertisement to Bid. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are required to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

7. INTERPRETATIONS AND ADDENDA

7.1. All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than 10 days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.2. Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

8. BID SECURITY

8.1. A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.

8.2. The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.

8.3. The Bid security of other bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of 7 days after the Effective Date of the Contract or 61 days after the Bid opening, whereupon Bid security furnished by such bidders will be released.

8.4. Bid security of other bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven days after the Bid opening.

9. CONTRACT TIMES

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

10. LIQUIDATED DAMAGES

10.1. Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

11. SUBSTITUTE AND “OR-EQUAL” ITEMS

11.1. The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or “or-equal” item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.

11.2. All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

12. SUBCONTRACTORS, SUPPLIERS, AND OTHERS

12.1. Pursuant to Idaho Code 67-2310, Bidder shall include in its Bid the name(s) and address(es) of each Subcontractor who, in the event the Bidder is awarded the Contract, will perform the plumbing, heating and air conditioning (HVAC) and electrical Work. Subcontractors named in accordance with the provisions of this section must possess appropriate license or Certificate of Competency issued by the State of Idaho covering the applicable classification of Work proposed. Failure of any Bidder to comply with this provision of the Idaho Code shall render Bid submitted by the Bidder unresponsive and void. Bidder shall not name a subcontractor in its bid unless the Bidder has received communication from the subcontractor as required by Idaho Code 67-2310.

12.2. A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents (most commonly in the Specifications) to do so. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.

12.3. Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.

12.4. If requested by Owner, such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit a substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.

12.5. If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, or other individuals or entities. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.

13. PREPARATION OF BID

13.1. The Bid Form is included with the Bidding Documents.

13.1.1. All blanks on the Bid Form shall be completed in ink or typed and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.

13.1.2. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words "No Bid" or "Not Applicable."

13.2. A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address, state of incorporation, and the corporate seal shall be shown.

13.3. A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.

- 13.4. A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.5. A Bid by an individual shall show the Bidder's name and official address.
- 13.6. A Bid by a joint venture shall be executed by an authorized representative of each joint venture in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.7. All names shall be typed or printed in ink below the signatures.
- 13.8. The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.9. Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.10. The Bid shall contain evidence of Bidder's authority and qualification to do business in Idaho. If the project is federally funded, signing the Bid Form constitutes a covenant to obtain such qualification prior to award of the contract. Bidder's Idaho Public Works Contractor License Number shall also be shown on the Bid Form.
14. EMPLOYMENT REQUIREMENTS
- 14.1. Pursuant to Idaho Code 44-1001 and 44-1002, Successful Bidder shall employ 95 percent bona fide Idaho residents as employees, except where it has been determined that only one source reasonably available to Bidder pursuant to Idaho Code 67-2808(2) or under contracts where 50 or less persons are employed, Successful Bidder may employ 10 percent nonresidents provided that in all cases Successful Bidder must give preference to employment of bona fide residents in performance of said Work. No Contract will be let to any person, firm, association, or corporation refusing to execute an agreement with above-mentioned provisions in it.
15. PREVAILING WAGE RATES
- 15.1. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of the Department of Labor (DOL) under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of the DOL which is attached hereto and made a part hereof, regardless of any contractual

relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

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

16. BASIS OF BID

16.1. Allowances:

16.1.1. For cash allowances, the Lump Sum Bid price shall include such amounts as the Bidder deems proper for Contractor's overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 13.02.B of the General Conditions.

17. SUBMITTAL OF BID

17.1. With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form, and, if required, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the other documents required to be submitted under the terms of Article 7 of the Bid Form.

17.2. A Bid shall be received no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the

Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to City of Nampa, Office of the Public Works Director, 411 3rd Street South, Nampa, Idaho 83651.

17.3. Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

18. MODIFICATION AND WITHDRAWAL OF BID

18.1. A Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.

18.2. If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 16.01 and submit a new Bid prior to the date and time for the opening of Bids.

18.3. Grounds for Relief. The Bidder shall establish to the satisfaction of the public entity that:

18.3.1. A clerical or mathematical mistake was made;

18.3.2. The Bidder gave the public entity written notice within 5 calendar days after the opening of the Bid of the mistake, specifying in the notice in detail how the mistake occurred; and

18.3.3. The mistake was material.

18.4. Relief From Bids. Following delivery of the notice described in the preceding section 18.3 (a), if an awarding authority for the public entity determines that a Bidder is entitled to relief from a Bid because of mistake, the authority shall prepare a report in writing to document the facts establishing the existence of each element required in Idaho Code 54-1904C. The report shall be available for inspection and copying as a public record and shall be filed with the public entity soliciting bids.

(b) A Bidder claiming a mistake satisfying all the conditions of Idaho Code 54-1904C shall be entitled to relief from Bid and have any Bid Security returned by the public entity. Bidders not satisfying the conditions found in Idaho Code 54-1904C shall forfeit any Bid Security. Bidders failing to execute a Contract and not satisfying the conditions of a mistake shall also forfeit any Bid Security.

19. OPENING OF BIDS

19.1. Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An

abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

20. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

20.1. All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

21. EVALUATION OF BIDS AND AWARD OF CONTRACT

21.1. Pursuant to Idaho Code 67-2348, any contractor domiciled outside the boundaries of Idaho shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible contractor domiciled in Idaho as would be required for such an Idaho domiciled contractor to succeed over the bidding contractor domiciled outside Idaho on a like contract being let in his domiciliary state.

21.2. Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner will reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.

21.3. If Owner awards the contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive Bid.

21.4. Evaluation of Bids:

21.4.1. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.

21.5. In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

21.6. Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

22. BONDS AND INSURANCE

22.1. Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation.

23. SIGNING OF AGREEMENT

23.1. When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within ten days thereafter, Owner shall deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

24. SALES AND USE TAXES

24.1. Bidder shall execute the Contractor's Affidavit Concerning Taxes, a copy of which is included in Section 00 41 00, Bid Form, Supplement 1. The completed form shall be submitted as part of the sealed bid to the Owner.

24.2. The Owner will inform the Idaho State Tax Commission of the Contract amount. Prior to Notice to Proceed, the Successful Bidder shall send a complete WH-5 form (a copy of which is included in the Part 2 – CONTRACTING REQUIREMENTS/PROJECT FORMS, Public Works Contract Report Form, Clean Water State Revolving Fund Insert Form 6-P) to the Idaho State Tax Commission, P.O. Box 36, Boise, ID 83722-2210. Successful Bidder shall provide a copy of the WH-5 form to the Owner.

24.3. Upon completion of the project, Successful Bidder shall execute the Affidavit of Payment of Securement of all Tax, a copy of which is included in the Part 2 – CONTRACTING REQUIREMENTS/PROJECT FORMS, Clean Water State Revolving Fund Form 6-Q. The completed form shall be submitted to the Owner.

24.4. Certain items of equipment may be exempt from use tax per Idaho Code Section 63-3622X and other sections.

24.4.1. For bidding purposes, Bidder shall assume that the equipment and materials listed in the attachment identified in paragraph 24.4.4 will be exempt from sales/use taxes under the provisions of Idaho Code Section 63-3622X and other sections. The assumed exemption will apply to

the cost of the equipment/materials as purchased up to the field connection point(s). The cost of the equipment will include the cost of spare parts and special tools specified for the equipment. The Successful Bidder shall be responsible for payment of all other sales/use taxes due.

24.4.2. As portions of the Project approach Substantial Completion, the Owner will make arrangements with the State Tax Commission to obtain determination of the sales/use tax status for the items listed in the attachment identified in paragraph 24.4.4 and materials in that facility. For equipment and material determined by the Tax Commission to be taxable, the Owner will compensate the Successful Bidder through the Change Order process for the sales/use taxes due on that equipment/material and accrued interest as determined by the Tax Commission. The Change Order amount shall be for the amount of the taxes and accrued interest due without any markups for overhead and profit.

24.4.3. For each of the items listed in the attachment identified in paragraph 24.4.4, the Successful Bidder shall provide to the Owner a legible copy of the supply contract showing the purchase price of the equipment including spare parts and special tools. The Contract shall show a breakdown between the equipment price and any services that the supplier/manufacturer will provide. In the case of listed categories of equipment/material, the Successful Bidder shall provide to the Owner a legible copy of the supply contract(s) showing itemized breakdown of the purchase price for each item of equipment/materials, including spare parts and special tools, in the category. The Contract shall show a breakdown between the equipment/materials price and any services the supplier/manufacturer will provide. Successful Bidder shall furnish any other documentation required by the Tax Commission or Owner.

24.4.4. The equipment/materials to which paragraph 24.4.1 shall apply are listed in Attachment A of this Section. The table title is "City of Nampa Wastewater Treatment Plant Phase 1 Expansion Project Group A, Instructions to Bidders, Paragraph 24.4.4, Attachment A."

25. RETAINAGE

25.1. Provisions for retainage are as set forth in the Agreement.

26. IDAHO CLEAN WATER STATE REVOLVING FUND LOAN

26.1. This project is funded in part by a loan from the State of Idaho Clean Water State Revolving Fund.

26.2. The loan agreement includes federal and state contract requirements that are incorporated into the construction contract. Additional requirements are included in

Idaho Clean Water State Revolving Fund insert included in the PART 2 – CONTRACTING FORMS, PROJECT FORMS section of Volume 1 - Specifications.

26.3. Bidder shall comply with Executive Order 12549, which precludes any contractors or subcontractors that have been suspended or debarred from programs that receive federal funding from being selected. The Owner will verify excluded parties at www.sam.gov.

26.4. Executive Order 11246 requires the Successful Bidder to comply with all federal equal employment opportunity requirements. SRF Form 6-I is a statement of compliance that the Successful Bidder shall execute, agreeing to comply with this executive order.

26.5. Bidder shall include the following information on themselves and all subcontractors included in the bid (required by 40 CFR 33.501):

26.5.1. Name with point of contact.

26.5.2. Mailing address, telephone number, and e-mail address.

26.5.3. The status of all bidders and each of their subcontractors as Disadvantaged Business Enterprises.

END OF SECTION

City of Nampa Wastewater Treatment Plant Phase 1 Expansion Project Group A,
Instructions to Bidders, Paragraph 24.4.4
Attachment A

Certain items of equipment may be exempt from use tax per Idaho Code Section 63-3622X and other sections.

Section No.	Title	Comments
35 20 16.24	Slide Gates	
40 27 00	Process Piping – General	Tax Exemption applies to exposed piping.
40 27 02	Process Valves and Operators	Tax Exemption applies to exposed components.
40 90 00	Instrumentation and Control for Process Systems	
40 91 00	Instrumentation and Control Components	
43 22 56.01	Submersible Mixers	
44 42 56.03	Vertical Turbine Solids Handling Pumps	
44 42 56.04	Submersible Pumps	

Note 1 : in the absence of any stated limitation, Instructions to Bidders paragraph 24.4.4 applies to all equipment/material furnished under the listed specifications.

BID FORM

1. **BID RECIPIENT**

1.1. This Bid is submitted to:

City of Nampa
Public Works Department
411 3rd Street South
Nampa, ID 83651

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

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 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

3. **BIDDER’S REPRESENTATIONS**

3.1. In submitting this Bid, Bidder represents that:

3.1.1. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

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

3.1.2. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

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

3.1.4. Bidder 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.

3.1.5. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

3.1.6. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

3.1.7. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.

3.1.8. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.

3.1.9. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.

3.1.10. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

4. BIDDER'S CERTIFICATION

4.1. Bidder certifies that:

4.1.1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

4.1.2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

4.1.3. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

4.1.4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:

4.1.4.1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;

4.1.4.2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

4.1.4.3. "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

4.1.4.4. "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.

5. BASIS OF BID

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

5.2. Lump Sum Bid Price:

Item		Bid Amount
5.2	Lump Sum Bid Price for Base Bid	\$

5.3. Allowances:

Item	Lump Sum for Cash Allowances	Allowance
5.3.1	Permit and Inspection Fees	\$35,000
5.3.2	Construction Dewatering of Confined Aquifer	\$100,000

All specified cash allowances are included in the price(s) set forth above, and have been computed in accordance with Paragraph 13.02 of the General Conditions.

Item	Lump Sum Contingency Allowance	Allowance
5.3.3	Hidden Utilities and Existing Conflicts	\$100,000

5.4. Major Equipment:

5.4.1. For the major equipment listed, provide the bid amount to provide at least one listed manufacturer of the equipment to be supplied. The lowest bid amount for the listed manufacturers will be used to calculate the Total Bid Price. The Bidder may submit an alternative manufacturer and Bid Alternative for the manufacturer. The Bid Alternative will not be used in calculating the total bid price but may be considered after award. Any of the manufacturers may be selected by the Owner after award.

Section 40 91 00, Instrumentation and Control Components: Programmable Logic Controllers			
Item	Manufacturer	Bid Alternative (\$)	Bid Amount (\$)
5.4.1	Allen Bradley		
5.4.2	Modicon		
5.4.3	Siemens		
5.4.A			

5.5. Dewatering:

5.5.1. Provide the name of the qualified subcontractor to perform construction dewatering during the project. The cost of the dewatering subcontractor is included in the Lump Sum Bid Price.

Section 31 23 19.01, Dewatering	
Item	Qualified Subcontractor
5.5	

Total Bid Price – Sum of the value of Items 5.2, 5.3.1, 5.3.2, 5.3.3, and the lowest value 5.4.1 through 5.4.3. \$ _____

Total Written in Words:

6. TIME OF COMPLETION

6.1. Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.2. Bidder accepts the provisions of the Agreement as to liquidated damages.

7. ATTACHMENTS TO THIS BID

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

7.1.1. Required Bid security;

7.1.2. List of Proposed Subcontractors (include Idaho Public Works Contractor License Numbers);

7.1.3. Contractor’s Affidavit Concerning Taxes; and,

7.1.4. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids.;

7.1.5. Idaho Public Works Contractor License No.

8. DEFINED TERMS

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

9. BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

By: *[Signature]* _____

[Printed name] _____

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: *[Signature]* _____

[Printed name] _____

Title: _____

Submittal Date: _____

Address for giving notices:

Telephone Number: _____

Fax Number: _____

Contact Name and e-mail address: _____

Bidder's License No.: _____
(where applicable)

END OF SECTION

**NAMING OF SUBCONTRACTORS FORM
NAMPA WWTP PHASE 1 EXPANSION PROJECT GROUP A**

Per Idaho Code, 67-2310, Bidder shall include in his or her Bid the names and address, and Idaho Public Works Contractor License Number of the Subcontractors who shall, in the event the Bidder secures the Contract, subcontract the plumbing, heating and air-conditioning work, and electrical work under the general Contract. Failure to name Subcontractors as required shall render Bid submitted by the Bidder unresponsive and void.

In the event that the general contractor intends to self-perform the plumbing, HVAC or electrical work, the general contractor must be properly licensed by the state of Idaho to perform such work. The general contractor shall demonstrate compliance with this requirement by listing the valid contractor's license number for the plumbing, HVAC or electrical work to be self-performed by the general contractor on the Bid Form.

As required by 40 CFR 33.501, and in addition to Idaho Code 67-2310, Bidder shall also list all other additional Subcontractors who shall, in the event the Bidder secures the Contract, perform work under the general Contract.

BIDDER NAME: _____

POINT OF CONTACT: _____

MAILING ADDRESS: _____

EMAIL: _____ PHONE: _____

DISADVANTAGED BUSINESS ENTERPRISE (YES/NO): _____

Subcontractor Listing Per Idaho Code 67-2310

License Number

PLUMBING:

Name: _____

Point of Contact: _____

Mailing Address: _____

Phone: _____

Email: _____

Disadvantage Business Enterprise (Yes/No): _____

HVAC:

Name: _____

Point of Contact: _____

Mailing Address: _____

Phone: _____

Email: _____

Disadvantage Business Enterprise (Yes/No): _____

ELECTRICAL:

Name: _____

Point of Contact: _____

Mailing Address: _____

Phone: _____

Email: _____

Disadvantage Business Enterprise (Yes/No): _____

Subcontractor Listing Per 40 CFR 33.501

License Number

OTHER: DEWATERING

Name: _____

Point of Contact: _____

Mailing Address: _____

Phone: _____

Email: _____

Disadvantage Business Enterprise (Yes/No): _____

OTHER: _____

Name: _____

Point of Contact: _____

Mailing Address: _____

Phone: _____

Email: _____

Disadvantage Business Enterprise (Yes/No): _____

OTHER: _____

Name: _____

Point of Contact: _____

Mailing Address: _____

Phone: _____

Email: _____

Disadvantage Business Enterprise (Yes/No): _____

OTHER: _____

Name: _____

Point of Contact: _____

Mailing Address: _____

Phone: _____

Email: _____

Disadvantage Business Enterprise (Yes/No): _____

OTHER: _____

Name: _____

Point of Contact: _____

Mailing Address: _____

Phone: _____

Email: _____

Disadvantage Business Enterprise (Yes/No): _____

Subcontractor Listing Per 40 CFR 33.501

License Number

OTHER: _____

Name: _____

Point of Contact: _____

Mailing Address: _____

Phone: _____

Email: _____

Disadvantage Business Enterprise (Yes/No): _____

OTHER: _____

Name: _____

Point of Contact: _____

Mailing Address: _____

Phone: _____

Email: _____

Disadvantage Business Enterprise (Yes/No): _____

OTHER: _____

Name: _____

Point of Contact: _____

Mailing Address: _____

Phone: _____

Email: _____

Disadvantage Business Enterprise (Yes/No): _____

OTHER: _____

Name: _____

Point of Contact: _____

Mailing Address: _____

Phone: _____

Email: _____

Disadvantage Business Enterprise (Yes/No): _____

OTHER: _____

Name: _____

Point of Contact: _____

Mailing Address: _____

Phone: _____

Email: _____

Disadvantage Business Enterprise (Yes/No): _____

CONTRACTOR’S AFFIDAVIT CONCERNING TAXES

STATE OF _____)

COUNTY OF _____)

Pursuant to the Idaho Code, Title 63, Chapter 15, I, the above signed, being duly sworn, depose and certify that all taxes, excises and license fees due to taxing units in the State of Idaho, for which I or my property is liable then due or delinquent, have been paid, or secured to the satisfaction of the respective taxing units.

(Contractor Name)

(Address)

(City and State)

(Signature)

Subscribed and sworn to before me the _____ day of _____, 20_____.

(Notary Public)

(City and State)

Commission Expires: _____

BID BOND

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

BIDDER (*Name and Address*):

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

OWNER:

City of Nampa
411 3rd Street South, Nampa, ID 83651

BID

Bid Due Date: **April 2, 2015**
NAMPA WWTP PHASE 1 EXPANSION PROJECT GROUP A
Nampa Wastewater Treatment Plant
340 West Railroad Street, Nampa, ID 83687

BOND

Bond Number: _____
Date: _____
Penal sum _____ \$ _____
(Words) (Figures)

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

BIDDER (Seal) **SURETY** (Seal)

Bidder's Name and Corporate Seal Surety's Name and Corporate Seal

By: _____ By: _____
Signature Signature (Attach Power of Attorney)

Print Name Print Name

Title Title

Attest: _____ Attest: _____
Signature Signature

Title Title

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

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

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

PART 2

CONTRACTING REQUIREMENTS

NOTICE OF AWARD

Date of Issuance:

Owner:

Owner's Contract No.:

Engineer:

Engineer's Project No.:

Project:

Contract Name:

Bidder:

Bidder's Address:

TO BIDDER:

You are notified that Owner has accepted your Bid dated [_____] for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

[describe Work, alternates, or sections of Work awarded]

The Contract Price of the awarded Contract is: \$ _____

5 unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

a set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner 5 counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security (*Bonds*) and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

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

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner:

Authorized Signature

By:

Title:

Copy: Engineer

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

THIS AGREEMENT is by and between The City of Nampa, Nampa, Idaho (Owner), and _____ (Contractor).

Owner and Contractor hereby agree as follows:

1. WORK

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

The Work consists of the construction of a new Primary Effluent Pump Station (PEPS) and an associated PEPS electrical building, a new Aeration Basin 3 and upgrades to the existing Aeration Basins 1 and 2, demolition of existing Trickling Filter 1, Secondary Clarifier 1, Secondary Effluent Pump Station and Secondary Sludge Pump Station to make room for the aforementioned PEPS and Aeration Basin 3, yard piping demolition and new yard piping to support the new PEPS and Aeration Basin 3, civil grading and roadways, site and equipment electrical work to support the new process facilities, and instrumentation and controls to support the new process facilities and begin the conversion of the site control network from a radial to a looped system.

2. THE PROJECT

2.1. The Project, of which the Work under the Contract Documents is a part, is generally described in Section 01 10 00, Summary of Work.

3. ENGINEER

3.1. The Project has been designed by CH2M HILL Engineers, Inc. (“Design Engineer”).

3.2. The Owner has retained Brown and Caldwell (“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.

4. CONTRACT TIMES

4.1. Time of the Essence:

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

4.2. Contract Times: Days.

4.2.1. The Work will be substantially completed within 870 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 60 days after substantial completion.

4.2.2. Parts of the Work shall be substantially completed on or before the following Milestone(s):

4.2.2.1. Milestone 1: Primary Effluent Pump Station, PEPS Electrical Building, and Aeration Basin 3 (600 days).

4.3. Liquidated Damages:

4.3.1. 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):

4.3.1.1. Substantial Completion: Contractor shall pay Owner \$3,000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2.1 above for Substantial Completion until the Work is substantially complete.

4.3.1.2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2.1 above for completion and readiness for final payment, Contractor shall pay Owner \$1,800 for each day that expires after such time until the Work is completed and ready for final payment.

4.3.1.3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently. Only the largest of any liquidated damages shall be assessed on any single day where more than one liquidated damage is to be assessed.

4.4. Special Damages:

4.4.1. 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.

4.4.2. 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.

5. CONTRACT PRICE

5.1. 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:

5.1.1. All specific allowances are included in the Total Bid Price in accordance with Paragraph 13.02 of the General Conditions.

5.1.2. Total Bid Price \$_____.

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

6. PAYMENT PROCEDURES

6.1. Submittal and Processing of Payments:

6.1.1. 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.

6.2. Progress Payments; Retainage:

6.2.1. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 5th 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).

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

6.2.1.1.1. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

6.2.1.1.2. For materials and equipment stored onsite but not incorporated in the Work payment shall be made in accordance with Section 01 29 00, Payment Procedures (with the balance being retainage).

6.2.2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 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.

6.3. Final Payment:

6.3.1. 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.

7. INTEREST

7.1. All amounts not paid when due shall bear interest at the rate of 5 percent per annum.

8. CONTRACTOR'S REPRESENTATIONS

8.1. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

8.1.1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

8.1.2. 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.

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

8.1.4. 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.

8.1.5. 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.

8.1.6. 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.

8.1.7. 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.

8.1.8. 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.

8.1.9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

8.1.10. 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.

8.1.11. The Contractor is an appropriately licensed public works contractor per Section 54-1902 (Idaho Code).

8.1.12. The Contractor shall submit a Public Works Contract Report (Form WH-5) to the Idaho State Tax Commission in compliance with Section 54-1904A and 63-3624(f) Idaho Code before the Notice to Proceed is issued.

9. CONTRACT DOCUMENTS

9.1. Contents:

9.1.1. The Contract Documents consist of the following:

9.1.1.1. This Agreement (pages 1 to ■■■, inclusive).

9.1.1.2. Performance bond (pages ■■■ to ■■■, inclusive).

9.1.1.3. Payment bond (pages ■■■ to ■■■, inclusive).

9.1.1.4. Other bonds.

9.1.1.4.1. ■■■ (pages ■■■ to ■■■, inclusive).

9.1.1.5. General Conditions (pages ■■■ to ■■■, inclusive).

9.1.1.6. Supplementary Conditions (pages ■■■ to ■■■, inclusive).

9.1.1.7. Specifications as listed in the table of contents of the Project Manual.

9.1.1.8. 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.

9.1.1.9. Addenda (numbers [] to [], inclusive).

9.1.1.10. Exhibits to this Agreement (enumerated as follows):

9.1.1.10.1. Contractor's Bid (pages [] to [], inclusive).

9.1.1.11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:

9.1.1.11.1. Notice to Proceed.

9.1.1.11.2. Work Change Directives.

9.1.1.11.3. Change Orders.

9.1.1.11.4. Field Orders.

9.1.2. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

9.1.3. There are no Contract Documents other than those listed above in this Article 9.

9.1.4. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

10. MISCELLANEOUS

10.1. Terms:

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

10.2. Assignment of Contract:

10.2.1. 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.

10.3. Successors and Assigns:

10.3.1. 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.

10.4. Severability:

10.4.1. 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.

10.5. Contractor's Certifications:

10.5.1. 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:

10.5.1.1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

10.5.1.2. "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;

10.5.1.3. "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

10.5.1.4. "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.

10.6. Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs:

10.6.1. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this Contract.

11. DAVIS BACON CONTRACT AND SUBCONTRACT PROVISIONS FOR GOVERNMENTAL AGENCIES

11.1. Minimum Wages:

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

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

11.1.2. (ii)(A) The loan recipient, on behalf of U.S. Environmental Protection Agency (EPA), shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Idaho Department of Environmental Quality (DEQ) shall review and act upon a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the loan recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the loan recipient to DEQ. DEQ will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, DOL, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise DEQ or will notify DEQ within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the loan recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), DEQ shall refer the request and the local wage determination, including the views of all interested parties and their recommendation to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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

either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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

11.2. Withholding:

11.2.1. The loan recipient, shall upon written request of the EPA Award Official or an authorized representative of the DOL, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to DB prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, DEQ may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

11.3. Payrolls and Basic Records:

11.3.1. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the DB Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of DOL has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the DB Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially

responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

11.3.2. (ii)(A) The Contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the loan recipient, that is, the entity that receives the loan from DEQ. Such documentation shall be available on request of DEQ or EPA. As to each payroll copy received, the loan recipient shall provide written confirmation in a form satisfactory to DEQ indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/programs/dbra/wh347.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to DEQ or EPA if requested by EPA, the Contractor, or the Wage and Hour Division of the DOL for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the loan recipient.

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

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

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

11.3.2.3. (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (ii)(B) of this section.

(C) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under Section 1001 of title 18 and Section 231 of Title 31 of the United States Code.

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

(A) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under

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

(B) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the DOL Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan

approved by the DOL Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

(H) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the DOL set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and loan recipient, DEQ, EPA, DOL, or the employees or their representatives.

11.4. Certification of Eligibility

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

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

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

11.5. Contract Provision for Contracts in Excess of \$100,000:

11.5.1. (i) Contract Work Hours and Safety Standards Act. The loan recipient shall insert the following clauses set forth in paragraphs (i)(A), (B), (C), and (D) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

(B) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (i)(A) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (i)(A) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (i)(A) of this section.

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

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

11.5.2. (ii) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the loan recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the loan recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the DOL, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

11.6. Compliance Verification

11.6.1. (i) The loan recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates if, upon a risk assessment, the loan recipient finds interviews are warranted. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The loan recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from <http://www.gsa.gov/portal/forms/download/115910>.

11.6.2. (ii) The loan recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the loan recipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Loan recipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Loan recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

11.6.3. (iii) The loan recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The loan recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the loan recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Loan recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the loan recipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

11.6.4. (iv) The loan recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the DOL or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item (ii) and (iii) above.

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

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.)

>

General Decision Number: ID150067 01/02/2015 ID67

Superseded General Decision Number: ID20140067

State: Idaho

Construction Type: Heavy

HEAVY CONSTRUCTION, Including water and sewer line construction and heavy construction projects on treatment plants and industrial (power plants, manufacturing plants, processing plants, etc.) sites

County: Canyon County in Idaho.

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/02/2015

* ELEC0291-011 06/01/2014

	Rates	Fringes
ELECTRICIAN.....	\$ 27.60	12.34

 ENGI0370-038 01/01/2014

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
Scrapers (over 40 yds to 60 yds)		
GROUP 7.....	\$ 27.96	10.5
Bulldozer, Scraper (over 80 yds to 100 yds)		
GROUP 8.....	\$ 28.19	10.5
Scraper (over 100 yds)		
GROUP 10.....	\$ 28.67	10.5
Scraper (up to and including 40 yds)		
GROUP 6.....	\$ 27.59	10.5

ZONE PAY:

Zone 1 0 - 30 miles: Free
 Zone 2 30 - 60 miles: \$25.00/per day

Zone 3 More than 60 miles: \$30.00/per day.

If a project is located in more than one zone the lower zone rate shall apply

ZONES SHALL BE MEASURED FROM THE THE FOLLOWING U.S. POST OFFICES:

BOISE: 304 N. 8TH STREET
 TWIN FALLS: 253 2ND AVE. WEST
 POCATELLO: CLARK STREET
 IDAHO FALLS: 875 NORTH CAPITAL AVE.

 TEAM0483-003 01/01/2014

	Rates	Fringes
TRUCK DRIVER		
GROUP 5A.....	\$ 23.75	13.55
GROUP 5B.....	\$ 23.93	13.55
GROUP 5C.....	\$ 24.16	13.55
GROUP 5D.....	\$ 24.67	13.55
GROUP 5E.....	\$ 24.90	13.55
GROUP 5F.....	\$ 25.34	13.55

GROUP DEFINITIONS:

GROUP 5A: Dump (0-16 yds)
 GROUP 5B: Dump (16-30 yds)
 GROUP 5C: Dump (30-50 yds)
 GROUP 5D: Dump (50-75 yds)
 GROUP 5E: Dump (75-100 yds)
 GROUP 5F: Dump (over 100 yds)

 SUID2010-060 08/08/2012

	Rates	Fringes
CARPENTER (Form Work Only).....	\$ 22.42	9.10
CARPENTER, Excludes Form Work....	\$ 26.06	11.26
CEMENT MASON/CONCRETE FINISHER...	\$ 22.43	15.06
LABORER: Common or General.....	\$ 12.39	2.46
LABORER: Grade Checker.....	\$ 21.76	9.81
LABORER: Mason Tender - Cement/Concrete.....	\$ 22.15	10.15
OPERATOR: Grader/Blade.....	\$ 28.51	9.60
OPERATOR: Loader (Front End)....	\$ 19.93	3.83
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 19.47	2.79

TRUCK DRIVER: Water Truck.....\$ 21.00 13.42

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

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 Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

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

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

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator

(See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

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

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

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

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

=====

END OF GENERAL DECISION

NOTICE TO PROCEED

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

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on [_____, 20__].

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, the number of days to achieve Substantial Completion is _____, and the number of days to achieve readiness for final payment is _____.

Before starting any Work at the Site, Contractor must comply with the following:

Owner:

Authorized Signature

By:

Title:

Date Issued:

Copy: Engineer

PERFORMANCE BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

City of Nampa
411 3rd Street South
Nampa, ID 83651

CONSTRUCTION CONTRACT

Effective Date of the Agreement:
Amount:
Description *(name and location):*

BOND

Bond Number:
Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*
Amount:
Modifications to this Bond Form: None See Paragraph 16

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

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

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

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

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

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

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

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a

qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

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

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction 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 the Owner or its heirs, executors, administrators, successors, and assigns.

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

11. 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 a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the 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 periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

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

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by

the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

PAYMENT BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

City of Nampa
411 3rd Street South
Nampa, ID 83651

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: None See Paragraph 18

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

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

- 12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, 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 Construction 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.
- 13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
- 14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
- 15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

- 16.1 **Claim:** A written statement by the Claimant including at a minimum:
 - 1. The name of the Claimant;
 - 2. The name of the person for whom the labor was done, or materials or equipment furnished;
 - 3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 - 4. A brief description of the labor, materials, or equipment furnished;
 - 5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 - 6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 7. The total amount of previous payments received by the Claimant; and

- 8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the 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.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

- 17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

Form 6-A Checklist for Plans and Specifications Review

Project Name Project Number

Reviewer Date

Y = yes N = no NA = not applicable

A. GENERAL INFORMATION

- 1. Is the project consistent with an approved engineering report or facility plan, and environmental assessment? Y N
- 2. Has a categorical exclusion or Finding of No Significant Impact (FONSI) been issued? Y N NA
- 3. Has an environmental impact statement (EIS) been prepared on this project? Y N NA
- 4. Is the treatment process suitable for the character and volume of wastewater to be treated? Y N NA
- 5. Have the wastewater system components been properly sized, based on population projections? Y N NA
- 6. Will a minimum of primary treatment and disinfection be provided during construction? Y N
- 7. If the present level of treatment cannot be provided during construction are other safeguards needed during construction? Y N
- 8. List all safeguards. (Remind the borrower in plan and specification approval letter.)

- 9. Has an organized, systematic, readily understood basis of design been provided? Y N
- 10. Has an infiltration/inflow analysis been completed? Y N
- 11. If an infiltration/inflow analysis has not been completed, has DEQ certified that the contributing sewer lines do not have excessive infiltration/inflow? Y N NA
- 12. Is the project, as it is proposed, located in the 100-year floodplain as identified using a Flood Insurance Rate Map (FIRM)? Y N NA
- 13. What reasonable protection against flooding has been provided?

- 14. Is the project in a designated flow hazard area as defined in PL 93-234 (Flood Disaster Protection Act)? Y N

- 15. If yes, what amount of insurance has been obtained by the borrower under the Flood Disaster Protection Act?
- 16. Are permits for construction required from other federal agencies? Y N NA
- 17. If yes, have the permits been secured? Y N
- 18. Are Displacement and Relocation Assistance requirements in accordance with the Rehabilitation Act of 1973? Y N
- 19. Is the design capable of meeting the required effluent limitations and design criteria? Y N NA
- 20. Does the design contain adequate operational flexibility and access to equipment? Y N
- 21. Has the user charge system been prepared? Y N
- 22. Has the sewer use ordinance been enacted? Y N
- 23. Is the site title opinion available? Y N
- 24. Have easements, rights-of-way, and permits been acquired? Y N
- 25. Have environmental mitigation measures been incorporated? Y N

General comments (optional)

B. SPECIFICATIONS: BID ADVERTISEMENT

- 1. Has Executive Order 11246 (Equal Employment), as amended, been included? Y N
- 2. Have Debarment and Suspension Reviews been included for all contractors and subcontractors? (Executive Order 12549) Y N
 - a) https://data.dbs.idaho.gov/etrakit2/Idaho_PublicWorksSearch.aspx
 - b) <https://www.epls.gov/eplsearch.do>

General comments (optional)

C. PROPOSAL (BID FORM) STATEMENT

- 1. Time of completion of project
 - a) Number of days
 - b) Date

2. 41 CFR Part 60-1.4

General comments (optional)

D. BONDING

The following items are required:

1. 5% bid bond or equal
2. 100% performance bond
3. 100% payment bond

General comments (optional)

E. INSURANCE

The following items are required:

1. Workers' compensation
2. Public liability
3. Property damage
4. Fire and extended coverage
5. Flood insurance

General comments (optional)

F. OTHER REQUIREMENTS

1. Materials testing
2. Treatment during construction
3. Description of geographical area
4. Statement of minority and female employment goals
5. Latest applicable wage determination - applicable if Davis-Bacon wage provisions apply for a particular loan.
6. Have female and minority utilization goals been included? Y N
7. Have State Tax Commission Documents been included? Y N

8. Do the specifications include information about the proposed subcontractors? Y N NA
9. Has 40 CFR 31 and 33 relating to MBE/WBE been included? Y N
10. Are specifications inserts included (Forms 6c-6w)? Y N

General
comments
(optional)

G. ARE THE FOLLOWING SECTIONS INCLUDED?

1. Age Discrimination Act of 1975, P.L. 94-135 (Cross Ref.: Form 6-C) Y N
2. Title VI of the Civil Rights Act of 1964, P.L. 88-352 (Cross Ref.: Form 6-C) Y N
3. Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, P.L. 100-590 (Cross Ref.: Forms 6-C, 6-F, 6-G and 6-H) Y N
4. Elimination of segregated facilities (Cross Ref.: Form 6-J) Y N
5. Contractor's Compliance Statement (Cross Ref.: Form 6-I) Y N
6. Guidance for Disadvantaged Business Enterprise requirements as found in 40 CFR Part 33 (Cross Ref.: Forms 6-C, 6-F, 6-G, 6-H, 6-O, 6-T, 6-U and 6-V) Y N NA
7. General information regarding contracts (Cross Ref.: Form 6-C) Y N
8. Access (Cross Ref.: Form 6-C) Y N
9. Construction site erosion (Cross Ref.: Final Environmental Determination) Y N
10. Protests Y N

General
comments
(optional)

H. BIDDABILITY

1. Is the procedure for bid evaluation clear and defensible? Y N NA
2. Are there provisions for a construction schedule and a breakdown from the winning bidder? Y N NA
3. Do the plans and specifications adequately define the project? Y N

General comments (optional)

I. CONSTRUCTABILITY

- 1. Are the documents compatible? (For example, are the blue-lines compatible with the specifications? Do the electrical drawings match the mechanical drawings? Are the exterior drawings of the building consistent with the spaces/equipment required internally? Are the plans complete?) Y N
- 2. Are there errors, omissions, or ambiguities? Y N
- 3. Are any special limitations that are imposed by the site addressed? Y N NA
- 4. Do the specifications directly relate to the plans? Y N
- 5. Are the construction documents compatible with generally accepted construction procedures and equipment? Y N
- 6. Are the electrical, mechanical, and structural features certified by a registered professional engineer? Y N

General comments (optional)

J. ENGINEERING DRAWINGS AND DETAIL SPECIFICATIONS

- 1. If a brand name has been used, was it followed by an "or equal" clause? Y N NA
- 2. If only one brand name is used, has the loan recipient provided justification showing they are in compliance with Idaho Code 67-2808(2)? Y N NA

General comments (optional)

K. BUILDINGS

- 1. Is an adequately equipped laboratory provided? Y N NA
 - a) If yes, give the name of the lab operator/analyst:
 - b) If no, have provisions been made to contract for lab work? Y N NA
- 2. Is the space provided in the various buildings adequate? Y N
- 3. Are heating, lights, and sanitary facilities adequate in all buildings? Y N

- 4. Are chemical storage and machine locations safe? Y N
- 5. Has the restriction on the use of mercury been complied with? Y N
- 6. Does design emphasize heating and energy conservation methods? Y N

General comments (optional)

L. ENVIRONMENTAL CONSIDERATIONS

- 1. Has noise control been given proper attention? Y N
- 2. Has odor control been given proper attention? Y N

General comments (optional)

M. RELIABILITY

- 1. Is standby power provided? Y N
- 2. If no standby power is provided, describe on an attachment the means of assuring continuous operation. Y N
- 3. Have redundant units and equipment been provided to the maximum extent possible? Y N NA
- 4. Can individual plant units be bypassed? Y N
- 5. Are provisions for operational flexibility adequate? Y N
- 6. Is piping color-coded and suitably identified? (This is an OSHA requirement.) Y N
- 7. Is the plant fenced or otherwise enclosed? Y N
- 8. Is the public water supply protected by a backflow preventer? Y N
- 9. Is mechanical ventilation provided where required? Y N
- 10. Are railings and machine guards provided? Y N
- 11. Is outdoor lighting adequate? Y N
- 12. Does the project address all OSHA design standards? Y N

General comments (optional)

N. GREEN PROJECT RESERVE

A technical memorandum has been submitted for each item identified as a Y N Green Project Reserve (GPR) component in the Letter of Interest. Each memorandum fully justifies the GPR designation according to the current EPA guidance for determining project eligibility and the examples provided on the SRF website.

Form 6-B
Plans and Specifications Review Approval Letter

Date

To:

RE: *(borrower), (Clean Water SRF loan #)*

Dear *(name)*:

Plans and specifications covering construction of your wastewater project at an estimated cost of \$ *(dollar amount)* have been reviewed and are hereby approved by the Idaho Department of Environmental Quality. This approval is conditioned upon satisfactory resolution of the following concerns:

1. *Concern #1*
2. *Concern #2*

Our approval of these documents does not constitute an obligation to provide funding for the project. Such obligations require a separate, formal award.

The following bid documents should be submitted for authorization to award the contract:

1. Evidence of advertising demonstrating adequate notice to bidders and sufficient bid preparation time (minimally 14 days). Bids must be advertised as required by Idaho Code for municipalities and political subdivisions of the state.
2. All addenda issued prior to the bid date unless previously approved.
3. The signed proposal from the apparent successful bidder(s) and acknowledgment of all addenda.
4. A tabulation of all bids received.
5. A revised budget and summary of costs by category.

For the selected bidder(s):

6. Contractor's compliance statement.
7. Certificate of non-segregated facilities.
8. Disadvantaged business utilization information.
9. Non-collusion affidavit.
10. The contractor may have to complete the following state tax forms: Affidavit of Payment or Securement of All Taxes and the Contractor for Public Works to Pay or Secure Taxes (to be submitted to the Idaho State Tax Commission). In addition, the contractor may be required to complete a Public Works Contract Report form and submit it to the Idaho State Tax Commission. The relevant Idaho Code is found in Titles 54 and 63. The Idaho Tax Commission may have other document submission requirements, and the listing here is not

meant to be comprehensive but is provided as a courtesy reminder. Please see Form 6-C, Idaho Clean Water State Revolving Fund (SRF) Specifications Insert.

11. List of subcontractors.
12. Bid bond.

Your cover letter should indicate the contractor(s) you have selected and the amount of each contract you intend to award. You are required to award to the contractor submitting the lowest responsive/responsible bid. In either event, documentation must be submitted with the bid documents to the office listed at the bottom of this letter. If no acceptable bids are received, notify me immediately by phone. Prior approval is required if all bids are rejected.

Any major changes, or changes that might result in violations of Idaho law, must be reviewed by this office prior to field installation. This office must also be kept informed of the scheduling of all construction phases so that spot inspections can be made as necessary.

This approval will expire (*date*). If construction is not completed at that time, plans may need to be resubmitted for approval before further construction proceeds.

Within 30 days after construction completion, a professional engineer registered in the state of Idaho must provide this office with as-built plans or a letter of certification stating that the project was installed substantially according to the approved plans.

If you have any questions or concerns, please feel free to contact this office at (*phone number*).

Sincerely,

Project Engineer
Regional Office Name
Regional Office Address
Regional Office City, ID ZIP

Enclosure

- c: (*name of contact*), District Health Department
(*name of contact*), Engineering (w/encl)
Idaho Division of Building Safety, Plumbing Bureau (w/checklist, vicinity map)
City of (*city name*)
Other affected funding agencies (*list agencies*) (w/encl)
Source File # (*insert number*)
Reading File
Loan Officer, DEQ State Office

Form 6-C
Idaho Clean Water State Revolving Fund (SRF)
Specifications Insert

A. GENERAL

The requirements contained herein apply to all construction work for which Idaho State Revolving Fund (SRF) monies are used for the payment of such work. In the event of conflict with other requirements contained elsewhere in these specifications, the requirements contained herein shall control.

These requirements are in addition to those set forth in Form 6-G, Requirements for Disadvantaged Business Enterprise Utilization and Equal Employment Opportunity.

All applicable federal, state, and local laws shall be complied with during bidding and construction. The contractor is responsible for its own and its employees' acts or omissions under the laws and the contract; the contractor and its subcontractor are jointly and equally responsible for the acts and omissions of the subcontractor and its employees.

Copies of all documentation required in Chapter 6 of this Handbook shall be provided to the Loan Recipient, who shall maintain the records until three years of loan repayments will have occurred.

B. COMPLIANCE WITH STATE AND LOCAL LAWS

The construction of the project, including the letting of subcontracts in connection herewith, shall conform to the applicable requirements of state and local laws and ordinances to the extent that such requirements do not conflict with federal laws and regulations.

C. MAINTENANCE OF EXISTING TREATMENT WORKS DURING CONSTRUCTION

Where construction consists of replacement or modification to any existing collection line, pumping facility or waste water treatment works, the contractor shall provide for the maintenance of the works' conveyance of waste water and its existing level of treatment at all times during construction, unless otherwise specified within these specifications.

D. ACCESS

The contractor shall provide for access to all sites of contract work for representatives of the Environmental Protection Agency (EPA) and the state Department of Environmental Quality (DEQ).

E. BONDING REQUIREMENTS

For construction or facility improvement contracts exceeding \$100,000, the minimum requirements shall be as follows:

1. Bid guarantee: a bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

2. Performance bond: a performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
3. Payment bond: a payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

F. INSURANCE

The contractor shall obtain such construction insurance (e.g., fire and extended coverage, workers' compensation, public liability, property damage, and "all risk" builder's risk) as is customary and appropriate unless identified more specifically elsewhere in these specifications.

G. SAFETY

Contractors are solely responsible for ensuring safety standards at the project site and for ensuring that all work will be conducted in a manner consistent with Occupational Safety and Health Administration Safety and Health Standards, 29 Code of Federal Regulations (CFR) Part 1926.

H. PROJECT SIGN

The contractor may furnish and install a sign for identification of this project. The sign should be constructed in accordance with the sample shown in Form 6-E, Project Sign. If the contractor wants to use its logo, or provide additional information, it should be shown on a separate sign, which may be attached to the project sign.

I. MODEL CONTRACT CLAUSES

As appropriate, the municipality shall include the following Model Contract Clauses, or their equivalent, in each contract.

1. SUPERSESSION

The recipient and the contractor agree that this and the following clauses apply to that work eligible for State Revolving Fund (SRF) assistance to be performed under this contract and that these clauses supersede any conflicting provisions of this contract.

2. PRIVACY OF CONTRACT CLAUSE

This contract is expected to be funded in part with funds from the EPA and DEQ. Neither the United States, the State of Idaho nor any of its departments, agencies, or employees is, or will be a party to this contract or any lower tier contract.

3. AUDIT ACCESS TO RECORDS

- a) The contractor (the person or entity under contract with the loan recipient to perform the work paid for with State Revolving Funds) shall maintain books, records, documents, and other evidence directly pertinent to performance on SRF-funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and the applicable DEQ regulations in effect on

- the date of execution of this contract. The contractor shall also maintain the financial information and data used in the preparation or support of any cost submission required under applicable regulations for negotiated contracts or change orders and a copy of the cost summary submitted to the recipient. The DEQ, the EPA, the Comptroller General of the United States, the United States Department of Labor, and the recipient, or any of their authorized representatives shall have access to all such books, records, documents, and other evidence for the purpose of inspection, audit, and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.
- b) If this is a fixed price contract awarded through sealed bidding or otherwise on the basis of effective price competition, the contractor agrees to make paragraphs (a) through (g) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the contractor agrees to make paragraphs (a) through (g) applicable to all contract awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (g) of this clause applicable to all change orders directly related to project performance.
 - c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency.
 - d) The contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).
 - e) Records under paragraphs (a) and (b) above shall be maintained by the contractor during performance on DEQ assisted work under this contract and for three years after the recipient makes final payment to the contractor and all other pending matters are closed.
 - f) Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.
 - g) This right of access clause applies to financial records pertaining to all contracts (except for fixed price contracts awarded through sealed bidding or otherwise on the basis of effective price competition), and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition, this right of access applies to all records pertaining to all contracts, contract change orders, and contract amendments:
 - (1) To the extent the records pertain directly to contract performance;
 - (2) If there is any indication that fraud, gross abuse, or corrupt practices may be involved; or
 - (3) If the contract is terminated for default or for convenience.

4. COVENANT AGAINST CONTINGENT FEES

The contractor assures that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purposes of securing business. For breach or violation of this assurance, the recipient shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, and brokerage or contingent fee.

5. GRATUITIES

- a) If the recipient finds after a notice and hearing that the contractor or any of the contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the recipient, DEQ or EPA in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, the recipient may, by written notice to the contractor, terminate this contract. The recipient may also pursue other rights and remedies that the law or this contract provides.
- b) In the event this contract is terminated as provided in paragraph (a), the recipient may pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

6. RESPONSIBILITY OF THE CONTRACTOR

- a) The following clause applies only to contracts for services.
 - (1) The contractor is responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports and other services furnished by the contractor under this contract. If the contract involves environmental measurements or data generation, the contractor shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to unforeseen conditions or malfunctions. The contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in that contractor's designs, drawings, specifications, reports and other services.
 - (2) The contractor shall perform the professional services necessary to accomplish the work specified in this contract in accordance with this contract and applicable DEQ requirements in effect on the date of execution of the assistance agreement for this project.
 - (3) The owner's or DEQ's approval of drawings, designs, specifications, reports and incidental work or materials furnished shall not in any way relieve the contractor of responsibility for the technical adequacy of his work. Neither the owner's nor

DEQ's review, approval, acceptance or payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause for action arising out of the performance of this contract.

- (4) The contractor shall be, and shall remain, liable in accordance with applicable law for all damages to the owner or DEQ caused by the contractor's negligent performance of any of the services furnished under this contract, except for errors, omissions or other deficiencies to the extent attributable to the owner, owner-furnished data or third party. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control.
- (5) The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this contract or state law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

7. ANTI- LOBBYING ACT

The contractor agrees to comply with the requirements of the federal Anti-Lobbying Act, Section 1352, Title 31, U.S. Code, which requires disclosure of lobbying activities. Form 6-D, Certification of Compliance with Anti-Lobbying Act, must be signed by all contractors entering into contracts of \$100,000 or greater.

8. COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

9. SUBCONTRACTS

For any loans requiring compliance with Davis-Bacon wage provisions, the contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

10. CONTRACT TERMINATION: DEPARTMENT

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

11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses set forth in paragraphs (a), (b), (c) and (d) of this section apply to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the previously mentioned required clauses. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

- a) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek

- unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- c) Withholding for unpaid wages and liquidated damages. The DEQ shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- d) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

In addition to the clauses contained in the paragraphs above, in any contract subject only to the Contract Work Hours and Safety Standards Act the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including watchmen and guards, working on the contract. Such records shall contain the names and addresses of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available for inspection, copying, or transcription by authorized representatives of the DEQ and the U.S. Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

12. DAVIS BACON CONTRACT AND SUBCONTRACT PROVISIONS FOR GOVERNMENTAL AGENCIES

Minimum wages

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

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

(ii)(A) The loan recipient, on behalf of U.S. Environmental Protection Agency (EPA), shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Idaho Department of Environmental Quality (DEQ) shall review and act upon a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the loan recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the loan recipient to DEQ. DEQ will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, DOL, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise DEQ or will notify DEQ within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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

Withholding

The loan recipient, shall upon written request of the EPA Award Official or an authorized representative of the DOL, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to DB prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, DEQ may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to

cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

Payrolls and basic records

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

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the loan recipient, that is, the entity that receives the loan from DEQ. Such documentation shall be available on request of DEQ or EPA. As to each payroll copy received, the loan recipient shall provide written confirmation in a form satisfactory to DEQ indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/programs/dbra/wh347.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to DEQ or EPA if requested by EPA, the contractor, or the Wage and Hour Division of the DOL for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the loan recipient.

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

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

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

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (ii)(B) of this section.

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

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

(A) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered

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

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

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

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

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

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

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

(H) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the DOL set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and loan recipient, DEQ, EPA, DOL, or the employees or their representatives.

Certification of eligibility

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

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

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

Contract Provision for Contracts in Excess of \$100,000

(i) Contract Work Hours and Safety Standards Act. The loan recipient shall insert the following clauses set forth in paragraphs (i)(A), (B), (C), and (D) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by

Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

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

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

(ii) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the loan recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the loan recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made

available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the DOL, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Compliance Verification

(i) The loan recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates if, upon a risk assessment, the loan recipient finds interviews are warranted. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The loan recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from <http://www.gsa.gov/portal/forms/download/115910>.

(ii) The loan recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the loan recipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Loan recipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Loan recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(iii) The loan recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The loan recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the loan recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Loan recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the loan recipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(iv) The loan recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the DOL or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item (ii) and (iii) above.

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

13. DAVIS BACON CONTRACT AND SUBCONTRACT PROVISIONS FOR NONGOVERNMENTAL ENTITIES

Minimum wages

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

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

Loan recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The loan recipient(s), on behalf of the U.S. Environmental Protection Agency (EPA), shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Idaho Department of Environmental Quality (DEQ) award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the loan recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the loan recipient(s) to the DEQ award official. The DEQ award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, DOL, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the DEQ award official or will notify the DEQ award official within the 30-day period that additional time is necessary.

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

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

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

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

Withholding

The loan recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the DOL, withhold or cause to be withheld from the contractor under this

contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to DB prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

Payrolls and basic records

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

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the loan recipient, that is, the entity that receives the loan from DEQ. Such documentation shall be available on request of DEQ or the EPA. As to each payroll copy received, the loan recipient shall provide written confirmation in a form satisfactory to DEQ indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/programs/dbra/wh347.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each

covered worker, and shall provide them upon request to the loan recipient(s) for transmission to DEQ or the EPA if requested by the EPA, DEQ, the contractor, or the Wage and Hour Division of the DOL for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the loan recipient(s).

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

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

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

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

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

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

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

(A) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a

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

(B) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. DOL, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio

permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

Certification of eligibility

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

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

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

Contract Provision for Contracts in Excess of \$100,000

(i) Contract Work Hours and Safety Standards Act. The loan recipient shall insert the following clauses set forth in paragraphs (i)(A), (B), (C), and (D) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

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

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

(ii) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the loan recipient shall insert a clause requiring that the contractor or subcontractor

shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the loan recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the DOL, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Compliance Verification

(i) The loan recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates if, upon a risk assessment, the loan recipient finds interviews are warranted. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The loan recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(ii) The loan recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the loan recipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Loan recipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Loan recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(iii) The loan recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The loan recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the loan recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Loan recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the loan recipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

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

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

J. REQUIRED CONTRACT CLAUSE

The municipality shall include the following clause in each contract as required by 40 CFR 33, Appendix A:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

K. MISC. DAVIS BACON

1. It is important for the actual wage determination(s) to be physically included in the bid specifications/contract. Contractors need to see the minimum wages they will be required to pay while they develop their cost estimates for work to be performed.
2. As of July 2012, the website to locate current wage determinations is <http://www.wdol.gov/dba.aspx#0>.
3. *All* contracts and subcontracts must include model clause 12 or 13 from section I of this form (verbatim, in their entirety).

L. SUSPENDED AND DEBARRED

The contractor agrees to comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532 (Suspension and Debarment). The contractor or subcontractor shall not knowingly enter into covered transactions (any contract awarded to a subcontractor, supplier, or consultant where the expected amount of the contract is \$25,000 or greater) with excluded persons. The contractor or subcontractor shall insert this condition into all lower tier covered transactions and ensure any subsequent lower tier covered transactions include this condition. Excluded parties may be verified at www.sam.gov.

To be Submitted by Successful Bidder Prior to the Notice to Proceed

Form 6-D
Certification of Compliance with Anti-Lobbying Act

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

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

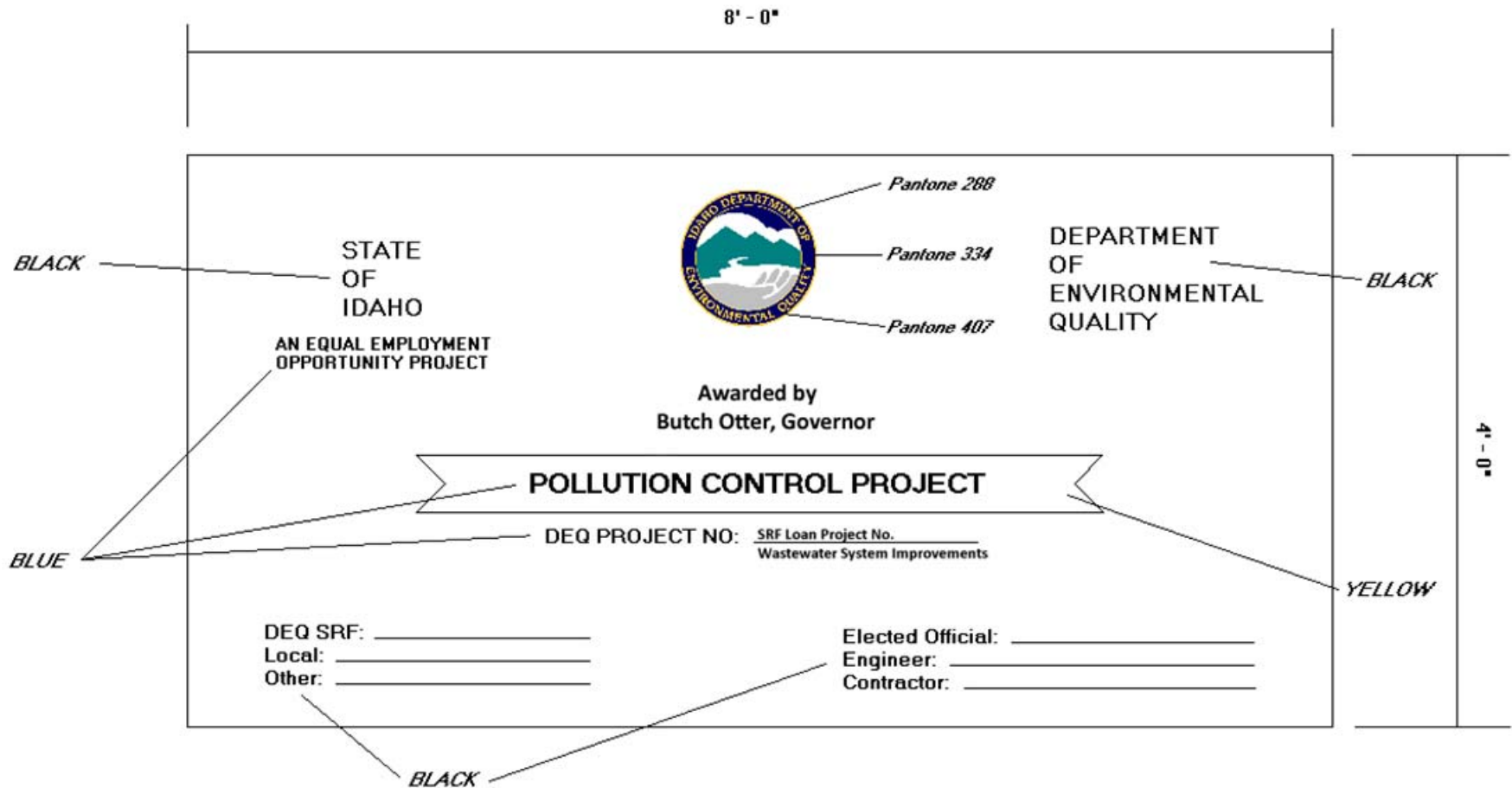
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to 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.

Signature

Date

Form 6-E Project Sign

1. A sign for identification of the project may be installed prior to commencement of construction at a location which is near the project site and amenable to public viewing.
2. The sign should be constructed of 4.0 feet by 8.0 feet exterior type high-density overlaid plywood or other sign material of equivalent quality and framed with 2.0 inch by 4.0 inch wood of suitable grade.
3. The DEQ logo should be painted on the sign in a manner similar to the attached detail drawing. The logo should be about 11.0 inches in diameter.
4. The sign should be painted with black or other visible dark lettering on a white background.
5. Information specified on the attached detail drawing should be displayed on the sign.
6. Lettering should be of professional quality and in accordance with the attached detail drawing; all lettering should be in proportion to the sizes shown.
7. Any additional information displayed on the sign should not detract from or displace the information required in the drawing.
8. The sign should be adequately supported with regard to site conditions and should be an adequate distance above the prevailing grade to permit public viewing.
9. The sign should be removed and appropriately disposed of when the construction is complete and accepted by DEQ.
10. The cost of preparation and erection of the sign is loan eligible.



Provide adequate supports for sign as site conditions may require and keep sign a proper distance above prevailing grade to permit public viewing.

Exterior-type high density overlaid plywood or other approved material suitable for signs.

NOTE:
Background and all other sign components not designated are painted white.

Form 6-F

Requirements for Disadvantaged Business Enterprise Utilization and Equal Employment Opportunity

I. GENERAL

A. POLICY

Consistent with the President's Policy Statement on Minority Business Enterprise dated December 17, 1983 (Executive Order 12432) and 40 CFR §§ 30, 31, 33, 35, and 40, all successful bidders shall be required to comply fully with these bid specifications toward the goal of equitable utilization of Disadvantaged Business Enterprises (DBEs), which include Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), Small Businesses in Rural Areas (SBRAs), and other entities meeting the U.S. Environmental Protection Agency's (EPA's) DBE rule criteria.

Such utilization may be through prime contracting, subcontracting, joint-venture, procurement of supplies, material or equipment, or other business participation utilized in completing the project. In this regard all contractors shall take all necessary and reasonable steps to ensure DBEs have the maximum opportunity to compete for and/or perform contracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of projects where assistance is provided from the State of Idaho, Department of Environmental Quality's State Revolving Fund (SRF).

B. REQUIREMENTS

Successful bidders must make the following affirmative steps in awarding subcontracts for supplies, construction, or services:

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. This will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources;
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process;
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process;
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually;

5. Use the services and assistance of the Idaho Transportation Department, Idaho Department of Environmental Quality's Fiscal Office, the Small Business Administration, and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate.

II. REQUIRED SUBMITTALS

Note: All forms listed in this section shall be submitted by the successful bidder prior to the notice to proceed, with the exception of:

- **Form 6-O, submitted semiannually by the loan recipient to the DEQ State Office, Fiscal Section—Grants Administration**
- A. Small, Minority, and Women Business Enterprises to be Utilized (Form 6-G). If no firms are listed on Form 6-G, documentation of the efforts to solicit such firms must be provided.
 - B. Sworn Statement of Compliance with Disadvantaged Business Enterprise (DBE) Utilization Requirements (Form 6-H).
 - C. Certification of Non-segregated Facilities Statement (Form 6-J).
 - D. DBE Program Subcontractor Performance Form (EPA Form 6100-3) (DEQ Form 6-U)
 - E. DBE Program Subcontractor Utilization Form (EPA Form 6100-4) (DEQ Form 6-V)
 - F. Notice to labor unions or other organization of worker's non-discrimination in employment (Form 6-K).
 - G. Contractor's Compliance Statement (Form 6-I).
 - H. Include an Equal Employment Opportunity (EEO) clause, or section, in the construction contract and subcontracts (Form 6-L).
 - I. Submit to DEQ Standard Form 100 (EEO-1) (Form 6-M) within 30 days of contract award (to the EEO Joint Reporting Committee, P.O. Box 19100, Washington, D.C., 20036-9100), unless such a report has been filed within 12 months preceding the contract award date. The EEO-1 report (Form 6-M) is to be submitted annually during the life of the project. Maintain copies of submissions in loan applicant files.
 - J. State clearly and expressly in solicitations for employees that all qualified applicants receive consideration for employment without regard to race, color, sex, age, or physical handicap.
 - K. Post EEO notices for the jobs in conspicuous places. They must be available to employees, applicants for employment, and representatives of labor unions or other such worker's organizations. EEO posters are available from the Department of Labor.
 - L. Executive Order 11246 must be complied with in the hiring of minorities and women on the construction project.

The goals for MBE, WBE, and SBRA participation are established each year and incorporated into the grant agreement between EPA and DEQ.

Fair share is a reasonable amount of funds commensurate with the total project funding, demographic factors and the availability of small, minority and women's businesses. A

fair share does not constitute an absolute goal, but a commitment on the part of the bidder to attempt to use small, minority, and women's businesses by carrying out the five affirmative steps described under Section I, B of this document.

Submit semiannual reports of MBE/WBE utilization to DEQ using Form 6-O.

- M. Submit MBE/WBE/SBRA subcontracts and supply contracts within 15 days of execution.

By submission of its bid, all bidders acknowledge that they understand and agree to be bound by the equal opportunity requirements of Executive Order 11246, U.S. Department of Labor (OFCCP) Regulations, Part 41 CFR 60-4 and 41 CFR 60-4.3(a); Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency Financial Assistance Agreements, Part 40 CFR 30, 31, 33, 35, and 40; and DEQ Small, Minority and Women Business Utilization goals, all of which shall be applicable throughout the duration of this project. Each bidder agrees that, if awarded this contract, the bidder will similarly bind contractually each subcontractor by the inclusion in the subcontract of all subcontractors the foregoing policies and regulations.

- N. Ensure that DBE subcontractors submit the DBE Program Subcontractor Participation Form (EPA Form 6100-2) (DEQ Form 6-T) to DEQ, Loans and Grants Program, Attn: DBE Coordinator, 1410 N. Hilton, Boise, Idaho, 83706. Retain copies of submissions in project files.

Explanatory note for DBE compliance reporting:

EPA's DBE Rule and How it Affects Companies Bidding on SRF Financed Projects

The Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) rule became effective on May 27, 2008. The DBE rule sets forth an EPA program that serves the compelling government interest of remedying past and current racial discrimination through agency-wide procurement objectives. The new DBE rule revises and replaces EPA's Minority and Women Business Enterprise (MBE/WBE) Program. Because the State Revolving Fund (SRF) Loan Program funding is provided by EPA, the new DBE rule requirements apply to all SRF funded projects.

The implementation of the new DBE Rule (40 CFR Parts 30, 31, 33, 35, and 40) adds additional contract administration requirements to an SRF loan recipient. This document summarizes those requirements.

Note that the SRF loan recipient is not a passive conduit of the contractor's DBE information. By submitting the proposed contractor's DBE documentation to the SRF Loan Program for review, the loan recipient is asserting that it has found the proposed contractor's documentation of good faith efforts adequate.

-
1. Each procurement contract signed by an SRF loan participant must include the following term and condition:

“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts

awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract.”

2. All SRF loan recipients will be required by EPA to create and maintain a “Bidders List”.
 - a. This list must include all firms that bid on prime contracts, or bid or quote on subcontracts under EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs.
 - b. This list must be kept until the project period for the identified loan has ended. The project period is defined as the timeframe that the loan participant receives SRF funding.
 - c. The following information must be obtained from all prime and subcontractors:
 - (1) Entity’s name with point of contact.
 - (2) Entity’s mailing address, telephone number, and email address
 - (3) The procurement on which the entity bid or quoted, and when, and;
 - (4) Entity’s status as an MBE/WBE or non-MBE/WBE
 - d. The SRF loan recipient must send a copy of the Bidder’s List to SRF.
3. Following are the related contract administration provisions:
 - a. A loan recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor’s receipt of payment from the loan recipient.
 - b. A loan recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.
 - c. If a DBE subcontractor fails to complete work under the subcontract for any reason, the loan recipient must require the prime contractor to employ the Six Good Faith Efforts (described below) if soliciting a replacement subcontractor.
 - d. A loan recipient must require its prime contractor to employ the Six Good Faith Efforts even if the prime contractor has achieved its fair share objectives.

Six Good Faith Efforts

- i. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities; including placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- ii. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- iii. Consider in the contracting process whether firms competing for large contracts could be contracted with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- iv. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- v. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U. S. Department of Commerce.
- vi. If the prime contractor awards subcontracts, require the prime contractor to take the steps in numbers 1 through 5 above.

4. The following additional forms must be included in the bid package. Under 40 CFR 33.302 (f) the Prime Contractor is responsible for the following forms:

- **EPA Form 6100–2 DBE Subcontractor Participation Form**

The Prime Contractor will provide this form, along with the instruction page, to all of its DBE subcontractors. EPA Form 6100-2 gives the DBE subcontractor the chance to describe the work the DBE subcontractor received from the Prime Contractor, how much the DBE sub-contractor was paid and any other concerns the DBE subcontractor might have (for example reasons why the DBE subcontractor believes it was terminated by the Prime Contractor).

DBE subcontractors may send completed copies of EPA Form 6100–2 directly to DEQ, Loans and Grants Program, Attn: DBE Coordinator, 1410 N. Hilton, Boise, Idaho, 83706.

- **EPA Form 6100–3 DBE Subcontractor Performance Form**

The Prime Contractor will provide this form, along with the instruction page, to all of its DBE subcontractors. EPA Form 6100-3 gives the DBE subcontractor the chance to report the scope and cost of the subcontract it received, providing a check for the information that the Prime

Contractor put in EPA Form 6100-4. The proposed DBE subcontractor shall forward a completed copy of the form to the Prime Contractor along with the subcontractor's quote. The Prime Contractor will include all completed 6100-3 forms as part of the Prime Contractor's bid or proposal package.

- **EPA Form 6100-4 Subcontractor *Utilization Form***

This form captures the Prime Contractor's intended use of an identified DBE Subcontractor, and the estimated dollar amount of the subcontract. Each Prime Contractor shall complete this form.

- a. List each subcontract discipline you will consider subcontracting – regardless of whether a subcontractor is already chosen. If you will not subcontract, mark form "N/A."
- b. The Prime Contractor shall provide this form to the loan recipient within 10 days of bid opening.
- c. The loan recipient shall provide this form, completed by the Prime Contractor, to the State Revolving Loan Fund Program within 14 days of bid opening
- d. Use additional sheets as necessary.
- e. The "**US citizen?**" question is required because, under 40 CFR 33.202, USEPA tracks DBE participation only for firms owned by citizens of the United States.

To be Submitted by Successful Bidder Prior to Notice to Proceed

Form 6-G Disadvantaged Business Enterprises to be Utilized

Project

Name of Bidder

MBE = minority business enterprise
WBE = women's business enterprise
SBRA = small business in a rural area

Name of firm

Address

City State Zip Code

Phone

Description of work element or supplies

Amount to be contracted

- MBE
- WBE
- SBRA

Joint Venture Percent:

Other

Subcontractor

Supplier

Manufacturer

Name of firm

Address

City State Zip Code

Phone

Description of work element or supplies

Amount to be contracted

- MBE
- WBE
- SBRA

Joint Venture Percent:

Other

Subcontractor

Supplier

Manufacturer

Name of firm

Address

City State Zip Code

Phone

Description of work element or supplies

Amount to be contracted

- MBE
- WBE
- SBRA

Joint Venture Percent:

Other

- Subcontractor
- Supplier
- Manufacturer

Name of firm

Address

City State Zip Code

Phone

Description of work element or supplies

Amount to be contracted

- MBE
- WBE
- SBRA

Joint Venture Percent:

Other

- Subcontractor
- Supplier
- Manufacturer

Use additional pages if necessary.

Contractor Name

Signature _____

Date _____

To be Submitted by Successful Bidder Prior to Notice to Proceed

Form 6-H
Sworn Statement of Compliance
with Disadvantaged Business Enterprises Utilization Requirements

The winning bidder must execute and submit, prior to notice to proceed, the following certification relating to disadvantaged business enterprise (DBE) utilization. This includes minority business enterprises (MBE), women's business enterprises (WBE), small business in a rural area (SBRA) participation, and other entities meeting the U.S. Environmental Protection Agency's DBE rule criteria.

The bidder has made the following good-faith efforts in awarding subcontracts:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. This will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce, as appropriate.

Signature

Date

Name and Title of Signer (please type)

To be Submitted by Successful Bidder Prior to Notice to Proceed

Form 6-I
Contractor's Compliance Statement (Executive Order 11246)

Date

This statement relates to a proposed contract with

(Name of owner)

who expects to finance the contract with assistance from the Idaho Department of Environmental Quality.

I am the undersigned bidder or prospective contractor. I represent that:

I have _____ / I have not _____ participated in a previous contract or subcontract subject to Executive Order 11246 of September 24, 1965 (regarding equal employment opportunity) or a preceding similar executive order. I agree to comply with all the provisions of this executive order and the rules, regulations, and relevant orders of the Secretary of Labor. (41 CFR 60-1.4(b)(4)).

Signature

Date

Name and title of signer (please type)

To be Submitted by Successful Bidder Prior to Notice to Proceed

Form 6-J
Certification of Non-Segregated Facilities

(Applicable to federally-assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

The federally-assisted construction contractor certifies that he or she does not maintain or provide for employees any segregated facilities at any of his or her establishments, and that he or she does not permit employees to perform their services at any location, under his or her control, where segregated facilities are maintained. The federally-assisted construction contractor certifies further that he or she will not maintain or provide for employees any segregated facilities at any of his or her establishments, and that he or she will not permit employees to perform their services at any location, under his or her control, where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally-assisted construction contractor agrees that (except where identical certifications from proposed subcontractors for specific time periods have been obtained) he or she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 that are not exempt from the provisions of the Equal Opportunity clause, and that he or she will retain such certification on file.

Signature

Date

Name and Title of Signer (please type)

To be Submitted by Successful Bidder Prior to Notice to Proceed

Form 6-K
Notice of Worker Non-Discrimination in Employment

TO: *(name of union or organization of workers)*

The undersigned currently holds contract(s) with *(name of applicant)* involving funds or credit of the U.S. Government or a subcontract(s) with a prime contractor holding such contract(s).

You are advised that under the provisions of the above contract(s) or subcontract(s) and in accordance with Section 202 of Executive Order 11246 dated September 24, 1965, the undersigned is obliged not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following:

- EMPLOYMENT, UPGRADING, TRANSFER, OR DEMOTION
- RECRUITMENT AND ADVERTISING
- RATES OF PAY OR OTHER FORMS OF COMPENSATION
- SELECTION FOR TRAINING, INCLUDING APPRENTICESHIP, LAYOFF, OR TERMINATION

This notice is furnished to you pursuant to the provisions of the above contract(s) or subcontract(s) and Executive Order 11246.

Copies of this notice will be posted by the undersigned in conspicuous places available to employees or applicants for employment.

Signature of contractor or subcontractor(s)

Date

To be Submitted by Successful Bidder Prior to Notice to Proceed

Form 6-L
41 CFR 60-1.4(b) Federally Assisted Construction Contracts
(Prime Contractors and Subcontractors)

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 he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or worker's 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 his books, records, and accounts by representatives of the Idaho Department of Environmental Quality (DEQ) 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 non-compliance 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 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 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 DEQ 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 is a local government, the above equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor that it will furnish DEQ and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist DEQ in the discharge of DEQ'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 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 DEQ 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, DEQ may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant, contract, loan, insurance, or 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.

SUBMIT CERTIFICATION TO DEQ REGIONAL OFFICE

Signature

Date

To be Submitted by Successful Bidder
Prior to Notice to Proceed

Form 6-M Equal Employment Opportunity Standard Form 100

INSTRUCTIONS

Each construction and non-construction contractor and subcontractor who has (1) 50 or more employees and (2) signs a contract, subcontract, or purchase order amounting to \$50,000 or more, shall file complete and accurate reports on Standard Form 100 (EEO-1) in triplicate to the Joint Reporting Committee within 30 days after the award to him or her of such a contract or purchase order, unless such person has submitted such a report within 12 months preceding the date of award. Subsequent reports shall be submitted annually on or before the 30th day of September.

Failure to file timely, complete, and accurate reports as required constitutes non-compliance with contractors' or subcontractors' obligations under Executive Order 11246, as amended, and is grounds for the imposition of sanctions authorized by Executive Order 11246 and other rules and regulations issued pursuant thereto.

Contractors and subcontractors may obtain EEO-1 reporting forms by writing to:

EEO-1 Joint Reporting Committee
P.O. Box 19100
Washington, D.C. 20036-9100
(866) 286-6440
[Email: e1.techassistance@eeoc.gov](mailto:e1.techassistance@eeoc.gov)

- Joint Reporting Committee
- Equal Employment Opportunity Commission
- Office of Federal Contract Compliance Programs (Labor)

EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER INFORMATION REPORT EEO-1

Standard Form 100
REV. 01/2006

O.M.B. No. 2048-0087
EXPIRES 01/2009
100-214

Section A—TYPE OF REPORT

Refer to instructions for number and types of reports to be filed.

1. Indicate by marking in the appropriate box the type of reporting unit for which a copy of this form is submitted (MARK ONLY ONE BOX).
- | | |
|--------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(1) <input type="checkbox"/> Single-establishment Employer Report</p> | <p>(2) <input type="checkbox"/> Multi-establishment Employer Report
 (3) <input type="checkbox"/> Consolidated Report (Required)
 (4) <input type="checkbox"/> Headquarters Unit Report (Required)
 (5) <input type="checkbox"/> Individual Establishment Report (submit one for each establishment with 50 or more employees)
 (6) <input type="checkbox"/> Special Report</p> |
|--------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

2. Total number of reports being filed by this company (Answer only Consolidated Report only)

Section B—COMPANY IDENTIFICATION (To be answered by all employers)

1. Parent Company						OFFICE USE ONLY
a. Name of parent company (owns or controls establishment in item 2) omit if same as label						a.
Address (Number and street)						b.
City or town		State		ZIP code		c.
2. Establishment this report is filed. (Omit if same as label)						
a. Name of establishment						d.
Address (Number and street)		City or Town		State		e.
b. Employer Identification No. (IRS 9-DIGIT TAX NUMBER)						f.
c. Was an EEO-1 report filed for this establishment last year? <input type="checkbox"/> Yes <input type="checkbox"/> No						

Section C—EMPLOYERS WHO ARE REQUIRED TO FILE (To be answered by all employers)

- | | | |
|------------------------------|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | 1. Does the entire company have at least 100 employees in the payroll period for which you are reporting? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | 2. Is your company affiliated through common ownership and/or centralized management with other entities in an enterprise with a total employment of 100 or more? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | 3. Does the company or any of its establishments (a) have 50 or more employees AND (b) is not exempt as provided by 41 CFR 60-1.5, AND either (1) is a prime government contractor or first-tier subcontractor, and has a contract, subcontract, or purchase order amounting to \$50,000 or more, or (2) serves as a depository of Government funds in any amount or is a financial institution which is an issuing and paying agent for U.S. Savings Bonds and Savings Notes? |
- If the response to question C-3 is yes, please enter your Dun and Bradstreet identification number (if you have one):

NOTE: If the answer is yes to questions 1, 2, or 3, complete the entire form, otherwise skip to Section G.

Section D – EMPLOYMENT DATA

Employment at this establishment – Report all permanent full- and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros.

Job Categories	Number of Employees (Report employees in only one category)														Total Col A - N
	Race/Ethnicity Not- Hispanic or Latino														
	Hispanic or Latino		Male						Female						
	Male	Female	White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or more races	White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or more races	
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	
Executive/Senior Level Officials and Managers 1.1															
First/Mid-Level Officials and Managers 1.2															
Professionals 2															
Technicians 3															
Sales Workers 4															
Administrative Support Workers 5															
Craft Workers 6															
Operatives 7															
Laborers and Helpers 8															
Service Workers 9															
TOTAL 10															
PREVIOUS YEAR TOTAL 11															

1. Date(s) of payroll period used: _____ (Omit on the Consolidated Report.)

To be Submitted by Successful Bidder Within 120 Days of Award

Form 6-N Affirmative Action Program Clauses

1. Each non-construction prime contractor and subcontractor who has 50 or more employees and has a government contract of \$50,000 or more must develop a written affirmative action compliance program for each of its establishments. A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and an evaluation of opportunities for utilization of minority group personnel. The contractor's program shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups, including, when there are deficiencies, the development of specific goals and time tables for the prompt achievement of full and equal employment opportunity. Each contractor shall include in its affirmative action compliance program a table of job classifications. This table should include but need not be limited to job titles, principal duties (and auxiliary duties, if any), rates of pay, and where more than one rate of pay applied (because of length of time in the job or other factors), the applicable rates. The affirmative action compliance program shall be signed by an executive official of the contractor.
2. **Utilization evaluation.** The evaluation of utilization of minority group personnel shall include the following:
 - a) An analysis of minority group representation in all job categories.
 - b) An analysis of hiring practices for the past year, including recruitment sources and testing, to determine whether equal employment opportunity is being afforded in all job categories.
 - c) An analysis of upgrading, transfer, and promotion for the past year to determine whether equal employment opportunity is being afforded.
3. **Maintenance of programs.** Within 120 days from the commencement of the contract, each contractor shall maintain a copy of separate affirmative action compliance programs for each establishment, including evaluations of utilization of minority group personnel and the job classification tables, at each local office responsible for the personnel matters of such establishment. An affirmative action compliance program shall be part of the manpower and training plans for each new establishment and shall be developed and made available prior to the staffing of such establishment. A report of the results of such program shall be compiled annually and the program shall be updated at that time. This information shall be made available to representatives of DEQ upon request, and the contractor's affirmative action program and the result it produces shall be evaluated as part of compliance review activities.

Signature

Date

To be Submitted Semi-Annually by the Loan Recipient.

Form 6-O DBE (MBE/WBE) Utilization under State of Idaho State Revolving Fund (SRF)

SRF Loan Number

1. Federal Fiscal Year

2. Reporting Period: 1st (Oct-Mar) 2nd (Apr-Sept)

3. Financial Assistance Agency
Idaho Department of Environmental Quality
410 North Hilton Drive
Boise, ID 83706
Attention: MBE/WBE Reporting (Grants & Loans Program)

4. Reporting Recipient
Name
Street Address
City, State, ZIP

4a. Reporting Contact

4b. Phone, Email

MBE/WBE Procurement Accomplished This Period

5. MBE (\$) 5a. WBE (\$) 5b. Total Procurement This Period

6. MBE/WBE Procurement Made During Reporting Quarter (use additional sheet if more space is needed):

	<i>Business Enterprise</i>		Dollar Value of Procurement	Date of Award	Name/Address of MBE/WBE Contractor or Vendor
	Minority	Women			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>

7. Name of Authorized Representative

8. Title

9. Signature Of Authorized Representative

10. Date

INSTRUCTIONS: MBE/WBE UTILIZATION UNDER STATE OF IDAHO STATE REVOLVING FUND**A. General Information**

Recipients are required to report to DEQ within one month following the end of each reporting period (in other words, April 30 and October 31) during which any procurement is actually executed under this assistance agreement. Reports are required semi-annually.

B. Definitions

A minority business enterprise (MBE) is a business (1) that is at least 51% owned by one or more minority individuals, or, in the case of a publicly owned business, at least 51% of the stock is owned by one or more minority individuals; *and* (2) whose daily business operations are managed and directed by one or more of the minority owners.

A women's business enterprise (WBE) is a business (1) that is at least 51% owned by one or more women, or, in the case of a publicly owned business, at least 51% of the stock is owned by one or more women; *and* (2) whose daily business operations are managed and directed by one or more of the women owners.

Business firms that are at least 51% owned by minorities or women, but are in fact managed and operated by non-minority individuals or men do not qualify for meeting MBE/WBE procurement goals.

In order for an MBE or WBE firm to be counted for this report, the firm must display proof of qualification (e.g. be listed in the current Disadvantaged Business Enterprise Directory, published by the Idaho Transportation Department).

C. Instructions

Item 1. To be filled in by DEQ representative.

Item 2. Check the applicable reporting period.

Items 4, 4a, 4b. Identify the organization receiving the financial assistance and the person to contact concerning this report.

Items 5, 5a, 5b. Include the dollar amount of MBE, WBE, and total contracts awarded under this assistance agreement this period.

Item 6. For each MBE/WBE procurement made under this assistance agreement during the reporting period, provide the following information:

- a) Check either MBE or WBE.
- b) Include the dollar value of procurement.
- c) Include the date of the award, shown as month, day, year.
- d) Include the name and address of each MBE/WBE firm.

Items 7 and 8. Include the name and title of the official administrator or designated reporting official.

Item 9. If filling out this form in hard copy, the submitter needs to sign it. If filling out the form electronically, a signature is not required as the e-mail will serve as the signature.

Item 10. Include the month, day, and year that the report is submitted.

To be Submitted by Successful Bidder
Prior to Notice to Proceed

Form 6-P
Public Works Contract Report Form

Print and fill out the following form and return it to
Idaho State Tax Commission, P.O. Box 36, Boise, ID 83722-2210.

For additional information, call (208) 334-7691.

WH-5

State Tax Commission

Ref. No.	Code No.
----------	----------

PUBLIC WORKS CONTRACT REPORT

This space for state use only.

Sections 54-1904a and 63-3624(g), Idaho Code, require all Public Works Contracts to be reported to the State Tax Commission.

Contract awarded to (contractor's name and home address)

Contract awarded to (contractor's name and home address)

State of Incorporation	Federal employee number	Date qualified to do business in Idaho (Section 30-501, I.C.)
------------------------	-------------------------	---------------------------------------------------------------

Business operates as: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation	Public Works contractor license number
----------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------

Sole proprietor's social security number	Sales/Use tax permit number	Withholding tax permit number
------------------------------------------	-----------------------------	-------------------------------

Project number (if any)	Amount of contract : \$
-------------------------	-------------------------

Description and location of work to be performed

Scheduled project start date: _____ and completion date: _____
If the following information is not available at this time, please indicate when it will be. _____

This form must be filed with the State Tax Commission within 30 days after a contract is awarded.

ALL SUBCONTRACTORS

Name	State of Incorporation	Federal employee number
------	------------------------	-------------------------

Address	Date business qualified to do business in Idaho	Public works contractor number
---------	-------------------------------------------------	--------------------------------

City, State, Zip	Business operates as: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation	Amount of subcontract \$
------------------	-------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------

Description of work

Name	State of Incorporation	Federal employee number
------	------------------------	-------------------------

Address	Date business qualified to do business in Idaho	Public works contractor number
---------	-------------------------------------------------	--------------------------------

City, State, Zip	Business operates as: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation	Amount of subcontract \$
------------------	-------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------

Description of work

Name	State of Incorporation	Federal employee number
------	------------------------	-------------------------

Address	Date business qualified to do business in Idaho	Public works contractor number
City, State, Zip	Business operates as: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation	Amount of subcontract \$
Description of work		

ALL SUBCONTRACTORS (Continued)

Name	State of Incorporation	Federal employee number
Address	Date business qualified to do business in Idaho	Public works contractor number
City, State, Zip	Business operates as: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation	Amount of subcontract \$
Description of work		

Name	State of Incorporation	Federal employee number
Address	Date business qualified to do business in Idaho	Public works contractor number
City, State, Zip	Business operates as: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation	Amount of subcontract \$
Description of work		

Name	State of Incorporation	Federal employee number
Address	Date business qualified to do business in Idaho	Public works contractor number
City, State, Zip	Business operates as: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation	Amount of subcontract \$
Description of work		

SUPPLIERS

Use the space below to report: Major suppliers of materials and supplies: items removed from inventory; equipment purchased, rented or leased for use in project; materials provided by government agency. Please indicate how sales or use tax was paid.

Name	Address	Phone number	<input type="checkbox"/> Tax paid to supplier. <input type="checkbox"/> Tax paid to state* <input type="checkbox"/> No tax paid.
Materials and equipment purchased and used:		Total value \$	
Name	Address	Phone number	<input type="checkbox"/> Tax paid to supplier. <input type="checkbox"/> Tax paid to state* <input type="checkbox"/> No tax paid.
Materials and equipment purchased and used:		Total value \$	
Name	Address	Phone number	<input type="checkbox"/> Tax paid to supplier. <input type="checkbox"/> Tax paid to state* <input type="checkbox"/> No tax paid.
Materials and equipment purchased and used:		Total value \$	
Name	Address	Phone number	<input type="checkbox"/> Tax paid to supplier. <input type="checkbox"/> Tax paid to state* <input type="checkbox"/> No tax paid.
Materials and equipment purchased and used:		Total value \$	

Name	Address	Phone number	<input type="checkbox"/> Tax paid to supplier. <input type="checkbox"/> Tax paid to state* <input type="checkbox"/> No tax paid.	
Materials and equipment purchased and used:		Total value \$		
Name	Address	Phone number	<input type="checkbox"/> Tax paid to supplier. <input type="checkbox"/> Tax paid to state* <input type="checkbox"/> No tax paid.	
Materials and equipment purchased and used:		Total value \$		
<p>* If tax was not paid to suppliers, but WAS or WILL BE reported as "Items Subject to Use Tax" under your permit number, indicate period of return on which payment WAS or WILL BE reported: _____ If tax was remitted to a state other than Idaho, name state next to "Total value" box(es) above. If tax is due and has not previously been reported, attach payment to this form.</p>				
SIGN HERE	Authorized signature	Print name	Phone number	Date
File with the Idaho State Tax Commission, P.O. Box 36, Boise, Idaho 83722-2210 - For additional information call (208) 334-7691				

To be Submitted by Successful Bidder Upon Project Completion

Form 6-Q
Affidavit of Payment of Securement of all Taxes

STATE OF)

) ss:

County of)

, being first duly sworn, on oath
deposes and says that he is in conformance with Idaho Code 63-1502; that he is authorized to do
business in the State of Idaho and that he can furnish satisfactory evidence that he has paid or
secured to the satisfaction of the respective taxing units all taxes for which he or his property is
liable, now due or delinquent, including assessments, excises and license fees levied by the State
of Idaho or any taxing unit within the State of Idaho.

DATED this day of , 20 .

SUBSCRIBED AND SWORN to before me this day of , 20 .

Notary Public for

Residing at

Commission Expires

To be Submitted by Successful Bidder Prior to Notice to Proceed

Form 6-R
Contractor for Public Works to Pay or Secure Taxes

(Idaho Code 63-1503)

The Contractor, in consideration of securing the business of erecting or constructing public works in this State, recognizing that the business in which he is engaged is of a transitory character, and that in the pursuit thereof, his property used therein may be outside the State when taxes, excises, or licenses fees to which he is liable become payable, agrees:

1. To pay promptly when due all taxes, (other than on real property), excises and license fees due to the State, its subdivisions, and municipal and quasi-municipal corporations therein, accrued or accruing during the term of this contract, whether or not the same shall be payable at the end of such term;
2. That if the said taxes, excises and license fees are not payable at the end of said term, but liability for the payment thereof exists, even though the same constitute liens upon his property, to secure the same to the satisfaction of the respective officers charged with the collection thereof; and,
3. That, in the event of his default in the payment or securing of such taxes, excises and license fees, to consent that the Department, Officer, Board or Taxing Unit entering into this contract may withhold from any payment due him hereunder the estimated amount of such accrued and accruing taxing, excises, and license fees for the benefit of all taxing units to which said contractor is liable.

Signature

Date

To be Submitted by Successful Bidder Prior to Notice to Proceed

Form 6-S
Contractor to Comply with Idaho Executive Order 2009-10

The Contractor, in consideration of securing the business of erecting or constructing public works in this State, agrees that the Contractor and their subcontractors will ensure that the only individuals hired are eligible under federal and state law to work in the United States.

The Contractor certifies their understanding that if any employee is knowingly and willfully hired, who is not legally entitled to employment in the United States, the Contractor may face penalties including immediate cancellation of the contract, reversion of unspent public funds, and monetary penalties.

Signature

Date



May be Submitted to DEQ State Office by DBE Subcontractor
Environmental Protection Agency Upon Project Completion

FORM 6-T
Disadvantaged Business Enterprise Program DBE
Subcontractor Participation Form

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Name of Subcontractor ²	Project Name
<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>

Address	Contract No.
<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>

Telephone Number	Email
<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>

Prime Contractor Name

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

Contract Item No.	Item of Work or Description of Services Received from the Prime Contractor	Amount Subcontractor was Paid by Prime Contractor

Contract Item No.	Item of Work or Description of Services Received from the Prime Contractor	Amount Subcontractor was Paid by Prime Contractor

 Subcontractor Signature

Title/Date

 Print Name

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

EPA FORM 6 100-2 (DBE Subcontractor Participation Form)

Submitted to DEQ State Office by Successful Bidder Prior to Notice to Proceed



**Environmental
Protection Agency**

**FORM 6-U
Disadvantaged Business Enterprise Program DBE
Subcontractor Performance Form**

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Name of Subcontractor

Project Name

Address

Contract No.

Name of Subcontractor

Email Address

Prime Contractor Name

Contract Item No.	Item of Work or Description of Services Bid to Prime	Price of Work Submitted to Prime Contractor

DBE Certified by: DOT SBA Other

Meets/exceeds EPA certification standards?: Yes No Unknown

Signature of Prime Contractor

Title

Print Name _____ Date _____

Signature of Subcontractor _____ Title _____

Print Name _____ Date _____

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

EPA FORM 6100-3 (DBE Subcontractor Performance Form)

Submitted to DEQ State Office by Successful Bidder Prior to Notice to Proceed



**Environmental
Protection Agency**

**FORM 6-V
Disadvantaged Business Enterprise Program DBE¹
Subcontractor Utilization Form**

Bid/Proposal No.	Project Name
Name of Prime Bidder/Proposer	E-mail Address
Address	
Telephone No.	Fax No.

The following subcontractors² will be used on this project:

Company Name, Address, Phone Number, and E-Mail Address	Type of Work to be Performed	Estimated Dollar Amount	Currently Certified as a Minority Owned or Woman Owned Business?

I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).

Signature of Prime Contractor

Print Name

Title/Date

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

EPA FORM 6100-4 (DBE Subcontractor Utilization Form)

Form 6-W Pre-Procurement Information Handout

The items listed below have historically been sources of problems in the bidding and awarding process of construction contracts. The explanations below are included in order to clarify the policies and to assist in compiling bids for the project. These items are by no means a complete list of responsibilities. Please refer to the specifications (Chapter 6) for the actual policy requirements.

A. DBE POLICY (NOT REQUIRED FOR PROJECTS COSTING LESS THAN \$250,000)

The Disadvantaged Business Enterprise (DBE) is used by the federal government to promote the use of such enterprises on federally funded projects. The federal DBE policy must be included in your bid solicitations. The borrower must be able to demonstrate that a good-faith effort was made to comply with the federal policy to include DBE subcontractors or suppliers on the project. DBEs should be placed on bid solicitation lists.

You may document your efforts to contact DBEs by submitting copies of advertisements in journals and newspapers, telephone logs, direct correspondence, etc. DEQ will review your documents and may check the validity of the contract that you have with DBEs. Refer to Forms in Chapter 6 of the DWSRF Handbook.

B. PROJECT SIGN

A sign may be produced and erected in a prominent location to adequately mark the project. (Signage costs are loan eligible.) The sign indicates that the project is funded by DEQ.

C. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION (EEO/AA)

Compliance with Federal guidelines pertaining to EEO/AA requirements are a part of the loan contract. Ensure that you are in compliance with these regulations. The current EEO poster (EEOC-P/E-1) (translations in different languages are available) must be posted on the site and may be ordered through the Equal Employment Opportunity Commission Web site at <http://www1.eeoc.gov/employers/poster.cfm>. It is the contractor's responsibility to contact the EEOC within 30 days of contract award. The EEO requirements only apply to projects that cost over \$50,000 and if the firm employs more than 50 people.

D. PROJECT SCHEDULING AND OUTLAYS

In order to comply with federal requirements, projected outlays must be reported by DEQ to EPA. Because of this requirement, your project must be carefully planned and expenditures projected so that payment schedules can be developed. The project schedule can also be very important, especially if the borrower is under a DEQ consent order, which includes a compliance schedule. Critical path scheduling or bar charts with projected outlays are acceptable forms of scheduling.

E. DAVIS BACON WAGE PROVISION REQUIREMENT

Review Attachment B to standard loan offer and Forms 9B and 9C.

1. The latest wage determinations from the US Department of Labor (USDOL) for the specific project area must be included in the plans and specifications when they are advertised for bid. Additional details are as follows:
 - a. The latest wage determinations can be found by navigating from the following website: <http://www.dol.gov/whd/america2.htm>.
 - b. The wage determinations are periodically updated and therefore can change between the dates of the bid advertisement and the bid closing. In a recent webinar training, the USDOL confirmed that it is the loan recipient's responsibility to ensure that any changes to the wage determinations, up until 10 days before close of the bid period, are incorporated into the contract documents (plans and specifications). That last wage determination will be in effect for the remainder of the project *unless* the contracts between the loan recipient and the successful bidder(s) for the project are not signed within 90 days of the bid opening. (USDOL calls these the 10 day rule and the 90 day rule.)
2. The following documents must be included in the signed contracts between the loan recipient and the successful bidder(s) for the project:
 - a. Paragraph I.12 or I.13 from Form 6-C (depending on the type of loan recipient) *must* be included in the signed contracts between the loan recipient and the successful bidder(s) for the project.
 - b. The latest wage determinations per the 10 day rule or the 90 day rule as discussed above.
3. A number of loan recipients have found it advantageous to utilize the services of grant administrators that are familiar with Davis Bacon requirements. These specialists can provide assistance from the initial plans and specifications through contract administration during the course of the project.

F. DOCUMENTS SUBMITTED

The borrower may, at their discretion, require all bidders to submit certain specification inserts from which DEQ only requires final submission from the successful bidder.

G. DUNS REGISTRATION

Borrower must renew this registration annually.

H. SUSPENSION AND DEBARMENT

All contractors *and* subcontractors must be cleared through state and federal debarment and suspension lists. Any contractor/subcontractor that is used without notification to the DEQ project officer may incur costs that will be disallowed.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, 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 form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *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, or both; 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, or both; 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; or (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. 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), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C.

- §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree 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 the 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. *Engineer*—The individual or entity named as such in the Agreement.
 21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
 22. *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. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
 23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
 24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
 25. *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.
 26. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
 27. *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.
 28. *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.
 29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
 30. *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.
 31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing

- the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
 33. *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.
 34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
 35. *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.
 36. *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.
 37. *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 furnished by Owner which are designated for the use of Contractor.
 38. *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.
 39. *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.
 40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
 41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
 42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
 43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
 44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made

available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.

45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *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.
48. *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 the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. Intent of Certain Terms or Adjectives:
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect

or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. Day:

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

D. Defective:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

E. Furnish, Install, Perform, Provide:

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. 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. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), 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 executed 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 specifically 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 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic

media or digital format, either directly, or through access to a secure Project website.

- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items 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 items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall 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.

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, shall mean 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, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the 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 Documents 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 Documents 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 shall 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 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 thereunder.

- 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 give written notice to Owner and Contractor 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 editions, 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 shall preclude

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 thirtieth 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 sixtieth day after the day of Bid opening or the thirtieth 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 shall 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 shall 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 shall 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 the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- 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. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall 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 utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. 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.
- E. Paragraph 8.03 governs 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.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times 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.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

**ARTICLE 5 – AVAILABILITY OF LANDS;
SUBSURFACE AND PHYSICAL CONDITIONS;
HAZARDOUS ENVIRONMENTAL CONDITIONS**

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- 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; 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 7.12, 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 at law; 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 shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site 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 known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); 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 upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. 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; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

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 either:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
2. is of such a nature as to require a change in the Drawings or Specifications; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 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 the necessity of Owner's obtaining 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 above; 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. Possible Price and Times Adjustments:

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, 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 conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
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; or
 - 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 as 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, or both, then any such adjustment shall 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, or both, 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.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing

Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. 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 in the Contract Documents, or was not shown or indicated 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), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
 - C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; 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 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. Possible Price and Times Adjustments:

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, 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. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - 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;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and

d. 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, or both, then any such adjustment shall 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, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

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

1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
2. 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 Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. 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; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for 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, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, 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.
- 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 or 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.H shall obligate 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 shall obligate 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 all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as

Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, 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 shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. 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.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

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. Contractor shall deliver to Owner, with copies to each named insured and additional insured

(as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements 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 and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements 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 and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. 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, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of 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.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.

H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect 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 shall be adjusted accordingly.

I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.

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

6.03 Contractor's Insurance

A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
4. Foreign voluntary worker compensation (if applicable).

B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:

1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
2. claims for damages insured by reasonably available personal injury liability coverage.
3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property

wherever located, including loss of use resulting therefrom.

C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
3. Broad form property damage coverage.
4. Severability of interest.
5. Underground, explosion, and collapse coverage.
6. Personal injury coverage.
7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.

D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.

E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess

liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.

F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

G. *Additional insureds:* The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.

H. *Contractor's professional liability insurance:* If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.

- I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
1. include at least the specific coverages provided in this Article.
 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 4. remain in effect at least until final payment (and longer if expressly required in this Article) 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 Documents.
 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

- B. 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.

6.05 *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 full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by

- endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
 5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
 - B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed 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.
 - C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
 - 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 notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 - E. *Additional Insurance:* 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 6.05, it may do so at Contractor's expense.
 - F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such

property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. 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 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 Subcontractors, all individuals or entities identified in the Supplementary Conditions as 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. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial 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.

- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work 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 any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 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 6.05 shall 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, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

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

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, 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.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities,

and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *“Or Equals”*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the 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 material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an “or equal” item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:

- 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- 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 shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 *Substitutes*

- A. Unless the specification or description of an item of material or equipment 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 material or equipment under the circumstances described below. To the extent possible such requests shall 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 material or equipment from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.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 material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall 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 that specified, and
 - 3) be suited to the same use as that 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 that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall 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 shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.
- 7.06 *Concerning Subcontractors, Suppliers, and Others*
- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities 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, Supplier, or other individual or entity 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 five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. 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, Suppliers, or other individuals or entities 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, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, 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, Supplier, or other individual or entity, whether initially or as a replacement, shall 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 fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor

is responsible for Contractor's own acts and omissions.

- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is

the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

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

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees

necessary for the prosecution of the Work which are applicable at the time of 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

7.09 *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.

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work 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 shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give 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 notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *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.

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities,

and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when 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.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor 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).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall 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.

7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the

prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 *Hazard Communication Programs*

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

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 threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Shop Drawings, Samples, and Other Submittals*

- A. Shop Drawing and Sample Submittal Requirements:

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. Shop Drawings:
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.
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.D.
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. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction 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 shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 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.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 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, shall 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, Sample, or other submittal shall 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.D.4.
- E. *Resubmittal Procedures:*
1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
 2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
 3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for

Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

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

8. any correction of defective Work by Owner.

- D. 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 shall 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 and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

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

drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.

- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

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 utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. 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.
- D. If the proper execution or results of any part of Contractor's Work depends upon work