



## CONTRACT DOCUMENTS

### WATER METER

### INSTALLATION PROJECT

**City of East Providence RFP #EP23/24-23**

East Providence, Rhode Island

Prepared for:

**City of East Providence Water Utilities Division**

60 Commercial Way

East Providence, RI 02914

Prepared by:



**Pare Corporation**

*Rhode Island Office*

8 Blackstone Valley Place

Lincoln, RI 02865

April 2024

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**CITY OF EAST PROVIDENCE  
WATER UTILITIES DIVISION  
WATER METER INSTALLATION PROJECT**

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**DIVISION 0**

**BIDDING AND CONTRACT REQUIREMENTS**



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**CITY OF EAST PROVIDENCE  
WATER METER INSTALLATION PROJECT  
ADVERTISEMENT  
REQUEST FOR PROPOSAL  
RFP EP23/24-23  
BID OPENING WEDNESDAY MAY 1, 2024 AT 11:00AM**

The City of East Providence seeks sealed bids to furnish all labor, equipment, tools, appliances and materials and performing all operations in connection with installing new meters, absolute encoder registers, and radio frequency (RF) Meter Interface Units (MIUs) to replace existing infrastructure in the water distribution system. Meters, absolute encoder registers, and MIUs will be provided to the selected Contractor by the City of East Providence. Specifications may be downloaded from the City's website

<https://eastprovidenceri.gov/rfp>

(1) original, Two (2) copies of proposals and (1) one thumb drive shall be submitted in one (1) sealed envelope to East Providence City Hall, Controllers Office, Room 103, Attn: Jessica Lamprey Procurement Specialist, 145 Taunton Ave., East Providence, RI 02914 no later than **WEDNESDAY MAY 1, 2024 at 11:00 AM**. The bids will be publicly recorded. Bids received with a time of 11:01 AM or later will be rejected. The outside envelope needs to be marked **RFP EP23/24-23**.

The City reserves the right to reject any/or all companies, to waive any informality in the proposal statement and to accept the proposal of any company based on what the City deems to be in its best interest.

Any questions regarding the RFP may be directed in writing to Brandon M. Blanchard, P.E. of Pare Corporation at [bblanchard@parecorp.com](mailto:bblanchard@parecorp.com) and Jessica Lamprey, Procurement Specialist at [jlamprey@eastprovidenceri.gov](mailto:jlamprey@eastprovidenceri.gov) no later than **FRIDAY APRIL 19, 2024 at 4:00 PM**.

Equal Opportunity/Affirmative Action Employer

Jessica Lamprey  
[jlamprey@eastprovidenceri.gov](mailto:jlamprey@eastprovidenceri.gov)

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**CITY OF EAST PROVIDENCE  
WATER METER INSTALLATION PROJECT  
BID FORM  
REQUEST FOR PROPOSAL  
RFP EP23/24-23  
BID OPENING WEDNESDAY MAY 1, 2024 AT 11:00AM**

The undersigned bidder, being familiar with local conditions affecting the cost of the work, hereby proposes to provide all necessary labor, materials, equipment and incidental items necessary to do all the work called for in the Specifications and in accordance with the Contract Documents.

No pre-bid conference has been scheduled for this project. Questions on the bid are due by **Friday April 19, 2024 at 4:00 PM.**

The undersigned further understands that the quantities of work as shown are approximate only and are subject to increase or decrease and offers to do the work whether the quantities are increased or decreased, at the unit prices stated. Davis–Bacon wages apply to this proposal.

All prices must be written in words and figures. In case of discrepancy, the amount shown in words will govern.

Bidder acknowledges receipt of the following addendum:

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At the time of the opening of bids, the bidder shall have inspected the sites of the work to familiarize himself with the conditions relating to the work under the contract.

No Bidder may withdraw their Bid within sixty (60) days following the closing time for receipt of Bids.

Bidder hereby agrees to begin work within ten (10) days after the date of the NOTICE TO PROCEED, unless otherwise specified or permitted by the CITY, and shall complete the work under the provisions of the Contract within 60 calendar days.

The undersigned bidder submits herewith Bid Security in the form of a Bid Bond or a Certified Check, in favor of the City of East Providence, in the amount not less than five (5) percent of the total amount bid in dollars, and agrees and consents that, if he is the successful bidder, the Bid Security shall be forfeited to the City of East Providence as liquidated damages, if the required Contract and Surety Bond are not executed within ten (10) days from the date of the NOTICE OF AWARD.

LIQUIDATED DAMAGES will be assessed at the rate of \$500.00 per day for each day beyond the contract length herein stipulated.

The undersigned bidder further agrees to pay the premiums for the Surety Bond (Performance, Labor and Materials Payment Bonds) for which said premiums are to be included in the Bid Price.

BIDDING FIRM: \_\_\_\_\_

NUMBER & STREET: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

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

TELEPHONE NO.: \_\_\_\_\_

Being a Corporation, incorporated under  
the laws of the State of

\_\_\_\_\_

(Partnership)

(Individual)

Composed of officers, partners  
or owner as follows:

\_\_\_\_\_  
(President, Owner, Partner)

(Corporate Seal)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

| <b>Item</b>                                     | <b>Est. Qty.</b> | <b>UOM</b> | <b>Brief Description</b>                                       | <b>Unit Bid Price (in Figures)</b> | <b>Amount (in Figures)</b> |
|---|------------------|------------|--|------------------------------------|----------------------------|
| 1   | 1                | LS         | Mobilization and Demobilization                                |                                    |                            |
| 2   | 6,234            | EACH       | Install 5/8-inch Neptune T-10 Water Meter and Absolute Encoder |                                    |                            |
| 3   | 304              | EACH       | Install 3/4-inch Neptune T-10 Water Meter and Absolute Encoder |                                    |                            |
| 4   | 102              | EACH       | Install 1-inch Neptune T-10 Water Meter and Absolute Encoder   |                                    |                            |
| 5   | 57               | EACH       | Install 1.5-inch Neptune T-10 Water Meter and Absolute Encoder |                                    |                            |
| 6   | 120              | EACH       | Install 2-inch Neptune T-10 Water Meter and Absolute Encoder   |                                    |                            |
| 7   | 7,850            | EACH       | Install Neptune R900 RF Meter Interface Units                  |                                    |                            |
| 8   | 250              | EACH       | Install Neptune R900 RF Cellular Endpoints                     |                                    |                            |
| 9   | 100              | EACH       | Furnish and Install New Meter Valve, 1-Inch and Smaller        |                                    |                            |
| 10  | 100              | EACH       | Furnish and Install New Meter Valve, 1.5-Inch and Larger       |                                    |                            |
| 11  | 100              | ALLOW      | Non-Standard Work Allowance                                    | \$20,000.00                        | \$20,000.00                |
| 12  | 6,234            | EACH       | Credit for Salvage Value of 5/8-inch Meter                     |                                    |                            |
| 13  | 304              | EACH       | Credit for Salvage Value of 3/4-inch Meter                     |                                    |                            |
| 14  | 102              | EACH       | Credit for Salvage Value of 1-inch Meter                       |                                    |                            |
| 15  | 57               | EACH       | Credit for Salvage Value of 1.5-inch Meter                     |                                    |                            |
| 16  | 120              | EACH       | Credit for Salvage Value of 2-inch Meter                       |                                    |                            |
| <b>Base Bid Price for Lines 1-16 in Figures</b> |                  |            |  |                                    |                            |
| <b>Base Bid Price for Lines 1-16 in Words</b>   |                  |            |  |                                    |                            |

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**CITY OF EAST PROVIDENCE  
WATER UTILITIES DIVISION  
WATER METER INSTALLATION PROJECT**

SECTION 00100

INSTRUCTIONS TO BIDDERS

The City of East Providence Standard Instructions to Bidders follow as Section 00100 of these Contract Documents.

END OF SECTION

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## **STANDARD INSTRUCTIONS TO BIDDERS (SHORT FORM) REQUEST FOR PROPOSALS**

**THESE INSTRUCTIONS ARE STANDARD FOR ALL REQUEST FOR PROPOSALS ISSUED BY THE PURCHASING DIVISION AND MAY BE DELETED, OR MODIFIED BY INDICATING SUCH CHANGE/S BY "SPECIAL INSTRUCTIONS TO BIDDERS."**

### **1.0 RECEIPT AND OPENING OF PROPOSALS:**

Sealed proposals will be received and date stamped East Providence City Hall, Controllers Office, Room 103, Attn: Procurement Specialist 145 Taunton Avenue, East Providence, Rhode Island 02914, until the time and date indicated on the Request for Proposals. No proposal received after that time will be considered. Mark outside bid envelope with item being proposed, and time and date of proposal due date.

### **2.0 FORM OF PROPOSAL:**

Proposals must be submitted on and in accordance with the proposal forms attached hereto, blank places must be filled in as noted, no change shall be made in the phraseology of the proposal form or in the item or items mentioned therein. Additionally, the proposals must contain the name and proper address of the proposing firm, and must be signed by a responsible member of the firm with his signature and official title. Proposals, which are not complete, or contain erasures or alterations, not initiated by the signer, may be rejected. FAXED proposals will not be accepted.

### **3.0 SUBMISSION OF PROPOSALS:**

3.1 Envelopes containing proposals must be sealed and addressed to the East Providence City Hall, Controllers Office, Room 103, Attn: Procurement Specialist 145 Taunton Avenue, East Providence, Rhode Island 02914 and must be marked with the name and address of the proposer, date and time of proposal due date, and name of item being proposed.

3.2 The Procurement Specialist will decide when the specified time has arrived to collect the proposals, and no proposal received thereafter will be considered.

3.3 Any proposer may withdraw his proposal by written request at any time prior to the advertised time for proposal due date. Telephonic proposals, amendments, or withdrawals will not be accepted. Additionally, FAXED bids will not be accepted.

3.4 No proposal may be withdrawn for a period of ninety (90) calendar days from the date and time of proposal due date. The City reserves the right to waive this requirement in order to best serve the interests of the City.

3.5 Negligence on the part of the proposer in preparing the proposal confers no rights for the withdrawal of the proposal after it has been opened.

3.6 Proposals received prior to the time of the due date will be securely kept unopened. No responsibility will attach to an officer or person of the City for the premature opening of a proposal not properly addressed and identified as a proposal.

#### **4.0 ADDENDA**

Copies of all Addenda will be posted to the City's Website. It is the Vendor's responsibility to check and download any and all addenda from the City's Website.

4.1 No Addenda will be posted later than four (4) working days prior to the date for receipt of bids except an Addendum, if necessary, postponing the date for receipt of bids or withdrawing the request for bids. Each bidder shall ascertain prior to submitting their bid that they have received all Addenda issued, and shall acknowledge their receipt in his bid.

#### **5.0 QUALIFICATIONS OF PROPOSER**

The City may make such investigations as it deems necessary to determine the ability of the proposer to perform the work, and the proposer shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any proposal if the evidence submitted by, or investigation of such proposer fails to satisfy the City that such proposer is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.

#### **6.0 CONTRACT SECURITY**

Only when a Contract Security is required in the Request for Proposal, the Contractor shall furnish a Bid Bond in the amount of Five Percent (5%) and a Surety Bond/Performance Bond in an amount equal to at least One Hundred Percent (100%) of the contract price as security for the faithful performance of the contract and for the payment of all persons performing labor on the project under the contract and furnishing materials, equipment and all other incidentals in connection with the contract. The surety on such bonds shall be a duly authorized surety company licensed to bond in the State of Rhode Island, and the cost of same will be paid by the Contractor. Before final acceptance, the bonds must be approved by the City.

The bonding company providing surety must be listed in the Federal Register as issued by the Department of Treasury, Department Circular 570, latest edition, as well as being licensed in the State of Rhode Island to provide surety.

#### **7.0 BID PRICES:**

Bidders shall state the proposed price/s in the manner as designated in the Bid Proposal Form. In the event that there is a discrepancy between the unit prices and the extended totals, the unit prices shall govern. In the event there is a discrepancy between the price written in words and in figures, the price written in words shall govern.



## **8.0 TERMS:**

Cash Discounts offered will be considered in determining awards. However, discounts for a period less than twenty (20) days will not be considered. The discount period shall be computed from date of delivery or from date the correct invoice is received by the City Controller, whichever date is later. The date of delivery shall be construed to mean the date on which the bid item is determined to meet the specifications and is therefore acceptable.

## **9.0 RHODE ISLAND SALES TAX:**

The City of East Providence is exempt from the Rhode Island Sales or Use Tax under the 1956 General Laws of the State of Rhode Island, Section 44-18-30, Para. 1, as amended.

## **10.0 "OR EQUAL" BIDDING:**

When the name of a manufacturer, a brand name, or manufacturer's catalogue number is issued as the bid standard in describing an item followed by "Or Approved Equal", this description is used to indicate quality, performance and other essential characteristics of the item required. If bidding on other than the make, model, brand or sample specified, but equal thereto, bidder must so state by giving the manufacturer's name, catalogue number and any other information necessary to prove that his intended substitution of a commodity is equal in all essential respects to the bid standard. Bidder must prove to the satisfaction of the City Manager, or by person or persons designated by him, that the bidders designated substitute is equal to the bid standard; otherwise, his bid will be rejected.

## **11.0 AWARD AND CONTRACT:**

11.1 Unless otherwise specified, the City reserves the right to make award by item, or items, or by total, as may be in the best interest of the City.

11.2 A written award (or acceptance of bid) mailed (or otherwise furnished) to the successful bidder followed by a City Purchase Order, shall be deemed to result in a binding contract without further action by either party.

11.3 It is the intent of the City to award a contract to the lowest responsible bidder in accordance with City Ordinances, Article V. Purchasing, Sec. 2- 243, and provided that the bid has been submitted in accordance with the requirements of the Bidding Documents, is judged to be reasonable, and does not exceed the funds available.

## **12.0 CONSIDERATION OF PROPOSALS REJECTION OF PROPOSALS**

12.1 The City reserves the right to reject the proposal of any proposer who has previously failed to perform properly or complete on time, contracts of a similar nature, or who is not in a position to perform the contract, or who has habitually and without just cause, neglected the payment of bills or disregarded its obligations to sub-contractors, material, or employees.

12.2 The City reserves the right to reject any or all proposals and in particular to reject a proposal not accompanied by any data required by the Bidding Documents or a proposal in any way incomplete or irregular, and to waive any informality in the proposals received, and to accept the proposal or parts thereof deemed to be most favorable to the best interest of the City.

12.3 The City shall have the right to waive any informality or irregularity in any proposal received

12.4 It is the intent of the City, if it accepts any Alternates, to accept them in the order in which they are listed in the proposal form, but the City shall have the right to accept Alternates in any order or combination and to determine the low bidder on the basis of the sum of the Base Bid and the Alternates accepted.

**13.0 DELIVERY:**

All prices bid must be on the basis of F.O.B. Delivery Point, East Providence, Rhode Island. Therefore, shipping costs are to be included within the prices quoted. Deliveries must consist only of new merchandise or equipment and shall be made between 8:00 A.M. and 4:00 P.M. Prevailing Time, Monday through Friday.

No delivery shall become due or be acceptable without a written Purchase Order, issued by the Procurement Specialist.

**14.0 AFFIRMATIVE ACTION REQUIREMENTS**  
**MBE/WBE PARTICIPATION**

Any firm or Contractor providing services to or doing business with the City shall adhere to the City's Affirmative Action Plan for MBE/WBE Participation. Said plan is on file with the City's Affirmative Action Officer.

**14.1 All bidders are required to submit the MBE/WBE Participation Affidavit.**

**15.0 INSURANCE REQUIREMENTS:**

The Contractor shall carry the following insurance coverages at his own expense:

(a) General: All insurance for this contract shall be written by a company (or companies) acceptable to the city and all policies or certificates shall be submitted to the City for examination prior to commencement of operations by the contractor. In the event any policy or certificate, the amount of the insurance, or the company writing same are not satisfactory to the City, the contractor shall secure other policies or certificates in form and amount with a company satisfactory to the City. The contractor shall not permit policies to be changed, cancelled, or to lapse and all policies shall include a clause to the effect that the policy shall not be subject to cancellation or a reduction in the limits of liability or amounts of insurance until notice has been sent by mail to the city stating when, (not less than 30 days thereafter) such cancellation or reduction shall be effective. All certificates of insurance shall be delivered to the City and contain true transcripts from the policy or policies authenticated by the proper officer of the insurer evidencing in particular those insured, the extent of the insurance, the location and operations to which the insurance applies, the expiration date and the above mentioned notice as to the location and operations involved.

The Contractor is required to list the City of East Providence not only as Certificate Holder but as an Additional Insured as well, on the "Certificate of Insurance".

If any part of the work is sublet, similar insurance shall be provided by or in behalf of the subcontractors to cover their operations. The contractor shall be charged with the responsibility for insurance protection for all his subcontract operations and should the contractor's policy not cover each and every subcontractor, certificates of insurance acceptable to the City covering each and every subcontractor shall be filed with said City prior to the commencement of subcontract operations.

Statutory Workman's Compensation Insurance: shall be provided by the contractor for all labor employed on the project who may come within the protection of such laws, and Employer's General Liability Insurance shall be provided for the benefit of employees not protected by compensation laws. The contractor will be charged with the responsibility for proper and adequate workman's compensation for all subcontract operations.

Contractors Comprehensive General Liability and Property Damage Insurance INCLUDING Owner's Protective: the contractor shall carry the above insurance for a minimum limit of not less than \$1,000,000.00 for all damages arising out of injury to or death of one person and subject to that limit for each person, a total limit of not less than \$1,000,000.00 for all damages arising out of injury to, or death of two or more persons in any one occurrence and Property Damage Liability Insurance providing for a limit of not less than \$1,000,000.00 for all damages arising out of injury to or destruction of property (including loss of use) in any occurrence and subject to that limit per occurrence total limit of \$1,000,000.00 all damages arising out of injury to or destruction of property during the policy period.

Contractor's Liability Insurance: Shall also include all major divisions of coverage and be on a comprehensive general liability basis including:

Premises - Operations

Independent Contractor's protective

Products and completed operations

Blanket Contractual

Owned, non-owned and hired motor vehicles

Broad form coverage for property damage (including explosion, Collapse and underground).

Comprehensive Automobile Liability and Property Damage Insurance: The Contractor shall carry the above insurance covering all owned, hired or non-owned vehicles in the amount of \$300,000.00 for all damages arising out of bodily injuries to death of one person and subject to that limit for each person, a total of \$500,000.00 for all damages arising out of bodily injuries to or death of two or more persons in any one accident and Property Damage coverage in the amount of \$300,000.00 for all damages arising out of injury to or destruction of property.

## **16.0 OSHA SAFETY AWARENESS PROGRAM**

In accordance with R.I.G.L. 28-20-35, all contractors bidding on construction projects of the City with a total project cost of one hundred thousand dollars (\$100,000.) or more, are required to have an OSHA "ten hour construction safety program", for their on-site employees. The training program shall utilize instructors trained by the Occupational Safety and Health Administration, using an OSHA approved curriculum.



**MBE/WBE PARTICIPATION AFFIDAVIT**

Item Description (as seen on RFP): \_\_\_\_\_

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

Prime Bidder (Company) Phone Number: \_\_\_\_\_

Prime Bidder (Company) Zip Code: \_\_\_\_\_

Which one of the following describes your business' status in terms of Minority and/or Woman-Owned Business Enterprise certification with the State of Rhode Island? \_\_\_\_\_ MBE \_\_\_\_\_ WBE \_\_\_\_\_ Neither MBE nor WBE

**By initialing the following sections and signing the bottom of this document in my capacity as the contractor or an authorized representative of contractor, I make this Affidavit:**

It is the policy of the City of East Providence that minority business enterprises (**MBEs**) and women business enterprises (**WBEs**) should have the maximum opportunity to participate in procurements and projects as prime contractors and vendors. Pursuant to Sec. 21-52 of the Providence Code of Ordinances and Chapter 31-14 et seq. of the Rhode Island General Laws (as amended), MBE and WBE participation goals apply to contracts.

- The goal for Minority Business Enterprise (MBE) participation is 10% of the total bid value.
- The goal for Women's Business Enterprise (WBE) participation is 10% of the total bid value.
- The goal for combined MBE/WBE participation is 20% of the total bid value.

**I acknowledge the City of East Providence's goals of supporting MBE/WBE certified businesses.** Initial \_\_\_\_\_

Are you subcontracting with other parties on this project: Yes \_\_\_ No \_\_\_ if yes fill out page 2, **Subcontractor Disclosure Form**.

Are you using any subcontractors on this job and not meeting the 20% MBE/WBE participation goal: Yes \_\_\_ No \_\_\_ if yes fill out page 3, **MBE/WBE Waiver Request Form**.

If awarded the contract, I understand that my company must submit to the Minority and Women's Business Coordinator at the City of East Providence (MBE/WBE Office), copies of all executed agreements with the subcontractor(s) being utilized to achieve the participation goals and other requirements of the RI General Laws. **I understand that these documents must be submitted prior to the issuance of a notice to proceed.** Initial \_\_\_\_\_

**I understand that, if awarded the contract, my firm must submit to the MBE/WBE Office canceled checks and reports required by the MBE/WBE Office on a quarterly basis verifying payments to the subcontractors(s) utilized on the contract.** Initial \_\_\_\_\_

If I am awarded this contract and find that I am unable to utilize the subcontractor(s) identified in my Statement of Intent, I understand that I must substitute another certified MBE and WBE firm(s) to meet the participation goals. **I understand that I may not make a substitution until I have obtained the written approval of the MBE/WBE Office.** Initial \_\_\_\_\_

**If awarded this contract, I understand that authorized representatives of the City of East Providence may examine the books, records and files of my firm from time to time, to the extent that such material is relevant to a determination of whether my firm is complying with the City's MBE/WBE participation requirements.** Initial \_\_\_\_\_

**I do solemnly declare and affirm under the penalty of perjury that the contents of the foregoing Affidavit are true and correct to the best of my knowledge, information and belief.**

Signature of Bidder \_\_\_\_\_ Printed Name \_\_\_\_\_

Company Name \_\_\_\_\_ Date \_\_\_\_\_

**SUBCONTRACTOR DISCLOSURE FORM**

**Fill out this form only if you WILL SUBCONTRACT with other parties. If you will not subcontract any portion of the proposed bid, do not fill out this form.**

Prime Bidder: \_\_\_\_\_ Primary NAICS Code: \_\_\_\_\_

Item Description (as seen on RFP): \_\_\_\_\_

**Please List all Subcontractors below.** Include the total dollar value that you propose to share with each subcontractor and the dollar amount to be subcontracted. Please check off MBE and WBE where applicable. The directory of all state-certified MBE/WBE firms is located at [www.mbe.ri.gov](http://www.mbe.ri.gov). Business NAICS codes can be found at <http://www.naics.com/search/>

| Proposed Subcontractor  | MBE | WBE | Primary NAICS Code | Date of Mobilization | \$ Value of Subcontract |
|---|-----|-----|--------------------|----------------------|-------------------------|
|   |     |     |                    |                      | \$                      |
|   |     |     |                    |                      | \$                      |
|   |     |     |                    |                      | \$                      |
|   |     |     |                    |                      | \$                      |
|   |     |     |                    |                      | \$                      |
|   |     |     |                    |                      | \$                      |
| <b>A. MBE SUBCONTRACTED AMOUNT:</b>   |     |     |                    |                      | \$                      |
| <b>B. WBE SUBCONTRACTED AMOUNT:</b>   |     |     |                    |                      | \$                      |
| <b>C. NON MBE WBE SUBCONTRACTED AMOUNT:</b>   |     |     |                    |                      | \$                      |
| <b>D. DOLLAR AMOUNT OF WORK DONE BY THE PRIME CONTRACTOR:</b>   |     |     |                    |                      | \$                      |
| <b>E. TOTAL AMOUNT OF BID (SUM OF A, B, C &amp; D):</b>   |     |     |                    |                      | \$                      |
| <b>F. PERCENTAGE OF BID SUBCONTRACTED TO MBEs AND WBEs. (Add A and B. Divide by E and multiply by 100).</b> |     |     |                    |                      | %                       |

Please read and initial the following statement acknowledging you understand.

If the percentage of the total amount of the bid being awarded to MBE or WBE vendors is less than 20% (Box F) and the prime contractor is NOT a Rhode Island State-certified MBE or WBE, **you must fill out the MBE/WBE WAIVER REQUEST FORM for consideration by City of East Providence MBE/WBE Outreach Director.** Initial \_\_\_\_\_

\_\_\_\_\_  
*Signature of Prime Contractor*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Date Signed*

**MBE/WBE WAIVER REQUEST FORM**

**Fill out this form only if you are using subcontractors and did not meet the 20% MBE/WBE participation goal. MBE or WBE Prime Bidders that are certified by the State of Rhode Island are NOT REQUIRED to fill out this form.**

Submit this form to the City of East Providence MBE/WBE Outreach Director, Elmer Carvalho-Pina at [epina@eastprovidenceri.gov](mailto:epina@eastprovidenceri.gov) and Procurement Specialist, Ralph Mitchell at [rmitchell@eastprovidenceri.gov](mailto:rmitchell@eastprovidenceri.gov) for review prior to bid submission.

This waiver applies only to the current bid which you are submitting to the City of Providence and does not apply to other bids your company may submit for in the future.

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

Company Trade: \_\_\_\_\_

Item Description (as seen on RFP): \_\_\_\_\_

To receive a waiver, you must list the certified MBE and/or WBE companies you contacted, the name of the primary individual with whom you interacted and the reason the MBE/WBE company could not participate on the project.

| MBE/WBE<br>Company name | Individual's<br>Name | Company Trade | Why did you choose not to<br>work with this company? |
|-------------------------|----------------------|---------------|--|
|                         |                      |               |  |
|                         |                      |               |  |
|                         |                      |               |  |
|                         |                      |               |  |
|                         |                      |               |  |

I acknowledge the City of East Providence’s goal of a combined MBE/WBE participation is 20% of the total bid value. I am requesting a waiver of \_\_\_\_\_% MBE/WBE (20% minus the Value of Box F on the Subcontractor Disclosure Form). If an opportunity is identified to subcontract any task associated with the fulfillment of this contract, a good faith effort will be made to select MBE/WBE certified businesses as partners.

\_\_\_\_\_  
Signature of Prime Contractor

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of City of East Providence  
MBE/WBE Outreach Director

\_\_\_\_\_  
Printed Name of City of East Providence  
MBE/WBE Outreach Director

\_\_\_\_\_  
Date Signed



## ANTI-COLLUSION DECLARATION

The Bidder, by virtue of issuing a Bid certifies that Bidder has not divulged, discussed or compared the Bid with other Bidders and has not colluded with any other Bidder of parties to a Bid whomsoever. Bidder further certifies and agrees that premiums, rebates or gratuities are prohibited whether with, prior to, or after any delivery of material or services. Any such violation will result in the cancellation of this contract and the removal of offending parties from all Bid lists.

### CONFLICT OF INTEREST

The Bidder and all sub-contractors shall disclose in writing as part of their Bid any possible or potential conflicts of interest which are known to, or reasonably should be known to the Bidder or sub-contractors, which may exist between their firms and the City of East Providence.

All Bidders and their subcontractors and business partners must disclose with their Bid, the name of any officer, director, agent or employee who is also an employee or family member of an employee of the City of East Providence.

Further, the Bidder must disclose the name of any City of East Providence employee or family member or any elected official who owns, directly or indirectly, an investment or other proprietary interest, in the firm or any of its parent company, subsidiaries or affiliates.

The Bidder and all sub-contractors and business partners shall disclose in writing as part of their Bid, any familial, personal or business relationships between members of Bidders, sub-contractor's or business partner's firms and members of the City of East Providence, whether or not there is any belief that the relationship might constitute a possible conflict of interests.

BIDDING FIRM:

SIGNATURE:

DATE:

PRINT NAME:

TITLE:



**City of East Providence  
Attn: Procurement Specialist**

**ELECTRONIC BID DOCUMENT NOTIFICATION OF RECEIPT**

In order to compile a complete listing of all recipients of the initial bid package please return this completed form by e-mail [to Controllers@eastprovidenceri.gov](mailto:Controllers@eastprovidenceri.gov)

It is the responsibility of all potential bidders to ensure any and all addenda are downloaded from the City website <https://eastprovidenceri.gov/rfp>

The undersigned hereby acknowledges electronic receipt of the bid documents for the procurement specified below.

***From:***

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Bid No.: \_\_\_\_\_

Title of Specification received:  
\_\_\_\_\_

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



# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

▶ Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Print or type.  
See Specific Instructions on page 3.

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

- |   |               |               |             |              |
|---|---------------|---------------|-------------|--------------|
| Individual/sole proprietor or single-member LLC | C Corporation | S Corporation | Partnership | Trust/estate |
|---|---------------|---------------|-------------|--------------|
- Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ \_\_\_\_\_
- Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.
- Other (see instructions) ▶ \_\_\_\_\_

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) \_\_\_\_\_

Exemption from FATCA reporting code (if any) \_\_\_\_\_

*(Applies to accounts maintained outside the U.S.)*

2 Business name/disregarded entity name, if different from above

Requester's name and address (optional)

5 Address (number, street, and apt. or suite no.) See instructions.

6 City, state, and ZIP code

7 List account number(s) here (optional)

## Part I Taxpayer Identification Number (TIN)

Social security number

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

OR

|  |  |  |  |  |  |
|--|--|--|--|--|--|
| Employer identification number   |  |  |  |  |  |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> </tr> </table> |  |  |  |  |  |
|  |  |  |  |  |  |

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments

other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here

Signature of U.S. person ▶

Date ▶

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer

identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

**Note:** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.

5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

### Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

## What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

**a. Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note: ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

**b. Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

**c. Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

**d. Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

**e. Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

### Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

### Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

| IF the entity/person on line 1 is a(n) . . .   | THEN check the box for . . .  |
|--|---|
| • Corporation  | Corporation   |
| • Individual<br>• Sole proprietorship, or<br>• Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.   | Individual/sole proprietor or single-member LLC   |
| • LLC treated as a partnership for U.S. federal tax purposes,<br>• LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or<br>• LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes. | Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation) |
| • Partnership  | Partnership   |
| • Trust/estate   | Trust/estate  |

### Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

#### Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

| IF the payment is for . . .  | THEN the payment is exempt for . . .  |
|--|---|
| Interest and dividend payments   | All exempt payees except for 7  |
| Broker transactions  | Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012. |
| Barter exchange transactions and patronage dividends                                   | Exempt payees 1 through 4   |
| Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup> | Generally, exempt payees 1 through 5 <sup>2</sup>   |
| Payments made in settlement of payment card or third party network transactions        | Exempt payees 1 through 4   |

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note:** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

## Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

## Line 6

Enter your city, state, and ZIP code.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note:** See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.SSA.gov](http://www.SSA.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/Businesses](http://www.irs.gov/Businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. Go to [www.irs.gov/Forms](http://www.irs.gov/Forms) to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to [www.irs.gov/OrderForms](http://www.irs.gov/OrderForms) to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note:** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.**

You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLÉ accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**What Name and Number To Give the Requester**

| For this type of account:  | Give name and SSN of:   |
|--|---|
| 1. Individual  | The individual  |
| 2. Two or more individuals (joint account) other than an account maintained by an FFI                          | The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup> |
| 3. Two or more U.S. persons (joint account maintained by an FFI)   | Each holder of the account  |
| 4. Custodial account of a minor (Uniform Gift to Minors Act)   | The minor <sup>2</sup>  |
| 5. a. The usual revocable savings trust (grantor is also trustee)  | The grantor-trustee <sup>1</sup>  |
| b. So-called trust account that is not a legal or valid trust under state law                                  | The actual owner <sup>1</sup>   |
| 6. Sole proprietorship or disregarded entity owned by an individual  | The owner <sup>3</sup>  |
| 7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A)) | The grantor <sup>4</sup>  |
| For this type of account:  | Give name and EIN of:   |
| 8. Disregarded entity not owned by an individual   | The owner   |
| 9. A valid trust, estate, or pension trust   | Legal entity <sup>4</sup> The   |
| 10. Corporation or LLC electing corporate status on Form 8832 or Form 2553                                     | corporation   |
| 11. Association, club, religious, charitable, educational, or other tax-exempt organization                    | The organization  |
| 12. Partnership or multi-  | The partnership   |
| 13. A broker or registered nominee   | The broker or nominee   |

| For this type of account:   | Give name and EIN of:                              |
|---|--|
| 14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments | The public entity                                  |
| 15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form section 1.671-4(b)(2)(i)(B))  | The trust<br>1099 Filing Method 2 (see Regulations |

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

**\*Note:** The grantor also must provide a Form W-9 to trustee of trust.

**Note:** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Secure Your Tax Records From Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.**

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at [spam@uce.gov](mailto:spam@uce.gov) or report them at [www.ftc.gov/complaint](http://www.ftc.gov/complaint). You can contact the FTC at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see [www.IdentityTheft.gov](http://www.IdentityTheft.gov) and Pub. 5027.

Visit [www.irs.gov/IdentityTheft](http://www.irs.gov/IdentityTheft) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.



1. WORK IDENTIFIED IN THE CONTRACT DOCUMENTS

- A. Scope: The scope of this project includes, but is not limited to, installing water meters of various size up to 2-inches, as specified; installing encoders/registers and radio-frequency (RF) modules; and furnishing and installing fittings and other incidentals as required for a fully functional and operational meter reading system.
- B. The City will provide all meters, encoders/registers, and RF modules to the Contractor for their installation. Meters will be Neptune T-10 meters of various size from 5/8-inch to 2-inch. RF modules will be Neptune R900. Contractor shall provide other materials as required for complete and functional installation.
- C. Project Location: City of East Providence, Rhode Island.
- D. The Owner hereby reserves the right, at any time, or from time to time, to order additions, deletions, or revisions in the work to be authorized through a written amendment (change order), which shall be subject to the provisions in General Conditions - Article 10.

2. CONTRACT PERIOD AND TERM OF AGREEMENT

- A. The overall contract period is four hundred (400) calendar days from date set in the Notice to Proceed (excluding the 1-year technical support services requested by Owner). Substantial completion shall be three hundred sixty-five (365) days following the Notice to Proceed, and final completion shall be four hundred (400) calendar days from the Notice to Proceed.
- B. The Bidder/Proposer must agree to commence work on or before a date to be specified in a written Notice to Proceed from the City and to fully complete the Project within 400 days of the start date specified in the Notice to Proceed. In the event that the Contractor fails to complete the work by the established end date, he agrees to pay the City all damages, which the City may suffer or incur, such as additional engineering, construction inspection and administrative expenses and any other consequential expenses for damages. The Director of Public Works will certify as to the damages incurred and the Contractor shall pay the City the amount thereof promptly on demand. In addition to the above, the Bidder agrees to pay as liquidated damages, the sum of \$500.00 a day for no fault of City excessive delay of project beyond the date of completion established under the Contract.

3. OBLIGATION OF THE PROPOSER

- A. At the time of opening of Proposals, each Proposer will be presumed to have inspected the Specifications and Contract Documents (including all Addenda), which have been sent to the address given by such Proposer. The failure or omission of any Proposer to receive or examine any form, instrument, or document or to inspect any item specified as a Trade-in shall in no way relieve any Proposer from any obligation with respect to his Proposal.
- B. Any exceptions or deviations from the provisions contained in this Specification must be explained in detail and attached to the Proposal. If such deviations do not depart from the intent of this notice and are in the best interest of the Owner, the Proposal will receive

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careful consideration.

4. TAX EXEMPTION

- A. Rhode Island Sales and Use Tax: Materials and equipment purchased for installation under this Contract are exempt from the Rhode Island Sales Tax. The exemption from the Sales Tax shall be accounted for by the Proposer when preparing and submitting their Proposal.
- B. Rhode Island Sales Tax: The City of East Providence is exempt from the payment of Rhode Island Sales Tax under the 1956 General Laws of the State of Rhode Island, 44-18-30 Paragraph 1, as amended.
- C. Federal Excise Taxes: The City of East Providence is exempt from the payment of any excise or federal transportation taxes. Prices submitted must be exclusive of taxes and will be so construed.

5. LABOR REGULATIONS

- A. The following paragraphs regarding labor regulations shall be included and become part of these Contract Documents:
  - 1. Non-resident Contractors are subject to Section 44-1-6 of the Rhode Island General Laws, as amended. (OUT OF STATE CONTRACTORS).
  - 2. The successful Proposer will be required to comply with the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations (29 CFR, Part 5).
  - 3. The successful Proposer will be required to comply with the Safety and Health Regulations (29 CFR, Part 1926 and all subsequent amendments) as promulgated by the Department of Labor.
  - 4. The successful Proposer will be required to comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352).
- B. Proposers must, if required, submit a compliance report concerning their employment practices and policies in order to maintain their eligibility to receive award of the Contract.
- C. Additional labor requirements, such as prevailing wage requirements and minority and woman-owned business participation, are stipulated in the Contract Documents.

6. ADDENDA AND INTERPRETATIONS

- A. No interpretation on the meaning of the Contract Documents will be made to any Proposer orally. Every request for such interpretations should be in writing and to be given consideration, must be received at least seven (7) days prior to the date fixed for the opening of the Proposals. Requests for interpretation shall be sent via email and made to the attention of Brandon M. Blanchard, P.E. ([bblanchard@parecorp.com](mailto:bblanchard@parecorp.com)) and Jessica Lamprey, Procurement Specialist ([jlamprey@eastprovidenceri.gov](mailto:jlamprey@eastprovidenceri.gov)).
- B. Any and all interpretations, and supplemental instructions, which, if issued, will be mailed by regular mail or emailed to all prospective Proposers (at the respective address furnished by the Proposer for such purpose), not later than forty-eight (48) hours prior to the date fixed

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for the opening of Proposals (unless such addenda postpones the opening of Proposals). Failure of Proposer to receive any such addendum or interpretations shall not relieve any Proposer from obligation under this Proposal as submitted. All addenda so issued shall become part of the Contract Documents.

7. STATE REVOLVING FUND

- A. Requirements of the Rhode Island Infrastructure Bank and the Rhode Island Drinking Water State Revolving Fund Program shall prevail where they conflict with the requirements described herein or in the Standard Instruction to Bidders and General Conditions of the contract.

8. PREVAILING WAGES

- A. In accordance with Rhode Island General Law 37-13-7, contracts in *excess of \$1,000* shall require compensation of all personnel based on *prevailing wages* for craftsmen, teamsters, and laborers engaged in construction, alteration and/or repair, painting and decorating. The rates are available from the Rhode Island Department of Labor at (401) 462-8580, or access on the web: [www.access.gpo.gov/davisbacon/allstates.html](http://www.access.gpo.gov/davisbacon/allstates.html) for the State forms. The selected Contractor shall be required to submit monthly certified payroll reports throughout the project, as required herein.

9. PERFORMANCE BOND

- A. In accordance with Rhode Island General Law 37-13-14, bidders/proposers for public works/public building contracts in *excess of \$5,000 shall furnish a performance bond, upon conditional award of the contract*, at 100% of the contract price, conditioned upon faithful performance of the contract. A Labor and Materials Bond, at full contract value, is required upon conditional award of the contract.

10. PLUMBING SERVICES

- A. Proposer shall have a Rhode Island licensed plumber available for any restorative plumbing work that is to be performed on a case-by-case basis to correct issues caused by the installer performing the work.
- B. Rhode Island General Law (RIGL) allows the City to use their employees or engage the services of licensed plumbers or other contractors/service providers that meet certain requirements as determined by the City, for the purpose of replacing water meters or meter reading devices. RIGL 5-20-35 (d) allows this exemption under Plumbers, Irrigators, and Water System Installation.

11. LEAD SERVICES

- A. Proposer is made aware that no work shall be performed on lead service lines under this Contract. If lead service lines are encountered during this contract, the selected Contractor shall notify the City immediately and shall provide the City with the purchased meter and appurtenant hardware for future installation by others.

END OF SECTION

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SECTION 00400

SUPPLEMENTS TO BID FORM

To: City of East Providence Controllers Office  
Attn: Procurement Specialist  
East Providence City Hall, Room 103  
145 Taunton Avenue  
East Providence, Rhode Island 02914

Project: City of East Providence Water Utilities Division (EPWUD)  
Water Meter Installation Project  
April 2024  
Pare Project No. 12200.14  
City of East Providence RFP No. EP23/24-23

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

Submitted by:  
(full name)

\_\_\_\_\_  
(full address)

In accordance with Section 00100 – Standard Instructions to Bidders, Section 00200 – Special Instructions to Bidders, and Bid Form, we include the Supplements to Bid Form appendices listed below. The information provided shall be considered an integral part of the Bid Form. These appendices are as follows:

- Appendix A: Subcontractors: Include the names of all subcontractors, including qualifications and experience and the portions of the work they will perform.
- Appendix B: Qualifications of Bidder
- Appendix C: Debarment & Suspension Certification

END OF SECTION





**APPENDIX C**

**DEBARMENT & SUSPENSION**

**Executive Order 12549--Debarment and Suspension**

**Source:** The provisions of Executive Order 12549 of Feb. 18, 1986, appear at 51 FR 6370, 3 CFR, 1986 Comp., p. 189, unless otherwise noted.

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to curb fraud, waste, and abuse in Federal programs, increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs, it is hereby ordered that:

**Section 1.** (a) To the extent permitted by law and subject to the limitations in Section 1(c), Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect. (b) Activities covered by this Order include but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees. (c) This Order does not cover procurement programs and activities, direct Federal statutory entitlements or mandatory awards, direct awards to foreign governments or public international organizations, benefits to an individual as a personal entitlement, or Federal employment.

**Sec. 2.** To the extent permitted by law, Executive departments and agencies shall: (a) Follow government-wide criteria and government-wide minimum due process procedures when they act to debar or suspend participants in affected programs. (b) Send to the agency designated pursuant to Section 5 identifying information concerning debarred and suspended participants in affected programs, participants who have agreed to exclusion from participation, and participants declared ineligible under applicable law, including Executive Orders. This information shall be included in the list to be maintained pursuant to Section 5. (c) Not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in an affected program. An agency may grant an exception permitting a debarred, suspended, or excluded party to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from this Presidential policy. However, I intend that exceptions to this policy should be granted only infrequently.

**Sec. 3.** Executive departments and agencies shall issue regulations governing their implementation of this Order that shall be consistent with the guidelines issued under Section 6. Proposed regulations shall be submitted to the Office of Management and Budget for review within four months of the date of the guidelines issued under Section 6. The Director of the Office of Management and Budget may return for reconsideration proposed regulations that the Director believes are inconsistent with the guidelines. Final regulations shall be published within twelve months of the date of the guidelines.



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**Sec. 4.** There is hereby constituted the Interagency Committee on Debarment and Suspension, which shall monitor implementation of this Order. The Committee shall consist of representatives of agencies designated by the Director of the Office of Management and Budget.

**Sec. 5.** The Director of the Office of Management and Budget shall designate a Federal agency to perform the following functions: maintain a current list of all individuals and organizations excluded from program participation under this Order, periodically distribute the list to Federal agencies, and study the feasibility of automating the list; coordinate with the lead agency responsible for government-wide debarment and suspension of contractors; chair the Interagency Committee established by Section 4; and report periodically to the Director on implementation of this Order, with the first report due within two years of the date of the Order.

**Sec. 6.** The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe government-wide criteria and government-wide minimum due process procedures, and set forth other related details for the effective administration of the guidelines.

**Sec. 7.** The Director of the Office of Management and Budget shall report to the President within three years of the date of this Order on Federal agency compliance with the Order, including the number of exceptions made under Section 2(c), and shall make recommendations as are appropriate further to curb fraud, waste, and abuse.

**Implementation in the SRF Programs**

A company or individual who is debarred or suspended cannot participate in primary and lower-tiered covered transactions. These transactions include SRF loans and contracts and subcontracts awarded with SRF loan funds.

Under 40 C.F.R. 32.510, the SRF agency must submit a certification stating that it shall not knowingly enter into any transaction with a person who is proposed for debarment, suspended, declared ineligible, or voluntarily excluded from participation in the SRF program. This certification is reviewed by the EPA regional office before the capitalization grant is awarded.

A recipient of SRF assistance directly made available by capitalization grants must provide a certification that it will not knowingly enter into a contract with anyone who is ineligible under the regulations to participate in the project. Contractors on the project have to provide a similar certification prior to the award of a contract and subcontractors on the project have to provide the general contractor with the certification prior to the award of any subcontract.

In addition to actions taken under 40 C.F.R. Part 32, there are a wide range of other sanctions that can render a party ineligible to participate in the SRF program. Lists of debarred, suspended and otherwise ineligible parties are maintained by the General Services Administration and should be checked by the SRF agency and all recipients of funds directly made available by capitalization grants to ensure the accuracy of certifications.

**Additional References**

C 40 C.F.R. Part 32: EPA Regulations on Debarment and Suspension.

**CERTIFICATION REGARDING DEBARMENT & SUSPENSION  
AND OTHER RESPONSIBILITY MATTERS**

In accordance with the Executive Order 12549, the prospective primary participant certifies to the best of his / her knowledge and belief, that its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification.
- d. Have not within a three-year period preceding this application / proposal had one or more public transactions (federal, state, or local) terminated for cause of default.
- e. Acknowledge that all sub-contractors selected for this project must be in compliance with paragraphs (1) (a – d) of this certification.

\_\_\_\_\_  
Name and Title of Authorized Agent Date

\_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_ I am unable to certify to the above statements. My explanation is attached.

**CITY OF EAST PROVIDENCE  
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WATER METER INSTALLATION PROJECT**

SECTION 00500

CONTRACT AGREEMENT

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A sample Contract for this project follows.

END OF SECTION

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This Contract (the “Contract”) is made and entered into by and between The City of East Providence, (the “City”) and [REDACTED] (the “Contractor”). This Contract shall become effective on the date it is executed by the last party to execute it (“the Effective Date”).

This Contract is for a project identified as City of East Providence Water Meter Installation Project #EP23/24-23.

For and in consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

### **ARTICLE 1** **THE WORK OF THIS CONTRACT**

The Contractor shall execute the entire work described in the Contract Documents, within 400 calendar days from date of signed contract except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

### **ARTICLE 2** **DOCUMENTS INCORPORATED BY REFERENCE**

This Contract includes the plans and specifications by Pare Corporation dated April 2024 as identified thereon for the Water Meter Installation Project, City’s Request for Proposal issued April 10, 2024, all of which are hereby incorporated herein by reference and made a part hereof. Change Orders issued hereafter, and any other amendments executed by the City and the Contractor, shall become and be a part of this Contract. Documents not included or expressly contemplated in this Article 2 do not, and shall not, form any part of this Contract.

### **ARTICLE 3** **REPRESENTATIONS OF THE CONTRACTOR**

In order to induce the City to execute this Contract and recognizing that the City is relying thereon, the Contractor, by executing this Contract, makes the following express representation to the City.

- (A) The Contractor is fully qualified to act as the contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the contractor for, and to construct, the Project;
- (B) The Contractor has become familiar with the Project site and the local conditions under which the Project is to be constructed and operated;
- (C) The Contractor has received, reviewed and carefully examined all the documents which make up this Contract, including, but not limited to, the plans and specifications, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction;
- (D) The Contractor is familiar with all Federal, State, municipal, and department laws, ordinances, orders, and regulations which may in any way affect the work of those employed therein, including, but not limited to, any special acts relating to the work or the Project of which it is a part;
- (E) The Contractor is aware of the hazards involved in the work and the danger to life and property both evident and inherent, and that the Contractor will conduct the work in a careful and safe manner without injury to persons or property.

**ARTICLE 4**  
**INTENT AND INTERPRETATION**

With respect to the intent and interpretation of this Contract, the City and the Contractor agree as follows:

- (A) This Contract, together with the Contractor's and Surety's performance in the total amount of the project cost and payment bonds for the Project, constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements. This Contract also supersedes any bid documents not incorporated herein pursuant to Article 2.
- (B) Anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price;
- (C) Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the City and any person except the Contractor;
- (D) When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

- (E) The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittals and shall give written notice to the City of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected work. The express or implied approval by the City of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties impose hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** The Contractor again hereby acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the City concerning such documents, as no such representations or warranties have been or are hereby made;
- (F) In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:
- (1) As between drawings and specifications, the specifications shall govern;
  - (2) As between figures given on plans and scaled measurements, the figures shall govern;
  - (3) As between this document and the plans or specifications, this document shall govern.

**ARTICLE 5**  
**OWNERSHIP OF DOCUMENTS WHICH MAKE UP THE CONTRACT**

The documents which make up this Contract, and each of them, as well as any other documents furnished by the City, shall remain the property of the City. The City shall provide the Contractor with a sufficient number of copies of the complete Contract as the City determines is necessary. The Contractor shall have the right to keep the Contractor's executed set; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of such Contract on other projects without the City's prior written authorization. All sets in usable condition, with the exception of the Contractor's executed set, shall be returned to the City at the completion or cessation of the work or termination of the Contract.

**ARTICLE 6**  
**CONTRACTOR'S PERFORMANCE**

The Contractor shall perform all of the work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

- (A) Construction of the Project;
- (B) The furnishing of the required 100% Performance Bond and Certificate of General Liability insurance coverage of \$1,000,000, as well as Workers' Compensation Insurance as required by the State of Rhode Island for itself and any of its employees.
- (C) The provision and furnishing, and prompt payment of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits required for the construction of the Project;
- (D) The creation and submission to the City of detailed and comprehensive as-built drawings depicting all as-built construction. Said as-built drawings shall be submitted to the City upon final completion of the Project and receipt of same by the City shall be a condition precedent to final payment to the Contractor.

**ARTICLE 7**  
**TIME FOR CONTRACTOR'S PERFORMANCE**

- (A) The Contractor shall commence the performance of this Contract within ten (10) calendar days after the Notice to Proceed and shall diligently continue its performance to and until final completion of the Project (subject to a winter shutdown period if necessary as provided for in Article 8 Paragraph (L)). The Contractor shall accomplish Substantial Completion of the Project on or before the dated established pursuant to Paragraphs (K) and (L) in Article 8.
- (B) The Contractor shall pay the City the sum of \$500 Dollars per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at the time of executing this Contract. When the City reasonably believes that Substantial Completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.
- (C) The term "Substantial Completion", as used herein, shall mean that point as determined by the City at which the Project is at a level of completion in strict compliance with this Contract such that the City or its designee can enjoy beneficial use or occupancy and can use or operate in all respects, for its intended purpose. Partial use or occupancy of the



Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

- (D) All limitations of time set forth herein are material and are of the essence of this Contract.

**ARTICLE 8**  
**PAYMENTS TO CONTRACTOR**

- (A) The City shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder, the Contract Sum of [REDACTED] (\$ [REDACTED]) total for the completion of work of the City of East Providence Water Meter Installation Project at the price set forth in this Paragraph 8 shall constitute the Contract Price, which shall not be modified except by Change Order as provided in this contract.
- (B) The City shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Paragraph 8. On or before the 15th day of each month after commencement of performance, but no more frequently than one monthly, the Contractor may submit a Payment Request for the period ending the 31st day of preceding the month. Said Payment Request shall be in such format and include whatever supporting information as may be required by the City. Each Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of work has reached the level for which payment is requested, that the work has been properly installed or performed in strict compliance with this Contract and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the City shall review the Payment Request and may also review the work at the project site or elsewhere to determine whether the quantity and quality of the work is as represented in the Payment Request and is as required by this Contract. The City shall approve in writing the amount which, in the opinion of the City, is properly owing to the Contractor. The payment of the Contractor's invoice will be made no later than thirty (30) days after the receipt of the invoice subject to the above. The Contractor shall submit progress invoices dated the last day of the month. These invoices will be submitted on G702 and G703 (AIA approved) documents.
- (C) The City will retain a percentage of the progress or monthly payments claimed, including approved change orders. The retainage shall remain at five percent (5%) until seventy-five percent (75%) of the Contract is complete, as determined by the City. At that time if the City decides the Contractor is making adequate progress, the City may reduce retainage to two and one half percent (2.5%) of the dollar value of all work satisfactorily complete to date, including change orders. Any further reduction in the retainage amount shall be at the City's discretion. The retainage shall be paid by the City to the Contractor within ninety (90) days of the date the work is accepted by the City unless a dispute exists with respect to the work.
- (D) Upon Substantial Completion, the City may reduce the amount of retainage to the final retainage of 2.5% of the dollar value of all work satisfactorily completed to date,

including approved change orders plus an additional retainage based on the City's estimate of the fair value of any punch list items and the cost of completing and/or correcting such incomplete or defective items or work. As these items are completed or corrected, they shall be paid for out of the retainage until Final Completion and Acceptance of Work is declared by the City. The final (2.5%) retainage shall be paid to the Contractor by the City within ninety (90) days of the date the work is accepted by the City unless a dispute exists with respect to the work.

- (E) Upon Final Completion and Acceptance of the Work, City shall issue a certificate attached to the final payment request stating that the Work has been accepted by the City under the conditions of the Contract Documents. The entire balance to be due the Contractor shall be paid to the Contractor within ninety (90) days of Final Completion and Acceptance of Work.
- (F) When payment is received from the City, the Contractor shall immediately pay all subcontractor, materialmen, laborers and suppliers the amounts they are due for the work covered by such payment. In the event the City becomes informed that the Contractor has not paid a subcontractor, materialman, laborer, or supplier as provided herein, the City shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the City, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- (G) Neither payment to the Contractor, utilization of the Project for any purpose by the City, nor any other act or omission by the City shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Contract.
- (H) The City shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:
  - (1) The quality of a portion, or all, of the Contractor's work not being in accordance with the requirements of this Contract;
  - (2) The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;
  - (3) The Contractor's rate of progress being such that, in the City's opinion, substantial or final completion, or both, may be inexcusably delayed;
  - (4) The Contractor's failure to use Contract funds, previously paid the Contractor by the City, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;

- (5) Claims made, or likely to be made, against the City or its property;
- (6) Loss caused by the Contractor;
- (7) The Contractor's failure or refusal to perform any of its obligations to the City.

In the event that the City makes a written demand upon the Contractor for amounts previously paid by the City as contemplated in this paragraph, the Contractor shall promptly comply with such demand.

- (I) When Substantial Completion has been achieved, the Contractor shall notify the City in writing and shall furnish to the City a listing of those matters yet to be finished. The City will thereupon conduct an inspection to confirm that the work is in fact substantially complete. Upon its confirmation that the Contractor's work is substantially complete, the City will so notify the Contractor in writing and will therein set forth the date of Substantial Completion. If the City, through its inspection, fails to find that the Contractor's work is substantially complete, and is required to repeat all, or any portion, of its Substantial Completion inspection, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by the City from any payment then or thereafter due to the Contractor.
- (J) When the Project is finally complete and the Contractor is ready for final inspection, it shall notify the City thereof in writing. Thereupon, the City will perform a final inspection of the project. If the City confirms that the project is complete in full accordance with this Contract and the Contractor has performed all of its obligations to the City hereunder, the City will furnish a final Approval for Payment certifying that the project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the City is unable to issue its final Approval for Payment and is required to repeat its final inspection of the Project, the Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by the City from the Contractor's final payment.
- (K) The Contractor is to begin work within ten (10) days after the date of the Notice to Proceed and shall complete the work within 400 consecutive days of notification of each assignment. If the Contractor fails to complete the work as set forth in this paragraph 8(L), the Contractor shall pay the City the sum of [REDACTED] (\$ [REDACTED]) per day for each and every calendar day of unexcused delay in completing the work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract. When the City reasonably believes that the date of completion will be un-excusable delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving completion

of the work, or any part thereof, for which the City has withheld payment, the City shall promptly release the Contractor those funds withheld, but no longer applicable, as liquidated damages.

- (L) The time for completion noted above has been developed upon the assumption that the work may be suspended during winter shutdown if necessary. Winter shutdown shall be determined by the Director of Public Works for the City of East Providence. The time period specified for completion of the work in Paragraph (K) above shall be suspended during such winter shutdown. The contractor shall plan on winter shutdown period based upon these dates unless otherwise directed by the City. The winter shutdown dates are subject to change depending upon weather conditions. The City shall notify the Contractor in writing if there is a change in the winter shutdown period due to weather, environmental or other conditions which preclude the work from being executed in accordance with these documents.
  
- (M) Prior to being entitled to receive final payment, and as a condition precedent thereto, the Contract shall furnish to the City, in the form and manner required by the City:
  - (1) An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
  
  - (2) If required by the City, separate releases of lien or lien waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have a claim against the City or the City's property;
  
  - (3) If applicable, consent(s) of surety to final payment;
  
  - (4) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout.

**ARTICLE 9**  
**MUNICIPAL POLICE TRAFFIC CONTROL**

The cost of municipal police traffic control shall be paid in accordance with RIGL §37-12-10. The Contractor shall be responsible for scheduling municipal police officers for traffic control purposes through the police department. If traffic control assignments are cancelled without twenty-four (24) hours notice, the Contractor is responsible to pay the City of East Providence for the hours police officers would have worked it if had not been for the untimely cancellation of the assignment. The City at its sole discretion may require such scheduling to be pre-approved by the Public Works Department. The Contractor is responsible for all highway safety equipment for traffic control purposes including but not limited to proper signage and traffic cones.

**ARTICLE 10**  
**CEASE AND DESIST ORDER**

In the event the Contractor fails or refuses to perform the work as required herein, the City may instruct the Contractor to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instruction has been corrected, no longer exists, or the City instructs that the work resume. In the event the City issues instructions to cease and desist, and in the further event that the Contractor fails and refuses within seven (7) calendar days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right, but not the obligation, to carry out the work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such work by the City. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the City may have against the Contractor.

**ARTICLE 11**  
**DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR**

In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in this Contract, the Contractor shall have and perform the following duties, obligations and responsibilities to the City:

- (A) The Contractor is again reminded of its continuing duties set forth in Subparagraph 4(E) which are by reference hereby incorporated in this Subparagraph 10(A). The Contractor shall not perform work without adequate plans and specifications, or, as appropriate, approved shop drawings, or other submittals. If the Contractor performs work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to the City and the Architect, the Contractor shall be responsible for such work and pay the cost of correcting same;
- (B) All work shall strictly conform to the requirements of this Contract;
- (C) The work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the work on behalf of the Contractor;
- (D) The Contractor hereby warrants that all labor furnished under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new and of high quality, that the completed work will be complete, of high quality, without defects, and that all work strictly complies with the requirements of this Contract. Any work not strictly complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty.
- (E) The Contractor shall obtain and pay for all required permits, fees and licenses

customarily obtained by the Contractor. The Contractor shall comply with all legal requirements applicable to the work;

- (F) The Contractor shall employ and maintain at the Project site only competent supervisory personnel.
- (G) The Contractor shall keep an updated copy of this Contract at the Project site. Additionally, the Contractor shall keep a copy of approved shop drawings and other submittals. All of these items shall be available to the City at all regular business hours. Upon final completion of the work, all of these items shall be finally updated and provided to the City and shall become the property of the City.
- (H) The Contractor shall maintain the Project site in a reasonably clean condition during performance of the work. Upon final completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment.
- (I) At all times relevant to this Contract, the Contractor shall permit the City to enter upon the Project site and to review or inspect the work without formality or other procedure.

#### **ARTICLE 12**

#### **DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CITY**

- (A) Except for permit fees which are the responsibility of the Contractor, the City shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, and services performed pursuant to the Contract.
- (B) If the Contractor fails to correct work which is not in accordance with the requirements of the contract, and persistently fails to carry out the work in accordance with the Contract, the City, by a written letter, may order the contractor to stop all work, or any portion thereof, until the cause of such order has been eliminated; however, the right of the City to stop the work shall not give rise to a duty on the part of the city to exercise this right for the benefit of the Contractor or any other person or entity.
- (C) Upon completion and acceptance of the work, the City shall issue a certificate attached to the final payment request that the work has been accepted by the City under the conditions of the Contract.

#### **ARTICLE 13**

#### **“OR EQUAL” CLAUSE**

- (A) Whenever a material or article required is specified or shown on the drawings by using the name of the proprietary product of a particular manufacturer or vendor, any material or article which will perform adequately the duties imposed by the general design may be considered equal and satisfactory providing the material or article so proposed is of equal substance and function in the City’s opinion. It shall not be purchased or installed without

the City's written approval. In all cases new material shall be used in the project.

- (B) If more than one brand, make of material, device, or piece of equipment is shown or specified, each should be regarded as the equal of the other. Any other brand, make of material, device, or equipment, which in the opinion of the City or its Authorized Representative, is the recognized equal of that specified (considering quality, workmanship and economy of operation), and is suitable for the purpose intended, may be accepted.

#### **ARTICLE 14** **INDEMNITY**

The Contractor shall indemnify and hold the City harmless from any and all claims, liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorney's fees and expenses, in connection with the Contractor's performance of this Contract, provided that such claims, liability, damage, loss, cost or expense is due to sickness, personal injury, disease or death, or loss or destruction of tangible property (other than the work itself), including loss of use resulting therefrom, to the extent caused by the Contractor, or anyone for whose acts the Contractor may be liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the City.

#### **ARTICLE 15** **CLAIMS BY THE CONTRACTOR**

Claims by the Contractor against the City are subject to the following terms and conditions:

- (A) All Contractor claims against the City shall be initiated by a written claim submitted to the City. Such claim shall be received by the City no later than seven (7) calendar days after the event, or the first appearance of the circumstances, causing the claim, and the same shall set forth in detail all known facts and circumstances supporting the claim;
- (B) The Contractor and City shall continue their performance hereunder regardless of the existence of any claims submitted by the Contractor.
- (C) In the event the Contractor discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical location of the Project, the Contract Price shall be modified, either upward or downward, upon the written claim made by either party within seven (7) calendar days after the first appearance to such party of the circumstances. As a condition precedent to the City having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Contractor to give written notice and make the claim as provided by this Subparagraph 15(c) shall constitute a waiver by the Contractor of any rights arising out of or relating to such concealed and unknown condition.

- (D) In the event the Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefor, the Contractor shall strictly comply with the requirements of Subparagraph 15(A) above and such claim shall be made by the Contractor before proceeding to execute any additional or change work. Failure of the condition precedent to occur shall constitute a waiver by the Contractor of any claim for additional compensation.
- (E) In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's cost shall be strictly limited to direct cost incurred by the Contractor and shall in no event include indirect cost or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third-parties including subcontractors, unless and until liability of the Contractor has been established therefor in a court of competent jurisdiction.
- (F) In the event the Contractor shall be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission by the City or someone acting in the City's behalf, or by City-authorized Change Orders, unusually bad weather not reasonably anticipatable, fire or other Acts of God, the date for achieving Substantial Completion, or, as applicable, final completion, shall be appropriately adjusted by the City upon the written claim of the Contractor to the City. A task is critical within the meaning of this Subparagraph 15(A) if, and only if, said task is on the critical path of the Project schedule so that delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the requirements of Subparagraph 15(A) above. If the Contractor fails to make such claim as required in this Subparagraph 15(F), any claim for an extension of time shall be waived.

**ARTICLE 16**  
**SUBCONTRACTORS**

Upon execution of this Contract, the Contractor shall identify to the City, in writing, those parties intended as subcontractors on the Project. The City shall, in writing, state any objections the City may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with reference to whom the City objects. The Contractor shall not award work to a subcontractor(s) in excess of fifty (50) percent of the Contract Price, without prior written approval of the City. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the City against the Contractor herein. Nothing contained in this Contract shall create any contractual relation between any subcontractor and the City.



**ARTICLE 17**  
**WAGE RATES**

- (A) There shall be paid to each laborer or mechanic of the Contractor or subcontractor engaged in the work on the Project under this Contract in the trade or occupation, an hourly wage rate pursuant to §37-13-7 of the General Laws of the State of Rhode Island regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics.
- (B) If, after the award of the Contract, it becomes necessary to employ any person in a trade or occupation not classified in the Contract, such person shall be paid at not less than a rate to be determined by the same authority which established the other wage rates for this Contract. Such approved minimum rate shall be retroactive to the time of the initial employment of such person in such trade or occupation. The Contractor shall notify the City of his intention to employ persons in trades or occupations not classified in sufficient time for the City to obtain approved rates for such trades or occupations.
- (C) The foregoing specified wage rates are minimum rates only, and the City will not consider any claims for additional compensation made by the Contractor because of payment by the Contractor of any wage rate in excess of the applicable rate contained in this Contract. All disputes in regard to the payment of wages in excess of those specified in this Contract, shall be adjusted by the Contractor.
- (D) Except as may otherwise be required by law, all claims and disputes pertaining to the classification of labor employed on the Project under this Contract, shall be decided by the City's governing body or other duly designated official.

**ARTICLE 18**  
**CHANGE ORDERS**

One or more changes to the work within the general scope of this Contract, may be ordered by Change Order. The Contractor shall proceed with any such changes, and the same shall be accomplished in strict accordance with the following terms and conditions:

- (A) Change Order shall mean a written order to the Contractor executed by the City after execution of this Contract, directing a change in the work and may include a change in the Contract Price or the time for the Contractor's performance, or any combination thereof. Said change orders must be approved by the City Manager on behalf of the City;
- (B) Any change in the Contract Price resulting from a Change Order shall be determined as follows:
  - (1) By mutual agreement between the City and the Contractor as evidenced by (a) the change in the Contract Price being set forth in the Change Order, (b) such change in the Contract Price, together with any conditions or requirements relating

thereto, being initialed by both parties and (c) the Contractor's execution of the Change Order; or,

- (2) If no mutual agreement occurs between the City and the Contractor, the change in the Contract Price, if any, shall be derived by determining the reasonable actual costs incurred or savings achieved, resulting from revisions in the work. Any such costs or savings shall be documented in the format, and with such content and detail as the City requires.
- (C) The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the work, this Contract as thus amended, the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed Change Order.
- (D) The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the City, the Contractor's surety or law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the City that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

#### **ARTICLE 19**

#### **DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK**

- (A) In the event that the Contractor covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the City, such work shall be uncovered and displayed for the City's inspection upon request, and shall be reworked at no cost in time or money to the City;
- (B) If any of the work is covered, concealed or obscured in a manner not covered by Subparagraph 19(A) above, it shall, if directed by the City, be uncovered and displayed for the City's inspection. If the uncovered work conforms strictly with this Contract, the costs incurred by the Contractor to uncover and subsequently, replace such work shall be borne by the City. Otherwise, such costs shall be borne by the Contractor;
- (C) The Contractor shall, at no cost in time or money to the City, correct work rejected by the City as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the City for all testing, inspections and other expenses incurred as a result thereof;
- (D) In addition to its warranty obligations set forth elsewhere herein, the Contractor shall be specifically obligated to correct any and all defective or nonconforming work for a period

of twelve (12) months following final completion upon written direction from the City.

- (E) The City may, but in no event be required to, choose to accept defective or nonconforming work. In such event, the Contract Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the project had it not been constructed in a manner as to include defective or nonconforming work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming work, the Contractor shall, upon written demand from the City, pay the City such remaining compensation for accepting defective or nonconforming work.

**ARTICLE 20**  
**TERMINATION BY THE CONTRACTOR**

If the City repeatedly fails to perform its material obligations to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance of this Contract by written notice to the City. In such event, the Contractor shall be entitled to recover from the City as though the City had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 22(A) hereunder.

**ARTICLE 21**  
**CITY'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE**

- (A) The City shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the City, the Contractor shall immediately comply with same;
- (B) In the event the City directs a suspension of performance under this Paragraph 21, through no fault of the Contractor, the City shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:
- (1) demobilization and remobilization, including such costs paid to subcontractors;
  - (2) preserving and protecting work in place;
  - (3) storage of materials or equipment purchased for the Project, including insurance thereon;
  - (4) performing in a later, or during a longer, time frame than that contemplated by this Contract.

**ARTICLE 22**  
**TERMINATION BY THE CITY**

The City may terminate this Contract in accordance with the following terms and conditions:

- (A) The City may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience. The City shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the work and the Contractor shall stop work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the City or designee. The Contractor shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated for convenience, the contractor shall be compensated as follows:
- (1) The Contractor shall submit a termination claim to the City specifying the amounts due because of termination for convenience together with costs, pricing or other data required by the City. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Contractor, an amount derived in accordance with Subparagraph (3) below;
  - (2) The City and the Contractor may agree to the compensation, if any, due to the Contractor hereunder;
  - (3) Absent agreement to the amount due to the Contractor, the City shall pay the Contractor the following amounts:
    - a) Contract prices for labor, materials, equipment and other services accepted under this contract;
    - b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would not have profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
    - c) Reasonable costs of settling and paying claims arising out

of the termination of subcontracts or orders pursuant to Subparagraph 18(A) of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 18(A) shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- (B) If the Contractor does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment, and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the City, in addition to any rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the work. In such case, the Contractor shall not be paid further until the work is complete. After final completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the City for cause pursuant to this Subparagraph 22(B) and is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 2(A) and the provision of Subparagraph 22(A) shall apply.

### **ARTICLE 23** **INSURANCE**

The Contractor shall carry and maintain the following insurance coverage at his own expense and add the City of East Providence as an additionally insured

- (A) All insurance for this Contract shall be written by a company (or companies) acceptable to the City and all policies or certificates shall be submitted to the City for examination prior to commencement of operations by the Contractor. In the event any policy or certificate, the amount of the insurance, or the company writing same are not satisfactory to the City, the Contractor shall secure other policies or certificates in form and amount with a company satisfactory to the City. The Contractor shall not permit policies to be changed, cancelled, or to lapse and all policies shall include a clause to the effect that the policy shall not be subject to cancellation or a reduction in the limits of liability or amounts of insurance until notice has been sent by mail to the City stating when, (not less than thirty days thereafter) such cancellation or reduction shall be effective. All certificates of insurance shall be delivered to the City and contain true transcripts from the policy or policies authenticated by the proper officer of the insurer evidencing in

particular those insured, the extent of the insurance, the location and operations to which the insurance applies, the expiration date and the above mentioned notice as to the location and operations involved.

If any part of the work is sublet, similar insurance shall be provided by or in behalf of the subcontractors to cover their operations. The Contractor shall be charged with the responsibility for insurance protection for all his subcontract operations and should the Contractor's policy not cover each and every subcontractor, certificates of insurance acceptable to the City covering each and every subcontractor shall be filed with said City prior to the commencement of subcontract operations.

(B) Contractor's Liability Insurance.

Liability insurance shall include all major divisions of coverage and be on a comprehensive general liability basis including:

Premises - Operations (including X-C-U)

Independent Contractor's protective

Products & completed operations

Blanket Contractual

Owned, non-owned and hired motor vehicles

Broad form coverage for property damage (including explosion, collapse and underground).

(C) The insurance required by this Subparagraph (b) shall be written for not less than the following, or greater if required by Law:

(1) Workers' Compensation:

a. State of Rhode Island - Statutory

b. Employer's Liability

(2) Comprehensive General Liability (including Premises Operations; Independent Contractor's Protective; Products & Completed Operations; Broad Form Property Damage):

(a) Bodily Injury:

\$1,000,000 - Each Occurrence

\$1,000,000 - Annual Aggregate

(b) Property Damage:

\$1,000,000 - Each Occurrence

\$1,000,000 - Annual Aggregate

(c) Products & Completed Operations to be maintained for one (1) year after final payment.

(d) Property Damage Liability Insurance will provide X, C, or U coverage as

applicable.

(3) Contractor's Liability:

(a) Bodily Injury:  
\$1,000,000 - Each Occurrence

(b) Property Damage:  
\$1,000,000 - Each Occurrence  
\$1,000,000 - Annual Aggregate

(4) Personal injury, with Employment Exclusion deleted:  
\$1,000,000 Annual Aggregate

(5) Comprehensive Automobile Liability:

(a) Bodily Injury:  
\$ 500,000 - Each Person  
\$1,000,000 - Each Occurrence

(b) Property Damage:  
\$1,000,000 - Each Occurrence

(6) Property Insurance:

The Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the City, the Contractor, Subcontractors and Subcontractors in the Work shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief.

(D) Insurance Covering Special Hazards:

Special hazards shall be covered by rider or riders to the Public Liability and Property Damage Insurance policy or policies herein above required to be furnished by the Contractor or by separate policies of insurance in the amounts stated in Paragraph 5(C).

- (1) Property Damage Liability arising out of the collapse of or injury to any building or structure due to excavation (including burrowing, filling or backfilling in connection therewith), tunneling, pile driving, cofferdam work, or caisson work; or moving, shoring, underpinning, razing or demolition of any building or structure, or removal or rebuilding of any structural support thereof.
- (2) Property Damage Liability for injury to or destruction of property arising directly or indirectly from blasting or explosions, however caused, other than explosions

of air or steam vessels, piping under pressure, prime movers, machinery, or power transmitting equipment.

- (3) Property Damage Liability for injury to or destruction of wires, conduits, pipes, mains, sewers, or other similar property, or any apparatus in connection therewith below the surface of the ground arising from and during the use of mechanical equipment for the purpose of excavating or drilling within project limits; injury to or destruction of property at any time resulting there from.
- (4) The Contractor shall require similar insurance in such amounts to be taken out and maintained by each subcontractor.

(E) “ALL RISK” Insurance:

The Contractor shall acquire and maintain “All Risk” type Builder’s Insurance. This insurance shall be in an amount equal to 100% of the insurable portion of the Project, and shall be for the benefit of the City, the Contractor, and each subcontractor as their interest may respectively appear.

**ARTICLE 24**  
**SURETY BONDS**

The Contractor shall be licensed to do business in the State of Rhode Island and shall furnish separate performance and payment bonds to the City. Each bond shall set forth a penal sum in an amount of not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the City and shall be executed by a surety, or sureties, reasonably acceptable to the City.

**ARTICLE 25**  
**PATENTS**

The Contractor shall pay all applicable royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights, and save the City harmless from loss on account thereof, except that the City shall be responsible for any such loss on when a particular process, design, or product of a manufacturer(s) is specified. However, if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, the Contractor shall be responsible for such loss unless the Contractor promptly gives such information to the City.



**ARTICLE 26**  
**APPRENTICES**

Apprentices shall be permitted to work only under a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal Committee of Apprenticeship, United States Department of Labor; or if no such Council exists in a State, under a program registered with the Bureau of Apprenticeship, United States Department of Labor.

**ARTICLE 27**  
**ASSIGNMENTS**

The Contractor shall not assign the whole or any part of this Contract, or any monies due or to become due hereunder, without the written consent of the City. In case the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms or corporations for services rendered or materials supplied for the performance of the work called for in this Contract.

**ARTICLE 28**  
**APPLICABLE LAW**

The law is hereby agreed to be the law of the State of Rhode Island.

**ARTICLE 29**  
**SUCCESSORS AND ASSIGNS**

Each party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of such party in connection with all terms and conditions of this Contract.

**CITY**

The City of East Providence  
East Providence, RI 02914

**CONTRACTOR**

By:

\_\_\_\_\_  
(Signature)

ROBERTO L. DASILVA, Mayor  
(Printed Name and Title)

\_\_\_\_\_  
(Date of Execution)

By:

\_\_\_\_\_  
(Signature)

(Printed Name and Title)

\_\_\_\_\_  
(Date of Execution)

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**CITY OF EAST PROVIDENCE  
WATER UTILITIES DIVISION  
WATER METER INSTALLATION PROJECT**

SECTION 00620

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, \_\_\_\_\_, as  
Principal, and \_\_\_\_\_, as  
Surety, are held and firmly bound unto the State of Rhode Island, as Oblige, in the sum of  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_),  
well and truly to paid, and for the payment of which we and each of us hereby bind our self, our heirs,  
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal has submitted a Bid for the City of East Providence's Water Meter Installation Project.

NOW, THEREFORE, if the City of East Providence shall accept the Bid of the Principal and the Principal shall enter into a Contract with the City of East Providence in accordance with the terms of such Bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the City of East Providence the difference not to exceed the penalty hereof between the amount specified in said Bid and such larger amount for which the City may in good faith contract with another party to perform the Work covered by said Bid, then this obligation shall be null and void, otherwise to remain in full force.

**CITY OF EAST PROVIDENCE  
WATER UTILITIES DIVISION  
WATER METER INSTALLATION PROJECT**

**BID BOND**

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this instrument at the City of East Providence, Rhode Island, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

WITNESS:

\_\_\_\_\_  
(Principal)

By: \_\_\_\_\_  
Name & Title  
(Affix Corporate Seal)

\_\_\_\_\_  
(Surety)

By: \_\_\_\_\_  
Attorney-in-fact  
(Affix Corporate Seal Here)

FEIN No.

(Attach Power of Attorney to this Bond)

END OF SECTION

**CITY OF EAST PROVIDENCE  
WATER UTILITIES DIVISION  
WATER METER INSTALLATION PROJECT**

SECTION 00630

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, \_\_\_\_\_, as Principal,  
and \_\_\_\_\_, as Surety, are held  
and firmly bound unto the City of East Providence, as Oblige, in the sum of \_\_\_\_\_  
Dollars (\$ \_\_\_\_\_ ), well and truly to paid, and for the payment of which we  
and each of us hereby bind our self, our heirs, executors, administrators, successors and assigns, jointly  
and severally, firmly by these presents.

THIS OBLIGATION IS UPON THE CONDITION that if the person or persons designated in the  
contract annexed hereto as the Contractor, shall faithfully furnish and perform everything required to be  
furnished and performed by them under the provisions of said Contract then this obligation shall be void;  
otherwise, it shall remain in full force and effect.

In the event that the said contract is abandoned by the Contractor, or the work of the Contractor is  
discontinued by the City of East Providence under the provisions of the GENERAL CONDITIONS, said  
surety hereby further agrees that it shall, if requested in writing by the City of East Providence, take such  
action as is necessary to complete said contract.

FOR VALUE RECEIVED, said surety company hereby stipulates and agrees that no change, extension of  
time, alteration or addition to the terms of said contract or to the work to be performed thereunder or the  
Contract Documents accompanying the same shall in any wise affect its obligation on this bond, and does  
hereby waive notice of any such change, extension of time, alteration or addition to the terms of said  
contract or to the work or to the specifications.

Said surety hereby certifies and affirms under the penalties of perjury that said surety is licensed by the  
State of Rhode Island.

Any legal action commenced by Principal or Surety must be commenced within two (2) years from the  
date of final payment.

**CITY OF EAST PROVIDENCE  
WATER UTILITIES DIVISION  
WATER METER INSTALLATION PROJECT**

**PERFORMANCE BOND**

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this instrument at the City of East Providence, Rhode Island, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

WITNESS:

(Principal)

By: \_\_\_\_\_  
Name & Title  
(Affix Corporate Seal)

(Surety)

By: \_\_\_\_\_  
Attorney-in-fact  
(Affix Corporate Seal Here)

FEIN No.

(Attach Power of Attorney to this Bond)

END OF SECTION

**CITY OF EAST PROVIDENCE  
WATER UTILITIES DIVISION  
WATER METER INSTALLATION PROJECT**

SECTION 00700

GENERAL CONDITIONS

- A. This Contract is governed by the enclosed General Conditions, except where modified by Section 00800 - Supplemental Conditions.

END OF SECTION

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

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*a practice division of the*  
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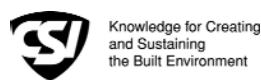
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National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314

American Council of Engineering Companies  
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

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## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

---

#### 1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*--The individual or entity named as such in the Agreement.

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *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.

41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

42. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain

administrative requirements and procedural matters applicable thereto.

44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

45. *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.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

48. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *Work*--The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times

but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

### B. Intent of Certain Terms or Adjectives

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

### C. Day

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

### D. Defective

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

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



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

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

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2 - PRELIMINARY MATTERS

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### *2.01 Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

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

### *2.02 Copies of Documents*

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

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

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement

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

### *2.04 Starting the Work*

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

### *2.05 Before Starting Construction*

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

1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

### *2.06 Preconstruction Conference*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

### *2.07 Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

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3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

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

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or

responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work

(unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

### 3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or

2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### 3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's

sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party..

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

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### 4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

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

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

#### 4.02 *Subsurface and Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

#### 4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

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

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

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

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

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

#### C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

- a. reviewing and checking all such information and data,
- b. locating all Underground Facilities shown or indicated in the Contract Documents,
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

#### B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will

promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 *Reference Points*

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

#### 4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to

entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06. G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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

## ARTICLE 5 - BONDS AND INSURANCE

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### 5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified

in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

#### 5.02 *Licensed Sureties and Insurers*

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

#### 5.03 *Certificates of Insurance*

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

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

#### 5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection

from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

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

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

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

3. include completed operations insurance;

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

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

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

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

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

#### 5.05 *Owner's Liability Insurance*

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

#### 5.06 *Property Insurance*

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

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

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

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any



deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

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

#### 5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them.

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

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order .

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

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

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract

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

#### 5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

### ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

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#### 6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or

received from the superintendent shall be binding on Contractor.

#### 6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

#### 6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

#### 6.05 *Substitutes and "Or-Equals"*

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

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

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

#### 2. Substitute Items

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

**B. Substitute Construction Methods or Procedures:** If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

**C. Engineer's Evaluation:** Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

**D. Special Guarantee:** Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

**E. Engineer's Cost Reimbursement:** Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract

Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

**F. Contractor's Expense:** Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

#### 6.06 Concerning Subcontractors, Suppliers, and Others

**A.** Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

**B.** If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

**C.** Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual

or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.07 *Patent Fees and Royalties*

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

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

#### 6.08 *Permits*

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

#### 6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

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

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Draw-

ings or Specifications or to the acts or omissions of Owner or Engineer or , or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

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

#### 6.14 *Safety Representative*

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

#### 6.15 *Hazard Communication Programs*

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

#### 6.16 *Emergencies*

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

#### 6.17 *Shop Drawings and Samples*

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

##### 1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

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

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals , any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

##### C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

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

d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents

with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

#### *D. Engineer's Review*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

#### *E. Resubmittal Procedures*

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

#### *6.18 Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or

disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

#### *6.19 Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

#### *6.20 Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or



arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal

shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## ARTICLE 7 - OTHER WORK AT THE SITE

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### 7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and
2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and

properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

#### 7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

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

#### 7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

## ARTICLE 8 - OWNER'S RESPONSIBILITIES

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### 8.01 *Communications to Contractor*

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

### 8.02 *Replacement of Engineer*

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

### 8.03 *Furnish Data*

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

### 8.04 *Pay When Due*

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

### 8.05 *Lands and Easements; Reports and Tests*

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

### 8.06 *Insurance*

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

### 8.07 *Change Orders*

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

### 8.08 *Inspections, Tests, and Approvals*

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

## 8.09 *Limitations on Owner's Responsibilities*

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

## 8.10 *Undisclosed Hazardous Environmental Condition*

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

## 8.11 *Evidence of Financial Arrangements*

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

## ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

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### 9.01 *Owner's Representative*

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

### 9.02 *Visits to Site*

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

Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

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

### 9.03 *Project Representative*

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

### 9.04 *Authorized Variations in Work*

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

### 9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

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

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show

partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

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

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

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10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall

promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

#### 10.02 *Unauthorized Changes in the Work*

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

#### 10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

#### 10.04 *Notification to Surety*

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

#### 10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,

2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

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

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11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

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

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and

Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

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

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

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

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have

resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

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

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

**C. Contractor's Fee:** When all the Work is performed on the basis of cost-plus, Contractor's fee shall

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

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

## 11.02 Allowances

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

### B. Cash Allowances

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

### C. Contingency Allowance

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

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

## 11.03 Unit Price Work

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

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

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

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

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

2. there is no corresponding adjustment with respect any other item of Work; and

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

## ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

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### 12.01 *Change of Contract Price*

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

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an

allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

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

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

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

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

### 12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted



by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

### 12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

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### 13.01 *Notice of Defects*

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

### 13.02 *Access to Work*

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

### 13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to

be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

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

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

#### 13.04 *Uncovering Work*

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

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 13.05 *Owner May Stop the Work*

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

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

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

#### 13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications .

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

#### 13.08 *Acceptance of Defective Work*

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

#### 13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

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

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

### ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

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#### 14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress

payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

#### 14.02 *Progress Payments*

##### A. Applications for Payments

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

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

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

##### B. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

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

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent

inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due*

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

*D. Reduction in Payment*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

- a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling Owner to a set-off against the amount recommended; or
- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

*14.03 Contractor's Warranty of Title*

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

*14.04 Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, , Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial

Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

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

#### 14.05 *Partial Utilization*

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

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals

that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.07 *Final Payment*

##### A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. consent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

##### B. *Engineer's Review of Application and Acceptance*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations

under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

#### C. Payment Becomes Due

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

#### 14.08 *Final Completion Delayed*

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

#### 14.09 *Waiver of Claims*

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

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance

with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

## ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

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### 15.01 *Owner May Suspend Work*

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

### 15.02 *Owner May Terminate for Cause*

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

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety ) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

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

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

#### 15.03 *Owner May Terminate For Convenience*

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

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

## ARTICLE 16 - DISPUTE RESOLUTION

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### 16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be



governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or

2. agrees with the other party to submit the Claim to another dispute resolution process, or

3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

## ARTICLE 17 - MISCELLANEOUS

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### 17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### 17.02 *Computation of Times*

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

### 17.03 *Cumulative Remedies*

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

### 17.04 *Survival of Obligations*

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

### 17.05 *Controlling Law*

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

### 17.06 *Headings*

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

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**CITY OF EAST PROVIDENCE  
WATER UTILITIES DIVISION  
WATER METER INSTALLATION PROJECT**

SECTION 00733 STATE REVOLVING FUND (SRF) LOAN PROGRAM REQUIREMENTS

SECTION 00733 INDEX

- A. Drinking Water State Revolving Fund Program - Contract Specifications Package (45 pages)
- B. EPA Disadvantaged Business Enterprise (DBE) Program – DBE Forms (6 pages)
- C. Good Faith Efforts to achieve DBE participation (2 pages)
- D. State of Rhode Island Minority Business Enterprise Utilization Plan (1 page)
- E. Office of Diversity, Equity and Opportunity Minority Business Enterprise Project Reporting Form (1 page)
- F. State Revolving Fund Sign (3 pages)
- G. Davis Bacon Wage Rates/Questionnaire (9 pages)
- H. Debarment & Suspension (Executive Order 12549) and Certification (3 pages)
- I. EPA American Iron and Steel Memorandum (20 pages)
- J. Rhode Island Certified Prevailing Wage Daily Log (1 page)
- K. EPA Memorandum “Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment in the SRF Programs” (2 pages)

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**Attachment A**

**Drinking Water State Revolving Fund Program – Contract Specifications**



## Rhode Island Department of Health Center for Drinking Water Quality

### Drinking Water State Revolving Fund Program Relevant Federal and State Laws

#### A. Federal

- 1) Equal Employment Opportunity and Affirmative Action (Executive Order 11246)
  - i) OFCCP fact sheet.
  - ii) Equal Opportunity Clause and the Standard Federal Equal Employment Specifications.
  - iii) Notice of Non-Discrimination in Employment.
- 2) Non-discrimination in employment notice.
- 3) Assurance of compliance with Title VI of the Civil Rights Act of 1964 and Section 13 of the FWPCA Amendments of 1972 (EPA form 4700-1).
- 4) Affirmative steps for soliciting MBE/WBE (40 CFR 31.36(e))

Applicable cross-cutting Federal authorities for projects funded through SRF programs are made available at [http://water.epa.gov/grants\\_funding/dwsrf/xcuts.cfm](http://water.epa.gov/grants_funding/dwsrf/xcuts.cfm). Additional information is provided in the United States Environmental Protection Agency's cross-cutting handbook available at <https://www.epa.gov/sites/production/files/2015-08/documents/crosscutterhandbook.pdf>.

#### B. State of Rhode Island

- 1) RIGL 37-2.1, Domestic Steel
- 2) RIGL 37-12, Contractors Bonds
- 3) RIGL 37-12.1, Substitution of Security for Retained Earnings of Architects and Engineers.
- 4) RIGL 37-13, Labor and Payment of Debts by Contractors
  - i) Prevailing Wage Rates
- 5) RIGL 37-14.1, Minority Business Enterprise
  - i) Regulations Governing Participation by Minority Business Enterprises in State Funded and Directed Public Construction Projects, Construction Contracts and Procurement Contracts Goods and Services.
- 6) RIGL 37-16, Public Works Arbitration
- 7) RIGL 45-55, Award of Municipal Contracts

**NOTE:** This package is prepared by DOH as a service of the DWSRF program. While every attempt at accuracy has been made, these are not certified true copies of the laws presented. **The responsibility for compliance with all applicable provisions of Federal and State laws and regulations relating to the bidding, award, and performance of contracts is the applicant's and the bidder's.** Certified true and complete copies of any Rhode Island laws and regulations may be obtained from the Office of the Secretary of State.

# Employment Standards Administration Office of Federal Contract Compliance Programs

## Fact Sheet EXECUTIVE ORDER 11246

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

### **BASIC PROVISIONS**

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

OFCCP administers and enforces Executive Order 11246, as amended, which prohibits federal contractors and federally-assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin.

The Executive Order also requires Government contractors to take affirmative action to insure that equal opportunity is provided in all aspects of their employment.

### **AFFIRMATIVE ACTION REQUIREMENTS**

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

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

If there are problems, the contractor will specify in its AAP the specific procedures it will follow and the good faith efforts it will make to provide equal employment opportunity.

Expanded efforts in outreach, recruitment, training and other areas are some of the affirmative steps contractors can take to help members of the protected groups compete for jobs on equal footing with other applicants and employees.

Affirmative action is not preferential treatment. It does not mean that unqualified persons should be hired or promoted over other people. What affirmative action does mean is that positive steps must be taken to ensure equal employment opportunity for traditionally disadvantaged groups.

### **ENFORCEMENT AND COMPLIANCE**

#### **Compliance Reviews**

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

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

#### **Complaint Investigations**

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

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

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

### **Compliance Assistance**

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

### **Enforcing Contract Compliance**

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

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

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

### **Further Information**

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



# EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Executive Order 11246

(Excerpts from 41 CFR 60 Parts 1 and 4)

## 41 CFR 60-1.4 - Equal opportunity clause

(b) Federally assisted construction contracts. Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

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, sexual orientation, gender identity, 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. Such action shall include but not be limited to the following:
- (2) 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. 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, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' 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.
- (5) 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.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will

permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation of the equal opportunity clause by reference.* The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Director may designate.

(e) *Incorporation by operation of the order.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

## **41 CFR 60-4.3 - Equal opportunity clauses**

(a) The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in, and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in, and is a part of, all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers, all applicants and all non-construction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to 60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under the Executive order.

### *Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)*

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

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
  - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
  - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
  - g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
  - h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
  - i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations

- serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to

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

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(b) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR Part 60-4 become effective.

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45 FR 65978, Oct. 3, 1980]

**NOTICE TO LABOR UNIONS OR OTHER ORGANIZATIONS OF WORKERS**

**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 of (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 Executive Order 11246, dated September 24, 1965, the undersigned is obliged not to discriminate against any employee or applicant for employment because of race, age, handicap, veteran status, color, creed, or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following:

**HIRING, PLACEMENT, UPGRADING, TRANSFER, OR DEMOTION,  
RECRUITMENT, ADVERTISING, OR SOLICITATION FOR  
EMPLOYMENT TRAINING DURING EMPLOYMENT, RATES OF PAY  
OR OTHER FORMS OF COMPENSATION, SELECTION FOR TRAINING  
INCLUDING APPRENTICESHIP, LAYOFF, OR TERMINATION.**

This notice is furnished 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.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Contractor or Subcontractor)

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



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**ASSURANCE OF COMPLIANCE  
FOR  
TITLE VI OF THE CIVIL RIGHTS ACT OF 1964  
AND  
SECTION 13 OF THE FWPCA AMENDMENTS OF 1972**

|   |   |                              |
|---|---|------------------------------|
| NAME AND ADDRESS OF APPLICANT/RECIPIENT ( <i>Hereinafter called ASSUROR</i> ) | GRANT IDENTIFICATION NUMBER<br><i>(To be completed by EPA)</i>  | GRANT AMOUNT REQUESTED<br>\$ |
|   | TYPE OF GRANT<br><input type="checkbox"/> DEMONSTRATION <input type="checkbox"/> RESEARCH <input type="checkbox"/> TRAINING<br><input type="checkbox"/> OTHER ( <i>Specify</i> ): |                              |
|   | CHECK ONE:<br><input type="checkbox"/> NEW <input type="checkbox"/> CONTINUATION  |                              |

HEREBY AGREES THAT IT will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements of the U.S. Environmental Protection Agency (*hereinafter called "EPA"*) issued pursuant to that title, to the end that in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Assuror receives financial assistance from EPA and hereby gives assurance that it will now and hereafter take all necessary measures to effectuate this agreement.

HEREBY AGREES THAT IT will comply with all applicable requirements of Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) and all requirements of EPA issued pursuant to that section, to the end that in accordance with that section of that Act, no person in the United States shall, on the ground of sex be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity under the said Federal Water Pollution Control Act Amendments for which the Assuror receives assistance from EPA and hereby gives assurance that it will now and hereafter take all necessary measures to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of financial assistance extended to the Assuror by EPA, this Assurance obligates the Assuror, or, in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provisions of similar services or benefits. If any personal property is so provided, this Assurance obligates the Assuror for the period during which it retains ownership or possession of the property. In all other cases, this Assurance obligates the Assuror for the period during which the financial assistance is extended to it by EPA.

THE ASSURANCE is given in consideration of and for the purpose of obtained any and all Federal grants, loans, contracts, property discounts or other financial assistance extended after the date hereof to the Assuror by EPA including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Assuror recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States shall reserve the right to seek judicial enforcement of this Assurance. The Assurance is binding on the Assuror, its successors, transferees, and assignees, and the person or persons whose signature appear below are authorized to sign this Assurance on behalf of the Assuror.

The obligations assumed by the Assuror hereunder are in addition to any obligations which may be imposed to the Assuror by any applicable regulation now outstanding or which may hereafter be adopted by EPA to effectuate any provision or goal of the said Title VI and all applicable requirements of the said Section 13, and no part of this Assurance shall be read so as to in any way detract from or modify any obligation which may be imposed on the Assuror by any such regulation standing alone.

|  |      |
|--|------|
| SIGNATURE OF ASSUROR BY PRESIDENT, CHAIRMAN OF BOARD OR COMPARABLE AUTHORIZED OFFICIAL | DATE |
|--|------|

# **CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE**

## 40 CFR 31.36(e)

40 CFR 31.36(e) – Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The grantee and sub-grantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- (vi) Requiring the prime contractor, if subcontracts are to be let, to take affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

# TITLE 37

## CHAPTER 2.1 DOMESTIC STEEL

### Section

|           |                                      |
|-----------|--------------------------------------|
| 37-2.1-1. | Short Title                          |
| 37-2.1-2. | Purpose                              |
| 37-2.1-3. | Purchase of steel and steel products |
| 37-2.1-4. | Payment                              |
| 37-2.1-5. | Definitions                          |

#### **37-2.1-1. Short title.**

This chapter shall be known and may be cited as the "Steel Products Procurement Act".

#### **37-2.1-2. Purpose.**

- (a) This chapter shall be deemed to be an exercise of the police powers of the state for the protection of the health, safety, and general welfare of the people of the state.
- (b) It is hereby determined by the general assembly of Rhode Island and declared as a matter of legislative findings that:
- (1) The United States is one of the leading countries in the production and use of steel and its allied products;
  - (2) The use of steel products constitutes a major industry of the United States and, as such, provides the jobs and family incomes of millions of persons in the United States;
  - (3) The taxes paid to Rhode Island and the United States by employers and employees engaged in the production and sale of steel products are one of the largest single sources of public revenues in this country;
  - (4) It has, for many years, been the policy of the state to aid and support the development and expansion of industry in the United States in order to foster the economic well-being of the state and its people; and
  - (5) The economy, general welfare, and national security of the United States, are inseparably related to the preservation and development of the steel industry in the United States.
- (c) The general assembly therefore declares it to be the policy of the state that all public officers and agencies should, at all times, aid and promote the development of the steel industry of the United States in order to stimulate and improve the economic well-being of the state and its people.

#### **37-2.1-3. Purchase of steel and steel products.**

- (a) Every public agency shall require that every contract document for the construction, reconstruction, alteration, repair, improvement, or maintenance of public works contain a provision that, if any steel products are to be used or supplied in the performance of the contract, only steel products as herein defined shall be used or supplied in the performance of the contract or any subcontracts thereunder.
- (b) This section shall not apply in any case where the head of the public agency, in writing, determines that steel products as herein defined are not produced in, or readily available in the United States or that such steel products shall not exceed fifteen percent (15%) of the costs of any other steel products obtainable nationally or internationally.

#### **37-2.1-4. Payment.**

No public agency shall authorize, provide for, or make any payments to any person under any contract containing the provision required by 37-2.1-3 unless the public agency is satisfied that such person has fully complied with that provision. Any such payments made to any person by any public agency which should not have been made, as a result of this section, shall be recoverable directly from the contractor or subcontractor who did not comply with 37-2.1-3 by either such public agency or the attorney general upon suit filed in the court of any county.

### **37-2.1-5. Definitions.**

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

- (a) "Person" means natural persons as well as corporations, partnerships, business units, and associations;
- (b) "Public agency" means (1) the state and its departments, boards, commissions and agencies, (2) cities, towns, school districts, and any other governmental unit or district, (3) any and all other public bodies, authorities, officers, agencies, or instrumentalities, whether exercising a governmental or proprietary function;
- (c) "Public works" means steel to construct, frame or reinforce any public structure, building, highway, waterway, street, bridge, transit system, airport, or other betterment, work or improvement, whether of a permanent or temporary nature, and whether for governmental or proprietary use;
- (d) "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel making process;
- (e) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

# TITLE 37

## CHAPTER 12 CONTRACTORS' BONDS

### Sections

- 37-12-1. Contractors required to give bond – Terms and conditions.
- 37-12-2. Rights of persons furnishing labor and materials.
- 37-12-3. Remedies of creditors and state – Priority of claims.
- 37-12-4. Intervention by creditor in suit brought by state.
- 37-12-5. Time limitation on creditors' actions.
- 37-12-6. Intervention in suit brought by creditor – Consolidation of suits.
- 37-12-7. Notice of Pendency of Suit
- 37-12-8. Certified copies of documents.
- 37-12-9. Payment into court by surety – Discharge.
- 37-12-10. Retainers relating to contracts for public works or sewer or water main construction.
- 37-12-11. Substitution of securities for retained earnings.

**§ 37-12-1. Contractors required to give bond – Terms and conditions.** – Every person (which word for the purposes of this chapter shall include a co-partnership, a number of persons engaged in a joint enterprise, or a corporation), before being awarded a contract by the department of transportation or by the department of administration, as the case may be, and every person awarded such a contract as a general contractor or construction or project manager for the construction, improvement, completion, or repair of any public road or portion thereof or of any bridge in which the contract price shall be in excess of fifty thousand dollars (\$ 50,000), or for a contract for the construction, improvement, completion, or repair of any public building, or portion thereof, shall be required to furnish to the respective department a bond of that person to the state, with good and sufficient surety or sureties (hereafter in this chapter referred to as surety), acceptable to the respective department, in a sum not less than fifty percent (50%) and not more than one hundred percent (100%) of the contract price, conditioned that the contractor, principal in the bond, the person's executors, administrators, or successors, shall in all things, well and truly keep and perform the covenants, conditions, and agreements in the contract, and in any alterations thereof made as therein provided, on the person's part to be kept and performed, at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the state, the respective department, and all of its officers, agents, and employees, as therein stipulated, and shall also promptly pay for all such labor performed or furnished and for all such materials and equipment furnished, (which as to equipment shall mean payment of the reasonable rental value, as determined by the respective department, of its use during the period of its use), as shall be used in the carrying on of the work covered by the contract, or shall see that they are promptly paid for, whether or not the labor is directly performed for or furnished to the contractor or is even directly performed upon the work covered by the contract, and whether or not the materials are furnished to the contractor or become component parts of the work, and whether or not the equipment is furnished to the contractor or even directly used upon the work. The bond shall contain the provisions that it is subject to all such rights and powers of the respective department and such other provisions as are set forth in the contract and the plans, specifications, and proposal incorporated by reference in the contract, and that no extension of the time of performance of the contract or delay in the completion of the work thereunder or any alterations thereof, made as therein provided, shall invalidate the bond or release the liability of the surety thereunder. Waiver of the bonding requirements of this section is expressly prohibited.

### **37-12-2. Rights of persons furnishing labor and materials.**

Every person who shall have performed labor and every person who shall have furnished or supplied labor, material, or equipment in the prosecution of the work provided for in the contract, in respect of which a payment bond is furnished under § 37-12-1, and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the day on which the last of the labor was performed or furnished by him or her, or material or equipment furnished or supplied by him or her for which a claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of the suit and to prosecute the action to final execution and judgment for the sum or sums justly due him or her; provided, however, that any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor

furnishing the payment bond shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety (90) days from the date on which the person furnished or performed the last of the labor, or furnished or supplied the last of the material or equipment for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the labor was furnished or performed or the material or equipment was furnished or supplied. The notice shall be served by mailing the same by certified mail, postage prepaid, in an envelope addressed to the contractor at any place he or she maintains an office, conducts his or her business, or his or her residence.

### **37-12-3. Remedies of creditors and state - Priority of claims.**

The remedy on the bond shall be by a civil action brought in the superior court for the counties of Providence and Bristol and in any suit brought on the bond the rights of the state shall be prior to those of all creditors. The rights of persons who shall have performed labor as aforesaid shall be prior to the rights of all other creditors, and there shall be no priorities among laborers or among other creditors under the bond. The state, either after having recovered a judgment against the contractor on the contract or without having recovered a judgment, may bring a suit on the bond against the contractor and surety on the bond, and may join as parties defendant in the suit any persons claiming to have rights under the bond as creditors; and, if it has not brought such a suit, it may at any time before a final and conclusive decree, intervene and become a party in any suit brought, as hereafter provided in this chapter, by any person claiming to be a creditor under the bond.

### **37-12-4. Intervention by creditor in suit brought by state.**

Any person claiming to be a creditor under the bond may at any time intervene and become a party in any pending suit brought as aforesaid by the state on the bond, and by so intervening may have the rights to the person adjudicated in the suit.

### **37-12-5. Time limitation on creditors' actions.**

No suit instituted under § 37-12-2 shall be commenced after the expiration of two (2) years, or under the maximum time limit as contained within any labor or material payment bond required under § 37-12-1, whichever period is longer, after the day on which the last of the labor was furnished or performed or material or equipment was furnished or supplied by any person claiming under the section.

### **37-12-6. Intervention in suit brought by creditor - Consolidation of suits.**

When a suit has been so brought on the bond by a person claiming to be a creditor under the bond and is pending, any other person claiming to be a creditor under the bond may intervene and become a party in the first suit thus brought and pending and by so intervening may have the rights of the other person adjudicated in the suit. If two (2) or more of the suits be filed in the court on the same day, the one in which the larger sum shall be claimed shall be regarded as the earlier suit. All suits brought upon the bond as provided in this chapter shall be consolidated together by the court and heard as one suit.

### **37-12-7. Notice of pendency of suit.**

In any suit brought under the provisions of this chapter such personal notice of the pendency of the suit as the court may order shall be given to all such known creditors and persons claiming to be creditors under the bond as shall not have entered their appearances in the suit and, in addition to the notice, notice of the pendency of the suit shall be given by publication in some newspaper published in this state of general circulation in the city or town or every city or town in which the work covered by the contract was carried on, once a week for three (3) successive weeks, in such form as the court may order. The court, however, may dispense with the notices if satisfied that sufficient notices shall have been given in some other suit brought under the provisions of this chapter.

### **37-12-8. Certified copies of documents.**

Any person claiming to be a creditor under the bond and having filed a claim with the respective department, in accordance with the requirements of § 37-12-2, shall have the right, at any time when the person could under this chapter file a suit or intervene in a pending suit, to require the respective department to furnish to the person certified copies of the contract, proposal, plans specifications, and bond.

### **37-12-9. Payment into court by surety - Discharge.**

The surety on the bond may pay into the registry of the court, for distribution among those who may be or become entitled thereto under the decree of the court, the penal sum named in the bond less any amount which the surety

may have paid to the state in satisfaction of the liability of the surety to the state under the bond, and then shall be entitled to be discharged from all further liability under the bond.

### **37-12-10. Retainers relating to contracts for public works or sewer or water main construction.**

(a) Upon substantial completion of the work required by a contract aggregating in amount less than five hundred thousand dollars (\$ 500,000) with any municipality, or any agency or political subdivision thereof, for the construction, reconstruction, alteration, remodeling, repair, or improvement of sewers and water mains, or any public works project defined in, the awarding authority may deduct from its payment a retention to secure satisfactory performance of the contractual work not exceeding five percent (5%) of the contract price unless otherwise agreed to by the parties. Upon substantial completion of the work required by a contract aggregating in an amount of five hundred thousand dollars (\$ 500,000) or greater with any municipality, or any agency or political subdivision thereof, for the construction, reconstruction, alteration, remodeling, repair, or improvement of sewers and water mains, or any public works project defined in § 37-13-1, the awarding authority may deduct from its payment a retention to secure satisfactory performance of the contractual work not exceeding five percent (5%) of the contract price. In the case of periodic payments with respect to contracts less than the aggregate amount of five hundred thousand dollars (\$ 500,000), the awarding authority may deduct from its payment a retention to secure satisfactory performance of the contractual work not exceeding five percent (5%) of the approved amount of any periodic payment unless otherwise agreed to by the parties. In the case of periodic payments with respect to contracts in the aggregate amount of five hundred thousand dollars (\$ 500,000) or greater, the awarding authority may deduct from its payment a retention to secure satisfactory performance of the contractual work not exceeding five percent (5%) of the approved amount of any periodic payment.

(b) The retainage shall be paid to any contractor or subcontractor within ninety (90) days of the date the work is accepted by the awarding authority unless a dispute exists with respect to the work. If payment is not made within ninety (90) days for any reason other than a dispute, which, if resolved and it is not the fault of the contractor, interest shall be assessed at the rate of ten percent (10%) per annum on all money which is to be paid to the contractor or subcontractor.

(c) The retainage shall be paid to any contractor or subcontractor within ninety (90) days of the date his or her work is completed and accepted by the awarding authority. If payment is not made, interest shall be assessed at the rate of ten percent (10%) per annum.

(d) There shall also be deducted and retained from the contract price an additional sum sufficient to pay the estimated cost of municipal police traffic control on any public works project. Municipalities shall directly pay the officers working traffic details and shall bill and be reimbursed by the withholding authority for which the contract is being performed every thirty (30) days until the project is complete.

(e) Notwithstanding the foregoing, with respect to projects located within the town of Warren, the withholding authority shall hold an amount from the contract price which shall be reasonably sufficient to pay the estimated cost of municipal police traffic control. The withholding authority shall pay to the town of Warren within seventy-two (72) hours of written demand the actual costs of police traffic control associated with said project on an ongoing basis.

### **37-12-11. Substitution of securities for retained earnings.**

(a) Where any public works contract as defined by § 37-13-1 provides for the retention of earned estimates by the state of Rhode Island, the contractor may, from time to time, withdraw the whole or any portion of the amount retained for payments to the contractor pursuant to the terms of the contract, upon depositing with the general treasurer either; (1) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, or United States treasury bills; (2) Bonds or notes of the state of Rhode Island ; or (3) Bonds of any political subdivision in the state of Rhode Island.

(b) No amount shall be withdrawn in excess of the market value of the securities at the time of deposit or of the par value of the securities, whichever is lower. The general treasurer shall, on a regular basis, collect all interest or income on the obligations so deposited and shall pay the interest or income, when and as collected, to the contractor who deposited the obligations. If the deposit is in the form of coupon bonds, the general treasurer shall deliver each coupon as it matures to the contractor. Any amount deducted by the state, or by any public department or official thereof, pursuant to the terms of the contract, from the retained payments otherwise due the contractor, shall be

deducted, first from that portion of the retained payments for which no security has been substituted, then from the proceeds of any deposited security. In the latter case, the contractor shall be entitled to receive interest, coupons, or income only from those securities which remain after the amount has been deducted. The securities so deposited shall be properly endorsed by the contractor in such manner so as to enable the general treasurer to carry out the provisions of this section.



## TITLE 37

### CHAPTER 12.1 SUBSTITUTION OF SECURITY FOR RETAINED EARNINGS OF ARCHITECTS AND ENGINEERS

#### Sections

- 37-12.1-1. Definition of Terms.
- 37-12.1-2. Substitution of security for retained earnings by designers.
- 37-12.1-3. Deduction from retained earnings.
- 37-12.1-4. Endorsement on securities.
- 37-12.1-5. Applicability.

#### **37-12.1-1. Definition of terms.**

Terms used in this chapter shall be construed as follows:

- (a) "Designers", means any person, firm or corporation duly authorized pursuant to the laws of this state to engage in the practice of architecture and/or engineering within this state.
- (b) "Public works contract" means a contract to perform design or planning services by a designer with the state or any agency or governmental subdivisions thereof.
- (c) "Retained earnings" means any moneys or earned estimates withheld from a designer pursuant to the terms of a public works contract.

#### **37-12.1-2. Substitution of security for retained earnings by designers.**

(a) Where any public works contract provides for the holding of retained earnings from a designer, the designer may from time to time withdraw the whole or any portion of the amount retained upon either depositing with the general treasurer:

- (1) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, or United States treasury bills;
- (2) Bonds or notes of the state of Rhode Island; or
- (3) Bonds of any political subdivision of the state of Rhode Island.

(b) With respect to the deposit of securities, the general treasurer shall, on a regular basis, collect all interest or income on the securities so deposited and shall pay the interest or income when and as collected to the designer depositing the securities. If the security is in the form of coupon bonds, the general treasurer shall deliver each coupon as it matures to the designer.

#### **37-12.1-3. Deduction from retained earnings.**

In the event that pursuant to the terms of the public works contract it is necessary to deduct any sum from retained earnings, the state or governmental unit or agency thereof shall first apply such deduction against sums not withdrawn and thereafter from the proceeds of the sale of any securities deposited or from the income earned on such securities, whichever is applicable.

#### **37-12.1-4. Endorsement on securities.**

All securities deposited with the general treasurer pursuant to this chapter shall be properly endorsed by the designer in such manner as to enable the general treasurer to carry out the provisions of this chapter.

#### **37-12.1-5. Applicability.**

This chapter shall apply to all retained earnings held pursuant to any public works contract as of [June 16, 1991].

# TITLE 37

## CHAPTER 13 LABOR AND PAYMENT OF DEBTS BY CONTRACTORS

### Sections

- 37-13-1. "Public Works" defined
- 37-13-2. "Contractor" defined – information required.
- 37-13-3. Contractors subject to provisions – Weekly payment of employees.
- 37-13-3.1 State public works contract apprenticeship requirements
- 37-13-4. Provisions applicable to public works contracts – List of Subcontractors.
- 37-13-5. Payment for trucking or materials furnished – Withholding of sums due.
- 37-12-6. Ascertainment of prevailing rate of wages and other payments – Specification of rate in call for bids and in contract.
- 37-13-7. Specification in contract of amount and frequency of payment and wages.
- 37-13-8. Investigation and determination of prevailing wages – Filing of schedule.
- 37-13-9. Statutory provisions included in contracts.
- 37-13-10. Overtime compensation.
- 37-13-11. Posting of prevailing wage rates.
- 37-13-12. Wage records of contractors.
- 37-13-12.1. Obstruction of enforcement.
- 37-13-12.2. Subpoena powers.
- 37-13-12.3. Compelling obedience to subpoenas.
- 37-13-12.4. Penalty for violations.
- 37-13-13. Furnishing payroll record to director of labor.
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### **37-13-1. "Public works" defined.**

"Public works" as used in this chapter shall mean any public work consisting of grading, clearing, demolition, improvement, completion, repair, alteration, or construction of any public road or any bridge, or portion thereof, or any public building or portion thereof, or any heavy construction, or any public works projects of any nature or kind whatsoever.

### **37-13-2. "Contractor" defined - Information required.**

The term "contractor" as used in this chapter shall mean the bidder whose bid has been accepted by an authorized agency or awarding authority as the bidder possessing the skills, ability, and integrity necessary to the faithful performance of the contract or work, and who shall certify that he or she is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the contract or work. Essential information in regard to qualifications shall be submitted in such form to the awarding authority and the director of labor and training as the director of labor and training shall require. The authorized agency or awarding authority shall reserve the right to reject all bids, if it be in the public interest to do so.

### **37-13-3. Contractors subject to provisions - Weekly payment of employees.**

All contractors, who have been awarded contracts for public works by an awarding agency or authority of the state or of any city, town, committee, or by any person or persons therein, in which state or municipal funds are used and of which the contract price shall be in excess of one thousand dollars (\$1,000) whether payable at the time of the signing of the contract or at a later date, and their subcontractors, on such public works shall pay their employees at weekly intervals and shall comply with the provisions set forth in 37-13-4 - 37-13-14, inclusive, and 37-13-16.

### **37-13-3.1. State public works contract apprenticeship requirements.**

Notwithstanding any laws to the contrary, all general contractors and subcontractors who perform work on any public works contract awarded by the state after passage of this act and valued at one million dollars (\$ 1,000,000) or more shall employ apprentices required for the performance of the awarded contract. The number of apprentices shall comply with the apprentice to journeyman ratio for each trade approved by the apprenticeship council of the department of labor and training. To the extent that any of the provisions contained in this section conflict with the requirements for federal aid contracts, federal laws and regulations shall control.

### **37-13-4. Provisions applicable to public works contracts - Lists of subcontractors.**

All public works shall be done by contract, subject to the same provisions of law relating thereto and to the letting thereof, which are applicable to similar contracts of the awarding authority or authorized agency, hereinafter called the "proper authority," in the general location where the work is to be performed and which are not contrary to the provisions of 37-13-1 - 37-13-14, and 37-13-16. Each contractor after the award of a contract for public works shall submit to the proper authority a list of his or her subcontractors of any part or all of the work. The list shall be submitted in such manner or form as the proper authority shall uniformly require from contractors in all public works.

### **37-13-5. Payment for trucking or materials furnished - Withholding of sums due.**

A contractor or subcontractor on public works authorized by a proper authority shall pay any obligation or charge for trucking and material which have been furnished for the use of the contractor or subcontractor, in connection with the public works being performed by him or her, within ninety (90) days after the obligation or charge is incurred or the trucking service has been performed or the material has been delivered to the site of the work, whichever is later. When it is brought to the notice of the proper authority in a city or town, or the proper authority in the state having supervision of the contract, that the obligation or charge has not been paid by the contractor or subcontractor, the proper authority may deduct and hold for a period not exceeding sixty (60) days, from sums of money due to the contractor or subcontractor, the equivalent amount of such sums certified by a trucker or material man creditor as due him or her, as provided in this section, and which the proper authority determines is reasonable for trucking performed or materials furnished for the public works.

### **37-13-6. Ascertainment of prevailing rate of wages and other payments - Specification of rate in call for bids and in contract.**

Before awarding any contract for public works to be done, the proper authority shall ascertain from the director of labor and training the general prevailing rate of the regular, holiday, and overtime wages paid and the general prevailing payments on behalf of employees only, to lawful welfare, pension, vacation, apprentice training, and educational funds (payments to the funds must constitute an ordinary business expense deduction for federal income tax purposes by contractors) in the city, town, village, or other appropriate political subdivision of the state in which the work is to be performed, for each craft, mechanic, teamster, laborer, or type of worker needed to execute the contract for the public works. The proper authority shall, also, specify in the call for bids for the contract and in the contract itself the general prevailing rate of the regular, holiday, and overtime wages paid and the payments on behalf of employees only, to the welfare, pension, vacation, apprentice training, and education funds existing in the locality for each craft, mechanic, teamster, laborer, or type of worker needed to execute the contract or work.

### **37-13-7. Specification in contract of amount and frequency of payment of wages.**

Every call for bids for every contract in excess of one thousand dollars (\$ 1,000), to which the state of Rhode Island or any political subdivision thereof or any public agency or quasi-public agency is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the state of Rhode Island or any political subdivision thereof, or any public agency or quasi-public agency and which requires or involves the employment of employees, shall contain a provision stating the minimum wages to be paid various types of employees which shall be based upon the wages that will be determined by the director of labor and training to be prevailing for the corresponding types of employees employed on projects of a character similar to the contract work in the city, town, village, or other appropriate political subdivision of the state of Rhode Island in which the work is to be performed. Every contract shall contain a stipulation that the contractor or his or her subcontractor shall pay all the employees employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates not less than those stated in the call for bids, regardless of any contractual relationships which may be alleged to exist between the contractor or subcontractor and the employees, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of the accrued payments as may be considered necessary to pay to the employees employed by the contractor, or any subcontractor on the work, the difference between the rates of wages required by the contract to be paid the employees on the work and the rates of wages received by the employees and not refunded to the contractor, subcontractors, or their agents.

(b) The terms "wages" , "scale of wages" , "wage rates" , "minimum wages" , and "prevailing wages" shall include:

(1) The basic hourly rate of pay; and

(2) The amount of:

(A) The rate of contribution made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to employees pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the employees affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of the benefits ; provided, that the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the director of labor and training insofar as this chapter of this title and other acts incorporating this chapter of this title by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in subsection ( b)(2), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in this subdivision, or any combination thereof, where the aggregate of any payments, contributions, and costs is not less than the rate of pay described in subsection (b)(1) plus the amount referred to in subsection (b)(2).

(c) The term "employees" , as used in this section, shall include employees of contractors or subcontractors performing jobs on various types of public works including mechanics, apprentices, teamsters, chauffeurs, and laborers engaged in the transportation of gravel or fill to the site of public works, the removal and/or delivery of gravel or fill or ready-mix concrete, sand, bituminous stone, or asphalt flowable fill from the site of public works, or the transportation or removal of gravel or fill from one location to another on the site of public works, and the employment of the employees shall be subject to the provisions of subsections (a) and (b) .

(d) The terms "public agency" and "quasi-public agency" shall include, but not be limited to, the Rhode Island industrial recreational building authority, the Rhode Island economic development corporation, the Rhode Island airport corporation, the Rhode Island industrial facilities corporation, the Rhode Island refunding bond authority, the Rhode Island housing and mortgage finance corporation, the Rhode Island resource recovery corporation, the Rhode Island public transit authority, the Rhode Island student loan authority, the water resources board corporate, the Rhode Island health and education building corporation, the Rhode Island turnpike and bridge authority, the Narragansett Bay water quality management district commission, Rhode Island telecommunications authority, the

convention center authority, the board of governors for higher education, the board of regents for elementary and secondary education, the capital center commission, the housing resources commission, the Quonset Point-Davisville management corporation, the Rhode Island children's crusade for higher education, the Rhode Island depositors economic protection corporation, the Rhode Island lottery commission, the Rhode Island partnership for science and technology, the Rhode Island public building authority, and the Rhode Island underground storage tank board.

### **37-13-8. Investigation and determination of prevailing wages - Filing of schedule.**

The director of labor and training shall investigate and determine the prevailing wages and payments made to or on behalf of employees, as set forth in § 37-13-7, paid in the trade or occupation in the city, town, village, or other appropriate political subdivision of the state and keep a schedule on file in his or her office of the customary prevailing rate of wages and payments made to or on behalf of the employees which shall be open to public inspection. In making a determination, the director of labor may adopt and use such appropriate and applicable prevailing wage rate determinations as have been made by the secretary of labor of the United States of America in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. § 276a; provided, however, that each contractor awarded a public works contract after July 1, 2007 shall contact the department of labor and training on or before July first of each year, for the duration of such contract to ascertain the prevailing wage rate of wages on a hourly basis and the amount of payment or contributions paid or payable on behalf of each mechanic, laborer or worker employed upon the work contracted to be done each year and shall make any necessary adjustments to such prevailing rate of wages and such payment or contributions paid or payable on behalf of each such employee every July first.

### **37-13-9. Statutory provisions included in contracts.**

A copy of 37-13-5, 37-13-6, and 37-13-7 shall be inserted in all contracts for public works awarded by the state or any city or town, committee, an authorized agency or awarding authority thereof, or any person or persons in their behalf in which state or municipal funds are used if the contract price be in excess of one thousand dollars (\$1,000).

### **37-13-10. Overtime compensation.**

Labor performed under the provisions of 37-13-1 - 37-13-16, inclusive, during the period of forty (40) hours in any one week and during the period of eight (8) hours in any one day, shall be considered a legal week's work or a legal day's work, as the case may be, and any number of hours of employment in any one week greater than the number of forty (40) hours or in any one day greater than the number of eight (8) hours shall be compensated at the prevailing rate of wages for overtime employment; provided, however, when the director of labor and training has determined in the investigation provided for in 37-13-7 and 37-13-8 that there is a prevailing practice in a city, town, or other appropriate political subdivision to pay an overtime rate of wages for work of any craft, mechanic, teamster, laborer, or type of worker needed to execute the work other than hours worked in any one week greater than the number of forty (40) or in hours worked in any one day greater than the number of eight (8), then the prevailing practice shall determine the legal workday and the legal workweek in the city or town for the work and the prevailing rate of overtime wages shall be paid for such work in excess of that legal workday or week, as the case may be.

### **37-13-11. Posting of prevailing wage rates.**

Each contractor awarded a contract for public works with a contract price in excess of one thousand dollars (\$ 1,000), and each subcontractor who performs work on those public works, shall post in conspicuous places on the project, where covered workers are employed, posters which contain the current, prevailing rate of wages and the current, prevailing rate of payments to the funds required to be paid for each craft or type of worker employed to execute the contract as set forth in §§ 37-13-6 and 37-13- 7, and the rights and remedies of any employee described in § 37-13-17 for nonpayment of any wages earned pursuant to this chapter. Posters shall be furnished to contractors and subcontractors by the director of labor and training, who shall determine the size and context thereof from time to time, at the time a contract is awarded. A contractor or subcontractor who fails to comply with the provisions of this section shall be deemed guilty of a misdemeanor and shall pay to the director of labor and training one hundred dollars (\$ 100) for each calendar day of noncompliance as determined by him or her. Contracts set forth in this section shall not be awarded by the state, any city, town, or any agency thereof until the director of labor and training has prepared and delivered the posters to the division of purchases, if the state or any agency thereof is the proper authority, or to the city, town, or an agency thereof, if it is the proper authority, and the contractor to whom the contract is to be awarded.

### **37-13-12. Wage records of contractors.**

Each contractor awarded a contract with a contract price in excess of one thousand dollars (\$1,000) for public works, and each subcontractor who performs work on those public works, shall keep an accurate record showing the name, occupation, and actual wages paid to each worker employed by him or her and the payments to all the employee funds specified in sections 37-13-6 and 37-13-7 by him or her in connection with the contract or work. The director and his or her authorized representatives shall have the right to enter any place of employment at all reasonable hours for the purpose of inspecting the wage records and seeing that all provisions of this chapter are complied with.

### **37-13-12.1. Obstruction of enforcement.**

Any effort of any employer to obstruct the director and his or her authorized representatives in the performance of their duties shall be deemed a violation of this chapter and punishable as such.

### **37-13-12.2. Subpoena powers.**

The director and his or her authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, subpoenas duces tecum, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the director.

### **37-13-12.3. Compelling obedience to subpoenas.**

In case of failure of any person to comply with any subpoena lawfully issued, or subpoena duces tecum, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the superior court, or any judge thereof, on application by the director, to compel obedience by proceedings in the nature of those for contempt.

### **37-13-12.4. Penalty for violations.**

Except as otherwise provided in this chapter, any employer who shall violate or fail to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for each separate offense, or by imprisonment of up to one year, or by both fine and imprisonment. Each day of failure to pay wages due an employee at the time specified in this chapter shall constitute a separate and distinct violation.

### **37-13-13. Furnishing payroll record to director of labor.**

(a) Every contractor and subcontractor awarded a contract for public works as defined by this chapter shall furnish a certified copy of his or her payroll records of his or her employees employed on the project to the awarding authority on a monthly basis for all work completed in the preceding month on a uniform form prescribed by the director of labor and training. Notwithstanding the foregoing, certified payrolls for department of transportation public works may be submitted on the federal payroll form, provided that, when a complaint is being investigated, the director or his or her designee may require that a contractor resubmit the certified payroll on the uniform department form.

(b) Awarding authorities, contractors and subcontractors shall provide any and all payroll records to the director of labor and training within ten (10) days of their request by the director or his or her designee.

(c) In addition, every contractor and subcontractor shall maintain on the site where public works are being constructed and the general or primary contract is one million dollars (\$1,000,000) or more, a daily log of employees employed each day on the public works project. The log shall include, at a minimum, for each employee his or her name, primary job title, and employer and shall be kept on a uniform form prescribed by the director of labor and training. Such log shall be available for inspection on the site at all times by the awarding authority and/or the director of the department of labor and training and his or her designee. This subsection shall not apply to road, highway, or bridge public works projects.

(d) The director of labor and training may promulgate reasonable rules and regulations to enforce the provisions of this section.

(e) The awarding authority of any public works project shall withhold the next scheduled payment to any contractor or subcontractor who fails to comply with the provisions of subsections (a) or (b) above and shall also

notify the director of labor and training. The awarding authority shall withhold any further payments until such time as the contractor or subcontractor has fully complied. If it is a subcontractor who has failed to comply, the amount withheld shall be proportionate to the amount attributed or due to the offending subcontractor as determined by the awarding authority. The department may also impose a penalty of up to five hundred dollars (\$500) for each calendar day of noncompliance with this section, as determined by the director of labor and training. Mere errors and/or omissions in the daily logs maintained under subsection (c) shall not be grounds for imposing a penalty under this subsection.

### **37-13-13.1. Audits of wage records of out of state contractors and subcontractors.**

Out of state contractors or subcontractors who perform work on public works in this state authorize the director of labor and training to conduct wage and hour audits of their payroll records pursuant to the provisions of chapter 14 of title 28.

### **37-13-14. Contractor's bond.**

The state or any city, town, agency, or committee therein awarding contracts for public works shall require the contractor awarded a contract with a contract price in excess of fifty thousand dollars (\$ 50,000) for public works to file with the proper authority good and sufficient bond with surety furnished by any surety company authorized to do business in the state, conditioned upon the faithful performance of the contract and upon the payment for labor performed and material furnished in connection therewith, a bond to contain the terms and conditions set forth in chapter 12 of this title, and to be subject to the provisions of that chapter. Waiver of the bonding requirements of this section is expressly prohibited.

### **37-13-14.1. Enforcement - Hearing**

(a) Before issuing an order or determination, the director of labor and training shall order a hearing thereon at a time and place to be specified, and shall give notice thereof, together with a copy of the complaint or the purpose thereof, or a statement of the facts disclosed upon investigation, which notice shall be served personally or by mail on any person, firm, or corporation affected thereby. The person, firm, or corporation shall have an opportunity to be heard in respect to the matters complained of at the time and place specified in the notice, which time shall be not less than five (5) days from the service of the notice personally or by mail. The hearing shall be held within ten (10) days from the order of hearing. The hearing shall be conducted by the director of labor and training or his or her designee. The hearing officer in the hearing shall be deemed to be acting in a judicial capacity and shall have the right to issue subpoenas, administer oaths, and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by Rhode Island civil practice law and rules. The hearing shall be expeditiously conducted, and upon such hearing, the hearing officer shall determine the issues raised thereon and shall make a determination and enter an order within ten (10) days of the close of the hearing, and forthwith serve a copy of the order, with a notice of the filing thereof, upon the parties to the proceeding, personally or by mail. The order shall dismiss the charges or direct payment of wages or supplements found to be due, including interest at the rate of twelve percent (12%) per annum from the date of the underpayment to the date of payment, and may direct payment of reasonable attorney's fees and costs to the complaining party.

(b) In addition to directing payment of wages or supplements including interest found to be due, the order shall also require payment of a further sum as a civil penalty in an amount up to three times the total amount found to be due. Further, if the amount of salary owed to an employee pursuant to this chapter but not paid to the employee in violation of thereof exceeds five thousand dollars (\$5,000), it shall constitute a misdemeanor and shall be referred to the office of the attorney general. The misdemeanor shall be punishable for a period of not more than one year in prison and/or fined not more than one thousand dollars (\$1,000). In assessing the amount of the penalty, due consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations, and the failure to comply with recordkeeping or other nonwage requirements. The surety of the person, firm, or corporation found to be in violation of the provisions of this chapter shall be bound to pay any penalties assessed on such person, firm, or corporation. The penalty shall be paid to the department of labor and training for deposit in the state treasury; provided, however, it is hereby provided that the general treasurer shall establish a dedicated "prevailing wages enforcement fund" for the purpose of depositing the penalties paid as provided herein. There is hereby appropriated to the annual budget of the department of labor and training the amount of the fund collected annually under this section, to be used at the direction of the director of labor and training for the sole purpose of enforcing prevailing wage rates as provided in this chapter.

(c) For the purposes of this chapter, each day or part thereof of violation of any provision of this chapter by a person, firm, or corporation, whether the violation is continuous or intermittent, shall constitute a separate and succeeding violation.

(d) In addition to the above, any person, firm, or corporation found in violation of any of the provisions of this chapter by the director of labor and training, an awarding authority, or the hearing officer, shall be ineligible to bid on, or be awarded work by, an awarding authority or perform any such work for a period of no less than eighteen (18) months and no more than thirty-six (36) months from the date of the order entered by the hearing officer. Once a person, firm, or corporation is found to be in violation of this chapter, all pending bids with any awarding authority shall be revoked, and any bid awarded by an awarding authority prior to the commencement of the work shall also be revoked.

(e) In addition to the above, any person, firm, or corporation found to have committed two (2) or more willful violations in any period of eighteen (18) months of any of the provisions of this chapter by the hearing officer, which violations are not arising from the same incident, shall be ineligible to bid on, or be awarded work by, an awarding authority or perform any work for a period of sixty (60) months from the date of the second violation.

(f) The order of the hearing officer shall remain in full force and effect unless stayed by order of the superior court.

(g) The director of labor and training, awarding authority, or hearing officer shall notify the bonding company of any person, firm, or corporation suspected of violating any section of this chapter. The notice shall be mailed certified mail and shall enumerate the alleged violations being investigated.

(h) In addition to the above, any person, firm, or corporation found to have willfully made a false or fraudulent representation on certified payroll records shall be referred to the office of the attorney general. A first violation of this section shall be considered a misdemeanor and shall be punishable for a period of not more than one year in prison and/or fined one thousand dollars (\$1,000). A second or subsequent violation of this section shall be considered a felony and shall be punishable for a period of not more than three (3) years imprisonment, a fine of three thousand dollars (\$3,000), or both. Further, any person, firm, or corporation found to have willfully made a false or fraudulent representation on certified payroll records shall be required to pay a civil penalty to the department of labor and training in an amount of no less than two thousand dollars (\$2,000) and not greater than fifteen thousand dollars (\$15,000) per representation.

### **37-13-15. Review.**

(a) There is hereby created an appeals board which shall be comprised of three (3) members who shall be appointed by the governor; provided, however, that each member of the appeals board shall have at least five (5) years experience with prevailing wage rates as they apply to the construction industry. The members of such appeals board shall serve without compensation. The members of the appeals board shall be appointed for terms of three (3) years except that of the three (3) members originally appointed by each of the appointing authorities; one (1) shall be appointed for a term of one (1) year, one (1) shall be appointed for a term of two (2) years and one (1) for a term of three (3) years.

(b) Any person aggrieved by any action taken by the director of labor and training or his or her designated hearing officer under the authority of this chapter, or by the failure or refusal of the director of labor and training to take any action authorized by this chapter, may obtain a review thereof for the purpose of obtaining relief from the action or lack of action by filing a petition for administrative review and relief, to the appeals board as provided herein. The petition for administrative review shall be filed within twenty (20) days of the action taken by the director of labor and training or designated hearing officer: The petition for administrative review shall be heard within ten (10) days of the date of filing. An aggrieved person under this section shall include:

- (1) Any person who is required to pay wages to his or her employees or make payments to a fund on behalf of his or her employees, as provided in this chapter;
- (2) Any person who is required to be paid wages for his or her labor or on whose behalf payments are required to be paid to funds, as provided by this chapter;
- (3) The lawful collective bargaining representative of a person defined in subdivision (2) above;
- (4) A trade association of which a person defined in subdivision (1) above is a member;
- (5) A proper authority as defined in this chapter;



- (6) A contractor who submitted a bid for work to be or which has been awarded under the provisions of this chapter or a trade association of which he or her is a member, and
  - (7) A labor organization which has one or more written collective bargaining agreements with one or more employers or a trade association which sets forth the hours, wages, and working conditions of a craft, mechanic, teamster, or type of worker needed to execute the work, as provided in this chapter to the extent that it would be affected by the action or the failure to act of the director of labor and training or the hearing officer.
- (c) Any aggrieved person as defined herein may obtain a review of a decision of the appeals board by filing a petition in the superior court in Providence county pursuant to the provisions of the administrative procedures act, praying for review and relief and the petition shall follow the course of and be subject to the procedures for causes filed in the court.
- (d) The director is hereby empowered to enforce his or her decision and/or the decision of the appeals board in the superior court for the county of Providence.

### **37-13-16. Termination of work on failure to pay agreed wages - Completion of work.**

Every contract within the scope of this chapter shall contain the further provision that in the event it is found by the director of labor and training that any employee employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the awarding party may, by written notice to the contractor or subcontractor, terminate his or her right as the case may be, to proceed with the work, or such part of the work as to which there has been a failure to pay the required wages, and shall prosecute the work to completion by contract or otherwise, and the contractor and his or her sureties shall be liable to the awarding party for any excess costs occasioned the awarding authority thereby.

### **37-13-17. Private right of action to collect wages or benefits**

(a) An employee or former employee, or any organization representing such an employee or former employee, of a contractor or subcontractor may bring a civil action for a violation of § 37-13-7 for appropriate injunctive relief, or actual damages, or both within three (3) years after the occurrence of the alleged violation. An action commenced pursuant to this section, may be brought in the superior court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom in the civil complaint is filed resides or has their principal place of business. Any contractor or subcontractor who violates the provisions of § 37-13-7 shall be liable to the affected employee or employees in the amount of unpaid wages or benefits, plus interest. A civil action filed in court under this section may be instituted instead of, but not in addition to the director of labor and training enforcement procedures authorized by § 37-13-14.1, provided the civil action is filed prior to the date the director of labor and training issues notice of an administrative hearing.

(b) An employer's responsibility and liability is solely for its own employees.

(c) An action instituted pursuant to this section may be brought by one or more employees or former employees on behalf of himself/herself or themselves and other employees similarly situated, except that no employee shall be a party plaintiff to any such action unless he/she gives his/her consent in writing to become such a party and such consent is filed in the court in which such action is brought.

(d) In an action filed under this section in which the plaintiff prevails, the court shall, in addition to any judgment awarded to the plaintiff, require reasonable attorneys' fees and the costs of the action to be paid by the defendant.

(e) The court in an action filed under this section shall award affected employees or former employees liquidated damages in an amount equal to two (2) times the amount of unpaid wages or benefits owed. Unpaid fringe benefit contributions owed pursuant to this section in any form shall be paid to the appropriate benefit fund, however, in the absence of an appropriate fund the benefit shall be paid directly to the individual.

(f) The filing of a civil action under this section shall not preclude the director of labor and training from referring a matter to the attorney general as provided in § 37-13-14.1(b), from prohibiting a contractor or subcontractor from bidding on or otherwise participating in contracts as provided in § 37-13-14.1(d), (e) and (h), or from prohibiting termination of work on failure to pay agreed wages pursuant to § 37-13-16.

(g) Any person, firm, or corporation found to have willfully made a false or fraudulent representation in connection with wage obligations owed on a contract shall be required to pay a civil penalty to the department of labor and training in an amount of no less than one thousand dollars (\$ 1,000) and not greater than three thousand dollars (\$ 3,000) per representation. Such penalties shall be recoverable in civil actions filed pursuant to this section. For purposes of this subsection "willfully" shall mean representations that are known to be false, or representations made with deliberate ignorance or reckless disregard for their truth or falsity.

(h) An employer shall not discharge, threaten, or otherwise discriminate against an employee, or former employee, regarding compensation terms, conditions, locations or privileges of employment because the employee or former employee, or a person or organization acting on his or her behalf: (1) Reports or makes a complaint under this section; or otherwise asserts his or her rights under this section; and/or (2) Participates in any investigation, hearing or inquiry held by the director of labor and training under § 37-13-14.1. In the event a contractor or subcontractor retaliates or discriminates against an employee in violation of this section, the affected employee may file an action in any court of competent jurisdiction and the court shall order reinstatement and/or restitution of the affected employee, as appropriate, with back pay to the date of the violation, and an additional amount in liquidated damages equal to two (2) times the amount of back pay and reasonable attorneys' fees and costs.

(i) If any one or more subsections of this section shall for any reason be adjudged unconstitutional or otherwise invalid, the judgment shall not affect, impair, or invalidate the remaining subsections.

## **PREVAILING WAGE RATES**

**(Appropriate wage rate to be inserted by bidder in specifications)**

**For a copy of the appropriate wage rate, contact:**

**R.I. Department of Labor and Training  
Center General Complex  
1511 Pontiac Avenue  
Cranston, RI 02920**

# TITLE 37

## CHAPTER 14.1 MINORITY BUSINESS ENTERPRISE

### Sections

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### **37-14.1-1. Purpose.**

The purpose of this chapter is to carry out the state's policy of supporting the fullest possible participation of firms owned and controlled by minorities and women (MBE's), in state funded and state directed public construction programs and projects and in state purchases of goods and services. This includes assisting MBE's throughout the life of contracts in which they participate.

### **37-14.1-2. Applicability.**

This chapter shall apply to any and all state purchasing, including, but not limited to the procurement of goods, services, construction projects, or contracts funded in whole or in part by state funds, or funds which, in accordance with a federal grant or otherwise, the state expends or administers or in which the state is a signatory to the construction contract.

### **37-14.1-3. Definitions.**

- (a) "Affirmative action" means taking specific steps to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve minority business enterprises fully in contracts and programs funded by the state.
- (b) "Compliance" means the condition existing when a contractor has met and implemented the requirements of this chapter.
- (c) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this chapter, a lease is a contract.
- (d) "Contractor" means one who participates, through a contract or subcontract, in any procurement or program covered by this chapter, and includes lessees and material suppliers.
- (e) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:
  - (1) Black (a person having origins in any of the black racial groups of Africa);
  - (2) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
  - (3) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);
  - (4) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);
  - (5) American Indian and Alaskan Native (a person having origins in any of the original peoples of North America.); or
  - (6) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under section 8(a) of the Small Business Act, as amended [15 U.S.C. 637(a)].
- (f) "Minority business enterprise" or "MBE" means a small business concern, as defined pursuant to section 3 of the federal Small Business Act [15 U.S.C. 632] and implementing regulations, which is owned and controlled by one or more minorities or women. For the purposes of this chapter, owned and controlled means a business.

- (1) Which is at least fifty-one percent (51%) owned by one or more minorities or women or, in the case of a publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by one or more minorities or women; and
- (2) Whose management and daily business operations are controlled by one or more such individuals.

(g) "MBE coordinator" means the official designated to have overall responsibility for promotion of minority business enterprise in his or her departmental element.

(h) "Noncompliance" means the condition existing when a recipient or contractor has failed to implement the requirements of this chapter.

#### **37-14.1-4. Policy.**

It is the policy of the state of Rhode Island that minority business enterprises (MBE's) shall have the maximum opportunity to participate in the performance of procurements and projects outlined in 37-14.1-2.

#### **37-14.1-5. Discrimination prohibited.**

No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any project covered by this chapter, on the grounds of race, color, national origin, or sex.

#### **37-14.1-6. Minority business enterprise participation.**

Minority business enterprises shall be included in all procurements and construction projects under this chapter and shall be awarded a minimum of ten percent (10%) of the dollar value of the entire procurement or project. The director of the department of administration is further authorized to establish by rules and regulation formulas for giving minority business enterprises a preference in contract and subcontract awards.

#### **37-14.1-7. Establishment of criteria and guidelines.**

The director of the department of administration shall establish, by rule and regulations adopted in accordance with chapter 35 of title 42, standards which shall determine whether a construction project is covered by this chapter, compliance formulas, procedures for implementation, and procedures for enforcement which are not inconsistent with 49 CFR 23 of the federal regulations. As to Rhode Island department of transportation contracts, the director of administration may delegate this authority to the director of transportation.

#### **37-14.1-8. Sanctions.**

(a) The director of the department of administration shall have the power to impose sanctions upon contractors not in compliance with this chapter and shall include but not be limited to:

- (1) Suspension of payments;
- (2) Termination of the contract;
- (3) Recovery by the state of ten percent (10%) of the contract award price as liquidated damages; and
- (4) Denial of right to participate in future projects for up to three (3) years.

(b) As to Rhode Island department of transportation contracts, the director of the department of administration may delegate this authority to the director of transportation.

**RHODE ISLAND REQUIREMENTS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES**  
**IN STATE FUNDED AND DIRECTED PUBLIC CONSTRUCTION PROJECTS, CONSTRUCTION**  
**CONTRACTS AND PROCUREMENT CONTRACTS**

In accordance with RI Gen. Law § 37-14.1-1, it is the policy of the State of Rhode Island to support the fullest possible participation of firms owned and controlled by minorities (MBEs) and women (WBEs). Pursuant to §§ 37-14.1-2 and 37-14.1-6, MBEs and WBEs shall be included in all state purchasing, including, but not limited to, the procurement of goods, services, construction projects, or contracts funded in whole or in part with state funds, or funds which, in accordance with a federal grant or otherwise, the state expends or administers. MBEs and WBEs shall be awarded a minimum of ten percent (10%) of the dollar value of the entire procurement or project. MBE participation credit shall only be granted for firms duly certified as MBEs or WBEs by the State of Rhode Island, Department of Administration, Office of Diversity, Equity and Opportunity, MBE Compliance Office (MBECO). The current directory of firms certified as MBEs or WBEs may be accessed at <http://odeo.ri.gov/offices/mbeco/mbe-wbe.php> or by contacting Elvys Ruiz at the MBECO at (401) 574-8253 or via email at [Elvys.Ruiz@doa.ri.gov](mailto:Elvys.Ruiz@doa.ri.gov)

# TITLE 37

## CHAPTER 16 PUBLIC WORKS ARBITRATION

### Sections

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### **37-16-1. Short title.**

This chapter shall be known as the "Public Works Arbitration Act".

### **37-16-2. Contract provision for arbitration.**

(a) A provision in a written contract executed on or after January 1, 1962, for the construction, alteration, repair, or painting of any public building, sewer, highway, bridge, water treatment or disposal projects one party to which is the state, a city, a town, or an authority, a board, a public corporation, or any similar body created by statute or ordinance or any committee, agency, or subdivision of any of them, to settle by arbitration any dispute or claim arising out of or concerning the performance or interpretation of the contract shall be valid, irrevocable, and enforceable, save upon grounds existing in law or equity for the revocation of the contract.

(b) (1) Every contract for the construction, alteration, repair, painting, or demolition of any public building, sewer, water treatment or disposal project, highway, or bridge one party to which is the state, a city, a town, or an authority, a board, a public corporation, or any similar body created by statute or ordinance or any committee, agency, or subdivision of any of them which has a contract price of ten thousand dollars (\$ 10,000) or more and which is executed on or after July 1, 1967, shall contain a provision for arbitration of disputes and claims arising out of or concerning the performance or interpretation of the contract as follows:

(2) "All claims, disputes, and other matters in question arising out of or relating to this contract or the performance or interpretation thereof shall be submitted to arbitration. Arbitration shall be commenced by a demand in writing made by one party to the contract upon the other within a reasonable time after the dispute, claim, or other matter in question arose but in no event after payment in full of the contract price has been made and accepted. The written demand shall contain a statement of the question to be arbitrated and a detailed statement of each item or matter in

dispute and the name of the arbitrator appointed by that party. The other party to the contract within ten (10) days of the receipt of the written demand shall appoint an arbitrator and give notice in writing thereof to the party who commenced arbitration. The two (2) arbitrators appointed by the parties shall within ten (10) days of the date of the appointment of the second arbitrator select a third arbitrator who shall be designated as chairperson and who immediately shall give written notice to the parties of his or her appointment. The third arbitrator shall select a time, date, and place for hearing and give each party five (5) days notice in writing thereof. The date for hearing shall not be more than fifteen (15) days after the date of appointment of the third arbitrator. The award shall be made promptly by the arbitrators and, unless otherwise agreed by the parties or specified by law, no later than thirty (30) days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the transmittal of the final statements and proofs to the arbitrators. The award shall be in writing and shall be signed by a majority of the arbitrators. It shall be executed in the manner required by law. The arbitrator shall provide a written explanation of the reasoning for the award. In the event the party of whom arbitration is demanded shall fail to appoint his or her arbitrator within the time specified or the two (2) arbitrators appointed by the parties are unable to agree on an appointment of the third arbitrator within the time specified, either party may petition the presiding justice of the superior court to appoint a single arbitrator who shall hear the parties and make an award as provided herein. The petitioner shall give five (5) days notice in writing to the other party before filing his or her petition."

(c) Any dispute involving claims less than one hundred thousand dollars (\$ 100,000) and associated with construction of a highway or bridge as referred to in subsection (b) shall be submitted to arbitration. Any dispute involving claims of one hundred thousand dollars (\$ 100,000) or more and associated with construction of a highway or bridge as referred to in subsection (b) shall only be arbitrated with the consent of the parties. If the parties fail to consent to arbitration and the state of Rhode Island is a party to the dispute, then the claim will proceed in accordance with § 37-13.1-1.

(d) For the purposes of this section, the term "claims" shall not mean the aggregate amount sought under the contract or in the arbitration, but shall refer specifically to each item or matter in dispute for which additional compensation is sought or for each item for which a credit is sought.

(e) Notwithstanding subsection (a) or (b) of this section, if any contract except for highway and bridge contracts provides for an arbitration procedure, and a method of appointment of an arbitrator or arbitrators, that method shall be followed instead of the method provided in subsection (b) of this section.

(f) This section shall apply to all written contracts executed on or after January 1, 1986.

### **37-16-3. Application to subcontracts.**

When a contract described in 37-16-2 is in effect and any party thereto has entered into a subcontract to perform part of the work and/or furnish any materials in connection with the work described in the contract and the terms of the subcontract provide for arbitration of a dispute or claim concerning the performance or interpretation thereof, or the subcontract, expressly or by reference to the terms of the contract, provides that the parties to the subcontract shall comply with the arbitration provisions of the contract, the following shall apply when a request is made or an order of court is entered for arbitration either under the terms of the contract or subcontract.

(a) When arbitration under the contract may adversely affect the interest of a party thereto because of the effect of an award of the arbitrator or arbitrators upon the performance or interpretation of the terms of a subcontract to which he or she is also a party, he or she may require any other party or all other parties to the subcontract to become a party or parties to the arbitration.

(b) When a party to a subcontract makes a demand or an order of court is entered for arbitration under the terms of the subcontract which comply with the provision of this chapter, any party thereto who is also a party to the contract and whose rights under the contract may be adversely affected by the effect of an award of the arbitrator or arbitrators upon the performance or interpretation of the contract, may require any other party to the contract to become a party to the arbitration.

(c) When a party to a contract or to a subcontract is made a party to arbitration by virtue of the provisions of this section, he or she shall have all the rights of a party to arbitration as provided in this chapter except the appointment of an arbitrator. Provided, however, he or she may object to the arbitrators appointed by the parties in which event a single arbitrator shall be appointed as provided in 37-16-2 in the petition of either of the original parties to arbitration. The award of the arbitrator or arbitrators shall be valid and shall be binding on him or her to



the extent that it affects the performance or interpretation of the contract and/or subcontract to which he or she is a party. The award of the arbitrator or arbitrators may be enforced, modified, or vacated as this chapter provides an award made in an arbitration of a contract described in 37-16-2 may be enforced, modified, or vacated.

#### **37-16-4. Stay of legal proceedings pending arbitration.**

If any suit or proceedings be brought upon any issue referable to arbitration under contract in writing providing for arbitration, the court in which the suit is pending upon being satisfied that the issue involved in the suit or proceedings is referable to arbitration under the contract, shall on application of one of the parties, stay the trial of the action until arbitration has been held.

#### **37-16-5. Jurisdiction of superior court to enforce arbitration provision and awards.**

The entering into a contract in writing providing for arbitration shall be deemed a consent of all parties, including those enumerated in 37-16-2, thereto to the jurisdiction of the superior court of this state to enforce the arbitration provision and any award made pursuant to that provision. A party aggrieved by the failure, neglect, or refusal of another to perform under a contract providing for arbitration, may petition the superior court, or a judge thereof, for an order directing that arbitration proceed in the manner provided for in the contract. Five (5) days' notice in writing of the application shall be served upon the party in default. Service thereof shall be made in the manner specified in the contract, and if no manner specified therein, then in the manner provided by law for personal service of a summons, within or without the state, or substituted service of a summons, or upon satisfactory proof that the party aggrieved has been or will be unable with due diligence to make service in any of the foregoing manners, then notice shall be served in such manner as the court or judge may direct. A judge of the superior court shall hear the parties and upon being satisfied that there is no substantial issue as to the making of the contract or the failure to comply therewith, the court, or the judge thereof, hearing the application, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the contract.

#### **37-16-6. Trial upon evidence of substantial issue.**

If evidentiary facts are set forth raising a substantial issue as to the making of the contract or the failure to comply therewith, the court, or the judge thereof, shall proceed immediately to the trial of the issues. Whenever an immediate trial is ordered, the order therefor shall provide that, if the court finds that a written contract providing for arbitration was made, and that there was a failure to comply therewith, the parties shall proceed with the arbitration in accordance with the terms of the contract and the order shall provide that if the court finds that there was no contract or failure to comply with the contract, then the proceeding shall be dismissed.

#### **37-16-7. Method of appointing arbitrators or umpire.**

If in the contract providing for arbitration, provision is made for a method of naming or appointing an arbitrator or arbitrators or an umpire, that method shall be followed, but if no method be provided therein, then the parties to the contract shall agree to the method of naming or appointing an arbitrator or arbitrators or an umpire and if the parties shall fail to agree, then the court or the judge thereof upon application of either of the parties after due notice to the other party shall appoint an arbitrator to hear the dispute.

#### **37-16-8. Scheduling and notice of arbitration hearing - Adjournment.**

Subject to the terms of the contract, if any are specified therein, the arbitrators selected as prescribed in this chapter must appoint a time and place for the hearing of the matters submitted to them, and must cause notice thereof to be given to each of the parties. They, or a majority of them, may adjourn the hearing from time to time upon the application of either party for good cause shown or upon their own motion, but not beyond the day fixed if a date in the contract, if any, for rendering their award, unless the time so fixed is extended by the written consent of the parties to the contract or their attorney, or the parties have continued with the arbitration without objection to such adjournment.

#### **37-16-9. Power of court to direct prompt hearing.**

The court shall have power to direct the arbitrators to proceed promptly with the hearing and determination of the dispute, claim, or matter in question.

#### **37-16-10. Arbitrator's oath - Waiver.**

Before hearing any testimony, arbitrators selected as prescribed in this chapter must be sworn, by an officer authorized by law to administer an oath, faithfully and fairly to hear and examine the claim, dispute, or matter in question and to make a just award according to the best of their understanding, unless the oath is waived by the

written consent of the parties to the contract or their attorneys or the parties have continued with the arbitration without objection to the failure of the arbitrators to take the oath.

### **37-16-11. Powers of arbitrators.**

The arbitrator or arbitrators selected as prescribed in this chapter, may require any person to attend before them as a witness; and he or she and they have, and each of them has, the same powers with respect to all the proceedings before them which are conferred upon a board or a member of a board authorized by law to hear testimony. All the arbitrators selected as prescribed in this chapter must meet together and hear all the allegations and proofs of the parties; but an award by a majority of them is valid.

### **37-16-12. Fees.**

In any proceeding under this chapter, unless the parties agree as to the arbitrator's or arbitrators' fees, such fees shall be fixed by the court or the judges thereof who shall require the payment equally by both parties of the arbitrators' fees.

### **37-16-13. Validity of awards.**

An award shall be valid and enforceable according to its terms and under the provisions of this chapter, without previous adjudication of the existence of a contract to arbitrate, subject, nevertheless, to the provisions of this section:

- (a) A party who has participated in any of the proceedings before the arbitrator or arbitrators may object to the confirmation of the award only on one or more of the grounds hereinafter specified (provided that he did not continue with the arbitration with notice of the facts or defects upon which his objection is based) because of a failure to comply with 37-16-8 or with 37-16-10 or because of the improper manner of the selection of the arbitrators.
- (b) A party who has not participated in any of the proceedings had before the arbitrator or arbitrators and who has not made or been served with an application to compel arbitration under 37-16-5 may also put in issue the making of the contract or the failure to comply therewith, either by a motion for a stay of the arbitration or in opposition to the confirmation of the award. If a notice shall have been personally served upon such party of an intention to conduct the arbitration pursuant to the provisions of a contract specified in the notice, then the issues specified in this subdivision may be raised only by a motion for a stay of the arbitration, notice of which motion must be served within ten (10) days after the service of the notice of intention to arbitrate. The notice must state in substance that unless within ten (10) days after its service, the party served therewith shall serve a notice of motion to stay the arbitration, he or she shall thereafter be barred from putting in issue the making of the contract or the failure to comply therewith. The arbitration hearing shall be adjourned upon service of the notice pending the determination of the motion. Where the opposing party, either on a motion for a stay or in opposition to the confirmation of an award, sets forth evidentiary facts raising a substantial issue as to the making of the contract or the failure to comply therewith, an immediate trial of the same shall be had. In the event that the party is unsuccessful he or she may, nevertheless, participate in the arbitration if the same is still being carried on.

### **37-16-14. Arbitration under chapter deemed special proceeding - Jurisdiction of superior court.**

Arbitration of a claim, dispute, or matter in question under a contract described in this chapter shall be deemed a special proceeding, of which the superior court for Providence County shall have jurisdiction.

### **37-16-15. Procedure for hearing of application to court.**

Any application to the court, or a judge thereof, hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

### **37-16-16. Form of award.**

To entitle the award to be enforced, as prescribed in this chapter, it must be in writing; and, within the time limited in the contract, if any, subscribed by the arbitrator or arbitrators making it and either filed in the office of the clerk of the court having jurisdiction as provided in 37-16-14 or delivered to one of the parties or his or her attorney.

### **37-16-17. Court order confirming award.**

At any time within one year after the award is made, as prescribed in 37-16-16, any party to the contract by the terms of which arbitration was had, may apply to the court having jurisdiction as provided in 37-16-14 for an order confirming the award. Thereupon the court must grant the order unless the award is vacated, modified, or corrected, as prescribed in 37-16-18 and 37-16-19 or unless the award is unenforceable under the provisions of 37-16-13. Notice of the motion must be served upon the adverse party or parties or his or her or their attorneys, as prescribed by law for service of notice of a motion upon an attorney in an action in the same court.

### **37-16-18. Court order vacating award.**

In any of the following cases, the court must make an order vacating the award, upon the application of any party to the controversy which was arbitrated

- (a) When the award was procured by fraud.
- (b) Where the arbitrator or arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted was not made.
- (c) If there was no valid contract, and the objection has been raised under the conditions set forth in 37-16-13.

### **37-16-19. Rehearing after vacation of award.**

Where an award is vacated, the court, in its discretion may direct a rehearing either before the same arbitrator or arbitrators or before a new arbitrator or arbitrators to be chosen in the manner provided in the contract for the selection of the original arbitrator or arbitrators or as provided for in 37-16-7 and any provision limiting the time in which the arbitrator or arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order.

### **37-16-20. Court order modifying or correcting award.**

In any of the following cases, the court must make an order modifying or correcting the award, upon the application of any party to the contract by the terms of which the arbitration was held.

- (a) Where there was an evident miscalculation of figures or an evident mistake in the description of any persons, thing, or property referred to in the award.
- (b) Where the arbitrator or arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted.
- (c) Where the award is imperfect in a matter of form not affecting the merits of the controversy, and, if it had been a master's report the defect could have been amended or disregarded by the court.

### **37-16-21. Notice of motion to vacate, modify, or correct an award.**

Notice of a motion to vacate, modify, or correct an award must be served upon all adverse parties, or their attorneys, within sixty (60) days after the award is filed or delivered, as prescribed by law for service of notice of a motion upon an attorney in an action; except that in opposition to a motion to confirm an award, any of the grounds specified in 37-16-18 may be set up. For the purpose of the motion, any judge who might make an order, to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of an adverse party or parties to enforce the award.

### **37-16-22. Entry of judgment - Costs.**

Upon the granting of an order confirming, modifying, or correcting an award, judgment may be entered in conformity therewith, except as is otherwise prescribed in this chapter. Costs of the application and of the proceedings subsequent thereto, not exceeding twenty-five dollars (\$25.00) and disbursements, may be awarded by the court in its discretion. If awarded, the amount thereof must be included in the judgment.

### **37-16-23. Filing of papers after judgment.**

(a) Immediately after entering judgment, the clerk must attach together and file the following papers:

- (1) The contract, and each written extension of the time, if any, within which to make the award.
- (2) The award.
- (3) Each notice, affidavit or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon the application.
- (4) A copy of the judgment.

(b) The judgment may be docketed as if it was rendered in an action.

### **37-16-24. Effect of judgment.**

The judgment so entered has the same force and effect, in all respects as, and is subject to all the provisions of law relating to a judgment in an action. The judgment may be enforced as if it had been rendered in an action in the court in which it is entered.

### **37-16-25. Appeals.**

An appeal may be taken from an order made in a proceeding under this chapter, or from a judgment entered upon an award. The proceedings upon the appeal, including the judgment thereupon and the enforcement of the judgment, are governed by the provisions of statute and rule regulating appeal in actions as far as they are applicable.

### **37-16-26. Satisfaction of award.**

- (a) An award which requires the payment of a sum of money by a city, town, or the state or any body described in 37-16-2 created or organized by or through the authority of any of them, shall be satisfied to the extent of payment of that sum by payment thereof to the party to whom the award was made by the treasurer or officer exercising the duties of a treasurer thereof from its general funds.
- (b) An award which requires the payment of a sum of money to a city, a town, or the state or any body described in 37-16-2 created or organized by or through the authority of any of them shall be satisfied to the extent of payment of that sum by payment thereof to its treasurer or officer exercising the duties of a treasurer thereof who shall deposit the same in its general funds.

### **37-16-27. Application to sureties.**

- (a) If a contractor principal on a bond furnished to guarantee performance or payment on a construction contract and the claimant are parties to a written contract with a provision to submit to arbitration any controversy thereafter arising under the contract, or subject to arbitration as provided in 37-16-2(b), the arbitration provisions shall apply to the surety for all disputes involving questions of the claimant's right of recovery against the surety. Either the claimant, the contractor principal, or surety may demand arbitration in accordance with the written contract or as provided in 37-16-2(b) if applicable in one arbitration proceeding, provided that the provisions of 37-16-3 shall be applicable to any such demand for arbitration. The arbitration award shall decide all controversies subject to arbitration between the claimant, on the one hand, and the contractor principal and surety on the other hand, including all questions involving liability of the contractor principal and surety on the bond, but a claimant must file suit for recovery against the surety within the time limits set forth in 37-12-2 and 37-12-5. The arbitration shall be in accordance with this chapter and the court shall enter judgment thereon as provided therein.
- (b) The arbitrator or arbitrators, if more than one, shall make findings of fact as to the compliance with the requirements for recovery against the surety, and those findings of fact shall be a part of the award binding on all parties to the arbitration.

# TITLE 45

## CHAPTER 55 AWARD OF MUNICIPAL CONTRACTS

### SECTIONS

- 45-55-1 Legislative findings
- 45-55-2. Method of source selection
- 45-55-3. Purchasing agent - Appointment - Duties.
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- 45-55-5. Competitive sealed bidding.
- 45-55-5.1. Business exempt.
- 45-55-5.2. Town of North Smithfield - Exemption.
- 45-55-6. Competitive negotiation.
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- 45-55-8. Sole source procurement and emergency procurements.
- 45-55-8.1 Qualification based selection of architects and engineers.
- 45-55-9. Small purchases.
- 45-55-10. Cancellation of invitation for bids and requests for proposals.
- 45-55-11. Responsibilities of bidders and offerors
- 45-55-12. Prequalification of contractors - General.
- 45-55-13. Exclusion of state mandated costs.
- 45-55-13.1. Exclusion of multi-cities or towns insurance corporations and cooperative risk management programs.
- 45-55-13.2. Exclusion of multi-cities or towns energy aggregation programs.
- 45-55-13.3. Exclusion of multi-school district combined purchasing consortia
- 45-55-14. Staff consultants.
- 45-55-15. Severability.
- 45-55-16 Prohibition against the use of lead based paints.
- 44-55-17 Penalties

#### **45-55-1. Legislative findings.**

It is hereby declared that a need exists to establish a uniform system for the award of contracts by municipalities, utilizing open cooperative bids.

#### **45-55-2. Method of source selection.**

Except as otherwise authorized by law, all municipal contracts shall be awarded by:

- (1) Competitive sealed bidding, pursuant to 45-55-5;
- (2) Competitive negotiations, pursuant to 45-55-6;
- (3) Non-competitive negotiations, pursuant to 45-55-7 and 45-55-8;
- (4) Small purchase procedures, pursuant to 45-55-9.
- (5) Qualification based selection (QBS) process for architects/engineers pursuant to 45-55-8.1

#### **45-55-3. Purchasing agent - Appointment - Duties.**

Within each city or town or quasi public agency there shall be designated a person or persons to act as purchasing officer to exercise the powers and duties as set forth in this chapter.

#### **45-55-4. Definitions.**

The words defined in this section have the following meanings whenever they appear in this chapter, unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular section, group of sections or provision.

- (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted.
- (2) "Change order" means a written order signed by the purchasing agent, or contractor directing or allowing the contractor to make changes which the changes clause of the contract authorizes the purchasing agent or contractor to order without the consent of the contractor or purchasing agent.
- (3) "Construction" means the process of building, altering, repairing, improving, or demolishing any public structures or building, or other public improvements of any kind to any public real property. It does not include the routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the municipality in the usual course of their job.
- (4) "Contract" means all types of agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts, purchase orders, and construction management contracts. It also includes supplemental agreements with respect to any of the preceding. "Contract" does not include labor contracts with employees of the municipality.
- (5) "Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It includes bilateral actions, as supplemental agreements, and unilateral actions, as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.
- (6) "Contractor" means any person having a contract with a municipality.
- (8) "Data" means recorded information, regardless of form or characteristic.
- (8) "Designee" means a duly authorized representative of a person holding a superior position.
- (9) "Employee" means an individual drawing a salary from a municipality, whether elected or not, and any non-salaried individual performing personal services for any municipality.
- (10) "May" means permissive.
- (11) "Municipality" means the individual cities and towns of the state of Rhode Island.
- (12) "Negotiation" means contracting by either of the methods described in §§ 45-55-6, 45-55-7, and 45-55-8.
- (13) "Person" means any business, individual, organization, or group of individuals.
- (14) "Procurement" means the purchasing, buying, renting, leasing, or otherwise obtaining of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (15) "Purchasing officer" means the person designated in each municipality or quasi public agency pursuant to section 45-55-3.
- (16) "Regulations" means rules and regulations adopted by the individual cities or towns, concerning the implementation of the provisions of this chapter.

(17) "Services" means the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services. "Services" does not include labor contracts with employees of governmental agencies.

(18) "Shall" means imperative.

(19) "Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.

(20) "Supplies" means all property, including, but not limited to, leases of real property, printing and insurance, except land or permanent interest in land.

#### **45-55-5. Competitive sealed bidding.**

(a) Contracts exceeding the amount provided by 45-55-9 shall be awarded by competitive bidding unless they are professional engineering/architectural services pursuant to 45-55-8.1 and it is determined in writing that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is practicable shall include whether:

- (1) Specifications can be prepared that permit award on the basis of either the lowest qualified bid price or the lowest qualified evaluated bid price; and
  - (2) The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.
- (b) The invitation for bids shall state whether award shall be made on the basis of the lowest bid price or the lowest evaluated or responsive bid price. If the latter basis is used, the objective measurable criteria to be utilized shall be stated in the invitation for bids, if available.
- (c) Adequate public notice of the invitation for bids shall be given a sufficient time prior to the date stated in the notice for the opening of bids. Notice may include publication in a newspaper of general circulation in the state as determined by the purchasing officer for the municipality not less than seven (7) days nor more than twenty-one (21) days before the date set for opening of the bids. The purchasing officer may make a written determination that the twenty-one (21) day limitation needs to be waived. The written determination shall state the reason why the twenty-one (21) day limitation is being waived and shall state the number of days, giving a minimum and maximum, before the date set for the opening of bids when public notice is to be given.
- (4) Bids shall be opened publicly in full view of the public at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and an abstract made available for public inspection. Subsequent to the awarding of the bid, all documents pertinent to the awarding of the bid shall be made available and open to public inspection and retained in the bid file.
- (5) The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price, or lowest evaluated or responsive bid price.
- (6) Correction or withdrawal of bids may be allowed only to the extent permitted by regulations issued by the purchasing officer.

#### **45-55-5.1. Business exempt.**

The North Kingstown Bus Contractors Association and the Scituate School Bus Owners Club shall be exempt from the provisions of this chapter.

#### **45-55-5.2. Town of North Smithfield - Exemption.**

The town of North Smithfield is exempt from the provisions of this chapter with regard to the contracting for fire and rescue services with the Primrose Volunteer Fire Department and/or North Smithfield Fire Department and/or their respective successors and assigns.

#### **45-55-6. Competitive negotiation.**

- (a) When, under regulations adopted by the city or town council, the purchasing agent determines in writing that the use of competitive sealed bidding is not practicable, and except as provided in 45-55-8, 45-55-9, and 45-55-10 a contract may be awarded by competitive negotiation.
- (b) Adequate public notice of the request for proposals shall be given in the same manner as provided in 45-55-5(c).
- (c) Contracts may be competitively negotiated when it is determined, in writing, by the purchasing agent that the bid prices received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which:
  - (1) Each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate; and
  - (2) The negotiated price is lower than the lowest rejected bid by any competitive bidder; and
  - (3) The negotiated price is the lowest negotiated price offered by a competitive offeror.
- (d) The request for proposals shall indicate the relative importance of price and other evaluation factors.
- (e) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the municipality taking into consideration price and the evaluation factors set forth in the request for proposals.
- (f) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined, in writing, to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
  - (1) With respect to prices, where such prices are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions; or
  - (2) Where time of delivery or performance will not permit discussions; or
  - (3) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable prices, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.

#### **45-55-7. Negotiations after unsuccessful competitive sealed bidding.**

- (a) In the event that all bids submitted pursuant to competitive sealed bidding under 45-55-5 result in bid prices in excess of the funds available for the purchase, and the purchasing officer determines in writing:
  - (1) That there are no additional funds available from any source so as to permit an award to the lowest responsive and responsible bidder, and
  - (2) The best interest of the municipality will not permit the delay attendant to a re-solicitation under revised specifications, or for revised quantities, under competitive sealed bidding as provided in 45-55-5, then a negotiated award may be made as stated in subsection (b) or (c) of this section.
- (b) Where there is more than one bidder, competitive negotiations pursuant to 45-55-6, shall be conducted with the three (3) (two (2) if there are only two (2)) bidders determined in writing, to be the lowest responsive and responsible bidders to the competitive sealed bid invitation. Competitive negotiations shall be conducted under the following restrictions:
  - (1) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in the discussions; or



(2) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price, or lowest evaluated bid price submitted by any responsive and responsible offeror.

(c) When after competitive sealed bidding, it is determined in writing, that there is only one responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with 45-55-8.

#### **45-55-8. Sole source procurement and emergency procurements.**

(a) A contract may be awarded for a supply, service, or construction item without competition when, under published regulations, the purchasing officer determines, in writing, that there is only one source for the required supply, service, or construction item.

(b) Notwithstanding any other provision of this chapter, the purchasing agent may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations or where the procurement will be in the best interest of the city as established by properly promulgated rules and regulations; provided, that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency, and for the selection of the particular contractor, shall be included in the contract file.

#### **45-55-8.1. Qualification based selection of architects and engineers.**

When the purchasing agent determines that the city or town needs the services of a professional architect or engineer, the purchasing agent shall follow the qualification based selection process for the procurement of architectural and engineering consulting services.

#### **45-55-9. Small purchases.**

Procurements, not to exceed an aggregate amount of ten thousand dollars (\$10,000) for construction and five thousand dollars (\$5,000) for all other purchases may be made in accordance with small purchase regulations promulgated by the municipality. These amounts shall be increased or decreased annually hereafter at the same rate as the Boston Regional Consumer Price Index. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. A municipality may further reduce the aggregate purchase amount, as provided for in this section by ordinance.

#### **45-55-10. Cancellation of invitation for bids and requests for proposals.**

An invitation for bids, a request for proposals, or other solicitation may be canceled, or all bids or proposals rejected, if it is determined, in writing, that such action if taken is not in the best interest of the municipality and approved by the chief purchasing officer.

#### **45-55-11. Responsibilities of bidders and offerors.**

(1) A written determination of responsibility of a bidder or offeror shall be made and it shall be made in accordance with regulations issued by the municipality.

A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted. The failure of a bidder or offeror to promptly supply information in connection with a reasonable inquiry may be grounds for a determination of non-responsibility with respect to a bidder or offeror.

(2) Except as otherwise provided, by law, information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the purchasing department administering the contract without prior written consent of the bidder or offeror.

#### **45-55-12. Prequalification of contractors - General.**

The municipality may provide for prequalification of suppliers as responsible prospective contractors for particular types of supplies, services, and construction. Municipalities which choose to provide for prequalification of suppliers shall adopt regulations for prequalification in the same manner provided for in the adoption of ordinances in the manner provided for in the legislative or home rule charter of the municipality. Solicitation mailing lists of

potential contractors of supplies, services, and construction shall include but need not be limited to prequalified contractors. Prequalification shall not foreclose a written determination:

- (1) Between the time of the bid opening or receipt of offers and the making of an award, that a prequalified supplier is not responsible; or
- (2) That a supplier who is not prequalified at the time of bid opening or receipt of offers is responsible.

**45-55-13. Exclusion of state mandated costs.**

The provisions of 45-13-7 through 45-13-10 do not apply to this section.

**45-55-13.1. Exclusion of multi-cities or towns insurance corporations and cooperative risk management programs.**

The provisions of this chapter shall not apply to entities organized pursuant to section 45-5-20.1. Those entities are exempt from all of the provisions of this chapter.

**45-55-13.2. Exclusion of multi-cities or towns energy aggregation programs.**

The provisions of this chapter do not apply to entities organized for the purpose of negotiating the purchase of electric power pursuant to § 39-3-1.1, or energy or energy related services. Those entities are exempt from all provisions of this chapter.

**45-55-13.3. Exclusion of multi-school district combined purchasing consortia.**

The provisions of this chapter do not apply to purchases and contracts entered into by those consortia established pursuant to § 16-2-9.2, and such entities shall be exempt from all provisions of this chapter.

**45-55-14. Staff consultants.**

The procurement of the service of an attorney, physician or dentist by a municipality, is exempt from the provisions of this chapter.

**45-55-15. Severability.**

If any one or more sections, clauses, sentences or parts of this chapter are for any reason be adjudged unconstitutional or otherwise invalid in any court, that judgment shall not affect, impair or invalidate the remaining provisions of this chapter but shall be confined in its operation to the specific provisions so held unconstitutional or invalid and the inapplicability or invalidity of any section, clause or provisions of this chapter in any one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

**45-55-16. Prohibition against the use of lead based paints.**

When purchasing paint products or contracting or subcontracting for painting, construction, improvement, completion, or repair of any public buildings, public road, public bridge, or public construction, all municipalities, as defined by 45-55-4(11), shall be prohibited from the use of lead based paint.

**45-55-17. Penalties.**

Any person who knowingly and intentionally violates any provision of this chapter shall be subject to a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500), or by imprisonment for not more than one year, or both.

**Attachment B**

**EPA Disadvantaged Business Enterprise (DBE) Program – DBE Forms**

**Disadvantaged Business Enterprise (DBE) 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 DBE<sup>1</sup> subcontractor<sup>2</sup> 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.

|                       |  |                         |  |
|-----------------------|--|-------------------------|--|
| Subcontractor Name    |  | Project Name            |  |
| Bid/ Proposal No.     | Assistance Agreement ID No. (if known) | Point of Contact        |  |
| Address               |  |                         |  |
| Telephone No.         |  | Email Address           |  |
| Prime Contractor Name |  | Issuing/Funding Entity: |  |

| Contract Item Number | Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies | Amount Received by Prime Contractor |
|----------------------|--|-------------------------------------|
|                      |  |                                     |

<sup>1</sup> 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.

<sup>2</sup> 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.



**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Performance Form**

This form is intended to capture the DBE<sup>1</sup> subcontractor's<sup>2</sup> 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.

|                       |  |                         |  |
|-----------------------|--|-------------------------|--|
| Subcontractor Name    |  | Project Name            |  |
| Bid/ Proposal No.     | Assistance Agreement ID No. (if known) | Point of Contact        |  |
| Address               |  |                         |  |
| Telephone No.         |  | Email Address           |  |
| Prime Contractor Name |  | Issuing/Funding Entity: |  |

| Contract Item Number   | Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies | Price of Work Submitted to the Prime Contractor  |
|--|---|--|
|  |   |  |
| DBE Certified By: <input type="checkbox"/> DOT <input type="checkbox"/> SBA<br><input type="checkbox"/> Other: _____ |   | Meets/ exceeds EPA certification standards?<br><input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unknown |

<sup>1</sup> 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.

<sup>2</sup> 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.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that 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).

|                                   |                   |
|-----------------------------------|-------------------|
| <b>Prime Contractor Signature</b> | <b>Print Name</b> |
|                                   |                   |
| <b>Title</b>                      | <b>Date</b>       |
|                                   |                   |

|                                |                   |
|--------------------------------|-------------------|
| <b>Subcontractor Signature</b> | <b>Print Name</b> |
|                                |                   |
| <b>Title</b>                   | <b>Date</b>       |
|                                |                   |

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.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE<sup>1</sup> subcontractors<sup>2</sup> and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

|                         |  |                  |  |
|-------------------------|--|------------------|--|
| Prime Contractor Name   |  | Project Name     |  |
| Bid/ Proposal No.       | Assistance Agreement ID No. (if known) | Point of Contact |  |
| Address                 |  |                  |  |
| Telephone No.           |  | Email Address    |  |
| Issuing/Funding Entity: |  |                  |  |

|   |                                      |                        |                                 |
|---|--------------------------------------|------------------------|---------------------------------|
| I have identified potential DBE certified subcontractors        | __ YES                               | __ NO                  |                                 |
| If yes, please complete the table below. If no, please explain: |                                      |                        |                                 |
|   |                                      |                        |                                 |
| <b>Subcontractor Name/<br/>Company Name</b>                     | <b>Company Address/ Phone/ Email</b> | <b>Est. Dollar Amt</b> | <b>Currently DBE Certified?</b> |
|   |                                      |                        |                                 |
|   |                                      |                        |                                 |
|   |                                      |                        |                                 |

Continue on back if needed

<sup>1</sup> 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.

<sup>2</sup> 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.



**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that 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).

| <b>Prime Contractor Signature</b> | <b>Print Name</b> |
|-----------------------------------|-------------------|
|                                   |                   |
| <b>Title</b>                      | <b>Date</b>       |
|                                   |                   |

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.

**Attachment C**

**Good Faith Efforts to Achieve DBE Participation**

# Good Faith Efforts

## What is the Purpose of the Good Faith Efforts?

The Good Faith Efforts are methods employed by all EPA financial assistance agreement recipients to ensure that disadvantaged business enterprises (DBEs) have the opportunity to compete for procurements funded by EPA financial assistance funds.

## What Are the Good Faith Efforts?

- ❖ Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and local government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- ❖ 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. For Indian Tribal, State and local Government recipients, this will include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- ❖ Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- ❖ Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- ❖ If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

## What are the New Contract Administration Provisions?

When the DBE rule goes into effect, there are a number of new provisions designed to prevent unfair practices that adversely affect DBEs. Those provisions are as follows:

- ❖ A 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 recipient.
- ❖ A recipient must be notified in writing by its prime contractor prior to any

termination of a DBE subcontractor for convenience by the prime contractor.

- ❖ If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the Six Good Faith Efforts if soliciting a replacement subcontractor.
- ❖ A recipient must require its prime contractor to employ the Six Good Faith Efforts even if the prime contractor has achieved its fair share objectives.

### **What are the New Forms Associated With the New Contract Administration Provisions?**

EPA Form 6100-2 - DBE Program Subcontractor Participation Form. This form gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have.

EPA Form 6100-3 - DBE Program Subcontractor Performance Form. This form captures an intended subcontractor's description of work to be performed for the prime contractor and the price of the work submitted to the prime.

EPA Form 6100-4 – DBE Program Subcontractor Utilization Form. This form captures the prime's intended use of an identified DBE subcontractor, and the estimated dollar amount of the subcontract.

| <b>Form</b>     | <b>Requirement</b>   | <b>Provided By</b> | <b>Completed By</b> | <b>Submitted To</b>                           |
|-----------------|--|--------------------|---------------------|---|
| EPA Form 6100-2 | Recipients required to have prime contractors provide form to Subcontractors | Prime Contractors  | DBE Subcontractors  | EPA DBE Coordinator                           |
| EPA Form 6100-3 | Recipients required to have prime contractors provide form to Subcontractors | Prime Contractors  | DBE Subcontractors  | Recipients as part of bid or proposal package |
| EPA Form 6100-4 | Recipients required to have prime contractors complete the form              | Recipients         | Prime Contractors   | Recipients as part of bid or proposal package |

**Attachment D**

**State of Rhode Island Minority Business Enterprise Utilization Plan**



**State of Rhode Island  
 Division of Equity, Diversity, and Inclusion (DEDI)  
 Minority Business Enterprise Compliance Office  
 Minority Business Enterprise Utilization Plan**

Company Name: \_\_\_\_\_

Representative's Name who administers MBE Program: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_ Telephone: \_\_\_\_\_

Email: \_\_\_\_\_ Project Location: \_\_\_\_\_

Bid or Project #: \_\_\_\_\_ Date Bid Opened: \_\_\_\_\_

Description of Work: \_\_\_\_\_

Contract Value: \_\_\_\_\_ MBE % Assigned: \_\_\_\_\_

Total # of All Subcontractors/Suppliers used: \_\_\_\_\_ # of MBE Subcontractors/Suppliers used: \_\_\_\_\_

**List All Subcontractors/Suppliers/Consultants/Independent Contractors – Total Dollar Amounts – Scope of Work:**

| <b>Subcontractor / Supplier</b> | <b>Dollar Award</b> | <b>Scope/Description of Work</b> | <b>RI Certified M/WBE<br/>Yes/No</b> |
|---------------------------------|---------------------|----------------------------------|--------------------------------------|
|                                 |                     |                                  |                                      |
|                                 |                     |                                  |                                      |
|                                 |                     |                                  |                                      |

Please note that all MBE/WBE firms must be certified by the RI MBE Compliance Office, and that MBE/WBE firms must self-perform 100% of the work with their own forces or subcontract to another RI certified MBE/WBE in order to receive participation credit. Vendors may count 60% of expenditures for materials and supplies obtained from an MBE certified as a regular dealer/supplier, and 100% of such expenditures obtained from an MBE/WBE certified as a manufacturer. For firms certified as a broker, you may receive MBE participation credit only for the fees and commissions charged for the procurement of the good and materials, but not the cost of the materials themselves.

The above referenced contract will not be released until this plan has been approved by the Director of the Department of Administration or its designee.

For assistance and advice in identifying MBE/WBE firms, please call the Minority Business Enterprise Compliance Office at (401) 574-8253. The directory of all certified MBE firms is also located at [www.mbe.ri.gov](http://www.mbe.ri.gov).

Signature of Authorized Agent of Business: \_\_\_\_\_ Date: \_\_\_\_\_

**Send Completed Form to:**  
**Kate Constance Brody, Esq. Administrator – MBE Compliance Office**  
**Division of Equity, Diversity, and Inclusion (DEDI)**  
**Minority Business Enterprise Compliance Office**  
**One Capitol Hill, 3rd Floor**  
**Providence, RI 02908**  
**Phone: (401) 574-8670**  
**Kate.Brody@doa.ri.gov**

**Attachment E**

**Office of Diversity, Equity, and Opportunity  
Minority Business Enterprise Project Reporting Form**

**Office of Diversity, Equity and Opportunity (ODEO)**  
**MBE Compliance Office**  
**1 Capitol Hill, 3<sup>rd</sup> Floor**  
**Providence, RI 02908**

**(401) 574-8670**  
[www.mbe.ri.gov](http://www.mbe.ri.gov)

Pursuant to RIGL 37-14.1 as well as the regulations promulgated thereto, the MBE Compliance Office requires that you complete the following table. Please note that these figures will be verified with the MBEs identified. If there are outstanding issues, such as retainage or a dispute, please indicate and attach supporting documentation for same. Also note that copies of invoice and cancelled checks for payment to all MBE subcontractors and suppliers are required.

**Contractor/Vendor Name:**

**Project Name & Location:**

**Original Prime Contract Amount: \$ \_\_\_\_\_ Current Prime Contract Amount: \$ \_\_\_\_\_ % Complete: \_\_\_\_\_**

| <b>MBE/WBE Subcontractor</b> | <b>Original Contract Amount</b> | <b>Change Orders</b> | <b>Revised Contract Value</b> | <b>% Completed To Date</b> | <b>Amount Paid To Date</b> | <b>Amount Due</b> | <b>Retainage %</b> | <b>Retainage Amount</b> | <b>Explanation</b> |
|------------------------------|---------------------------------|----------------------|-------------------------------|----------------------------|----------------------------|-------------------|--------------------|-------------------------|--------------------|
|                              |                                 |                      |                               |                            |                            |                   |                    |                         |                    |
|                              |                                 |                      |                               |                            |                            |                   |                    |                         |                    |
|                              |                                 |                      |                               |                            |                            |                   |                    |                         |                    |
|                              |                                 |                      |                               |                            |                            |                   |                    |                         |                    |

I declare, under penalty of perjury, that the information provided in this verification form and supporting documents is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

Notary Certificate:

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Commission Expires



**Attachment F**

**State Revolving Fund Sign**

THIS PROJECT IS FUNDED BY THE



# STATE REVOLVING FUND

JOINTLY ADMINISTERED BY THE

**Rhode Island  
Infrastructure Bank**

**Vahid Ownjazayeri  
Chair**

**Jeffrey R. Diehl  
Executive Director**



**State of Rhode Island  
Department of Health**

**Daniel J. McKee  
Governor**

**Dr. Utpala Bandy,  
MD, MPH, Interim Director-  
RIDOH**



*"Dedicated To Protecting And Preserving Our State's Most Important Resource...Clean Water"*



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Department of Health**

Daniel J. McKee  
Governor

Dr. Utpala Bandy,  
MD, MPH, Interim Director-  
RIDOH



*"Dedicated To Protecting And Preserving Our State's Most Important Resource...Clean Water"*

Black

Navy Blue

Black

Green &  
Navy Blue

Navy Blue

Black

Navy Blue

Grade

Navy Blue

8'



THIS PROJECT IS FUNDED BY THE

# STATE REVOLVING FUND

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Governor

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MD, MPH, Interim Director-  
RIDOH



*"Dedicated To Protecting And Preserving Our State's Most Important Resource...Clean Water"*

4'

5"

2"

4"

5"

4"

2"

3"

4"

2"

3"

2"

3"

4"

2"

3"

**Attachment G**

**Davis Bacon Wage Rates/Questionnaire**

"General Decision Number: RI20240001 03/22/2024

Superseded General Decision Number: RI20230001

State: Rhode Island

Construction Types: Building, Heavy (Heavy and Marine) and Highway

Counties: Rhode Island Statewide.

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

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

|   |   |
|---|---|
| If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022: | . Executive Order 14026 generally applies to the contract.<br>. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.  |
| If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:         | . Executive Order 13658 generally applies to the contract.<br>. The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024. |

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

| Modification Number | Publication Date |
|---------------------|------------------|
| 0                   | 01/05/2024       |
| 1                   | 01/12/2024       |
| 2                   | 02/23/2024       |
| 3                   | 03/08/2024       |
| 4                   | 03/22/2024       |

ASBE0006-006 09/01/2023

|   | Rates    | Fringes |
|---|----------|---------|
| HAZARDOUS MATERIAL HANDLER<br>(Includes preparation,<br>wetting, stripping, removal<br>scrapping, vacuuming, bagging<br>& disposing of all insulation<br>materials, whether they<br>contain asbestos or not, from<br>mechanical systems)..... | \$ 48.15 | 34.84   |

ASBE0006-008 09/01/2023

|  | Rates    | Fringes |
|--|----------|---------|
| Asbestos Worker/Insulator<br>Includes application of<br>all insulating materials,<br>protective coverings,<br>coatings & finishes to all<br>types of mechanical systems. | \$ 48.15 | 34.84   |

BOIL0029-001 01/01/2021

|                  | Rates    | Fringes |
|------------------|----------|---------|
| BOILERMAKER..... | \$ 45.87 | 29.02   |

BRII0003-001 06/01/2022

|  | Rates    | Fringes |
|--|----------|---------|
| Bricklayer, Stonemason,<br>Pointer, Caulker & Cleaner..... | \$ 46.86 | 29.14   |

BRII0003-002 09/01/2022

|  | Rates    | Fringes |
|--|----------|---------|
| Marble Setter, Terrazzo<br>Worker & Tile Setter..... | \$ 46.54 | 30.34   |

BRII0003-003 09/01/2022

|  | Rates    | Fringes |
|--|----------|---------|
| Marble, Tile & Terrazzo<br>Finisher..... | \$ 38.78 | 29.61   |

CARP0330-001 01/01/2024

|   | Rates    | Fringes |
|---|----------|---------|
| CARPENTER (Includes Soft<br>Floor Layer)..... | \$ 43.63 | 30.25   |

|                   |          |       |
|-------------------|----------|-------|
| Diver Tender..... | \$ 44.88 | 30.25 |
| DIVER.....        | \$ 57.03 | 30.25 |
| Piledriver.....   | \$ 41.53 | 29.35 |
| WELDER.....       | \$ 44.88 | 30.25 |

FOOTNOTES:

When not diving or tending the diver, the diver and diver tender shall receive the piledriver rate. Diver tenders shall receive \$1.00 per hour above the pile driver rate when tending the diver.

Work on free-standing stacks, concrete silos & public utility electrical power houses, which are over 35 ft. in height when constructed: \$.50 per hour additional.

Work on exterior concrete shear wall gang forms, 45 ft. or more above ground elevation or on setback: \$.50 per hour additional.

The designated piledriver, known as the ""monkey"": \$1.00 per hour additional.

-----  
 CARP1121-002 01/02/2023

|                 | Rates    | Fringes |
|-----------------|----------|---------|
| MILLWRIGHT..... | \$ 41.54 | 30.73   |

-----  
 ELEC0099-002 06/01/2023

|                                | Rates    | Fringes      |
|--------------------------------|----------|--------------|
| ELECTRICIAN.....               | \$ 48.61 | 50.44%       |
| Teledata System Installer..... | \$ 36.46 | 11.59%+15.31 |

FOOTNOTES:

Work of a hazardous nature, or where the work height is 30 ft. or more from the floor, except when working OSHA-approved lifts: 20% per hour additional.

Work in tunnels below ground level in combined sewer outfall: 20% per hour additional.

-----  
 ELEV0039-001 01/01/2023

|                        | Rates    | Fringes    |
|------------------------|----------|------------|
| ELEVATOR MECHANIC..... | \$ 59.36 | 37.335+a+b |

FOOTNOTES:

a. PAID HOLIDAYS: New Years Day; Memorial Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; the Friday after Thanksgiving Day; and Christmas Day.

b. Employer contributes 8% basic hourly rate for 5 years or more of service of 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.

-----  
 \* ENGI0057-001 11/01/2023



Rates Fringes

Operating Engineer: (power plants, sewer treatment plants, pumping stations, tunnels, caissons, piers, docks, bridges, wind turbines, subterranean & other marine and heavy construction work)

|              |          |       |
|--------------|----------|-------|
| GROUP 1..... | \$ 41.95 | 29.75 |
| GROUP 2..... | \$ 39.95 | 29.75 |
| GROUP 3..... | \$ 35.23 | 29.75 |
| GROUP 4..... | \$ 38.93 | 29.75 |
| GROUP 5..... | \$ 38.93 | 29.75 |
| GROUP 6..... | \$ 34.65 | 29.75 |
| GROUP 7..... | \$ 28.65 | 29.75 |
| GROUP 8..... | \$ 34.20 | 29.75 |
| GROUP 9..... | \$ 43.17 | 29.45 |

a. BOOM LENGTHS, INCLUDING JIBS:

- 150 feet and over + \$ 2.00
- 180 feet and over + \$ 3.00
- 210 feet and over + \$ 4.00
- 240 feet and over + \$ 5.00
- 270 feet and over + \$ 7.00
- 300 feet and over + \$ 8.00
- 350 feet and over + \$ 9.00
- 400 feet and over + \$10.00

a. PAID HOLIDAYS:

New Year's Day, President's Day, Memorial Day, July Fourth, Victory Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day. a: Any employee who works 3 days in the week in which a holiday falls shall be paid for the holiday.

a. FOOTNOTES:

Hazmat work: \$2.00 per hour additional.  
Tunnel/Shaft work: \$5.00 per hour additional.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Cranes, lighters, boom trucks and derricks

GROUP 2: Digging machine, Ross Carrier, locomotive, hoist, elevator, bidwell-type machine, shot & water blasting machine, paver, spreader, graders, front end loader (3 yds. and over), vibratory hammer & vacuum truck, roadheaders, forklifts, economobile type equipment, tunnel boring machines, concrete pump and on site concrete plants.

GROUP 3: Oilers on cranes.

GROUP 4: Oiler on crawler backhoe.

GROUP 5: Bulldozer, bobcats, skid steer loader, tractor, scraper, combination loader backhoe, roller, front end loader (less than 3 yds.), street and mobile-powered sweeper (3-yd. capacity), 8-ft. sweeper minimum 65 HP).

GROUP 6: Well-point installation crew.

GROUP 7: Utility Engineers and Signal Persons

GROUP 8: Heater, concrete mixer, stone crusher, welding machine, generator and light plant, gas and electric driven pump and air compressor.

GROUP 9: Boat & tug operator.

-----  
\* ENGI0057-002 11/01/2023

|  | Rates    | Fringes |
|--|----------|---------|
| Power Equipment Operator<br>(highway construction<br>projects; water and sewerline<br>projects which are incidental<br>to highway construction<br>projects; and bridge projects<br>that do not span water) |          |         |
| GROUP 1.....   | \$ 41.95 | 29.75   |
| GROUP 2.....   | \$ 39.95 | 29.75   |
| GROUP 3.....   | \$ 35.23 | 29.75   |
| GROUP 4.....   | \$ 38.93 | 29.75   |
| GROUP 5.....   | \$ 38.93 | 29.75   |
| GROUP 6.....   | \$ 34.65 | 29.75   |
| GROUP 7.....   | \$ 28.65 | 29.75   |
| GROUP 8.....   | \$ 34.20 | 29.75   |
| GROUP 9.....   | \$ 34.28 | 29.75   |

a. FOOTNOTE: a. Any employee who works three days in the week in which a holiday falls shall be paid for the holiday.

a. PAID HOLIDAYS: New Year's Day, President's Day, Memorial Day, July Fourth, Victory Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day & Christmas Day.

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 1: Digging machine, crane, piledriver, lighter, locomotive, derrick, hoist, boom truck, John Henry's, directional drilling machine, cold planer, reclaimer, paver, spreader, grader, front end loader (3 yds. and over), vacuum truck, test boring machine operator, veemere saw, water blaster, hydro-demolition robot, forklift, economobile, Ross Carrier, concrete pump operator and boats

GROUP 2: Well point installation crew

GROUP 3: Utility engineers and signal persons

GROUP 4: Oiler on cranes

GROUP 5: Combination loader backhoe, front end loader (less than 3 yds.), forklift, bulldozers & scrapers and boats

GROUP 6: Roller, skid steer loaders, street sweeper

GROUP 7: Gas and electric drive heater, concrete mixer, light plant, welding machine, pump & compressor

GROUP 8: Stone crusher

GROUP 9: Mechanic & welder

BUILDING CONSTRUCTION

|                          | Rates    | Fringes |
|--------------------------|----------|---------|
| Power Equipment Operator |          |         |
| GROUP 1.....             | \$ 46.07 | 29.75   |
| GROUP 2.....             | \$ 44.07 | 29.75   |
| GROUP 3.....             | \$ 42.60 | 29.75   |
| GROUP 4.....             | \$ 39.85 | 29.75   |
| GROUP 5.....             | \$ 37.00 | 29.75   |
| GROUP 6.....             | \$ 43.15 | 29.75   |
| GROUP 7.....             | \$ 42.72 | 29.75   |
| GROUP 8.....             | \$ 40.04 | 29.75   |

a. BOOM LENGTHS, INCLUDING JIBS:

- 150 ft. and over: + \$ 2.00
- 180 ft. and over: + \$ 3.00
- 210 ft. and over: + \$ 4.00
- 240 ft. and over: + \$ 5.00
- 270 ft. and over: + \$ 7.00
- 300 ft. and over: + \$ 8.00
- 350 ft. and over: + \$ 9.00
- 400 ft. and over: + \$10.00

a. PAID HOLIDAYS: New Year's Day, President's Day, Memorial Day, July Fourth, Victory Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day & Christmas Day. a: Any employee who works 3 days in the week in which a holiday falls shall be paid for the holiday.

- a. FOOTNOTE: Hazmat work: \$2.00 per hour additional.  
Tunnel/Shaft work: \$5.00 per hour additional.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Cranes, lighters, boom trucks and derricks.

GROUP 2: Digging machine, Ross carrier, locomotive, hoist, elevator, bidwell-type machine, shot & water blasting machine, paver, spreader, front end loader (3 yds. and over), vibratory hammer and vacuum truck

GROUP 3: Telehandler equipment, forklift, concrete pump & on-site concrete plant

GROUP 4: Fireman & oiler on cranes

GROUP 5: Oiler on crawler backhoe

GROUP 6: Bulldozer, skid steer loaders, bobcats, tractor, grader, scraper, combination loader backhoe, roller, front end loader (less than 3 yds.), street and mobile powered sweeper (3 yds. capacity), 8-ft. sweeper (minimum 65 hp)

GROUP 7: Well point installation crew

GROUP 8: Heater, concrete mixer, stone crusher, welding machine, generator for light plant, gas and electric driven pump & air compressor

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IRON0037-001 09/16/2023

|                 | Rates    | Fringes |
|-----------------|----------|---------|
| IRONWORKER..... | \$ 40.00 | 32.58   |

-----  
LAB00271-001 11/27/2022

BUILDING CONSTRUCTION

|                          | Rates    | Fringes |
|--------------------------|----------|---------|
| LABORER                  |          |         |
| GROUP 1.....             | \$ 35.50 | 26.85   |
| GROUP 2.....             | \$ 35.75 | 26.85   |
| GROUP 3.....             | \$ 36.25 | 26.85   |
| GROUP 4.....             | \$ 36.50 | 26.85   |
| GROUP 5.....             | \$ 37.50 | 26.85   |
| LABORERS CLASSIFICATIONS |          |         |

GROUP 1: Laborer, Carpenter Tender, Mason Tender, Cement Finisher Tender, Scaffold Erector, Wrecking Laborer, Asbestos Removal [Non-Mechanical Systems]

GROUP 2: Asphalt Raker, Adzemen, Pipe Trench Bracer, Demolition Burner, Chain Saw Operator, Fence & Guard Rail Erector, Setter of Metal Forms for Roadways, Mortar Mixer, Pipelayer, Riprap & Dry Stonewall Builder, Highway Stone Spreader, Pneumatic Tool Operator, Wagon Drill Operator, Tree Trimmer, Barco-Type Jumping Tamper, Mechanical Grinder Operator

GROUP 3: Pre-Cast Floor & Roof Plank Erectors

GROUP 4: Air Track Operator, Hydraulic & Similar Self-Powered Drill, Block Paver, Rammer, Curb Setter, Powderman & Blaster

GROUP 5: Toxic Waste Remover

LABORERS CLASSIFICATIONS

GROUP 1: Laborer, Carpenter Tender, Mason Tender, Cement Finisher Tender, Scaffold Erector, Wrecking Laborer, Asbestos Removal [Non-Mechanical Systems]

GROUP 2: Asphalt Raker, Adzemen, Pipe Trench Bracer, Demolition Burner, Chain Saw Operator, Fence & Guard Rail Erector, Setter of Metal Forms for Roadways, Mortar Mixer, Pipelayer, Riprap & Dry Stonewall Builder, Highway Stone Spreader, Pneumatic Tool Operator, Wagon Drill Operator, Tree Trimmer, Barco-Type Jumping Tamper, Mechanical Grinder Operator

GROUP 3: Pre-Cast Floor & Roof Plank Erectors

GROUP 4: Air Track Operator, Hydraulic & Similar Self-Powered Drill, Block Paver, Rammer, Curb Setter, Powderman & Blaster

GROUP 5: Toxic Waste Remover

-----  
LAB00271-002 11/27/2022

HEAVY AND HIGHWAY CONSTRUCTION

|   | Rates    | Fringes |
|---|----------|---------|
| LABORER   |          |         |
| COMPRESSED AIR  |          |         |
| Group 1.....  | \$ 55.40 | 24.15   |
| Group 2.....  | \$ 52.93 | 24.15   |
| Group 3.....  | \$ 42.45 | 24.15   |
| FREE AIR  |          |         |
| Group 1.....  | \$ 44.05 | 24.15   |
| Free Air  |          |         |
| Group 1.....  | \$ 46.00 | 24.15   |
| FREE AIR  |          |         |
| Group 2.....  | \$ 43.05 | 24.15   |
| Free Air  |          |         |
| Group 2.....  | \$ 45.00 | 24.15   |
| FREE AIR  |          |         |
| Group 3.....  | \$ 40.50 | 24.15   |
| Free Air  |          |         |
| Group 3.....  | \$ 42.45 | 24.15   |
| LABORER   |          |         |
| Group 1.....  | \$ 35.50 | 24.85   |
| Group 2.....  | \$ 35.75 | 24.85   |
| Group 3.....  | \$ 36.50 | 24.85   |
| Group 4.....  | \$ 29.00 | 24.85   |
| Group 5.....  | \$ 37.50 | 24.85   |
| OPEN AIR CAISSON,<br>UNDERPINNING WORK AND<br>BORING CREW |          |         |
| Bottom Man.....   | \$ 41.50 | 24.15   |
| Top Man & Laborer.....                                    | \$ 35.60 | 24.15   |
| TEST BORING   |          |         |
| Driller.....  | \$ 41.95 | 24.15   |
| Laborer.....  | \$ 41.95 | 24.15   |

LABORER CLASSIFICATIONS

GROUP 1: Laborer; Carpenter tender; Cement finisher tender; Wrecking laborer; Asbestos removers [non-mechanical systems]; Plant laborer; Driller in quarries

GROUP 2: Adzeperson; Asphalt raker; Barcotype jumping tamper; Chain saw operators; Concrete and power buggy operator; Concrete saw operator; Demolition burner; Fence and guard rail erector; Highway stone spreader; Laser beam operator; Mechanical grinder operator; Mason tender; Mortar mixer; Pneumatic tool operator; Riprap and dry stonewall builder; Scaffold erector; Setter of metal forms for roadways; Wagon drill operator; Wood chipper operator; Pipelayer; Pipe trench bracer

GROUP 3: Air track drill operator; Hydraulic and similar powered drills; Brick paver; Block paver; Rammer and curb setter; Powderperson and blaster

GROUP 4: Flagger & signaler

GROUP 5: Toxic waste remover

LABORER - COMPRESSED AIR CLASSIFICATIONS

GROUP 1: Mucking machine operator, tunnel laborer, brake person, track person, miner, grout person, lock tender, gauge tender, miner: motor person & all others in compressed air

GROUP 2: Change house attendant, powder watchperson, top

person on iron

GROUP 3: Hazardous waste work within the ""HOT"" zone

#### LABORER - FREE AIR CLASSIFICATIONS

GROUP 1: Grout person - pumps, brake person, track person, form mover & stripper (wood & steel), shaft laborer, laborer topside, outside motorperson, miner, conveyor operator, miner welder, heading motorperson, erecting operator, mucking machine operator, nozzle person, rodperson, safety miner, shaft & tunnel, steel & rodperson, mole nipper, concrete worker, form erector (wood, steel and all accessories), cement finisher (this type of work only), top signal person, bottom person (when heading is 50' from shaft), burner, shield operator and TBM operator

GROUP 2: Change house attendant, powder watchperson

GROUP 3: Hazardous waste work within the ""HOT"" zone

#### LABORER CLASSIFICATIONS

GROUP 1: Laborer; Carpenter tender; Cement finisher tender; Wrecking laborer; Asbestos removers [non-mechanical systems]; Plant laborer; Driller in quarries

GROUP 2: Adzeperson; Asphalt raker; Barcotype jumping tamper; Chain saw operators; Concrete and power buggy operator; Concrete saw operator; Demolition burner; Fence and guard rail erector; Highway stone spreader; Laser beam operator; Mechanical grinder operator; Mason tender; Mortar mixer; Pneumatic tool operator; Riprap and dry stonewall builder; Scaffold erector; Setter of metal forms for roadways; Wagon drill operator; Wood chipper operator; Pipelayer; Pipe trench bracer

GROUP 3: Air track drill operator; Hydraulic and similar powered drills; Brick paver; Block paver; Rammer and curb setter; Powderperson and blaster

GROUP 4: Flagger & signaler

GROUP 5: Toxic waste remover

#### LABORER - COMPRESSED AIR CLASSIFICATIONS

GROUP 1: Mucking machine operator, tunnel laborer, brake person, track person, miner, grout person, lock tender, gauge tender, miner: motor person & all others in compressed air

GROUP 2: Change house attendant, powder watchperson, top person on iron

GROUP 3: Hazardous waste work within the ""HOT"" zone

#### LABORER - FREE AIR CLASSIFICATIONS

GROUP 1: Grout person - pumps, brake person, track person, form mover & stripper (wood & steel), shaft laborer, laborer topside, outside motorperson, miner, conveyor operator, miner welder, heading motorperson, erecting operator, mucking machine operator, nozzle person,

rodperson, safety miner, shaft & tunnel, steel & rodperson, mole nipper, concrete worker, form erector (wood, steel and all accessories), cement finisher (this type of work only), top signal person, bottom person (when heading is 50' from shaft), burner, shield operator and TBM operator

GROUP 2: Change house attendant, powder watchperson

GROUP 3: Hazardous waste work within the ""HOT"" zone

-----  
 PAIN0011-005 06/01/2023

|   | Rates    | Fringes |
|---|----------|---------|
| PAINTER   |          |         |
| Brush and Roller.....   | \$ 37.62 | 22.85   |
| Epoxy, Tanks, Towers,<br>Swing Stage & Structural<br>Steel..... | \$ 39.62 | 22.85   |
| Spray, Sand & Water<br>Blasting.....                            | \$ 40.62 | 22.85   |
| Taper.....  | \$ 38.37 | 22.85   |
| Wall Coverer.....   | \$ 38.12 | 22.85   |

-----  
 PAIN0011-006 06/01/2022

|              | Rates    | Fringes |
|--------------|----------|---------|
| GLAZIER..... | \$ 40.78 | 23.40   |

FOOTNOTES:

SWING STAGE: \$1.00 per hour additional.

PAID HOLIDAYS: Labor Day & Christmas Day.

-----  
 PAIN0011-011 06/01/2023

|                            | Rates    | Fringes |
|----------------------------|----------|---------|
| Painter (Bridge Work)..... | \$ 56.25 | 23.45   |

-----  
 PAIN0035-008 06/01/2011

|                   | Rates    | Fringes |
|-------------------|----------|---------|
| Sign Painter..... | \$ 24.79 | 13.72   |

-----  
 PLAS0040-001 01/01/2024

BUILDING CONSTRUCTION

|                                   | Rates    | Fringes |
|-----------------------------------|----------|---------|
| CEMENT MASON/CONCRETE FINISHER... | \$ 43.00 | 29.10   |

FOOTNOTE: Cement Mason: Work on free swinging scaffolds under 3 planks width and which is 20 or more feet above ground and any offset structure: \$.30 per hour additional.

-----  
 PLAS0040-002 01/01/2024

HEAVY AND HIGHWAY CONSTRUCTION

|                                   | Rates    | Fringes |
|-----------------------------------|----------|---------|
| CEMENT MASON/CONCRETE FINISHER... | \$ 38.45 | 25.30   |
| -----                             |          |         |
| PLAS0040-003 01/01/2024           |          |         |

|                         | Rates    | Fringes |
|-------------------------|----------|---------|
| PLASTERER.....          | \$ 43.65 | 29.43   |
| -----                   |          |         |
| PLUM0051-002 08/28/2023 |          |         |

|                               | Rates    | Fringes |
|-------------------------------|----------|---------|
| Plumbers and Pipefitters..... | \$ 50.59 | 32.75   |
| -----                         |          |         |
| ROOF0033-004 12/01/2023       |          |         |

|                         | Rates    | Fringes |
|-------------------------|----------|---------|
| ROOFER.....             | \$ 43.80 | 30.31   |
| -----                   |          |         |
| SFRI0669-001 01/01/2024 |          |         |

|                         | Rates    | Fringes |
|-------------------------|----------|---------|
| SPRINKLER FITTER.....   | \$ 47.55 | 32.85   |
| -----                   |          |         |
| SHEE0017-002 12/01/2020 |          |         |

|                         | Rates    | Fringes |
|-------------------------|----------|---------|
| Sheet Metal Worker..... | \$ 38.58 | 36.73   |
| -----                   |          |         |
| TEAM0251-001 05/01/2023 |          |         |

HEAVY AND HIGHWAY CONSTRUCTION

|               | Rates    | Fringes    |
|---------------|----------|------------|
| TRUCK DRIVER  |          |            |
| GROUP 1.....  | \$ 29.71 | 34.602+A+B |
| GROUP 2.....  | \$ 29.86 | 34.602+A+B |
| GROUP 3.....  | \$ 29.91 | 34.602+A+B |
| GROUP 4.....  | \$ 29.96 | 34.602+A+B |
| GROUP 5.....  | \$ 30.06 | 34.602+A+B |
| GROUP 6.....  | \$ 30.46 | 34.602+A+B |
| GROUP 7.....  | \$ 30.66 | 34.602+A+B |
| GROUP 8.....  | \$ 30.16 | 34.602+A+B |
| GROUP 9.....  | \$ 30.41 | 34.602+A+B |
| GROUP 10..... | \$ 30.21 | 34.602+A+B |

FOOTNOTES:

A. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, plus Presidents' Day, Columbus Day, Veteran's Day & V-J Day, providing the employee has worked at least one day in the calendar week in which the holiday falls.

B. Employee who has been on the payroll for 1 year or more but less than 5 years and has worked 150 Days during the last year of employment shall receive 1 week's paid



vacation; 5 to 10 years - 2 weeks' paid vacation; 10 or more years - 3 week's paid vacation.

C. Employees on the seniority list shall be paid a one hundred dollar (\$100.00) bonus for every four hundred (400) hours worked, up to a maximum of five hundred dollars (\$500.00)

All drivers working on a defined hazard material job site shall be paid a premium of \$2.00 per hour over applicable rate.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Pick-up trucks, station wagons, & panel trucks

GROUP 2: Two-axle on low beds

GROUP 3: Two-axle dump truck

GROUP 4: Three-axle dump truck

GROUP 5: Four- and five-axle equipment

GROUP 6: Low-bed or boom trailer.

GROUP 7: Trailers when used on a double hook up (pulling 2 trailers)

GROUP 8: Special earth-moving equipment, under 35 tons

GROUP 9: Special earth-moving equipment, 35 tons or over

GROUP 10: Tractor trailer

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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

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

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WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

4.) All decisions by the Administrative Review Board are final.  
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END OF GENERAL DECISION"

**Attachment H**

**Debarment & Suspension (Executive Order 12549) and Certification**

# DEBARMENT & SUSPENSION

## Executive Order 12549--Debarment and Suspension

**Source:** The provisions of Executive Order 12549 of Feb. 18, 1986, appear at 51 FR 6370, 3 CFR, 1986 Comp., p. 189, unless otherwise noted.

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to curb fraud, waste, and abuse in Federal programs, increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs, it is hereby ordered that:

**Section 1.** (a) To the extent permitted by law and subject to the limitations in Section 1(c), Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect.

(b) Activities covered by this Order include but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees.

(c) This Order does not cover procurement programs and activities, direct Federal statutory entitlements or mandatory awards, direct awards to foreign governments or public international organizations, benefits to an individual as a personal entitlement, or Federal employment.

**Sec. 2.** To the extent permitted by law, Executive departments and agencies shall:

(a) Follow government-wide criteria and government-wide minimum due process procedures when they act to debar or suspend participants in affected programs.

(b) Send to the agency designated pursuant to Section 5 identifying information concerning debarred and suspended participants in affected programs, participants who have agreed to exclusion from participation, and participants declared ineligible under applicable law, including Executive Orders. This information shall be included in the list to be maintained pursuant to Section 5.

(c) Not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in an affected program. An agency may grant an exception permitting a debarred, suspended, or excluded party to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from this Presidential policy. However, I intend that exceptions to this policy should be granted only infrequently.

**Sec. 3.** Executive departments and agencies shall issue regulations governing their implementation of this Order that shall be consistent with the guidelines issued under Section 6. Proposed regulations shall be submitted to the Office of Management and Budget for review within four months of the date of the guidelines issued under Section 6. The Director of the Office of Management and Budget may return for reconsideration proposed regulations that the Director believes are inconsistent with the guidelines. Final regulations shall be published within twelve months of the date of the guidelines.

**Sec. 4.** There is hereby constituted the Interagency Committee on Debarment and Suspension, which shall monitor implementation of this Order. The Committee shall consist of representatives of agencies designated by the Director of the Office of Management and Budget.

**Sec. 5.** The Director of the Office of Management and Budget shall designate a Federal agency to perform the following functions: maintain a current list of all individuals and organizations excluded from program participation under this Order, periodically distribute the list to Federal agencies, and study the feasibility of automating the list; coordinate with the lead agency responsible for government-wide debarment and suspension of contractors; chair the Interagency Committee established by Section 4; and report periodically to the Director on implementation of this Order, with the first report due within two years of the date of the Order.

**Sec. 6.** The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe government-wide criteria and government-wide minimum due process procedures, and set forth other related details for the effective administration of the guidelines.

**Sec. 7.** The Director of the Office of Management and Budget shall report to the President within three years of the date of this Order on Federal agency compliance with the Order, including the number of exceptions made under Section 2(c), and shall make recommendations as are appropriate further to curb fraud, waste, and abuse.

### **Implementation in the SRF Programs**

A company or individual who is debarred or suspended cannot participate in primary and lower-tiered covered transactions. These transactions include SRF loans and contracts and subcontracts awarded with SRF loan funds.

Under 40 C.F.R. 32.510, the SRF agency must submit a certification stating that it shall not knowingly enter into any transaction with a person who is proposed for debarment, suspended, declared ineligible, or voluntarily excluded from participation in the SRF program. This certification is reviewed by the EPA regional office before the capitalization grant is awarded.

A recipient of SRF assistance directly made available by capitalization grants must provide a certification that it will not knowingly enter into a contract with anyone who is ineligible under the regulations to participate in the project. Contractors on the project have to provide a similar certification prior to the award of a contract and subcontractors on the project have to provide the general contractor with the certification prior to the award of any subcontract.

In addition to actions taken under 40 C.F.R. Part 32, there are a wide range of other sanctions that can render a party ineligible to participate in the SRF program. Lists of debarred, suspended and otherwise ineligible parties are maintained by the General Services Administration and should be checked by the SRF agency and all recipients of funds directly made available by capitalization grants to ensure the accuracy of certifications.

### **Additional References**

C 40 C.F.R. Part 32: EPA Regulations on Debarment and Suspension.

**CERTIFICATION REGARDING DEBARMENT & SUSPENSION  
AND OTHER RESPONSIBILITY MATTERS**

In accordance with the Executive Order 12549, the prospective primary participant certifies to the best of his / her knowledge and belief, that its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification.
- d. Have not within a three-year period preceding this application / proposal had one or more public transactions (federal, state, or local) terminated for cause of default.
- e. Acknowledge that all sub-contractors selected for this project must be in compliance with paragraphs (1) (a – d) of this certification.

\_\_\_\_\_  
Name and Title of Authorized Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_ I am unable to certify to the above statements. My explanation is attached.



**Attachment I**

**EPA American Iron and Steel Memorandum**



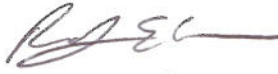
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460


MAR 20 2014

OFFICE OF WATER

**MEMORANDUM**

SUBJECT: Implementation of American Iron and Steel provisions of P.L. 113-76,  
Consolidated Appropriations Act, 2014

FROM: For Andrew D. Sawyers, Director   
Office of Wastewater Management (4201M)

Peter C. Grevatt, Director   
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors  
Regions I - X

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an “American Iron and Steel (AIS)” requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Federal Fiscal Year 2014.

Section 436 also sets forth certain circumstances under which EPA may waive the AIS requirement. Furthermore, the Act specifically exempts projects where engineering plans and specifications were approved by a State agency prior to January 17, 2014.

The approach described below explains how EPA will implement the AIS requirement. The first section is in the form of questions and answers that address the types of projects that must comply with the AIS requirement, the types of products covered by the AIS requirement, and compliance. The second section is a step-by-step process for requesting waivers and the circumstances under which waivers may be granted.

## Implementation

The Act states:

Sec. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out

the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.

The following questions and answers provide guidance for implementing and complying with the AIS requirements:

### **Project Coverage**

#### **1) What classes of projects are covered by the AIS requirement?**

All treatment works projects funded by a CWSRF assistance agreement, and all public water system projects funded by a DWSRF assistance agreement, from the date of enactment through the end of Federal Fiscal Year 2014, are covered. The AIS requirements apply to the entirety of the project, no matter when construction begins or ends. Additionally, the AIS requirements apply to all parts of the project, no matter the source of funding.

#### **2) Does the AIS requirement apply to nonpoint source projects or national estuary projects?**

No. Congress did not include an AIS requirement for nonpoint source and national estuary projects unless the project can also be classified as a 'treatment works' as defined by section 212 of the Clean Water Act.

#### **3) Are any projects for the construction, alteration, maintenance, or repair of a public water system or treatment works excluded from the AIS requirement?**

Any project, whether a treatment works project or a public water system project, for which engineering plans and specifications were approved by the responsible state agency prior to January 17, 2014, is excluded from the AIS requirements.

#### **4) What if the project does not have approved engineering plans and specifications but has signed an assistance agreement with a CWSRF or DWSRF program prior to January 17, 2014?**

The AIS requirements do not apply to any project for which an assistance agreement was signed prior to January 17, 2014.

**5) What if the project does not have approved engineering plans and specifications, but bids were advertised prior to January 17, 2014 and an assistance agreement was signed after January 17, 2014?**

If the project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the approval date for purposes of the exemption in section 436(f).

**6) What if the assistance agreement that was signed prior to January 17, 2014, only funded a part of the overall project, where the remainder of the project will be funded later with another SRF loan?**

If the original assistance agreement funded any construction of the project, the date of the original assistance agreement counts for purposes of the exemption. If the original assistance agreement was only for planning and design, the date of that assistance agreement will count for purposes of the exemption only if there is a written commitment or expectation on the part of the assistance recipient to fund the remainder of the project with SRF funds.

**7) What if the assistance agreement that was signed prior to January 17, 2014, funded the first phase of a multi-phase project, where the remaining phases will be funded by SRF assistance in the future?**

In such a case, the phases of the project will be considered a single project if all construction necessary to complete the building or work, regardless of the number of contracts or assistance agreements involved, are closely related in purpose, time and place. However, there are many situations in which major construction activities are clearly undertaken in phases that are distinct in purpose, time, or place. In the case of distinct phases, projects with engineering plans and specifications approval or assistance agreements signed prior to January 17, 2014 would be excluded from AIS requirements while those approved/signed on January 17, 2014, or later would be covered by the AIS requirements.

**8) What if a project has split funding from a non-SRF source?**

Many States intend to fund projects with “split” funding, from the SRF program and from State or other programs. Based on the Act language in section 436, which requires that American iron and steel products be used in any project for the construction, alteration, maintenance, or repair of a public water system or treatment works receiving SRF funding between and including January 17, 2014 and September 30, 2014, any project that is funded in whole or in part with such funds must comply with the AIS requirement. A “project” consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time and place. This precludes the intentional splitting of SRF projects into separate and smaller contracts or assistance agreements to avoid AIS coverage on some portion of a larger

project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreement for SRF and State or other funding would carry separate requirements.

**9) What about refinancing?**

If a project began construction, financed from a non-SRF source, prior to January 17, 2014, but is refinanced through an SRF assistance agreement executed on or after January 17, 2014 and prior to October 1, 2014, AIS requirements will apply to all construction that occurs on or after January 17, 2014, through completion of construction, unless, as is likely, engineering plans and specifications were approved by a responsible state agency prior to January 17, 2014. There is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to January 17, 2014.

**10) Do the AIS requirements apply to any other EPA programs, besides the SRF program, such as the Tribal Set-aside grants or grants to the Territories and DC?**

No, the AIS requirement only applies to funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12)

**Covered Iron and Steel Products**

**11) What is an iron or steel product?**

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail below);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail below);
- Reinforced precast concrete; and
- Construction materials (defined in more detail below).

**12) What does the term ‘primarily iron or steel’ mean?**

‘Primarily iron or steel’ places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

**13) Can you provide an example of how to perform a cost determination?**

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem, coupling, valve, seals, etc). However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

**14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product be produced in the US?**

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

**15) What is the definition of steel?**

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

**16) What does ‘produced in the United States’ mean?**

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the

material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

**17) Are the raw materials used in the production of iron or steel required to come from US sources?**

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

**18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?**

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

**19) What is the definition of ‘municipal castings’?**

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

- Access Hatches;
- Ballast Screen;
- Benches (Iron or Steel);
- Bollards;
- Cast Bases;
- Cast Iron Hinged Hatches, Square and Rectangular;
- Cast Iron Riser Rings;
- Catch Basin Inlet;
- Cleanout/Monument Boxes;
- Construction Covers and Frames;
- Curb and Corner Guards;
- Curb Openings;
- Detectable Warning Plates;
- Downspout Shoes (Boot, Inlet);
- Drainage Grates, Frames and Curb Inlets;
- Inlets;
- Junction Boxes;
- Lampposts;
- Manhole Covers, Rings and Frames, Risers;



Meter Boxes;  
Service Boxes;  
Steel Hinged Hatches, Square and Rectangular;  
Steel Riser Rings;  
Trash receptacles;  
Tree Grates;  
Tree Guards;  
Trench Grates; and  
Valve Boxes, Covers and Risers.

## **20) What is ‘structural steel’?**

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

## **21) What is a ‘construction material’ for purposes of the AIS requirement?**

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

## **22) What is not considered a ‘construction material’ for purposes of the AIS requirement?**

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and

data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

**23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?**

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

**24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?**

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin.

If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

**Compliance**

**25) How should an assistance recipient document compliance with the AIS requirement?**

In order to ensure compliance with the AIS requirement, specific AIS contract language must be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements. Sample language for assistance agreements and contracts can be found in Appendix 3 and 4.

EPA recommends the use of a step certification process, similar to one used by the Federal Highway Administration. The step certification process is a method to ensure that producers adhere to the AIS requirement and assistance recipients can verify that products comply with the AIS requirement. The process also establishes accountability and better enables States to take enforcement actions against violators.

Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer,

processor, etc) of the iron and steel products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification can be quite simple. Typically, it includes the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer's responsible party. Attached, as Appendix 5, are sample certifications. These certifications should be collected and maintained by assistance recipients.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes occurred in the US. While this type of certification may be acceptable, it may not provide the same degree of assurance. Additional documentation may be needed if the certification is lacking important information. Step certification is the best practice.

## **26) How should a State ensure assistance recipients are complying with the AIS requirement?**

In order to ensure compliance with the AIS requirement, States SRF programs must include specific AIS contract language in the assistance agreement. Sample language for assistance agreements can be found in Appendix 3.

States should also, as a best practice, conduct site visits of projects during construction and review documentation demonstrating proof of compliance which the assistance recipient has gathered.

## **27) What happens if a State or EPA finds a non-compliant iron and/or steel product permanently incorporated in the project?**

If a potentially non-compliant product is identified, the State should notify the assistance recipient of the apparent unauthorized use of the non-domestic component, including a proposed corrective action, and should be given the opportunity to reply. If unauthorized use is confirmed, the State can take one or more of the following actions: request a waiver where appropriate; require the removal of the non-domestic item; or withhold payment for all or part of the project. Only EPA can issue waivers to authorize the use of a non-domestic item. EPA may use remedies available to it under the Clean Water Act, the Safe Drinking Water Act, and 40 CFR part 31 grant regulations, in the event of a violation of a grant term and condition.

It is recommended that the State work collaboratively with EPA to determine the appropriate corrective action, especially in cases where the State is the one who identifies the item in noncompliance or there is a disagreement with the assistance recipient.

If fraud, waste, abuse, or any violation of the law is suspected, the Office of Inspector General (OIG) should be contacted immediately. The OIG can be reached at 1-

888-546-8740 or [OIG\\_Hotline@epa.gov](mailto:OIG_Hotline@epa.gov). More information can be found at this website: <http://www.epa.gov/oig/hotline.htm>.

## **28) How do international trade agreements affect the implementation of the AIS requirements?**

The AIS provision applies in a manner consistent with United States obligations under international agreements. Typically, these obligations only apply to direct procurement by the entities that are signatories to such agreements. In general, SRF assistance recipients are not signatories to such agreements, so these agreements have no impact on this AIS provision. In the few instances where such an agreement applies to a municipality, that municipality is under the obligation to determine its applicability and requirements and document the actions taken to comply for the State.

### **Waiver Process**

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework described below will allow States, on behalf of the assistance recipients, to apply for waivers of the AIS requirement directly to EPA Headquarters. Only waiver requests received from states will be considered. Pursuant to the Act, EPA has the responsibility to make findings as to the issuance of waivers to the AIS requirements.

### **Definitions**

The following terms are critical to the interpretation and implementation of the AIS requirements and apply to the process described in this memorandum:

Reasonably Available Quantity: The quantity of iron or steel products is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

Satisfactory Quality: The quality of iron or steel products, as specified in the project plans and designs.

Assistance Recipient: A borrower or grantee that receives funding from a State CWSRF or DWSRF program.

## **Step-By-Step Waiver Process**

### Application by Assistance Recipient

Each local entity that receives SRF water infrastructure financial assistance is required by section 436 of the Act to use American made iron and steel products in the construction of its project. However, the recipient may request a waiver. Until a waiver is granted by EPA, the AIS requirement stands, except as noted above with respect to municipalities covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the AIS requirement, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron and steel products. It is essential that the assistance recipient include the AIS terms in any request for proposals or solicitations for bids, and in all contracts (see Appendix 3 for sample construction contract language). The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of three conditions is met:

1. Applying the American Iron and Steel requirements of the Act would be inconsistent with the public interest;
2. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron and steel products needed to complete the project as described in the plans and specifications that may not be available from domestic sources. It may also identify the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the State SRF program. It is strongly recommended that the State designate a single person for all AIS communications. The State SRF designee will review the application for the waiver and determine whether the necessary information has been included. Once the waiver application is complete, the State designee will forward the application to either of two email addresses. For CWSRF waiver requests, please send the application to: [cwsrfwaiver@epa.gov](mailto:cwsrfwaiver@epa.gov). For DWSRF waiver requests, please send the application to: [dwsrfwaiver@epa.gov](mailto:dwsrfwaiver@epa.gov).

## Evaluation by EPA

After receiving an application for waiver of the AIS requirements, EPA Headquarters will publish the request on its website for 15 days and receive informal comment. EPA Headquarters will then use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.

In the event that EPA finds that adequate documentation and justification has been submitted, the Administrator may grant a waiver to the assistance recipient. EPA will notify the State designee that a waiver request has been approved or denied as soon as such a decision has been made. Granting such a waiver is a three-step process:

1. Posting – After receiving an application for a waiver, EPA is required to publish the application and all material submitted with the application on EPA’s website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at: [http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm)
2. Evaluation – After receiving an application for waiver of the AIS requirements, EPA Headquarters will use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.
3. Signature of waiver approval by the Administrator or another agency official with delegated authority – As soon as the waiver is signed and dated, EPA will notify the State SRF program, and post the signed waiver on our website. The assistance recipient should keep a copy of the signed waiver in its project files.

## Public Interest Waivers

EPA has the authority to issue public interest waivers. Evaluation of a public interest waiver request may be more complicated than that of other waiver requests so they may take more time than other waiver requests for a decision to be made. An example of a public interest waiver that might be issued could be for a community that has standardized on a particular type or manufacturer of a valve because of its performance to meet their specifications. Switching to an alternative valve may require staff to be trained on the new equipment and additional spare parts would need to be purchased and stocked, existing valves may need to be unnecessarily replaced, and portions of the system may need to be redesigned. Therefore, requiring the community to install an alternative valve would be inconsistent with public interest.

EPA also has the authority to issue a public interest waiver that covers categories of products that might apply to all projects.

EPA reserves the right to issue national waivers that may apply to particular classes of assistance recipients, particular classes of projects, or particular categories of iron or steel products. EPA may develop national or (US geographic) regional categorical waivers through the identification of similar circumstances in the detailed justifications presented to EPA in a waiver request or requests. EPA may issue a national waiver based on policy decisions regarding the public's interest or a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. In such cases, EPA may determine it is necessary to issue a national waiver.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at [dorfman.jordan@epa.gov](mailto:dorfman.jordan@epa.gov) or (202) 564-0614 or Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division, at [anderer.kirsten@epa.gov](mailto:anderer.kirsten@epa.gov) or (202) 564-3134.

Attachments

## Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

| Items  | ✓ | Notes |
|--|---|-------|
| <p>General</p> <ul style="list-style-type: none"> <li>• Waiver request includes the following information:               <ul style="list-style-type: none"> <li>— Description of the foreign and domestic construction materials</li> <li>— Unit of measure</li> <li>— Quantity</li> <li>— Price</li> <li>— Time of delivery or availability</li> <li>— Location of the construction project</li> <li>— Name and address of the proposed supplier</li> <li>— A detailed justification for the use of foreign construction materials</li> </ul> </li> <li>• Waiver request was submitted according to the instructions in the memorandum</li> <li>• Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor</li> </ul>   |   |       |
| <p>Cost Waiver Requests</p> <ul style="list-style-type: none"> <li>• Waiver request includes the following information:               <ul style="list-style-type: none"> <li>— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products</li> <li>— Relevant excerpts from the bid documents used by the contractors to complete the comparison</li> <li>— Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers</li> </ul> </li> </ul>   |   |       |
| <p>Availability Waiver Requests</p> <ul style="list-style-type: none"> <li>• Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested:               <ul style="list-style-type: none"> <li>— Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials</li> <li>— Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers.</li> <li>— Project schedule</li> <li>— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials</li> </ul> </li> <li>• Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought</li> <li>• Has the State received other waiver requests for the materials described in this waiver request, for comparable projects?</li> </ul> |   |       |



## Appendix 2: HQ Review Checklist for Waiver Request

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

| Review Items   | Yes                      | No                       | N/A                      | Comments |
|--|--------------------------|--------------------------|--------------------------|----------|
| <b>Cost Waiver Requests</b> <ul style="list-style-type: none"> <li>• Does the waiver request include the following information?               <ul style="list-style-type: none"> <li>– Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products</li> <li>– Relevant excerpts from the bid documents used by the contractors to complete the comparison</li> <li>– A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market</li> </ul> </li> <li>• Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%?</li> </ul>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |          |
| <b>Availability Waiver Requests</b> <ul style="list-style-type: none"> <li>• Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested?               <ul style="list-style-type: none"> <li>– Supplier information or other documentation indicating availability/delivery date for materials</li> <li>– Project schedule</li> <li>– Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials</li> </ul> </li> <li>• Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers?</li> <li>• Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information)</li> <li>• Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested?<br/>Examples include:               <ul style="list-style-type: none"> <li>– Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State</li> <li>– Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States</li> <li>– Correspondence with construction trade associations indicating the non-availability of the materials</li> </ul> </li> <li>• Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits?</li> </ul> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |          |

### **Appendix 3: Example Loan Agreement Language**

ALL ASSISTANCE AGREEMENT MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN SRF ASSISTANCE AGREEMENTS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

Comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

#### **Appendix 4: Sample Construction Contract Language**

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the City of \_\_\_\_\_ (“Purchaser”) and the \_\_\_\_\_ (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

## Appendix 5: Sample Certifications

The following information is provided as a sample letter of **step** certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

\_\_\_\_\_

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

The following information is provided as a sample letter of certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

\_\_\_\_\_

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

**Attachment J**

**Rhode Island Certified Prevailing Wage Daily Log**



**Attachment K**

**EPA Memorandum “Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment in the SRF Programs”**





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF WATER

**MEMORANDUM**

**SUBJECT:** Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment in the SRF Programs

**FROM:** Kiri Anderer, P.E., Acting Associate Branch Chief  
Infrastructure Branch, OGWDW

KIRSTEN  
ANDERER

Digitally signed by KIRSTEN  
ANDERER  
Date: 2020.12.11 07:55:52  
-05'00'

Michael Deane, Branch Chief  
State Revolving Fund Branch, OWM

MICHAEL DEANE

Digitally signed by MICHAEL  
DEANE  
Date: 2020.12.11 17:56:38 -05'00'

**TO:** SRF Branch Chiefs  
Regions 1-10

Effective August 13, 2020, recipients and subrecipients of EPA funded assistance agreements, including borrowers under EPA funded revolving loan funds, must comply with regulations at [2 CFR 200.216](#), *Prohibition on certain telecommunication and video surveillance services or equipment*, implementing section 889 of [Public Law 115-232](#). The regulation prohibits the use of Federal funds to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use “covered telecommunications equipment or services” identified in the regulation as a substantial or essential component of any system, or as critical technology as part of any system. Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that “uses any equipment, system, or service that uses covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the [System for Award Management](#) exclusion list.

As described in section 889 of Public Law 115-232, covered telecommunications equipment or services includes:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.

- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

### **Applicability in the State Revolving Fund (SRF) Programs**

Clean Water and Drinking Water SRF (CWSRF and DWSRF) programs may not expend equivalency funds for these products on or after August 13, 2020. States must ensure that equivalency assistance agreements include the telecommunications prohibition condition [provided by EPA's Office of Grants and Debarment](#) (OGD) in OGD's most recent EPA General Terms and Conditions. The condition must also be in construction contracts associated with equivalency assistance agreements.

There is no exhaustive list of components and services that fall under the prohibition. State SRF managers and local assistance recipients should exercise due diligence and be particularly mindful of project components with internet or cellular connections. For example, recipients should be mindful of automatic meter reading (AMR) technology and advanced metering infrastructure (AMI), instrumentation control systems (e.g. process control systems, distributed control systems and programmable logic controls), and security cameras and other electronic security measures to ensure that those items are procured from a non-excluded entity. Items included in the prohibition are not eligible SRF costs, and the SRF programs cannot reimburse borrowers for these costs.

The prohibition also applies to the CWSRF administrative funds (if states are billing those costs to the federal CWSRF capitalization grant) and the four DWSRF set-asides. States should be mindful of items such as cell phones, computers, and mobile WiFi routers or hotspots funded by those accounts.

If you have questions on the implementation of this grant condition, please contact Michael Deane at [Deane.Michael@epa.gov](mailto:Deane.Michael@epa.gov) or Kiri Anderer at [Anderer.Kirsten@epa.gov](mailto:Anderer.Kirsten@epa.gov).

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated below. All provisions, which are not so amended or supplemented, remain in full force and effect.

ARTICLE 1 - DEFINITIONS

General

The terms "Plans" and "Project Plans" used in various locations throughout these Specifications shall have the same meaning as "Drawings" as defined in the General Conditions. The word "site" shall mean the specific area adjacent to and including the area upon which the work is performed. The words "as directed", "as permitted", "as required", or words of like effect shall mean the direction, permission, and/or requirement of the Owner is intended and similarly the words, "approved", "acceptable", "satisfactory", or words of like effect shall mean approved by, acceptable, or satisfactory to the Owner, unless otherwise provided herein. The words "necessary", "suitable" "equal", or words of like effect shall mean necessary, suitable, or equal in the opinion of the Owner.

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract have the meanings assigned to them in the General Conditions.

SC-1.01. SPECIFIC CHANGES

Include following sections under paragraph 1.01.

SC-1.19. Engineer – Delete paragraph 1.19 in its entirety and replace with the following:

1.19. Engineer - Owner or Owner's representative as defined by the Owner.

SC-1.43. Delete paragraph 1.43 in its entirety and replace with the following:

1.43 Specifications - Sections included under Division 1 through Division 16 of the Contract Documents.

SC-1.45. Insert the following at the beginning of the definition.

Substantial completion shall mean either that the Work required by the Contract has been completed except for work having a Contract Price of less than one per cent of the then adjusted total contract price, or...

SC-1.52. Add the following new definitions after paragraph 1.52 of the General Conditions:

1.53 Conditions of the Contract - The combined General Conditions and Supplementary Conditions.

1.54 Contract Documents – Request for Proposals, Information to Bidders, Instructions for Bidders, Price Proposal Form, Supplements to Price Proposal, Technical Proposal Requirements, Agreement, Bonds, General Conditions, Supplementary Conditions, Specifications, and Appendices.

**CITY OF EAST PROVIDENCE  
WATER UTILITIES DIVISION  
WATER METER INSTALLATION PROJECT**

ARTICLE 2 - PRELIMINARY MATTERS

SC-2.03. Delete paragraph 2.03 of the General Conditions in its entirety and insert the following in its place:

2.03. The Contract Time will commence at the issuance of the Notice to Proceed or within fifteen days of contract execution.

SC-2.05C. Delete paragraph 2.05C of the General Conditions in its entirety and insert the following in its place:

2.05C. Before any Work at the site is started, Contractor shall deliver to Owner, with copies to Engineer and each additional insured identified in Article 5 of the Supplementary Conditions, certificates of insurance (and other evidence requested by Owner) which Contractor is required to purchase and maintain in accordance with the requirements of Article 5.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

SC-3.01. Add a new paragraph immediately after Paragraph 3.01. of the General Conditions which is to read as follows:

3.01 D. Each and every provision of law and clause required by law to be inserted in these Contract Documents shall be deemed to be inserted herein, and they shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or if not correctly inserted, then upon the application of either party, the Contract Documents shall forthwith be physically amended to make such insertion.

ARTICLE 4.0 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

SC-4.01. Add a new paragraph immediately after Paragraph 4.01. of the General Conditions which is to read as follows:

4.01D. If all lands and rights-of-way are not obtained as herein contemplated before construction begins, Contractor shall begin the work upon such land and rights-of-way as Owner has previously acquired.

ARTICLE 5 - BONDS AND INSURANCE

Amend paragraph 5.01 by adding the following sections:

D. The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds shall be in a form acceptable to the Owner and shall be issued by companies licensed to issue such Bonds in the State of Rhode Island, and the cost thereof shall be included in the Contract Sum. Bonding companies shall be approved by the Owner and shall be listed on the U.S. Treasuries Circular 570 of approved bonding companies. The amount of each bond shall be equal to 100 percent of the Contract Sum, as amended.

Insurance companies shall be approved by the Owner and shall be rated A- or better.

E. The Contractor shall deliver the required bonds to the Owner on or before the date the Agreement is entered into.

**CITY OF EAST PROVIDENCE  
WATER UTILITIES DIVISION  
WATER METER INSTALLATION PROJECT**

- F. The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

Amend Paragraph 5.04 as follows:

SC-5.04 The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Law:

5.04A.1. and 5.04A.2. Worker's Compensation

(1) Worker's Compensation Statutory Coverage

5.04A.3., 5.04A.4., and 5.04A.5. Comprehensive General Liability including Premise/Operations; Explosion, Collapse and Underground Property Damage; Products/Completed Operations, Broad Form Contractual, Independent Contractors; Broad Form Property Damage; and Personal Injury liabilities. Carrier shall be "A-rated or higher.

a.) Bodily Injury:

- (i) \$1,000,000- Each Occurrence
- (ii) \$1,000,000- Annual Aggregate

b.) Property Damage:

- (i) \$1,000,000- Each Occurrence
- (ii) \$1,000,000- Annual Aggregate

c.) Products & Complete Operations to be maintained for one (1) year after final payment.

d.) Property Damage Liability Insurance will provide X, C, or U coverage as applicable.

(3) Contractor's Liability:

a.) Bodily Injury:

- (i) \$1,000,000- Each Occurrence

b.) Property Damage:

- (i) \$1,000,000- Each Occurrence
- (ii) \$1,000,000- Annual Aggregate

(4) Personal Injury, with Employment Exclusion deleted:

- a.) \$1,000,000- Annual Aggregate

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5.04A.6. Comprehensive Automobile Liability including all owned (private and others), hired and non-owned vehicles: Carrier shall be A- rated or higher.

- a.) Bodily Injury:
  - (i) \$500,000- Each Person
  - (ii) \$1,000,000- Each Occurrence
  
- b.) Property Damage:
  - (i) \$1,000,000- Each Occurrence
  
- c.) Special Hazards:
  - (i) \$1,000,000- Each Occurrence

SC-5.04. Add a new paragraph immediately after Paragraph 5.04B.7. of the General Conditions which is to read as follows:

5.04B.8. Contractor may purchase and maintain excess liability insurance in the umbrella form in order to satisfy the limits of liability required for the insurance to be purchased and maintained in accordance with paragraph 5.04. Evidence of such excess liability shall be delivered to Owner in the form of a certificate indicating the policy numbers and limits of liability of all underlying insurance.

SC-5.04. ADD paragraph 5.04C of the General Conditions:

5.04C. If Owner has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by Contractor in accordance with this Article 5 on the basis of its not complying with the Contract Documents, Owner will notify Contractor in writing thereof within ten days of the date of delivery of such certificates to Owner in accordance with Paragraph 2.05C. Contractor will provide such additional information in respect of insurance provided by him/her as Owner may reasonably request.

SC-5.05 DELETE paragraph 5.05 of the General Conditions in its entirety.

SC-5.06B DELETE paragraph 5.06 of the General Conditions in its entirety.

SC-5.07B and 5.07C DELETE paragraph 5.07B and 5.07C of the General Conditions in its entirety.

SC-5.08. DELETE paragraph 5.08 of the General Conditions in its entirety.

SC-5.09 – DELETE paragraph 5.09 of the General Conditions in its entirety and replace with the following:

5.09 If Owner has any objection to the coverage afforded by, or other provisions of, the insurance required to be purchased and maintained by Contractor in accordance with Article 5.0 on the basis of its not complying with the Contract Documents, Owner shall notify Contractor thereof in writing. Contractor shall provide to the Owner such additional information in respect of insurance provided by as the Owner may reasonably request.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

Amend Article 6.0 by adding the following:

**SC 6.0 Equal Opportunity**

The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin.

Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising.

SC-6.02. Add the following new paragraphs immediately after Paragraph 6.02B of the General Conditions:

6.02C. This Agreement is subject to the applicable provisions of the Contract Work Hours and Safety Standards Act, Public Law 87-581, 87th Congress, as amended. No Contractor or Subcontractor contracting for any part of the work shall require or permit any laborer or mechanic to be employed on the Work in excess of forty hours in any work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all hours worked in excess of forty hours in such work week.

6.02D. Contractor shall employ only competent persons to do the work and whenever Owner shall notify Contractor, in writing, that any person on the Work appears to be incompetent, disorderly, or otherwise unsatisfactory, such person shall be removed from the Project and shall not again be employed on it except with the consent of Owner.

6.02E. Except as may be otherwise required by law, all claims and disputes pertaining to the classification of labor employed on the project under this Contract shall be decided by the governing body having jurisdiction.

SC-6.06. DELETE Paragraphs 6.06A and 6.06B of the General Conditions in their entirety and insert the following in its place:

6.06A. Contractor shall not employ any subcontractor, supplier or other person or organization, (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner may have reasonable objection. Acceptance of any Subcontractor, other person or organization by Owner does not waive Owner's rights to reject defective Work. Contractor shall not be required to employ any Subcontractor, other person or organization against which Contractor has reasonable objection.

SC-6.06. Add a new sentence at the end of Section 6.06 to read as follows:

6.06H. Owner or ENGINEER may furnish to any Subcontractor, Supplier or other person or organization, to the extent practicable, information about amounts paid on their behalf to Contractor in accordance with Contractor's Applications for Payment.

SC-6.10. Add the following language at the end of Paragraph 6.10 of the General Conditions:

The materials and supplies to be used in the Work of this Contract are exempt from the Sales and Use Tax of

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the State of Rhode Island. Contractor shall obtain the proper certificates, maintain the necessary records and otherwise comply with the requirements of Chapter 14 of the Acts of 1966 and any amendments thereto.

SC-6.20. Add two sentences at the end of Paragraph 6.20A to read as follows:

If through the acts of neglect on the part of the Contractor, any other Contractor or any Subcontractor shall suffer loss or damage on the Work, Contractor shall settle with such other Contractor or Subcontractor by agreement or arbitration if such other Contractor or Subcontractor will so settle. If such other Contractor or Subcontractor shall assert any claim against Owner on account of any damage alleged to have sustained, Owner shall notify Contractor, who shall indemnify and save harmless Owner against any such claims.

ARTICLE 8 – OWNER’S RESPONSIBILITIES

SC 8.02. DELETE Section 8.02 in its entirety, and replace with the following:

8.02. In case of termination of the employment of Engineer, Owner shall appoint an Engineer, whose status under the Contract Documents shall be that of the former Engineer.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

SC-9.03. Add a new paragraph immediately after Paragraph 9.03 of the General Conditions which is to read as follows:

9.03B. Owner will designate an agent to represent him/her at the Site who is not ENGINEER's agent or employee. The duties and responsibilities of the agent will be as enumerated in the agent's agreement with Owner, a copy of which will be furnished to Contractor upon written request.

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

SC-11.03.D. DELETE Paragraph 11.03D in its entirety and replace with the following:

11.03D. The unit price of an item of Unit Price Work shall be subject to re-evaluation and adjustment under the following conditions:

11.03D.1. If there is no corresponding adjustment with respect to any other item of Work; and

11.03D.2. If Contractor believes that Contractor has incurred additional expense as a result thereof; or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, either Owner or Contractor may make a claim for an adjustment in the Contract Price in accordance with Article 12 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

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

SC-13.05. Add a new paragraph immediately after paragraph 13.05 of the General Conditions to read as follows:

13.05B. If the Owner stops Work under Paragraph 13.05 Contractor shall be entitled to no extension of Contract Time or increase in Contract Price.



ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02

Add a new sentence immediately after paragraph 14.02A.1 of the General Conditions, which is to read as follows:

The Contractor shall furnish evidence that payment received on the basis of materials and equipment not incorporated and suitably stored, has in fact been paid to the respective supplier(s) within sixty days of payment by Owner. Failure to provide such evidence of payment may result in the withdrawal of previous approval(s) and removal of the cost of related materials and equipment from the next submitted Application for Payment.

SC-14.03

Add two new paragraphs immediately after paragraph 14.03 of the General Conditions, which are to read as follows:

14.03.B. No materials or supplies for the Work shall be purchased by Contractor or Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. Contractor warrants that he/she has good title to all materials and supplies used by him/her in the Work, free from all liens, claims or encumbrances.

14.03.B. Contractor shall indemnify and save Owner harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, material, men, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. Contractor shall at Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If Contractor fails to do so, then Owner may, after having served written notice on the said Contractor either pay unpaid bills, of which Owner has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonable sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to Contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this section be construed to impose any obligations upon Owner to either Contractor or his/her Surety.

SC-14.02.

Add four new paragraphs immediately after paragraph 14.02.D.3 of the General Conditions, which are to read as follows:

14.02.D.4. Should Contractor neglect to pay any undisputed claims, made in writing to Owner within thirty days after completion of the Work, but continuing unsatisfied for a period of ninety days, Owner may pay such claim and deduct the amount thereof from the balance due Contractor. Owner may also, with the written consent of Contractor, use any monies retained, due, or to become due under this Contract for the purpose of payment for both labor and materials for the Work, for which claims have not been filed.

14.02.D.5. Security is provided both by the Payment Bond and the power of Owner to retain any monies for claims, but payment by one shall in no way impair or discharge the liability of the other.

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14.02.D.6. Any and all liens for work and materials may be paid off by Owner within a reasonable time after filing for record in accordance with State and local laws, notice of such liens except where the claim on which the lien is filed is being litigated by Contractor, and in such case Owner may pay the amount of any final judgement or decree or any such claim within a reasonable time after such final judgement or decree shall be rendered.

14.02.D.7 All monies paid by Owner in settlement of liens as aforesaid, with the costs and expenses incurred by Owner in connection therewith, shall be charged to Contractor, shall bear interest at the rate of one and a half percent per month, and shall be deducted from the next payment due Contractor under the terms of this Contract.

SC – 14.07 DELETE Section 14.07 B. Review of Application and Acceptance and Replace with the following:

14.07B. Within 30 days of satisfactory completion of the work and receipt by Owner of Contractor's final application for payment, Owner will make final payment to the Contractor.

Payment hereunder is subject to satisfactory evidence of payment to all subcontractors and resolution of any and all claims and/or liens.

SC – 14.08 DELETE Sections 14.08. Final Completion Delayed.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

SC-15.02

Add a new paragraph immediately after paragraph 15.02A.4. of the General Conditions which is to read as follows:

15.02A.5 If Contractor abandons the Work, or sublets this Contract or any part thereof, without the previous written consent of Owner, or if the Contract or any claim there under shall be assigned by Contractor otherwise than as herein specified;

Delete Section 15.03A.3 and 15.03A.4 in their entirety.

ARTICLE 16 - DISPUTE RESOLUTION

SC-16.

Add a new sentence at the end of Article 16.01 of the General Conditions, which is to read as follows:

Contractor shall carry on the Work and maintain the progress schedule during the dispute resolution proceedings, unless otherwise agreed by him/her and Owner in writing.

Delete all references to arbitration in "General Conditions". Arbitration shall be in accordance with the provisions of the State Arbitration Laws (State of Rhode Island, General Laws, Title 37, Chapter 16), which shall take precedence and shall govern.

Every contract for the construction, alteration, repair or painting or demolition of any public building, sewer, water treatment or disposal project, highway, or bridge one party to which is the state, a city, a town, or an authority, a board, a public corporation, or any similar body created by statute or ordinance or any committee,

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agency, or subdivision of any of them which has a contract price of ten thousand dollars (\$10,000) or more and which is executed on or after July 1, 1967, out of, or concerning the performance or interpretation of, the contract as follows:

“All claims, disputes, and other matters in question arising out of or relating to this contract or the performance or interpretation thereof shall be submitted to arbitration. Arbitration shall be commenced by a demand in writing made by one party to the contract upon the other within a reasonable time after the dispute, claim, or other matter in question arose but in no event after payment in full of the contract price has been made and accepted. The written demand shall contain a statement of the question to be arbitrated and a detailed statement of each time or matter in dispute and the name of the arbitrator appointed by that party. The other party to the contract within (10) days of the receipt of the written demand shall appoint an arbitrator and give notice in writing thereof to the party who commenced arbitration. The two (2) arbitrators appointed by the parties shall within ten (10) days of the date of the appointment of the second arbitrator select a third arbitrator who shall be designated as chairperson and who immediately shall give written notice to the parties of his or her appointment. The third arbitrator shall select a time, date and place for hearing and give each party five (5) days notice in writing thereof. The date for hearing shall not be more than fifteen (15) days after the date of appointment of the third arbitrator. The arbitrators shall render their award in writing to each of the parties not more than thirty (30) days after the date hearing shall commence unless the parties shall otherwise agree in writing. In the event the party of whom arbitration is demanded shall fail to appoint his or her arbitrator within the time specified or the two (2) arbitrators appointed by the parties are unable to agree on an appointment of the third arbitrator within the time specified, either party may petition the residing justice of the superior court to appoint a single arbitrator who shall hear the parties and make an award as provided herein. The petitioner shall give five (5) days notice in writing to the other party before filing his or her petition.”

ARTICLE 17 - MISCELLANEOUS

SC-17.07

Add a new paragraph immediately after paragraph 17.06 of the General Conditions, which is to read as follows:

17.07. Both the address given in the Price Proposal Form upon which this Agreement is founded, and Contractor's office at or near the site of the Work are hereby designated as places to either of which notices, letters, and other communications to Contractor shall be certified, mailed, or delivered. The delivering at the above named place, or depositing in a postpaid wrapper directed to the first-named place, in any post office box regularly maintained by the post office department, of any notice, letter or other communication to Contractor shall be deemed sufficient service thereof upon Contractor; and the date of said service shall be the date of such delivery or mailing. The first-named address may be changed at any time by an instrument in writing, executed and acknowledged by Contractor, and delivered to Owner and ENGINEER. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or other communication upon Contractor personally.

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**WAGE RATES:**

SC-17.08

Add the following new paragraphs immediately after paragraph 17.07 of the Supplementary Conditions:

17.08. The requirements and provisions of all applicable laws and any amendments thereof or additions thereto as to the employment of labor, and to the schedule of minimum wage rates established in compliance with laws shall be a part of these Contract Documents. Copies of the wage schedules are included in the Contract Documents, if applicable under this Contract. If, after the Notice of Award, it becomes necessary to employ any person in a trade or occupation not classified in the wage determinations, such person shall be paid at not less than such rates as shall be determined by the officials administering the laws mentioned above. Such approved minimum rate shall be retroactive to the time of the initial employment of such person in such trade or occupation. Contractor shall notify Owner of his/her intention to employ persons in trades or occupations not classified in sufficient time for Owner to obtain approved rates for such trades or occupations.

17.08.1. The schedules of wages referred to above are minimum rates only, and Owner will not consider any claims for additional compensation made by Contractor because of payment by Contractor of any wage rate in excess of the applicable rate contained in these Contract Documents. All disputes in regard to the payment of wages in excess of these specified in the schedules shall be resolved by Contractor.

17.07.2 The said schedules of wages shall continue to be the minimum rates to be paid during the life of this Agreement and a legible copy of said schedules shall be kept posted in a conspicuous place at the site of the work.

**PART II - STATE GOVERNMENT PROVISIONS**

Each and every other provision of law or clause required by law to be inserted in this Contract shall be deemed to be also inserted herein in accordance with paragraph SC-3.1.1. of Supplementary Conditions.

**1.0 STATE OF RHODE ISLAND PROVISIONS**

1.1 The Owner and Contractor agree that all applicable State of Rhode Island Provisions which apply to the work to be performed under this Contract will be followed. The Contractor must inform him/herself of all pertinent State of Rhode Island Provisions with performing this work. The most recent revisions of any State Provisions will apply in this Contract. The most recent provisions supersede any conflicting provisions of this Contract.

**1.2 State Wage Rates, As Applicable**

END OF SECTION

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SECTION 00840

PAYMENT BOND

- A. An example Payment Bond form is enclosed herein.

END OF SECTION

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# PAYMENT BOND

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

---

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*):

## CONTRACT

Effective Date of Agreement:

Amount:

Description (*Name and Location*):

## BOND

Bond Number:

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

Amount:

Modifications to this Bond Form:

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

## CONTRACTOR AS PRINCIPAL

## SURETY

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

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

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

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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



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

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

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

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

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

15. Definitions

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

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

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

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

Surety Agency or Broker:

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

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SECTION 00850

NOTICE OF AWARD

- A. An example Notice of Award is enclosed herein.

END OF SECTION

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# Notice of Award

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

Project: \_\_\_\_\_

Owner: \_\_\_\_\_

Owner's Contract No.: \_\_\_\_\_

Contract: \_\_\_\_\_

Engineer's Project No.: \_\_\_\_\_

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

Bidder's Address: *[send Notice of Award Certified Mail, Return Receipt Requested]*

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

*[Indicate total Work, alternates, or sections of Work awarded.]*

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Owner  
By: \_\_\_\_\_  
Authorized Signature  
\_\_\_\_\_  
Title

Copy to Engineer

*This page intentionally left blank*

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SECTION 00860

NOTICE TO PROCEED

- A. An example Notice to Proceed is enclosed herein.

END OF SECTION

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# Notice to Proceed

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

Project: \_\_\_\_\_

Owner: \_\_\_\_\_

Owner's Contract No.: \_\_\_\_\_

Contract: \_\_\_\_\_

Engineer's Project No.: \_\_\_\_\_

Contractor: \_\_\_\_\_

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

You are notified that the Contract Times under the above Contract will commence to run on \_\_\_\_\_. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the date of Substantial Completion is \_\_\_\_\_, and the date of readiness for final payment is \_\_\_\_\_ [(or) the number of days to achieve Substantial Completion is \_\_\_\_\_, and the number of days to achieve readiness for final payment is \_\_\_\_\_].

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

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

\_\_\_\_\_ *[add other requirements]*.

\_\_\_\_\_

Owner

Given by:

\_\_\_\_\_

Authorized Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Date

Copy to Engineer

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**DIVISION 1**

**GENERAL REQUIREMENTS**



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SECTION 01010

GENERAL DESCRIPTION OF WORK

**PART 1 GENERAL**

1.1 LOCATION OF WORK

- A. The location of the work is within the East Providence Water Utilities Division's (EPWUD) water distribution system.
- B. The EPWUD is part of the City of East Providence Department of Public Works. The EPWUD currently operates out of their main facility located at 60 Commercial Way in East Providence, RI.
- C. The EPWUD serves all of the City of East Providence as well as customers in neighboring communities. There are approximately 15,260 services connections, with all but 3 of these within the City of East Providence (3 service connections are located in Barrington, RI).
- D. The EPWUD proposes new water meters, encoder registers, and radio-frequency (RF) meter interface units to replace existing hardware at several of their service connections throughout the water distribution system.

1.2 SCOPE OF WORK

- A. Remove and dispose existing Neptune T-10 water meters of various size (5/8-inch to 2-inch), absolute encoder registers, and Neptune R900 v3 and v4 radio frequency (RF) modules (Meter Interface Units (MIUs)) at locations identified by the EPWUD throughout the distribution system. The number of meters, encoder registers, and MIUs of various size and type requiring removal and disposal are listed in Section 01025 – Measurement and Payment. The actual locations will be furnished to the selected Contractor.
- B. Install Neptune T-10 cold water displacement meters of various size (5/8-inch to 2-inch), complimentary absolute encoder registers, and Neptune R900 v4 RF MIUs throughout the distribution system to replace the hardware removed as noted above. The number of meters, encoder registers, and MIUs of various size and type are listed in Section 01025 – Measurement and Payment. The actual locations will be furnished to the selected Contractor. Meters, absolute encoder registers, and MIUs will be provided by the City of East Providence for installation by Contractor.
- C. Install Neptune R900 cellular endpoints where results of propagation study performed by Contractor show that RF MIUs (R900 v4) cannot be read at the minimum frequencies stipulated by AWWA and industry standards. Cellular endpoints will be provided by the City of East Providence for installation by Contractor.
- D. The City's existing meter reading system is a Neptune advanced metering infrastructure (AMI) system that will remain in service throughout this Contract. Contractor shall also maintain all existing utility service, including but not limited to electrical, natural gas, sewer, and water except where temporary, scheduled shutdowns are required to perform the work. Provide adequate notice in advance of any temporary interruption in service.

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- E. The Work also includes coordinating and scheduling work with customers and the EPWUD, documenting the progressing of work throughout the project duration, and photographing and recording pre-construction and post-construction conditions.
- F. Contractor shall notify the City if a lead or galvanized service line is encountered during meter and radio replacement. The City is replacing lead and galvanized service lines, under a separate contract, to comply with Rhode Island Department of Health regulations. Meter and radio replacement will take place after the service line is replaced.

**1.3 DEFINITIONS**

- A. Owner, where used in these Specifications, shall refer to the EPWUD.
- B. Engineer, where used in these Specifications, shall refer to Pare Corporation.
- C. Contractor, where used in these Specifications, shall refer to the Proposer awarded a contract to perform the services described herein.
- D. Contract Documents, where used herein, shall refer to the Project Manual and Specifications.

**PART 2 PRODUCTS (Not Used)**

**PART 3 EXECUTION**

**3.1 GENERAL**

- A. The Contractor shall be responsible for scheduling its activities and the activities of any subcontractors to meet Contract completion dates and project milestones established herein. Contractor is responsible for contacting customers to schedule the work. The EPWUD will identify services where work is required and will provide existing customer information, but EPWUD does not have contact information for every customer. Contractor shall coordinate with EPWUD to determine appropriate methods to contact customers where contact information is not readily available.
- B. Contractor shall provide a Project Manager to oversee the project. The Project Manager shall be thoroughly familiar with and experienced in municipal water meter installation and replacement projects.
- C. The Owner will designate a Project Manager assigned to this project to interface with Contractor's Project Manager on matters of scheduling, customer interactions, dispute resolution, and contract administration. Contractor notes that the Owner and the designated Project Manager will have limited involvement in the project and is not available to direct or carry out the day to day activities of this Contract.
- D. Contractor shall provide a competent Superintendent or Foreman present at all times when work is in progress.
- E. Customer complaints and concerns should first be directed to Contractor. Contractor shall provide a customer service representative capable of meeting with customers to resolve problems and customer complaints. The Project Manager or Superintendent/Foreman can serve as the

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Contractor's customer service representative with Owner approval. Contractor shall provide a telephone number that can be reached 24 hours a day, 7 days a week in the event of a customer complaint or issue that requires immediate resolution by Contractor. Contractor shall notify Owner in the event customer complaints cannot be resolved without intervention by EPWUD.

- F. The Contractor shall submit a Work Plan prior to initiating construction activities, which describes their proposed sequence and timing of the work; a complete project schedule; construction methods; product delivery, handling, and storage procedures; and qualifications of their key personnel. Contractor shall assign a Project Manager and Superintendent or Foreman to oversee the work of this contract.
- G. The Contractor shall use project tracking software to coordinate scheduling, track service orders, and record project progress capable of generating routine summary reports that can be provided to Owner, as requested. The software must also be suitable for preparing a work order report for each service. Contractor shall provide a template work order report for review and comment by Owner prior to the start of work. It is anticipated work order reports will include the following minimum information:
- Customer Personal Information (e.g., name, mailing address, contact information);
  - Customer Service Information (e.g., account number, meter read route, etc.);
  - Project Location (e.g., physical address);
  - Date and Method of Contacts with Customer;
  - Completion Date and Time;
  - Contractor Personnel Performing Work;
  - Photographs of service, meter, and MIU prior to the work and after work is complete;
  - Water Service Size and Pipe Material;
  - Serial/product number for new hardware (e.g., meter, MIU);
  - Installation Notes; and
  - Customer Service Notes.
- H. EPWUD will continue to engage in meter repairs throughout the distribution system during this project, as required. EPWUD will also be available to assist Contractor perform customer shutoffs by closing curb stops, in the event the service cannot be isolated with customer's onsite plumbing.

### 3.2 HAULING, HANDLING, AND STORING OF MATERIALS

- A. Transport and handle items in accordance with manufacturer's instructions.
- B. Coordinate with City to schedule deliveries to reduce long-term on-site storage prior to installation and/or operation.
- C. Deliver products to the site in manufacturer's original sealed containers or other packing systems, complete with instructions for handling, storage, unpacking, protecting and installing.
- D. Promptly inspect shipment to assure that products comply with requirements, quantities are correct, and items are undamaged. Notify Owner verbally, and in writing, of any problems.

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- I. All materials which, in the opinion of the Owner, have become so damaged as to be unfit for the use intended or specified shall be promptly removed from the site of the work and the Contractor shall receive no compensation for the damaged material or its removal.

**3.3 SUBMITTALS**

- A. The Contractor shall issue submittals on all equipment and materials to be incorporated into the Work. Any equipment and materials that are ordered, delivered to the site, and/or installed prior to Owner's review shall be done at Contractor's risk.
- B. Provide submittals electronically for Owner's review, in accordance with submittal procedures agreed to at the start of the Contract.
- C. Provide Owner minimum 14 calendar days for review of submittals. The Contractor shall be responsible for issuing submittals promptly and timely so that there shall be no delay to the Work.
- D. Revise and reissue rejected submittals promptly.

**3.4 QUALITY CONTROL**

- A. The Contractor is responsible for controlling the quality of Work including work of its Subcontractors and suppliers and for ensuring that the specified quality is achieved. The Contractor shall maintain control over construction and installation processes to assure compliance with specified requirements.
- B. The Contractor shall maintain control over procurement sources to ensure that materials, equipment and services conform to specified requirements.
- C. The Engineer and Owner have the right but not the responsibility to perform inspections, witness tests, or otherwise monitor or assess the Work and activities. The Engineer's and Owner's right to perform inspections, witness tests, or otherwise monitor or assess the Work and activities does not relieve the Contractor or its subcontractors and vendors of their obligations to comply with the requirements of the Contract Documents.

**3.5 PROTECTION OF WORK AND PROPERTY**

- A. The Contractor is responsible for the preservation of all public and private property and shall use every precaution necessary to prevent damage thereto. Public or private property damaged due to Contractor's operations shall be restored to a condition equal to or better than existing condition. The cost of repairs to damaged property shall be borne by the Contractor.
- B. Restoration of damaged property shall be performed promptly to the satisfaction of Owner.
- C. During the course of the work, Contractor shall keep work locations as clean and neat as possible at all times. Contractor shall remove, haul away, and dispose of all residue resulting from the work. Contractor shall make a thorough inspection of the work area at the end of work at all project locations to ensure that it is left clean and free of debris resulting from the work of this Contract.



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- D. Contractor shall provide temporary sanitary facilities for use by its workers. At no times shall customer's property be used by the Contractor's workers.

3.6 HEALTH AND SAFETY

- A. The Contractor shall be fully responsible for the safety and health of its employees and its subcontractors during the performance of the Work.
- B. The Contractor shall be directly responsible for ensuring the work is performed in a safe and healthful manner.

3.7 MEETINGS

- A. Pre-Construction Meeting: After the bids have been opened but prior to the start of the construction there will be a preconstruction meeting to discuss the phasing and scheduling of the construction project. The specific time and place of the conference will be arranged by Owner after the Contract has been awarded.
- B. Progress Meetings: Progress meetings will be held during the course of the project on an as needed basis, as determined by Owner. Potential topics to be covered during progress meetings include the following:
  - 1. Progress of Work in relation to Contract Schedule.
  - 2. Proposed Work activities for forthcoming period.
  - 3. Resources committed to Contract.
  - 4. Coordination of Work with others.
  - 5. Status of procurement of equipment and materials.
  - 6. Status of Submittals.
  - 7. Outstanding actions, decisions, or approvals that affect Work activities.
  - 8. Security issues.
  - 9. Quality Issues
  - 10. Potential Claims
  - 11. Contract Changes
  - 12. Costs & Budget
  - 13. Mitigation Measures

3.8 WORK HOURS

- A. Normal construction activity shall take place only between the hours of 8:00 am to 5:00 pm excluding, Saturdays, Sundays and legal holidays unless otherwise allowed by Owner after consultation with property owner and/or tenant where work is to be performed.
- B. The Contractor shall plan their Work to avoid working beyond these hours.

3.9 CONTRACT CLOSEOUT

- A. Substantial Completion: the construction must be complete. For this purpose, completion of

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construction shall be defined in accordance with the following guidelines:

1. The Contractor has completed work at all project sites included in the Contract, including removal of existing hardware, installation of new hardware, and restoration of service at all locations.
2. Contractor shall accompany Owner during any final site walkthroughs and compilation of punch list, as applicable.
3. All shop drawings must have final approval.

B. Final Completion shall include the following activities:

1. Complete punch list.
2. Issue outstanding field reports to Owner
3. Submit final Application for Payment identifying total adjusted Contract Sum, previous payments, and sum remaining due. The Contractor shall submit the following documents with or prior to Final Application for Payment, as applicable: Contract Completion and Acceptance Certificate, Consent of Surety to Final Payment, Release and Waiver of Liens and Claims, Affidavit of Payment of Debts and Claims, and remaining releases, waivers, guarantees, and all data required by the Contract Documents.
4. Complete final cleaning operations, including final disposal of any removed hardware and removal of unused inventory from the project site.

### 3.10 GUARANTEE PERIOD

- A. Guarantee period begins upon Final Completion of the project.
- B. During the guarantee period as defined in General Conditions, the Contractor shall correct all deficiencies.
- C. Corrective work will be identified by Owner. The Contractor will be notified of the item(s) requiring corrective work.
- D. The Contractor shall begin work on all corrective work within 72 hours of being notified of the deficiency by Owner and will then work continuously until the deficiency is corrected. Upon completion of the corrective work, the Contractor shall submit a letter report to the Owner detailing a description of the deficiency and the corrective action that was taken. If the Contractor does not begin work within 72 hours of being notified or does not then work continuously to correct the work, the Owner may have the work completed by others and have all costs deducted from money that would otherwise be due to the Contractor.
- E. The Contractor will coordinate all corrective work with Owner.

END OF SECTION

**PART 1 – GENERAL**

**1.1 EXTENT OF WORK**

- A. Measurement. The quantities to be measured under the various items in the Bid Form will be those quantities of work completed in accordance with the Contract Documents. The methods of measurement will be as stated hereinafter for the individual items.
- B. Prices. The unit or lump sum prices for all items in the schedule of prices shall be full compensation for the work of the Contractor specified and shall include the cost of furnishing all materials, labor, tools and equipment and all work and expense incidental to and necessary to complete the work in accordance with the Contract Documents.

**1.2 WORK NOT PAID FOR SEPARATELY**

- A. Bonds. Payment for bonds required by the contract is included in the prices bid for the various items of work on the Bid Form and no separate payment will be made thereof.
- B. Certifications. Payment for testing and certifications performed to ensure materials comply with the requirements of these Contract Documents shall not be paid for separately and are incidental to the individual items of work listed on the Bid Form.

**1.3 BID ITEMS**

- A. Appurtenant items of work specified which are required to complete the work but are not listed separately under the various applicable bid items of work, shall have no separate payment for such items. It shall be the responsibility of the Contractor to verify any missing or incomplete items.
- B. The Owner reserves the right to remove select bid items and to increase or decrease the unit quantity of bid items. The successful proposer is made aware that the unit price so stated on the Bid Form constitutes full compensation for that item, regardless of any increase or decrease in the unit quantity of that bid item. There is no guarantee of any minimum or maximum quantity for any bid item. Standards of the industry (e.g. renegotiation of the bid price due to a 25% increase or decrease in the unit quantity of the bid item) shall not be enforceable under this contract. Renegotiation of bid prices is solely at the discretion of the Owner.

**1.4 MEASUREMENT**

- A. The measurement of all quantities of items listed on the Bid Form shall be done by the Contractor. The measurement will include proper and complete documentation of all items to the satisfaction of the Owner prior to the submission for payment. The measurement submitted shall be in the same unit description listed on the Bid Form.

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1.5 PAYMENT

- A. Payments shall be made to the Contractor only after proper documentation of the unit quantity provided or percentage of work completed, and in accordance with the contract terms and conditions regarding payment.
- B. Payment for bid items shall include full compensation for all incidentals required for the complete installation of the completed product.
- C. Payment shall be made only for that work which is performed within the pay limits as defined by these specifications. No payment shall be made for work beyond these limits unless the work has been authorized by the Owner in writing.

1.6 PARTIAL PAYMENT FOR PRODUCTS

- A. There shall be no partial payment for products delivered but not completely installed.

1.7 EXTRA WORK

- A. Extra work, if any, shall be performed and paid for in accordance with the Contract Agreement.

1.8 BASE PRICE PROPOSAL - ITEM DESCRIPTIONS

A. Item 1, Mobilization and Demobilization

- 1. The Work of this section shall be measured as specified at the Lump Sum price provided on the Bid Form. The payable quantity will be for the preparatory work and operations which must be performed or for costs which must be incurred prior to beginning work, as well as costs associated with bonds and other “up-front” costs incurred by the Contractor.
- 2. Contractor shall perform a propagation study of the water system to identify customer meters that cannot be read by the new R900 v4 meter interface units integrated into the existing AMI system as part of this project. The intent of this work is to identify customer locations where targeted deployment of cellular endpoints will be used. The propagation study shall be considered part of project mobilization and payment for this work shall be made as part of this item.
- 3. The payment for work associated with mobilization and demobilization shall be a Lump Sum Price as provided on the Bid Form for Item No. 1. Payment will be limited to 75% of the lump sum amount of this item until the work is complete and the contractor has completely demobilized. No more than 50% of the lump sum amount of this item shall be paid for in the Contractor’s first pay application. The lump sum price bid for this item shall not exceed 5 percent of the total of all items, excluding this item.

B. Items 2 – 6, Install Neptune T-10 Water Meter & Absolute Encoder

- 1. The Work of this section shall be measured as specified at the Unit Price for each new Neptune T-10 meter and absolute encoder register that is installed, of the various sizes provided for on the Bid Form. The payable quantity will be for each

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complete meter assembly, inclusive of the water meter, encoder, and all other appurtenances required for a functional meter assembly.

2. The City will furnish all meters and encoder registers for Contractor to install. Furnishing fittings and appurtenances necessary to complete the work is incidental and shall be included for payment under these items, unless specified for payment under other bid items.
3. Payment for installing radio-frequency meter interface units (MIUs) will be made separately.
4. Contractor will be responsible for coordinating with the City to arrange delivery, handling, and storage of hardware to be installed for this project.
5. A minimum of three attempts to schedule installation shall be made by Contractor. The Contractor shall document each attempt and furnish such documentation to Owner.
6. The work of this section includes removal and proper disposal of existing hardware being replaced as part of this work, except where material shall be salvaged with scrap value credited to Owner under separate bid items.
7. The payment for the work of these items as described herein shall be at the Unit Prices provided for Item Nos. 2 – 6.

C. Item 7, Install Neptune R900 RF Meter Interface Units

1. The Work of this section shall be measured as specified at the Unit Price for each new Neptune R900 radio-frequency (RF) meter interface unit (MIU) that is installed in accordance with project specifications and requirements. The payable quantity will be for each complete installation, inclusive of any appurtenances required.
2. Payment for furnishing and installing meters and absolute encoder registers will be made separately.
3. The City will furnish all Neptune R900 radio-frequency (RF) meter interface units (MIUs) to the Contractor for installation.
4. A minimum of three attempts to schedule installation shall be made by Contractor. The Contractor shall document each attempt and furnish such documentation to Owner.
5. The work of this section includes removal and disposal of existing hardware being replaced as part of this work, including legal disposal of batteries.
6. The payment for the work of these items as described herein shall be at the Unit Price provided for Item No. 7.

D. Item 8, Install Neptune R900 Cellular Endpoints

1. The Work of this section shall be measured as specified at the Unit Price for each

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new Neptune R900 cellular endpoint that is installed in accordance with project specifications and requirements. The payable quantity will be for each complete installation, inclusive of any appurtenances required.

2. Payment for furnishing and installing meters and absolute encoder registers will be made separately.
  3. The City will furnish all Neptune R900 cellular endpoints to the Contractor for installation.
  4. A minimum of three attempts to schedule installation shall be made by Contractor. The Contractor shall document each attempt and furnish such documentation to Owner.
  5. The work of this section includes removal and disposal of existing hardware being replaced as part of this work, including legal disposal of batteries.
  6. The payment for the work of these items as described herein shall be at the Unit Price provided for Item No. 8.
- E. Item 9, Furnish and Install New Meter Valve, 1-Inch and Smaller
1. The Work of this section shall be measured as specified at the Unit Price for each new meter valve, 1-inch and smaller, to be furnished and installed where existing valves are inoperable or otherwise require replacement. The payable quantity will be for each complete installation, inclusive of any appurtenances required.
  2. Only those valves that are pre-approved by Owner for installation will be eligible for payment.
  3. The payment for the work of these items as described herein shall be at the Unit Price provided for Item No. 9.
- F. Item 10, Furnish and Install New Meter Valve, 1.5-Inch and Larger
1. The Work of this section shall be measured as specified at the Unit Price for each new meter valve, 1.5-inch and larger, to be furnished and installed where existing valves are inoperable or otherwise require replacement. The payable quantity will be for each complete installation, inclusive of any appurtenances required.
  2. Only those valves that are pre-approved by Owner for installation will be eligible for payment.
  3. The payment for the work of these items as described herein shall be at the Unit Price provided for Item No. 10.
- G. Item 11, Non-Standard Work Allowance
1. Measurement of this item shall be for non-standard work not otherwise included in other bid items but is required to perform complete installations of new meters, encoders, and meter interface units.

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2. Under this bid item, the Contractor will be reimbursed based on their estimated time and materials, upon approval and acceptance by the Owner.
  3. Payment for this item shall be made from the allowance amount established under Item No. 11.
- H. Items 12 – 16, Credit for Salvage Value of Meters of Various Size
1. Measurement of this item shall be a credit based on the scrap value of existing water meters that are removed and salvaged by Contractor.
  2. Existing meters shall be held for one billing cycle (approximately six weeks) prior to them being salvaged for scrap.
  3. Storage and disposal costs associated with salvaged meters shall not be separately measured for payment, but shall be considered incidental to the salvage of the meter.
  4. Cost of removing existing meters is included in the payment of other items.
  5. Credit shall be made at the Unit Prices provided for Items No. 12 – 16 for each salvaged meter.

END OF SECTION

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**DIVISION 15**  
**MECHANICAL**



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**SECTION 15100  
COLD WATER METERS, ABSOLUTE ENCODER REGISTERS,  
AND METER INTERFACE UNITS**

**PART 1 GENERAL**

1.1 WORK INCLUDED

- A. Furnish and install all materials, equipment, and incidentals necessary to remove existing cold water meters, absolute encoders, and radio frequency (RF) meter interface units (MIUs) and to install new hardware. Meters shall be of various size from 5/8-inch to 2-inch.
- B. Furnish and install all materials, equipment, and incidentals necessary to install adaptors, water valves, meter setters, tail pieces, flange conversion kits, and couplings, and other required fittings to install new hardware.
- C. Owner is the City of East Providence Water Utilities Division. Customers refer to the individual customer accounts serviced by the water department.
- D. Water meters, absolute encoders, and MIUs will be purchased separately by the City of East Providence and provided to the Contractor for installation. Contractor shall furnish all other materials, equipment, and incidentals necessary for complete and functional installation.

1.2 RELATED SECTIONS

- A. Section 01010 General Description of Work

1.3 REFERENCE

- A. AWWA Standard C700 – Cold Water Meters – Displacement Type
- B. AWWA Standard C707 – Encoder-Type Remote-Registration Systems for Cold-Water Meters
- C. AWWA Manual M6 Water Meters – Selection, Installation, Testing, and Maintenance
- D. NSF/ANSI 61 – Drinking Water Systems – Health Effects
- E. NSF/ANSI 372 – Safe Drinking Water Act

1.4 SUBMITTALS

- A. Transmit each submittal with Engineer-accepted form.
- B. Sequentially number the transmittal forms. Re-submittals to have original number with an alphabetic suffix.

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- C. Identify Project, Contractor, subcontractor or supplier, and pertinent specification section number, as appropriate.
- D. Apply Contractor's stamp, signed or initialed certifying that review, verification of products required, field dimensions, adjacent construction work, and coordination of information is in accordance with the requirements of the work and Contract Documents.
- E. Schedule submittals to expedite the Project and deliver to Engineer via email or other appropriate means as agreed upon at project start-up. Coordinate submission of related items.
- F. Identify variations from Contract Documents and product or system limitations, which may be detrimental to successful performance of the completed work.
- G. Provide space for Contractor and Engineer review stamps.
- H. Revise and resubmit submittals as required, identifying all changes made since previous submittal.
- I. Refer to Section 01010 - General Description of Work for additional requirements.

**PART 2 PRODUCTS**

**2.1 WATER METERS - GENERAL**

- A. All cold water meters shall be new and unused and of new construction. Meters and meter parts shall be manufactured, assembled, and tested within the United States.
- B. All cold water meters shall be produced from an ISO 9001 certified manufacturing facility and shall conform to AWWA Standard C700 – Cold Water Meters – Displacement Type. All meters shall meet or exceed the accuracy requirements specified in AWWA C700.
- C. All cold water meters shall comply with NSF/ANSI 61 and NSF/ANSI 372.
  - 1. Meters shall be manufactured of “lead free” alloy as defined by NSF/ANSI 61 and NSF/ANSI 372.
  - 2. Manufacturer shall provide a copy of a letter from NSF International, on NSF letterhead, documenting compliance with NSF/ANSI 61 and NSF/ANSI 372.
- D. Meter battery life shall be guaranteed (with warranty provided) to a minimum of 10 years of continuous operation. Warranty shall commence upon date of installation.
- E. Meters shall be guaranteed for a minimum of one year on material and workmanship. Registers shall be guaranteed for a minimum of ten years from date of installation.
- F. Manufacturer shall warrant their meter meets or exceeds AWWA C700 accuracy standards and each shipment of meters shall be accompanied by factory test data certifying their accuracy at the flows required by AWWA C700.

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G. Water meter registers shall read flow in units of cubic feet.

2.2 DISPLACEMENT TYPE METERS

A. General

1. Meters shall be Neptune T-10 (5/8-inch to 2-inch), as manufactured by Neptune Technology Group, Inc. of Tallassee, AL, to conform to East Providence Water Utilities Division standards. Neptune T-10 meters are magnetic-driven, positive displacement meters of the flat nutating disc type.

B. Dimensional Requirements

1. The size, capacity, and meter lengths shall be as specified in AWWA Standard C700 (latest revision). The maximum number of disc nutations is not to exceed those specified in AWWA C700 latest revision.

C. Meter Maincase

1. The meter maincase and cover shall be cast from NSF/ANSI 61 and NSF/ANSI 372 certified lead free alloy containing a minimum of 85% copper. The serial number should be stamped between the inlet or outlet port of the maincase and the register. Maincase markings shall be cast raised and shall indicate size, model, direction of flow, and NSF/ANSI 61 certification. Plastic maincases are not acceptable.
2. Maincases for 5/8", 3/4", and 1" meters shall be of the removable bottom cap type with the bottom cap secured by stainless steel bolts, nuts, and washers. Intermediate meter maincases shall also be made of the same lead free brass material in sizes up to 2" with a cover secured to the maincase with stainless steel bolts. Meters with a frost plug, a screw-on design, or no bottom cap shall not be accepted in 5/8"- 1" sizes. The 5/8" meters shall have a synthetic polymer or cast iron bottom cap option.
3. All lead free maincases shall be guaranteed free from manufacturing defects in workmanship and material for the life of the meter.
4. All meters shall be adaptable to a field programmable absolute encoder register without interruption of the customer's service.
5. All maincase bolts shall be Type 316 stainless steel to prevent corrosion.

D. Direct Read Standard Register

1. The register shall be of the straight reading sealed magnetic drive type and shall contain

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six (6) numeral wheels. Registers shall provide a minimum of 8-digit meter reading and shall encode to the eight most significant digits of the meter reading for transmission through the RF module. Meter display units shall be coordinated with Owner.

2. Registers shall be roll sealed and dry. All direct reading register cups shall be copper to prevent corrosion and be covered with a high strength, impact resistant flat glass lens to prevent breakage. The lens shall be positioned above the register box to allow for runoff of debris. The register lid shall overlap the register box to protect the lens. The register shall be designed to remain fog-free. The register retaining ring shall be designed to absorb impact from the register. Register boxes and lids shall be of high-strength synthetic polymer or approved equivalent. All registers shall have the size, model and date of manufacture stamped on the dial face.
3. The register shall contain a low flow indicator with a 1:1 ratio to disc nutations to provide leak detection. The mechanical low flow indicator dial shall be of the center sweep type with 100 equally divided gradations at its periphery.
4. Registers shall be secured to the maincase by means of a plastic tamper-proof seal to allow for inline service replacement. Register seal screws are only accepted when supplied with attached sealing wire to at least one bottom cap bolt with seal wire holes of not less than 3/32" in diameter.
5. Registers shall be guaranteed for at least ten (10) years. All meters will be guaranteed for one (1) year on material and workmanship.
6. Registers shall be compatible with RF module for off-site meter reading. The processor chip in the register shall have the ability to be programmed an unlimited number of times with a minimum of ten (10) digits using an AMR handheld unit. The register shall have the ability to be reprogrammed by Owner at any time.

E. Measuring Chamber

1. The measuring chamber shall be of a two-piece snap-joint type with no fasteners allowed. The chamber shall be made of a non-hydrolyzing synthetic polymer.
2. The control block shall be the same material as the measuring chamber and be located on the top of the chamber. The control block shall be located after the strainer.
3. The measuring chamber outlet port shall be sealed to the maincase outlet port by means of an "O" ring gasket.
4. The flat nutating disc shall be a single piece made from non-hydrolyzing synthetic polymer and shall contain a type 316 stainless steel spindle. The nutating disc shall be

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equipped with a synthetic polymer thrust roller located within the disc slot. The thrust roller head shall roll on the buttressed track provided by the diaphragm.

5. The chamber shall be warranted for ten (10) years against freeze damage if the meter has been equipped with a frost proof cast iron or synthetic polymer bottom cap.

**F. Strainers**

1. All meters shall contain a removable polypropylene plastic strainer screen. The strainer shall be located near the maincase inlet port, before the measuring chamber. The strainer shall also function as the device that holds the measuring chamber in place within the maincase. Straps or other types of fasteners shall not be accepted.

**G. Performance**

1. To ensure accuracy, each meter shall be accompanied by a factory test tag certifying the accuracy at the flows required by AWWA C700.

All meters shall be warranted as follows:

| <b>Size</b> | <b>Low Flow</b> | <b>Low Flow New Meter Accuracy</b> | <b>Low Flow Repaired Meter Accuracy</b> |
|-------------|-----------------|------------------------------------|---|
| 5/8"        | 1/8 gpm @ 95%   | 5 yrs or 500,000 gallons           | 15 yrs or 1,500,000 gallons             |
| 3/4"        | 1/4 gpm @ 95%   | 5 yrs or 750,000 gallons           | 15 yrs or 2,250,000 gallons             |
| 1"          | 3/8 gpm @ 95%   | 5 yrs or 1,000,000 gallons         | 15 yrs or 3,000,000 gallons             |
| 1 1/2"      | 3/4 gpm @ 95%   | 2 yrs or 1,600,000 gallons         | 12 yrs or 5,000,000 gallons             |
| 2"          | 1 gpm @ 95%     | 2 yrs or 2,700,000 gallons         | 12 yrs or 8,000,000 gallons             |

Normal meter operating range shall be as follows:

| <b>Size</b> | <b>Accuracy Range ± 1.5%</b> |
|-------------|------------------------------|
| 5/8"        | 1/2 - 20 gpm                 |
| 3/4"        | 3/4 - 30 gpm                 |
| 1"          | 1 - 50 gpm                   |
| 1 1/2"      | 2 - 100 gpm                  |
| 2"          | 2 1/2" - 160 gpm             |

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H. Manufacturer

1. Meters and meter parts shall be manufactured, assembled, and tested within the United States. Manufacturers may be required to provide proof of where and what percentage of the meter register, chamber, and maincase is manufactured in the United States.
2. Manufacturers shall have a minimum of fifteen (15) years of field and production experience with all sizes and models quoted.
3. Manufacturers shall provide only one (1) model of meter which complies with these specifications. Suppliers must have been manufacturing meters for at least one hundred (100) years.

I. System Guarantee

1. All meters shall be guaranteed upgradeable to the following Neptune systems without interruption of the customer's service.

ProRead™ (ARB® VI) AutoDetect Absolute Encoder  
E-CODER® (ARB VII) Solid State Absolute Encoder  
R900®

FLOSEARCH® II  
TRICON/E®3  
TRICON®  
ProCoder™

J. Remote Capability Options

1. All meters shall be equipped with encoder remote registers per AWWA C707 and meet all AWWA C700 performance standards.

2.3 ABSOLUTE ENCODER REGISTERS

A. General

1. Encoders shall be Neptune E-CODER solid state absolute encoder register, as manufactured by Neptune Technology Group, Inc. of Tallassee, AL to conform to City of East Providence Water Utilities Division standards.

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**B. Encoder Register Unit - Registration**

1. The register shall provide at least a nine-digit visual registration at the meter.
2. The register shall provide an eight-digit meter reading for transmission through the radio frequency (RF) meter interface unit.
3. The dial shall have a high resolution nine-digit LCD display for meter testing.
4. The register shall employ a visual LCD leak detection indicator as well as provide remote leak detection through an ASCII format to the RF meter interface unit.
5. The register shall provide reverse flow detection, communicated as ASCII format data to the RF meter interface unit.
6. Reverse flow detection shall be calculated based on 15-minute interval consumption.
7. The register shall provide an indication of days of zero consumption, communicated as ASCII format data to the RF meter interface unit.
8. The meter manufacturer shall guarantee that the reading obtained electronically matches the LCD odometer reading on the register.
9. The register should accumulate and register consumption without connecting to a receptacle or meter interface unit.
10. The register shall display flow rate information.
11. The register shall subtract reverse flow from the total registration.

**C. Mechanical Construction**

1. The registers should be manufactured in two different versions; one for inside set application and one for pit set.

**D. Inside Set Version**

1. The unit shall be constructed of high-strength polycarbonate and possess a hermetic sonic weld seal. Registers for inside set applications should be oil-free designs.
2. The register shall be attached to the meter case by a bayonet attachment. Fastening screws or nuts shall not be required. A tamperproof seal pin shall be used to secure the register to the maincase.

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3. The register shall be removable from the meter without disassembling the meter body and shall permit field installation and/or removal without taking the meter out of service.
4. Provision shall be made in the register for the use of seal wires to further secure the register.
5. Terminal screws shall be accessible on the register for transmission wire connection. A permanently potted wire connection shall be available for pit set meters applications.

**E. Pit Set Version**

1. The unit shall be constructed in a roll-sealed copper shell and glass lens assembly.
2. The register shall be attached to the meter case by a bayonet attachment. Fastening screws or nuts shall not be required. A tamperproof seal pin shall be used to secure the register to the maincase.
3. The register shall be removable from the meter without disassembling the meter body and shall permit field installation and/or removal without taking the meter out of service.
4. Provision shall be made in the register for the use of seal wires to further secure the register.
5. Terminal connections shall be permanently potted so that the terminal cover cannot be removed.

**F. Electrical Construction**

1. The solid-state absolute encoder register shall incorporate an Application Specific Integrated Circuit (ASIC) and firmware designed to verify accurate measurement, information transmission, and data integrity.
2. Connection shall be made to the register by three screw-type terminals sonically inserted into the register top. Access to the terminals shall be available to all models of register with the exception of a permanently potted version. A port cover shall be provided to cover the terminals after they have been wired.

**G. Meter Reading Information**

1. The solid-state absolute encoder register shall provide to the reading equipment an eight-digit meter reading. An identification number of up to 10 digits shall be provided with each reading when read using a probed reading device.
2. The solid-state absolute encoder register shall provide additional value-added information remotely when connected to a RF meter interface (i.e. detailed leak

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detection data, days of leak state, days of no consumption, and back flow indication). This information shall be communicated through the encoder protocol and RF meter interface to the route management software to allow the seamless integration of data into a CIS package.

H. Remote Receptacle – Mechanical Construction

1. Where indicated, a remote receptacle shall be provided for attachment to a pit meter lid with another unit also designed for attachment by wall mounting.
2. The materials employed shall be corrosion resistant, resistant to ultraviolet degradation, unaffected by rain or condensation, and compatible with rugged service and long life.
3. The pit receptacle shall be mounted in a single 1¾” hole in the pit lid while not extending more than 4½” into the pit.
4. The pit-mounted receptacle shall be provided with a minimum length of six feet of wire connected and sealed at the receptacle without terminal exposure.
5. The remote receptacle shall not contain a battery unless it is a RF meter interface.

2.4 RADIO FREQUENCY (RF) METER INTERFACE UNITS (MIU)

A. General

1. Radio-frequency (RF) meter interface units (MIUs) shall be Neptune R900 system endpoint, as manufactured by Neptune Technology Group, Inc. of Tallassee, AL, to conform to City of East Providence Water Utilities Division standards.
2. Meters connected to RF MIUs shall collect meter usage from encoder meter register and transmit the meter reading and a unique ID number to the data collection device.
3. The MIUs shall be compact electronic devices connected to the water meters. They shall interrogate the encoder register and transmit the meter reading and other information to a remote reading device per the City’s existing fixed network AMI system. They shall be compatible with encoder registers using either Neptune ProRead / E-CODER® protocol or Sensus-protocol (UI-1203). MIUs shall feature “auto detect” functionality to detect the type of encoder connected and shall not require reprogramming in the field. The same RF MIUs shall be capable of being read by a walk-by handheld computer equipped with a RF receiver, a mobile system with an RF receiver mounted in a vehicle, and a fixed network data collection system. This shall allow an easy migration between the three-meter reading systems without any change to the MIU devices or revisiting the site.
4. The MIU shall log 96 days of hourly consumption data, available for retrieval via RF activation from the handheld or mobile data collection device.

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5. The MIUs shall be attached to new meters or shall retrofit to existing meters in the field where they are proposed to remain in service. The MIUs shall be manufactured in both wall and pit models. The wall MIU shall have the ability to be mounted in a basement or on the outside of a house. The pit MIU shall have the ability to be mounted in a pit or an underground vault and offer an optional through-the-pit lid antenna. The wall and pit MIUs shall have a fully-potted, submersible design. In general, new MIUs will be installed at the location of existing MIUs unless otherwise directed by Owner or Engineer.

**B. Physical / Mechanical Requirements**

**1. Wall Unit**

- a. The MIU housing shall be constructed of a polycarbonate plastic compound and be capable of mounting both indoors and outdoors on a wall or pole or attached directly to the meter. The device shall be water resistant and capable of exposure to spray and splash. The device shall be able to withstand a 200-hour salt fog test as specified in the NEMA 4 standard.
- b. The device shall provide a location for a tamper-deterrent seal. Tampering with the device functions or connections shall not be possible without causing visible damage to the device exterior or to the seal.
- c. The device shall be capable of operating at temperatures of -22°F to +149°F (-30°C to +65°C) with operating humidity of 0 to 100% condensing.
- d. The circuit board and the battery will be protected by a potting material.
- e. The unit shall retrofit to existing installations.
- f. The MIU device shall be protected against static discharge without loss of data per IEC 801-2, issue 2.

**2. Pit Unit**

- a. For pit or vault applications, the MIU antenna shall be designed to be installed through the industry standard 1 3/4" hole in the pit lid with no degradation of transmission range. The MIU antenna unit will be capable of mounting to various thicknesses of pit lids from 1/2" to 2 1/2".
- b. The device shall be capable of operating at temperatures of -22°F to +149°F (-30°C to +65°C) with operating humidity of 0 to 100% condensing.
- c. The range will not be affected when the pit is flooded.
- d. The circuit board and the battery will be protected by a potting material.
- e. The antenna shall be made of a metallic and polymer material to withstand traffic and shall have a dual seal connection to the MIU housing.

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- f. The MIU device shall be protected against static discharge without loss of data per IEC 801-2, issue 2.

C. Operating Specifications

1. FCC Licensing and Certification

- a. The MIU shall operate within FCC Part 15.247 regulations for devices operating in the 902 MHz to 928 MHz unlicensed band. The output power of the devices will be governed by their conformance to these relevant FCC standards.
- b. To minimize the potential for RF interference for other devices, the MIU shall transmit using the frequency hopping, spread spectrum technique comprised of alternating pseudo-random frequencies with the 902 MHz to 928 MHz unlicensed band.
- c. For ease of implementation, the System shall not require any special licensing, including licenses from the FCC. The System shall, therefore, operate in the 902 MHz to 928 MHz unlicensed band.
- d. The System shall be expandable at any time without getting authorization from the FCC.
- e. No wake-up tone shall be necessary.

2. Field and Installation Operations

- a. No MIU programming shall be necessary for installation.
- b. The MIU shall be mounted per the manufacturer's installation instructions to ensure a reliable and quality installation throughout the life of the MIU.
- c. The handheld reading equipment shall provide a test mode to verify proper operation of the MIU by displaying the MIU ID number and meter reading.
- d. The handheld reading equipment shall provide a test mode to verify proper operation as well as troubleshooting of the MIU on the AMI network by displaying the MIU ID number and latest meter reading.
- e. The MIU shall be capable of being received by a handheld receiver, mobile receiver, or fixed network data collector without special configuration, programming of operation modes, or re-manufacture.

3. Data Transport

- a. The MIU shall provide 8-digit reading resolution from encoded registers using either Neptune E-CODER<sup>®</sup> or Sensus UI-1203 protocol in mobile as well as AMI network data collection applications, simultaneously, without need for programming.
- b. The MIU shall read the encoded register at 15-minute intervals to provide accurate leak and reverse flow detection using 8-digit resolution reads.

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- c. The MIU shall transmit readings from the encoder that are not older than 15 minutes.
  - d. The MIU shall transmit the meter reading continuously at a predetermined transmission interval.
  - e. The MIU shall transmit AMI network messages every 7 ½ minutes – standard. No programming shall be necessary to activate transmission of AMI network messages.
  - f. Each AMI network message shall include capability to include 3-meter readings for redundancy to improve read success rates.
  - g. The MIU shall transmit mobile messages every 14 seconds – standard. No programming shall be necessary to activate or revert to transmission of mobile messages.
  - h. In the event of a cut wire, the MIU shall not send the last good read as this can lead to miss-billing. The MIU shall transmit a trouble code in lieu of the meter reading.
  - i. Tamper – if wiring has been disconnected, a “non-reading” shall be provided indicating wire tamper; a reading that gives the last available reading is an incorrect reading.
  - j. Each device shall have unique pre-programmed identification numbers of ten (10) characters. ID numbers will be permanent and shall not be altered. Each device shall be labeled with the ID number in numeric and barcode form. The label shall also display FCC approval information, manufacturer’s designation, and date of manufacture.
  - k. The MIU shall transmit the encoder meter reading and a unique MIU ID number.
  - l. The MIU shall interface to encoder registers using Neptune ProRead, Neptune E-CODER® or Sensus UI-1203 communication protocol via a 3-conductor wire without need for special configuration to the MIU.
  - m. The MIU shall periodically transmit a packet that includes the register information such as register ID, register type, and other status information no less than weekly.
4. Operational Characteristics
- a. Power shall be supplied to the MIU by a lithium battery with capacitor.
  - b. The number of radio-based meter reads performed shall not affect the battery life.
  - c. The battery life shall not be affected by outside erroneous wake-up tones (e.g., other water, gas, or electric utilities reading and therefore sending out a wake-up tone).
  - d. The battery shall be a fully potted component of the MIU with no external wires.
  - e. The vendor shall warrant that the MIUs shall be free of manufacture and design defects for a period of twenty (20) years – the first ten (10) years with prorating, as long as the MIU is working under the environmental and meter reading conditions specified.
-

## 2.5 CELLULAR ENDPOINTS

### A. General

1. Neptune R900 cellular endpoints shall be used in a targeted deployment to read meters where new R900 v4 MIUs cannot be read by the existing advanced meter infrastructure (AMI) based on propagation study performed by the selected vendor.
2. Cellular endpoints shall integrate seamlessly with existing and new metering infrastructure and shall provide for a reliable and secure means of data transfer with encryption along the entire communication path from endpoint to the tower to the AMI core network.
3. Cellular endpoint shall be compact, ruggedized electronic device that is water resistant, designed to withstand harsh environmental conditions, and operate with other utility assets (fixed network endpoints, walk-up and drive-by endpoints, etc.).
4. Cellular endpoint shall be two-way capable, transmit time synchronized 15-minute interval data over a cellular network 4 times per day with a backup mobile reading method in the event of extended outage. Endpoint shall require no programming or configuration and shall be programmed and configured at the factory for transmitting at default, predetermined transmission intervals with only a battery swipe necessary to initiate operation. The endpoint shall feature an “auto-detect” feature that automatically scans and detects the appropriate register protocol, allowing a quick and error free installation.
5. Each cellular endpoint shall have its own unique 9-digit identification number that is included in each transmission. The identification number shall be permanent and not modifiable. Additionally, this unique identification number shall be included on the endpoint label in numeric and barcode form along with applicable FCC information, date of manufacture, and manufacturer’s designation.
6. Cellular endpoints shall be suitable for both pit and wall installation. The pit endpoint shall work with any type of meter pit lid and have a through-the-lid, external antenna option for use with metal meter pit lids.
7. Cellular endpoints shall be compatible with Neptune meter registers and registers using the Sensus UI-1203 protocol.
8. Cellular endpoint shall not support a dual port option.
9. Cellular endpoint shall have no restrictions for operating in close proximity of each other or other endpoints.
10. Cellular endpoint shall operate within FCC Parts 15.247 and 27 regulations.

### B. Physical/Mechanical/Environmental Requirements

1. Cellular endpoint housing shall be construction of a polycarbonate plastic compound capable of mounting both indoors and outdoors on a wall or pole and in a pit.
2. Cellular endpoint shall be able to operate under a metal meter pit lid with a through-the-lid antenna option.
3. Cellular endpoint shall be a fully submersible, potted device that adheres to the IP68 standard.
4. All electrical components shall be encapsulated in potting to protect from moisture and water intrusion.
5. Circuit board and battery of the cellular endpoint shall be protected and encapsulated by

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- potting material for reliability and operation in a submerged pit environment or from exposure to moisture.
6. Endpoint shall withstand a 200-hour salt fog test as specified in the NEMA 4 standard.
  7. Endpoint shall be protected against static discharge without loss of data per IEC 1801-2, issue 2.
  8. Cellular endpoints shall be capable of operating in the following environmental conditions:
    - i. Operating temperature: -22 °F to +149 °F
    - ii. Storage temperature: -40 °F to +158 °F
    - iii. Operating humidity: 100% condensing
  9. Power to the endpoint shall be supplied by a lithium-thionyl-chloride D-cell battery and a hybrid layer capacitor with a 20-year life expectancy and shall not be removable or field replaceable.
  10. The cellular endpoint shall be labeled with manufacturer's name, model number, unique identification number, required FCC labeling, and date of manufacture. The label shall also include a bar code of the unique identification number.
  11. The external antenna for the pit endpoint shall be designed for installation through the industry standard 1-3/4" hole in the pit lid and shall be capable of mounting to various thickness of pit lids from 1/2" to 2-1/2".
  12. External antenna for the pit endpoint shall be made of a metallic and polymer material to withstand traffic and have a dual seal connection to the endpoint housing.
- C. Data Transmission and Storage
1. Cellular endpoint shall be configured from the factory to interrogate meter register for consumption and event data (continuous flow, intermittent flow, reverse flow) every 15 minutes. Endpoints shall not be capable of field configuration.
  2. The 15-minute interval data shall be transmitted to the head end software over the cellular network every 6 hours. At each transmit, the endpoint shall provide all 15-minute interval data collected since the last successful cellular transmit. Transmit schedule shall not be configurable.
  3. Transmission schedule shall provide for a maximum elapsed time of no more than eight hours from when the meter is read to when the reading is available in the head end software.
  4. The endpoint shall store up to 96 days of 15-minute consumption and event data.
  5. In the event of network outage or failed cellular transmit to the head end software, the endpoint shall still interrogate the meter register, store the data, and track what has been successfully transmitted over the cellular network. The endpoint shall automatically backfill and data that has not been transmitted successfully to the head end software with the next successful cellular transmit.
  6. The cellular endpoint shall support a mobile back-up message that automatically transmits every 30 seconds after 72 consecutive hours of failed cellular transmits. The endpoint shall stop transmitting the mobile messages after a successful cellular transmit and automatically backfill any data that has not been transmitted successfully to the head end software.
  7. Cellular endpoints shall be supported by the FirstNet network for cellular data transmission. A 15-year cellular data transmission plan shall be provided.



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D. Time Synchronization and System Commands

1. The cellular endpoint's clock shall be time-synchronized from the cellular network with every cellular transmission and provided an accuracy of +/- 1 second.
2. The cellular endpoint shall support remove, over-the-air firmware updates.

E. Leak and High Flow Detection

1. Cellular endpoint shall provide leak detection capability by monitoring each 15-minute consumption interval during a 24-hour period.
2. If all 15-minute intervals record water consumption, cellular endpoint shall report a Continuous Consumption event.
3. The cellular endpoint shall report an Intermittent Consumption event if 50 of the 96 intervals during a 24-hour period record water consumption..
4. The leak detection event data shall be provided to the head end software at least four times per day.

F. Backward Flow Detection

1. Cellular endpoint shall support backward/reverse flow detection and shall provide data to the head end software at least four times per day.
2. Cellular endpoint shall report a Minor Reverse Flow event when backward flow is detected between the minimum and maximum values, and shall report a Major Reverse Flow event when backward flow is detected above the maximum value.
3. Minimum value shall be equal to 1 reserve digit change of the 8<sup>th</sup> wheel on the odometer display and the maximum value shall be 100 times the minimum value.

G. Security, Tamper Detection and Prevention

1. Cellular endpoints shall support encryption along the entire communication route, from the endpoint to the cell tower to the network core.
2. Cellular endpoint shall provide a seal wire for tamper resistance of meter housing.
3. Cellular endpoint shall provide a unique error code for a tamper event that is transmitted to the head end software. The endpoint shall check for tamper with each 15-minute interrogation of the register and not clear the error code until the event has been resolved.

2.6 ANCILLARY MATERIALS

A. GENERAL

1. The Contractor shall furnish all equipment and incidentals required to replace existing meters, registers, and MIUs. This includes, but is not necessarily limited to, gaskets, cables, sealing wire, numbered seals, washers, wire and connectors, and other materials.

**PART 3 EXECUTION**

**3.1 CONTROL AND MANAGEMENT**

**A. SCOPE**

1. The Contractor shall furnish all labor, transportation, tools, equipment, and incidental materials necessary to survey and conduct meter evaluations on the water meters, remove existing water meters and registers, and install new water meters and registers.
2. Owner shall provide Contractor with an electronic list of services requiring meter, register, and MIU replacement. This listing will include customer name, address, account number, telephone number, and meter size to the extent this information is available. Owner will assist Contractor obtain contact information where missing. Contractor shall verify that meter size on file with Owner is accurate.
3. The Contractor shall coordinate installation locations with the Owner and Engineer. Contractor shall provide Owner a weekly schedule with a continuously updated 2-week look-ahead, so that customers can be notified in advance of the work. The installation locations shall proceed as much as possible based on the Owner's metering routes, which will be provided by the Owner at the start of the project.
4. Contractor shall provide the names of all personnel assigned to this project, which shall be subject to a background check carried out by the City of East Providence Police Department, at Owner's discretion.
5. Contractor's workers assigned to this project shall all carry two forms of proper identification, including name, company name and logo, and picture identification while at a customer's location. Identification shall be easily identifiable and visible at all times.
6. Contractor's workers shall not enter any property where an adult, 18 years or older, is not present.
7. Contractor shall issue a Work Plan, as described in Section 01010 General Description of Work, prior to the start of the installation of meters. All costs associated with preparing the Work Plan shall be the responsibility of the Contractor.

**3.2 PRIOR TO INSTALLATION**

**A. GENERAL**

1. Contractor shall verify that installation location is specified on the Owner's list of customer services requiring replacement hardware under this Contract.
2. Contractor shall coordinate with Owner for entry to each work site.
3. Contractor shall verify that the work site is safe for personnel and equipment prior to entry.

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4. Upon receipt of materials, inspect shipping containers for damage and inspect the contents of any damaged cartons prior to storage. After unpacking, inspect for damage and notify Distributor immediately if damage or missing components are identified.
5. Store containers in a dry, clean environment.
6. No meter replacement shall be performed on a lead service. If a lead service line is encountered, Contractor shall notify City immediately. Contractor shall provide purchased meter and appurtenant hardware to City for future installation by others. Contractor shall also document each lead service encountered and provide this information to the City for recordkeeping, including at minimum the location (e.g., street address), size of service, condition, and photo documentation.

### 3.3 INSTALLATION

#### A. GENERAL

1. The Contractor shall remove existing meters in accordance with manufacturer's specifications and instructions.
2. The installation work includes the removal of existing hardware and installation of new meter and register. For situations where a meter is being installed in a meter pit, the installation work includes the installation of a mounting bracket or pit mount device per the manufacturer's recommendations. The Contractor shall notify the Owner at least forty-eight (48) hours prior to starting any work in meter pits.
3. Each customer will be informed that the water service will be shut off to accomplish the meter changeout. The water service shall be shut off for as short a time period as necessary.
4. The Contractor shall determine that the pipes and couplings around the meter are in acceptable condition for meter replacement. If the inside of the valve is not capable of shutdown, the Contractor shall not freeze the service. The Owner will assist the Contractor with shut down, given a forty-eight (48) hour notice. The Owner shall locate and operate the curb stop during normal working hours and in emergency situations to obtain a shut off, and the Contractor shall install a new meter valve in connection with the meter installation.
5. If, in the opinion of the Contractor, the existing meter cannot be removed without unreasonable risk of damage to the customer's premises, the Contractor shall notify the Owner and the Engineer.
6. The Contractor shall notify the Customer, Owner, and Engineer of any pre-existing leaks that are observed upon reasonable inspection prior to meter installation.

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7. The Contractor shall notify the Engineer and the Owner of any installations that are special or unusual cases (for example, meter buried in concrete or finished basements with paneling requiring additional work). In these instances, the Owner will make the final determination as to whether:
  - i. access to the meter will be provided to Contractor,
  - ii. the meter will be changed by the Contractor as an extra work item, or
  - iii. the meter will be eliminated from the Contract at no cost to the Owner.
8. Installation that has not been completed due to either “lockout” or pre-existing conditions as described above will not be paid for.
9. Contractor shall have sufficient materials on site and be prepared to immediately repair damages to a customer’s service due to breakages caused by carrying out the work of this Contract.

**B. INSTALLATION DETAILS**

1. The following summary describes the general steps of the installation work to be performed. The actual work may differ from this description, and is not necessarily limited to these actions:
  - Notify customer of water service shut-off.
  - Photograph the old meter and meter register with final reading clearly visible before the old meter and register is replaced.
  - Replace old meter and register with new meter and absolute encoder register, per Manufacturer’s recommendations.
  - Install new RF module in suitable location per Manufacturer’s recommendations and remove old reading device.
  - Install wiring between the RF module and meter register as necessary if the factory wiring supplied with the RF module is not sufficient.
  - Activate and program the meter and RF module, if applicable, to connect into the fixed network AMR System.
  - Test and confirm activation with manufacturer’s AMR System handheld device.
  - Install tamper tag on meter, tamper warning sticker on the RF module and seal meter.
  - Photograph (with a digital camera) the new meter setting with the meter seal clearly visible after the meter installation is complete.
  - Record latitude and longitude of RF module location.
  - Clean work area.
  - Complete all documentation.
  - Inform building occupant of actions and leave written explanation of meter operation, and notification period for defects.

**C. WIRING**

1. At some installations, additional cable for wiring RF module will be required. Contractor shall provide cable and connections as required. Refer to Neptune R900 MIU Installation and Maintenance Guide in Appendix A for additional information.

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**D. TESTING**

1. The Contractor shall check the operation of each installed water meter and attached equipment using the manufacturer's test equipment upon completion of the meter installation. Should any meter fail to operate during the test, the Contractor shall be responsible for determining what the problem is and correcting it on the spot at no additional cost to the Owner.
2. The Owner shall test the operation of the meter and RF module installation with six (6) weeks of installation.
3. The project shall not be considered substantially complete until it has been determined by the Owner and Engineer that all installations have been completed as specified. A test shall be considered successful upon the fixed network receiving seven (7) consecutive days of hourly consumption data. Should any equipment fail to operate during the test, the Contractor shall be responsible for determining the problem and correcting it at no additional cost to the Owner.

**E. SEALING AND INSTALLATION**

1. Contractor shall furnish and install a lead free wire seal to seal the register head, all meter screws, bottom cap bolts, and seal the inlet meter nut with a guard-nut.

**F. TAMPER TAG AND WARNING STICKER**

1. Contractor shall furnish and place a tamper warning tag on each meter and a weatherproof sticker on the RF module advising customer that tampering with meter or module is subject to penalties including fines and interruptions of service. Provide language to Owner for review and approval.

**G. SALVAGE**

1. Contractor shall salvage existing meters removed and replaced for metal scrap. Existing meters shall be retained for one billing cycle following installation of new infrastructure (approximately 6 weeks) before they are scrapped.

**H. REJECTION OF WORK**

1. If upon inspection by Owner deficiencies are found in the work, Contractor shall repair defects at no additional cost to Owner. Repaired work will be subject to Owner reinspection before it is accepted.

END OF SECTION

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**APPENDIX A**

**Product Sheets and Installation Instructions**



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A PRODUCT SHEET OF NEPTUNE TECHNOLOGY GROUP

# T-10 Meter

SIZES 5/8", 3/4", AND 1"

Every T-10® water meter meets or exceeds the latest AWWA C700 Standard. Its nutating disc, positive displacement principle has been time-proven for accuracy and dependability since 1892, ensuring maximum utility revenue.

## Construction

The T-10 water meter consists of three major assemblies: a register, a lead free, high-copper alloy maincase, and a nutating disc measuring chamber.

The T-10 meter is available with a variety of register types. For reading convenience, the register can be mounted in one of four positions on the meter.

The corrosion-resistant maincase will withstand most service conditions; internal water pressure, rough handling, and in-line piping stress.

The innovative floating chamber design of the nutating disc measuring element is unaffected by meter position or in-line piping stresses while the unique chamber seal extends the low-flow accuracy by sealing the chamber outlet port to the maincase outlet port. The nutating disc measuring element utilizes corrosion-resistant materials throughout and a thrust roller to minimize wear.

## Warranty

Neptune® provides a limited warranty for performance, materials, and workmanship. See warranty statement for details.

## Guaranteed Systems Compatibility

All T-10 water meters are guaranteed adaptable to our ProRead™, AutoDetect, ProCoder™, E-CODER®, E-CODER®)R900i™, E-CODER®)R450i™, ProCoder™)R900i™, TRICON®/S, TRICON/E®3, and Neptune meter reading systems without removing the meter from service.



## KEY FEATURES

### REGISTER

Magnetic-driven, low-torque registration ensures accuracy

Impact-resistant register

High-resolution, low-flow leak detection

Bayonet-style register mount allows in-line serviceability

Tamperproof seal pin deters theft

Date of manufacture, size, and model stamped on dial face

### LEAD FREE MAINCASE

NSF/ANSI 372, NSF/ANSI 61

Lifetime guarantee

Resists internal pressure stresses and external damage

Handles in-line piping variations and stresses

Provides residual value vs. plastic or composite

Electrical grounding continuity

### NUTATING DISC MEASURING CHAMBER

Positive displacement

Widest effective flow range for maximum revenue

Proprietary polymer materials maximize long-term accuracy

Floating chamber design is unaffected by meter position or in-line piping stresses



A PRODUCT SHEET OF NEPTUNE TECHNOLOGY GROUP

# T-10<sup>®</sup> METER

SIZES: 1 ½" and 2"



## Construction

Every Neptune<sup>®</sup> T-10<sup>®</sup> water meter meets or exceeds the latest AWWA C700 Standard. Its nutating disc, positive displacement principle has been time-proven for accuracy and dependability since 1892, ensuring maximum utility revenue.

The T-10 water meter consists of three major assemblies: a register, a lead free, high-copper alloy maincase, and a nutating disc measuring chamber.

The T-10 meter is available with a variety of register types. For reading convenience, the register can be mounted in one of four positions on the meter.

The corrosion-resistant maincase will withstand most service conditions: internal water pressure, rough handling, and in-line piping stress.

The innovative floating chamber design of the nutating disc measuring element protects the chamber from frost damage while the unique chamber seal extends the low-flow accuracy by sealing the chamber outlet port to the maincase outlet port. The nutating disc measuring element utilizes corrosion-resistant materials throughout and a thrust roller to minimize wear.

## Warranty

Neptune provides a limited warranty for performance, materials and workmanship. See warranty statement for details.

## KEY FEATURES

### Register

- Magnetic-driven, low-torque registration ensures accuracy
- Impact-resistant register
- High-resolution, low-flow leak detection
- Bayonet-style register mount allows in-line serviceability
- Tamperproof seal pin deters theft
- Date of manufacture, size, and model stamped on dial face

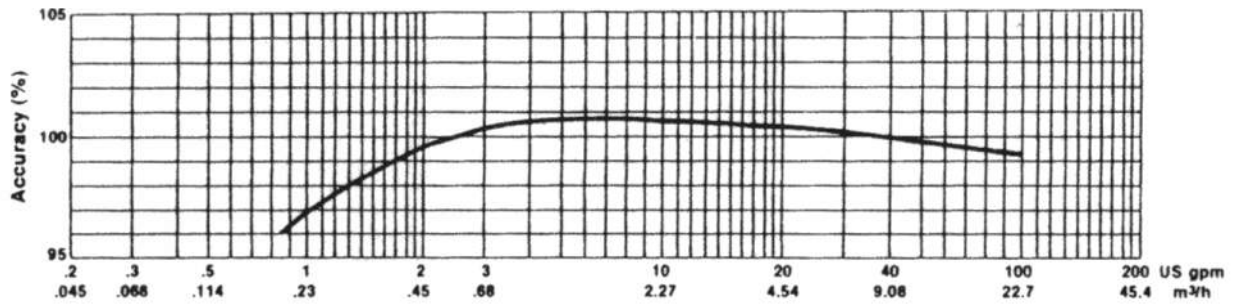
### Lead Free Maincase

- Made from lead free, high-copper alloy
- NSF/ANSI 61 Certified
- NSF/ANSI 372 Certified
- Lifetime guarantee
- Resists internal pressure stresses and external damage
- Handles in-line piping variations and stresses
- Provides residual value vs. plastic
- Electrical grounding continuity

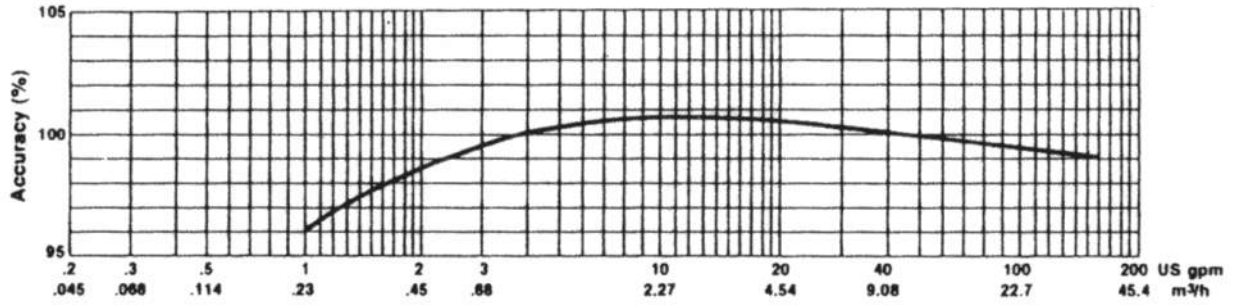
### Nutating Disc Measuring Chamber

- Positive displacement
- Widest effective flow range for maximum revenue
- Proprietary polymer materials maximize long-term accuracy
- Floating chamber design is unaffected by meter position or in-line piping stresses

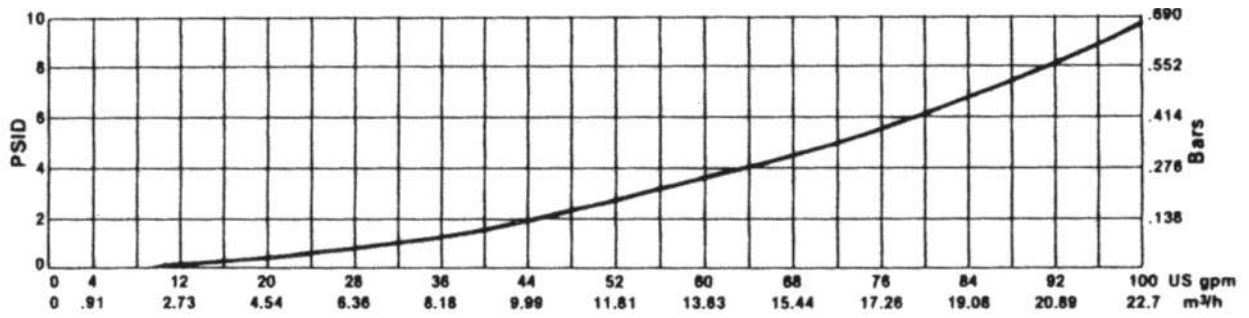
### 1 1/2" Accuracy



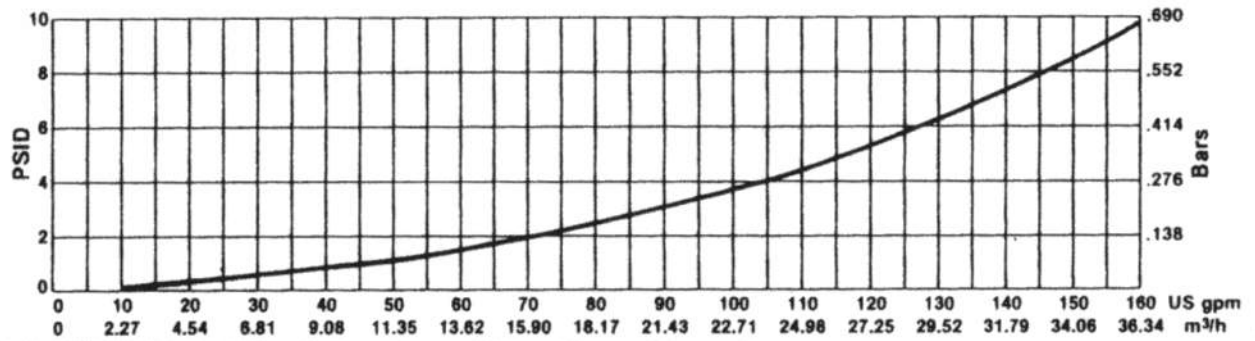
### 2" Accuracy



### 1 1/2" Pressure Loss



### 2" Pressure Loss



*These charts show typical meter performance. Individual results may vary.*

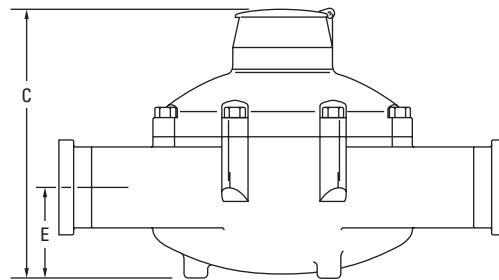
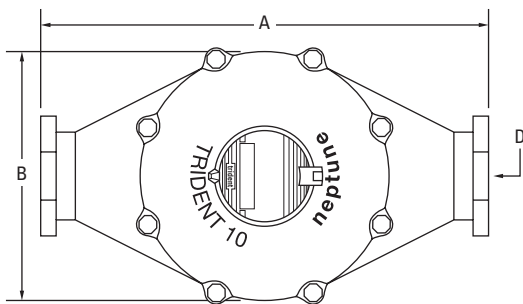
## Operating Characteristics

| Meter Size | Normal Operating Range @100% Accuracy (±1.5%)          | AWWA Standard                                    | Low Flow @ 95% Accuracy              |
|------------|--|--|--------------------------------------|
| 1 1/2"     | 2 to 100 US gpm<br>0.46 to 22.73 m <sup>3</sup> /h     | 5 to 100 US gpm<br>1.1 to 22.7 m <sup>3</sup> /h | 3/4 US gpm<br>0.17 m <sup>3</sup> /h |
| 2"         | 2 1/2 to 160 US gpm<br>0.57 to 36.36 m <sup>3</sup> /h | 8 to 160 US gpm<br>1.8 to 36.3 m <sup>3</sup> /h | 1 US gpm<br>0.23 m <sup>3</sup> /h   |

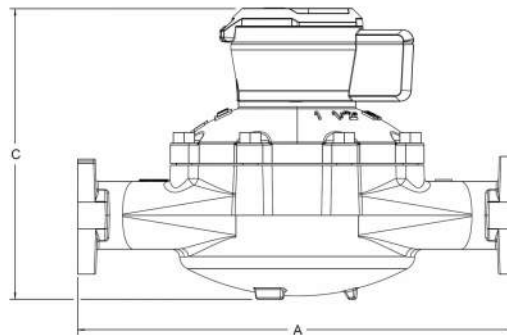
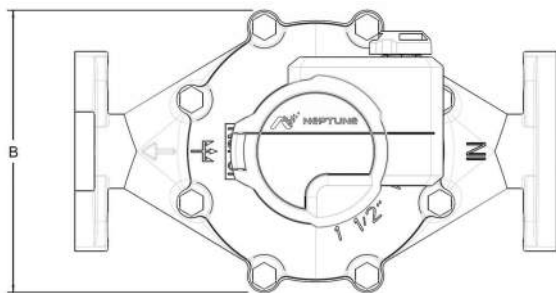
## Dimensions

| Meter Size            | A in/mm       | B in/mm       | C-Std. in/mm  | C-ARB in/mm      | C-E-CODER®) R900i™ or ProCoder™) R900i™ | D-Threads per inch | D-Thread Type | E in/mm      | Weight lbs/kg |
|-----------------------|---------------|---------------|---------------|------------------|---|--------------------|---------------|--------------|---------------|
| 1 1/2"<br>Screw End   | 12 5/8<br>321 | 8 1/16<br>205 | 8 1/8<br>206  | 8 13/16<br>220.3 | 8 3/8<br>213                            | 11 1/2             | 1 1/2<br>NPT  | 2 9/16<br>65 | 31<br>14.1    |
| 1 1/2"<br>Flanged End | 13<br>330     | 8 1/16<br>205 | 8 1/8<br>206  | 8 13/16<br>220.3 | 8 3/8<br>213                            | —                  | —             | 2 9/16<br>65 | 35<br>15.9    |
| 2"<br>Screw End       | 15 1/4<br>387 | 9 7/16<br>240 | 9 5/16<br>237 | 9 15/16<br>248.4 | 9 1/2<br>241                            | 11 1/2             | 2"<br>NPT     | 3 1/8<br>79  | 40<br>18.1    |
| 2"<br>Flanged End     | 17<br>432     | 9 7/16<br>240 | 9 5/16<br>237 | 9 15/16<br>248.4 | 9 1/2<br>241                            | —                  | —             | 3 1/8<br>79  | 44<br>20.0    |

T-10 With Standard Register



T-10 With E-CODER®)R900i™ or ProCoder™)R900i™ Pit Register



## Guaranteed Systems Compatibility

All T-10 meters are guaranteed adaptable to our ProRead™, ProCoder™, E-CODER®, E-CODER®)R900i™, E-CODER®)R450i™, ProCoder™)R900i™, TRICON®/S, TRICON/E®3, and Neptune Utility Systems™ without removing the meter from service.

## Registration

| ProRead Registration (per sweep hand revolution) |                  | 1 ½" | 2" |
|--|------------------|------|----|
| 100  | US Gallons       | ✓    | ✓  |
| 100  | Imperial Gallons | ✓    | ✓  |
| 10   | Cubic Feet       | ✓    | ✓  |
| 1  | Cubic Metre      |      | ✓  |
| .01  | Cubic Metre      | ✓    |    |
| Register Capacity ProRead, ProCoder, and E-CODER |                  | 1 ½" | 2" |
| 100,000,000                                      | US Gallons       | ✓    | ✓  |
| 100,000,000                                      | Imperial Gallons | ✓    | ✓  |
| 10,000,000                                       | Cubic Feet       | ✓    | ✓  |
| 100,000  | Cubic Metres     | ✓*   |    |
| 1,000,000  | Cubic Metres     | ✓**  | ✓  |
| E-CODER High Resolution (8-digit reading)        |                  | 1 ½" | 2" |
| 1  | US Gallons       | ✓    | ✓  |
| 1  | Imperial Gallons | ✓    | ✓  |
| 0.1  | Cubic Feet       | ✓    | ✓  |
| 0.01   | Cubic Metres     |      | ✓  |
| 0.001  | Cubic Metres     | ✓    |    |
| ProCoder High Resolution (8-digit reading)       |                  | 1 ½" | 2" |
| 1  | US Gallons       | ✓    | ✓  |
| 1  | Imperial Gallons | ✓    | ✓  |
| 0.1  | Cubic Feet       | ✓    | ✓  |
| 0.01   | Cubic Metres     | ✓    | ✓  |

\*ProRead and E-CODER only \*\*ProCoder only

## Specifications

### Certification

- NSF/ANSI 61, NSF/ANSI 372

### Application

- Cold water measurement of flow in one direction

### Maximum Operating Water Pressure

- 150 psi (1,034 kPa)

### Maximum Operating Water Temperature

- 80°F

### Measuring Chamber

- Nutating disc technology design made from proprietary synthetic polymer

## Options

### Sizes

- 1 ½" flanged or threaded end
- 2" flanged or threaded end

### Units of Measure

- U.S. gallons, imperial gallons, cubic feet, cubic metres

### Register Types

- Direct reading: Bronze box and cover
- Remote reading: ProRead Absolute Encoder, ProCoder, E-CODER, E-CODER)R900i, E-CODER)R450i, ProCoder)R900i, TRICON/S, TRICON/E3

- Reclaim

### Measuring Chamber

- Synthetic polymer

### Companion Flanges

- Lead free, high-copper alloy

### Environmental Conditions

- Operating temperature: +33°F to +149°F (0°C to +65°C)
- Storage temperature: +33°F to +158°F (0°C to +70°C)

### Test Ports

- 1" (optional)



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neptunetg.com

Neptune Technology Group  
1600 Alabama Highway 229  
Tallahassee, AL 36078  
800-633-8754 f 334-283-7293

## Specifications

- NSF/ANSI 372, NSF/ANSI 61
- National Type Evaluation Program (NTEP) certification

### Application

- Cold water measurement of flow in one direction in residential service applications

### Maximum Operating Water Pressure

- 150 psi (1034 kPa)

### Maximum Operating Water Temperature

- 80°F

### Measuring Chamber

- Nutating disc technology design made from proprietary synthetic polymer

## Options

### Sizes

- $\frac{5}{8}$ " ,  $\frac{5}{8}$ " x  $\frac{3}{4}$ "
- $\frac{3}{4}$ " ,  $\frac{3}{4}$ " SL,  $\frac{3}{4}$ " x 1"
- 1" , 1" x 1 $\frac{1}{4}$ "

### Units of Measure:

- U.S. gallons, imperial gallons, cubic feet, cubic metres

### Register Types

- Direct reading: bronze box and cover (standard)

### Remote Reading:

- ProRead, ProCoder, E-CODER, E-CODER)R900i, E-CODER)R450i, ProCoder™)R900i™, TRICON/S, TRICON/E3

- Reclaim

### Bottom Caps

- Synthetic polymer ( $\frac{5}{8}$ " only)
- Cast iron
- Lead free, high-copper alloy

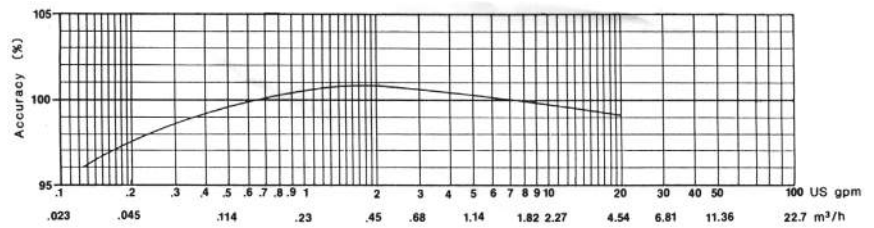
### Connections

- Lead free, high-copper alloy, straight or bent

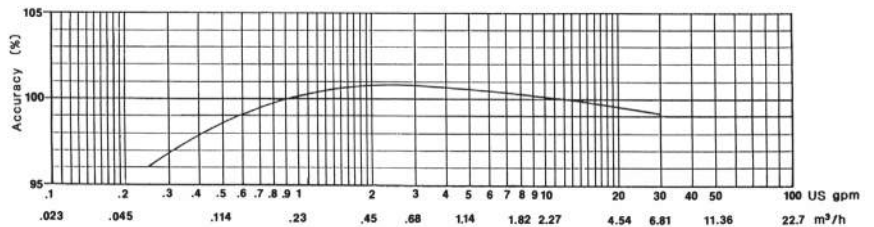
### Environmental Conditions

- Operating temperature:  
+33° F to +149° F (0° C to +65° C)
- Storage temperature:  
+33° F to +158° F (0° C to +70° C)

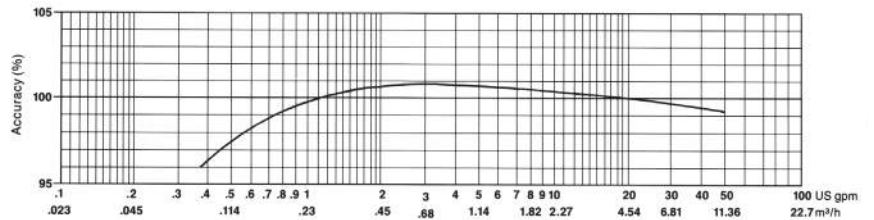
## $\frac{5}{8}$ " ACCURACY



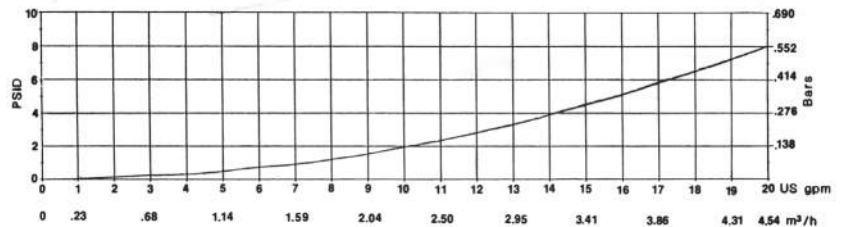
## $\frac{3}{4}$ " ACCURACY



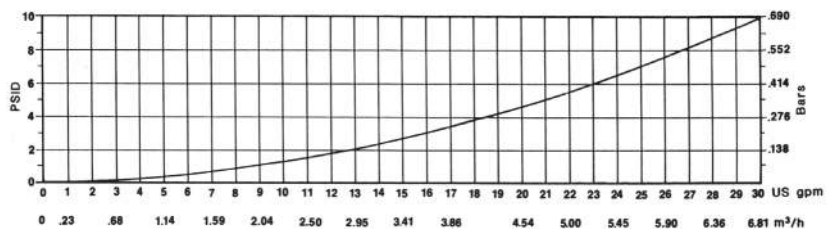
## 1" ACCURACY



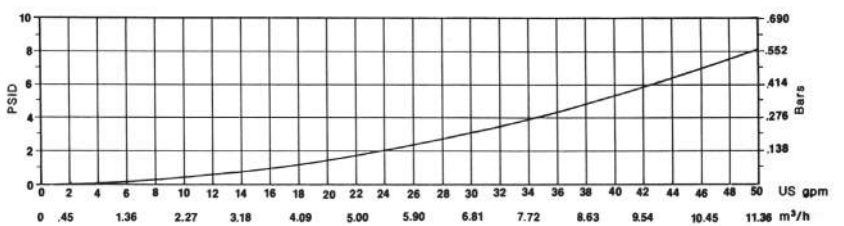
## $\frac{5}{8}$ " PRESSURE LOSS



## $\frac{3}{4}$ " PRESSURE LOSS



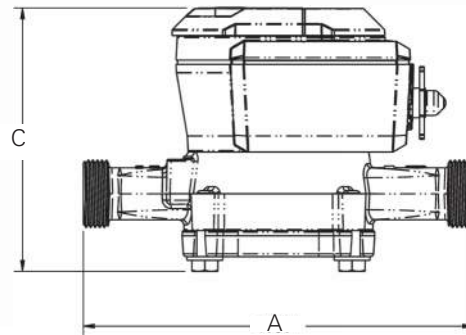
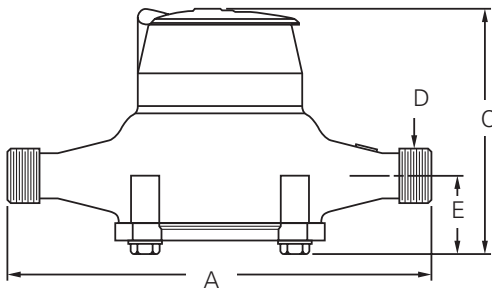
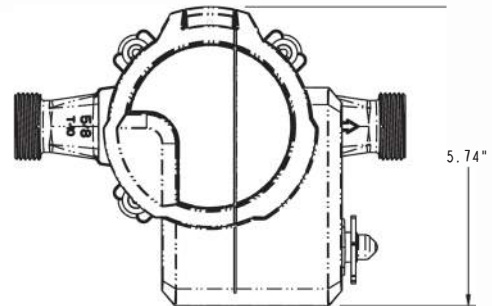
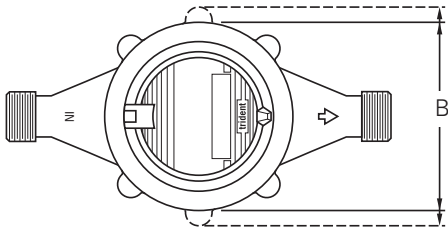
## 1" PRESSURE LOSS



These charts show typical meter performance. Individual results may vary.

## Dimensions

| Meter Size           | A             | B            | C            |              |                       |  |                                      | D-               | E-          | Weight lbs/kg |
|----------------------|---------------|--------------|--------------|--------------|-----------------------|--|--------------------------------------|------------------|-------------|---------------|
|                      | in/mm         | in/mm        | Std. in/mm   | ARB in/mm    | ProCoder™ or E-CODER® | ProCoder™) R900i™ or ProCoder™) R450i™ | E-CODER®) R900i™ or E-CODER®) R450i™ | NPSM Thread      | in/mm       |               |
| 5/8"                 | 7 1/2<br>191  | 3 5/8<br>92  | 4 3/8<br>111 | 5 1/4<br>133 | 5 1/4<br>133          | 5 1/4<br>133                           | 5 1/4<br>133                         | 3/4" - 14"       | 1 1/2<br>38 | 3 1/4<br>1.4  |
| 5/8" x 3/4"          | 7 1/2<br>191  | 3 5/8<br>92  | 4 3/8<br>111 | 5 1/4<br>133 | 5 1/4<br>133          | 5 1/4<br>133                           | 5 1/4<br>133                         | 1" - 11 1/2"     | 1 1/2<br>38 | 3 3/8<br>1.5  |
| Pre 2011 5/8"        | 7 1/2<br>191  | 3 5/8<br>92  | 4 7/8<br>124 | 5 1/2<br>146 | 5 1/2<br>139          | 5 1/2<br>139                           | 5 1/2<br>139                         | 3/4" - 14"       | 1 5/8<br>41 | 3 3/4<br>1.7  |
| Pre 2011 5/8" x 3/4" | 7 1/2<br>191  | 3 5/8<br>92  | 4 7/8<br>124 | 5 1/2<br>146 | 5 1/2<br>139          | 5 1/2<br>139                           | 5 1/2<br>139                         | 1" - 11 1/2"     | 1 5/8<br>41 | 4<br>1.8      |
| 3/4"                 | 9<br>229      | 4 3/8<br>111 | 5 1/2<br>140 | 6 1/4<br>159 | 6 1/4<br>159          | 6 1/4<br>159                           | 6 1/4<br>159                         | 1" - 11 1/2"     | 1 7/8<br>48 | 6<br>2.7      |
| 3/4" SL              | 7 1/2<br>191  | 4 3/8<br>111 | 5 1/2<br>140 | 6 1/4<br>159 | 6 1/4<br>159          | 6 1/4<br>159                           | 6 1/4<br>159                         | 1" - 11 1/2"     | 1 7/8<br>48 | 5 1/2<br>2.5  |
| 3/4" x 1"            | 9<br>229      | 4 3/8<br>111 | 5 1/2<br>140 | 6 1/4<br>159 | 6 1/4<br>159          | 6 1/4<br>159                           | 6 1/4<br>159                         | 1 1/4" - 11 1/2" | 1 7/8<br>48 | 6 1/2<br>2.9  |
| 1"                   | 10 3/4<br>273 | 6 1/2<br>165 | 6 3/8<br>162 | 7<br>178     | 7<br>178              | 7<br>178                               | 7<br>178                             | 1 1/4" - 11 1/2" | 2 1/8<br>54 | 9 3/4<br>4.4  |
| 1" x 1 1/4"          | 10 3/4<br>273 | 6 1/2<br>165 | 6 3/8<br>162 | 7<br>178     | 7<br>178              | 7<br>178                               | 7<br>178                             | 1 1/2" - 11 1/2" | 2 1/8<br>54 | 10 1/4<br>4.6 |



## Operating Characteristics

| Meter Size | Normal Operating Range @ 100% Accuracy (+/- 1.5%)  | AWWA Standard                                    | Low Flow @ 95% Accuracy              |
|------------|--|--|--------------------------------------|
| 5/8"       | 1/2 to 20 US gpm<br>0.11 to 4.55 m <sup>3</sup> /h | 1 to 20 US gpm<br>0.23 to 4.5 m <sup>3</sup> /h  | 1/8 US gpm<br>0.03 m <sup>3</sup> /h |
| 3/4"       | 3/4 to 30 US gpm<br>0.17 to 6.82 m <sup>3</sup> /h | 2 to 30 US gpm<br>0.45 to 6.8 m <sup>3</sup> /h  | 1/4 US gpm<br>0.06 m <sup>3</sup> /h |
| 1"         | 1 to 50 US gpm<br>0.23 to 11.36 m <sup>3</sup> /h  | 3 to 50 US gpm<br>0.68 to 11.4 m <sup>3</sup> /h | 3/8 US gpm<br>0.09 m <sup>3</sup> /h |

## Registration

| ProRead Registration<br>(per sweep hand revolution)       |                  | 5/8" | 3/4" & 1" |
|---|------------------|------|-----------|
| 10  | US Gallons       | √    | √         |
| 10  | Imperial Gallons | √    | √         |
| 1   | Cubic Foot       | √    | √         |
| 0.1   | Cubic Metre      | √    | √         |
|   |                  |      |           |
| Register Capacity<br>ProRead, ProCoder, and E-CODER       |                  | 5/8" | 3/4" & 1" |
| 10,000,000  | US Gallons       | √    | √         |
| 10,000,000  | Imperial Gallons | √    | √         |
| 1,000,000   | Cubic Feet       | √    | √         |
| 100,000   | Cubic Metres     | √    | √         |
|   |                  |      |           |
| ProCoder and E-CODER High<br>Resolution (8-digit reading) |                  | 5/8" | 3/4" & 1" |
| 0.1   | US Gallons       | √    | √         |
| 0.1   | Imperial Gallons | √    | √         |
| 0.01  | Cubic Feet       | √    | √         |
| 0.001   | Cubic Metres     | √    | √         |



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neptunetg.com

Neptune Technology Group  
1600 Alabama Highway 229  
Tallahassee, AL 36078  
800-633-8754 f 334-283-7293





## T-10<sup>®</sup> Meter Installation Instructions

1. Flush the service line prior to meter installation to remove debris in the line.
2. Place an electrical grounding strap on service line, connecting the inlet and outlet service lines on either side of the meter setting.
3. In outdoor settings the meter and service line should be located deep enough in the ground to prevent freezing.
4. Suitable inlet and outlet meter valves and couplings/setters must be installed. Appropriate space must be allowed in the line for the meter laying length and two coupling gaskets. The pipe ends must be sufficiently aligned so that the coupling and meter threads can engage without binding or cross-threading.
5. Before installing the meter, remove the meter thread protectors and spud caps. Be sure that no debris enters the meter during installation.
6. Place the coupling gaskets inside the coupling nuts and set the meter in the line. The meter should be in the horizontal position with the register dial facing upward. The direction of flow marked on the meter must agree with the direction of water flow in the water lines.
7. Start the coupling nuts by hand then use a wrench and tighten sufficiently to prevent leakage. Be careful not to cross-thread the connections.
8. Slowly open the meter inlet valve to allow water to fill the meter. Next, slowly open the meter outlet valve. Open a downstream faucet and run enough water to dissipate entrained air and flush the line. While the faucet is open, check to see if the meter is operating correctly.
9. Turn off the faucet and check the meter installation for leaks.

# Quickly Communicate Critical Data

## Neptune® E-CODER® Solid State Absolute Encoder



The Neptune® E-CODER® solid state absolute encoder register provides consumption data, including insight into flow direction, flow rate, and leak status – all without the need for a battery. The integrated-circuit design of the E-CODER register ensures one data source for both visual and remote reads with no possibility of mismatch.

- Provides superior water delivery insight
- Easy installation that requires minimal operator training
- High-resolution reading to detect ultra-low flows
- Leak, tamper, and reverse flow flags for improved operational efficiency
- Easy-to-read 9-digit LCD
- On-screen flow rate and flow direction for streamlined diagnostics

## Options

### Sizes

- Available for all sizes and makes of current Neptune mechanical meters

### Electronic Accessory Equipment

- R900 Wall and Pit Endpoints
- Cellular Wall and Pit Endpoints
- LoRaWAN Wall and Pit Endpoints

### Data Collection Systems

- Pocket ProReader
- Advantage II Probe
- Trimble Ranger 3
- Trimble Nomad / R900 BCT
- Belt Clip Transceiver
- Mobile Data Collector
- R900® System Gateways

### Units of Measure

- US Gallons (GPM), Cubic Feet (GPM), Cubic Metres (LPM)

### 9-digit local registration

### 8-digit remote registration

### 4-8 digits remote registration (TouchCoupler version)

## High Resolution (8-digit reading)

|   | Size               | G   | ft <sup>3</sup> | m <sup>3</sup> |
|---|--------------------|-----|-----------------|----------------|
| T-10 (includes disc side of TRU/FLO)                              | 5/8" x 3/4", 1"    | 0.1 | 0.01            | 0.001          |
| T-10 (includes disc side of HPPIII)                               | 1 1/2", 2"         | 1   | 0.1             | 0.01           |
| HP Turbine (includes FS Turbine, HPPIII, Turbine Side of TRU/FLO) | 1 1/2", 2", 3", 4" | 1   | 0.1             | 0.01           |
| HP Turbine (includes FS Turbine, HPPIII, Turbine Side of TRU/FLO) | 6", 8", 10"        | 10  | 1               | 0.1            |

## Technical Specifications

### Materials

- Inside Set Housing: polycarbonate
- Pit Set Housing: copper shell and glass lens
- Connecting wire: 3-lead #22 AWG
- Remote receptacles: ABS, nylon, and polycarbonate

### Distance

- A single register may be located with up to 500 feet (152 m) of wire from receptacle or endpoint.

### Environmental Conditions



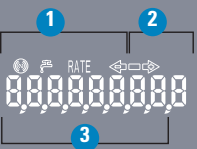
- Operating temperature: 14°F to 149°F (-10°C to 65°C)
- Storage temperature: -40°F to +158°F (-40°C to +70°C)
- Operating humidity: 0 to 100% (pit version)

## Warranty

- Neptune provides a limited warranty for performance, materials, and workmanship. See warranty statement for details.

## System Compatibility

- Compatible with Neptune R900 System. Also available as E-CODER®)R900i™ for an integrated radio solution and E-CODER®)TC for Sensus TouchCoupler compatibility.

|   |   |
|---|---|
|  | <p><b>FLOW INDICATOR</b><br/>Shows the direction of flow through the meter:<br/>ON Water in use. OFF Water not in use.<br/>Flashing Water is running slowly. (-) Reverse flow.<br/>(+) Forward flow.</p>  |
|  | <p><b>LEAK INDICATOR</b><br/>Displays a possible leak:<br/>OFF No leak indicated.<br/>Flashing Intermittent leak indicates that water has been used for at least 50 of the 96 15-minute intervals during the previous 24-hour period.<br/>On Continuously Indicates water use for all 96 15-minute intervals during the previous 24-hour period.</p>                        |
| <b>RATE</b>   | <p><b>RATE OF FLOW</b><br/>Average flow rate is displayed every twelve (12) seconds on LCD display.</p>   |
|  | <p><b>LCD DISPLAY</b><br/>Nine-digit LCD displays the meter reading in billing units of measure: U.S. gallons, cubic feet, Imperial gallons, or cubic metres.</p> <ul style="list-style-type: none"> <li>1 E-CODER Basic Reading/Customary 6-digit remote reading</li> <li>2 Customary sweep hand digits</li> <li>3 E-CoderPLUS Reading (8-digit remote reading)</li> </ul> |



- Solar Panel 1
- Date of Manufacture 2
- LCD Display 3



Neptune Technology Group  
1600 Alabama Highway 229  
Tallahassee, AL 36078  
800-633-8754 f 334-283-7293



**NEPTUNE**  
TECHNOLOGY GROUP

E-CODER® Quick

Install Guide



## 1: General Instructions

The E-CODER® is an electronic absolute encoder register designed for use with Neptune's Automatic Reading and Billing (ARB®) System. This register operates with Neptune's R900® and R450™ MIUs, providing advanced features such as leak, backflow, and tamper detection.

With the E-CODER register, both the homeowner and the utility can use the following features:

- Nine-digit display for visual reading
- Eight digits for billing
- Water flow indicators
- Intermittent and continuous leak detection icon on the LCD panel

This guide helps you identify and read information displayed on the E-CODER register. It also helps you recognize the common causes of leaks and instructs what to do if you find one. This guide contains steps to determine whether a leak is fixed after repairs.

## 2: Product Description

The face of the E-CODER<sup>®</sup> contains reading information.

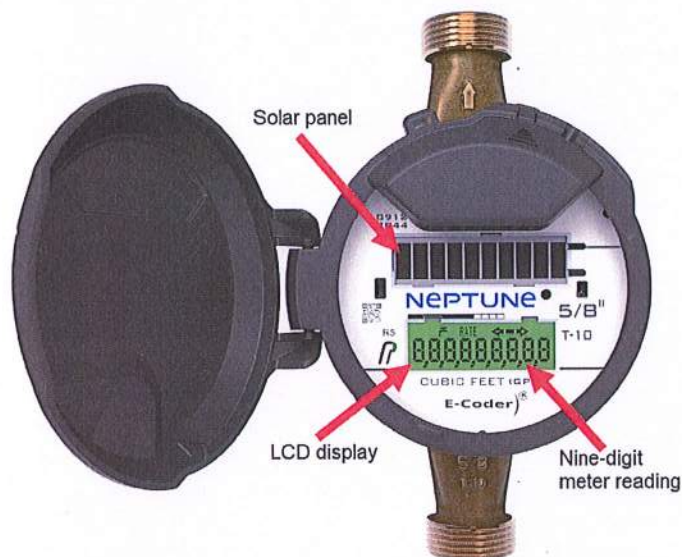


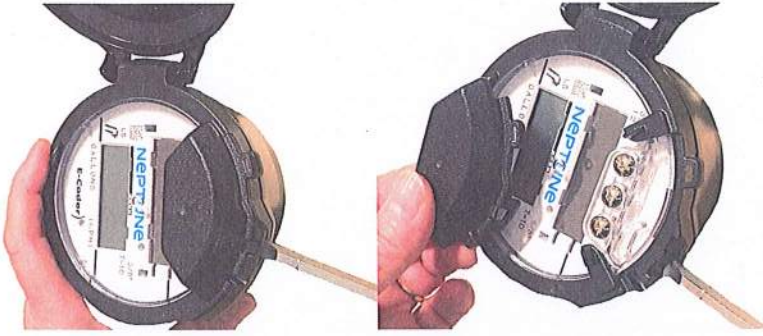
Figure 1: E-CODER<sup>®</sup> Face Plate

## 3: Wiring the Inside Set Version

Follow these steps to run a three-conductor cable from the E-CODER<sup>®</sup> register to the MIU.

1. Connect the three-conductor wire to the encoder register's terminals as described in the manufacturer's instructions, using the color code in step 3. The encoder terminal uses three wires: black, green, and red.

2. Remove the terminal cover with a flat-head screwdriver.



**Figure 2: Removing the Terminal Cover**



**Figure 3: Wiring with Proper Color Wires**

3. Wire the encoder register with the proper colors.
4. Test the wiring to verify the read.

5. Route the wires as shown.



**Figure 4: Routing the Wire**



**Figure 5: Applying Compound**

6. Apply Novagard® G661 or Dow® Compound #4 to the terminal screws and exposed bare wires.





Neptune recommends Novagard G661 or Dow Corning Compound #4.



Novagard may cause irritation to eyes and skin. If swallowed, do not induce vomiting; dilute with one to two glasses of water or milk and seek medical attention. Please refer to MSDS Novagard Silicone Compounds & Grease Inc. 5109 Hamilton Ave. Cleveland, OH 44114, 216-881-3890. For copies of MSDS sheets, call Neptune's Customer Support at (800) 647-4832.

7. Place the terminal cover on the register, ensuring the wire is routed through the strain relief.



**Figure 6: Placing the Cover on the Register**



**Figure 7: Snapping the Cover in Place**

8. Snap the terminal cover in place by pressing on the molded arrow.
9. Proceed to "Activating the E-CODER®" on page 15.

## 4: Wiring the Pit Set Version

Complete the following steps to wire the pit set version. The following figure shows the components required for installation.



Figure 8: Installation Components

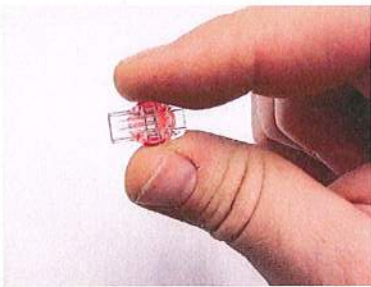


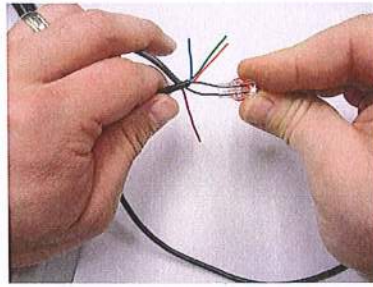
Figure 9: Scotchlok™ Connector

1. Hold the Scotchlok™ between your finger and thumb with the colored cap facing down.

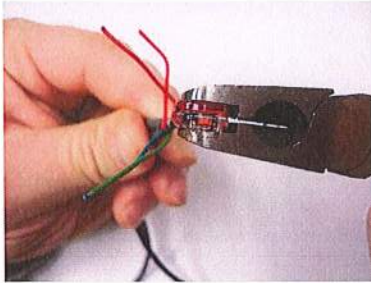


Do not strip the colored insulation from the wires or strip and twist the bare wires prior to inserting them into the connector. Insert the insulated colored wires directly into the Scotchlok connector.

2. Take one non-stripped black wire from the pigtail and one from the receptacle / MIU and insert the wires into the Scotchlok connector until fully seated.



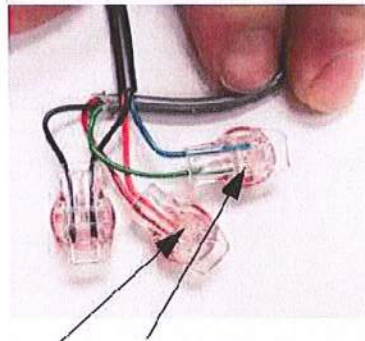
**Figure 10: Seating Connector Wires**



**Figure 11: Crimping Tool**

3. Place the connector color cap side down between the jaws of the crimping tool. For part numbers, see Table 2 on page 14.

4. Check to ensure that the wires are still fully seated in the connector before crimping the connector.



Red and green wires not fully seated

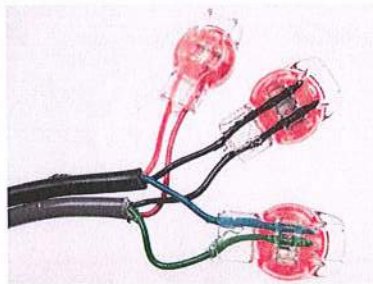
**Figure 12: Improper Connections**

5. Squeeze the connector firmly with the proper crimping tool until you hear a pop and gel oozes out the end of the connector.
6. Repeat steps one through five for each color wire. See Table 1 on page 9 for the wiring configuration to connect Neptune<sup>®</sup> MIUs or competitor MIUs to the E-CODER<sup>®</sup>.

**Table 1: Color Code for Wires**

| MIU Wire Color / Encoder Terminal | MIU Type  |
|-----------------------------------|---|
| Black / B Green / G Red / R       | <ul style="list-style-type: none"><li>• R900®</li><li>• R450™</li></ul> |
| Black / G Green / R Red / B       | Sensus  |
| Black / B White / G Red / R       | ltron   |
| Black / G White / R Red / B       | Aclara  |
| Black / G Green / B Red / R       | Elster  |
| Black / G Green / R Red / B       | Badger  |

7. After you connect all three colored wires, read the encoder register to ensure proper connections, and that the receptacle / MIU is functioning properly.



**Figure 13: Three Color Wires Connected**



**Figure 14: Splice Tube**

8. Take all three connected Scotchloks and push them into the splice tube until fully covered by the silicone grease.

9. Separate the gray wires, and place them into the slots on each side of the splice tube.



**Figure 15: Gray Wires in Slot**



Figure 16: Cover in Place

10. Snap the cover closed to finish the installation.

11. Proceed to "Activating the E-CODER®" on page 15.

## 5: Installing Networked Receptacle / Dual Port MIUs



Enhanced R900<sup>®</sup> v4 MIUs are not dual port capable. These instructions apply only to v3 MIUs.

The Dual Port R900 and R450<sup>™</sup> MIUs work only with Neptune<sup>®</sup> ProRead<sup>™</sup> or E-CODER<sup>®</sup> registers. Each register must be programmed in "RF Network" mode prior to installation.

E-CODER registers cannot be programmed while connected together in a network. Program them separately before making the network connection.



The designations HI and LO are Neptune's designations for the high (HI) flow or turbine side of the compound, and the low (LO) flow or disc side of the compound.



The settings can also be used to designate the primary (HI) and secondary (LO) meters in a dual set application.

## Programming the HI Register

---

Complete the following steps using the Neptune field programmer to select the ProRead Program tab for programming.

1. Select **RF Compound HI** format.
2. Select connectivity **2W**.
3. Match the **Dial Code 65**.
4. Type the appropriate register ID.
5. Program the register.
6. Read or query the register to confirm correct programming as shown in this figure.



Figure 17: HI Register

## Programming the LO Register

---

Use the Neptune field programmer to select the ProRead Program tab for programming.



1. Select **RF Compound LO** format.
2. Match the **Connectivity 2W**.
3. Match the **Dial Code 65**.
4. Type the appropriate **Register ID**.
5. Program the register.
6. Read or query the register to confirm correct programming.

Figure 18: LO Register

## 6: Wiring Networked Registers

Complete the following steps to wire the networked registers.

1. Connect each color wire with the appropriate color wire from the pigtail and both registers, until all three colors have been successfully connected.

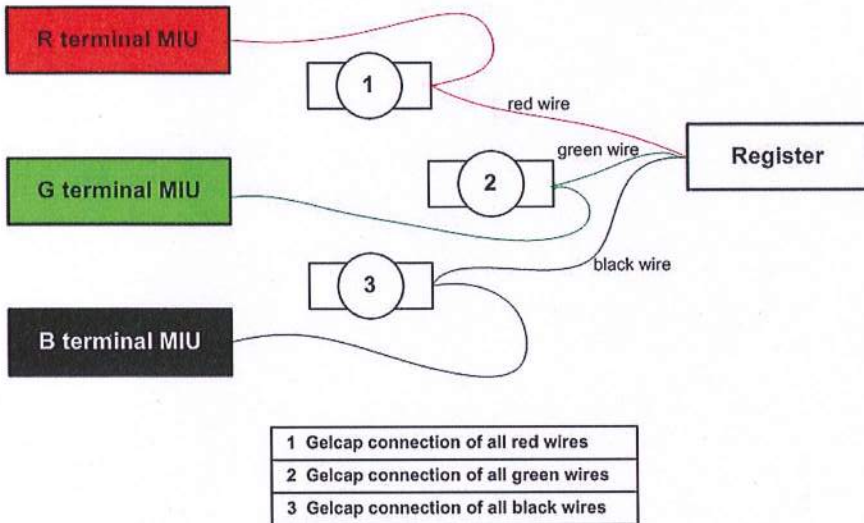


Figure 19: Interconnection of Like Terminals

Remove any bare or non-insulated wire. Insert only insulated wire into the splice connector.



Observe proper polarity as shown in the above figure, when wiring the registers so that all terminals are interconnected with wires of the same color: red, black, or green.

2. Proceed with "Activating the E-CODER®" on page 15.



## 7: Crimping Tool Manufacturers

To apply the Scotchlok™ connectors, you need a proper crimping tool. The following table shows a list of various manufacturers and model numbers.



To reduce fatigue, use a tool within each splicing group with the highest mechanical advantage indicated within the parentheses ( ).

**Table 2: Crimping Tools**

| Manufacturer  | Model Number   |
|---------------|--|
| 3M            | <ul style="list-style-type: none"><li>• E-9R (10:1)</li><li>• E-9BM (10:1)</li><li>• E-9C/CW (7:1)</li><li>• E-9E (4:1) E-9Y (3:1)</li></ul> |
| Eclipse Tools | 100-008  |



Use of normal pliers or channel locks is highly discouraged because they do not apply even pressure and can result in an improper connection.

## 8: Activating the E-CODER®

To read the E-CODER® you must first activate it. Complete the following steps to activate the E-CODER.

1. Expose the E-CODER to sunlight or activate with a flashlight for five seconds.



If you can power on the LCD, but there is insufficient light to read the ASCII, the LCD displays LO Light.



Figure 20: LCD Displays LO Light

Verify the following LCD displays the :

- All-Segment test
- Version number
- Flow rate

The display alternates between the reading and the flow rate.

## 9: Reading the E-CODER<sup>®</sup>

It is important to become familiar with the information available from the meter. Table 3 on page 16 lists various icons and displays along with a description.

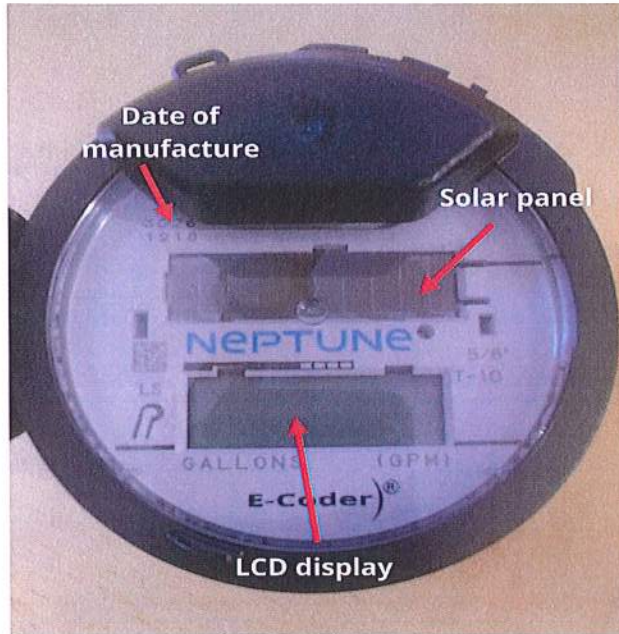



Figure 21: E-CODER<sup>®</sup> Displays

Table 3: Icons and Displays

| Icon     | Description  |
|----------|--|
|          | Flow / Leak Indicator shows the direction of flow through the meter: |
| ON       | Water in use   |
| OFF      | Water not in use   |
| Flashing | Water is running slowly / low flow indicator                         |
| +        | Forward flow   |
| -        | Reverse flow   |

**Table 3: Icons and Displays (continued)**

| Icon   | Description   |   |
|--|---|---|
|         | Leak indicator displays a possible leak:  |   |
|  | OFF   | No leak   |
|  | Flashing  | Intermittent leak indicated. Water used during at least 50 of the last 96 15-minute interval data updates within the past 24 hours. |
| Continuous ON  | Continuous leak indicated. Water used during all 96 15-minute interval data updates within the past 24 hours. |   |
| RATE – Rate of Flow. Average flow rate is displayed every 12 seconds on the LCD display. |   |   |

The following table shows the LCD display and what the icons and numbers mean.

**Table 4: LCD Display**

| LCD Display   | Description   |
|---|---|
| <p>Nine-digit LCD displays the meter reading in billing units (U.S. gallons left to right):</p> | <div data-bbox="354 380 846 625" style="text-align: center;"> </div> <ul style="list-style-type: none"> <li>• (1) E-CODER Basic Reading / Customary- 6-digit remote reading</li> <li>• (2) Customary sweep hand digits</li> <li>• (3) E-CoderPLUS Reading – 8-digit remote reading</li> </ul> |

If the leak indicator is Flashing or Continuously ON, it indicates a possible leak. The following table contains some common causes of potential leaks.

**Table 5: Causes of Leaks**


| Possible Cause of Leak                                   | Intermittent Leak | Continuous Leak |
|--|-------------------|-----------------|
| Outside faucet, garden hose, or sprinkler system leaking | ✓                 | ✓               |
| Toilet valve not sealed properly                         | ✓                 | ✓               |
| Toilet running   |                   | ✓               |

**Table 5: Causes of Leaks (continued)**

| Possible Cause of Leak                     | Intermittent Leak | Continuous Leak |
|--|-------------------|-----------------|
| Faucet in kitchen or bathrooms leaking     | ✓                 | ✓               |
| Ice maker leaking                          |                   | ✓               |
| Soaker hose in use                         |                   | ✓               |
| Leak between the water meter and the house |                   | ✓               |
| Washing machine leaking                    | ✓                 | ✓               |
| Dishwasher leaking                         | ✓                 | ✓               |
| Hot water heater leaking                   |                   | ✓               |
| Yard watered for more than eight hours     | ✓                 | ✓               |
| Continuous pet water device in use         |                   | ✓               |
| Water-cooled air conditioner or heat pump  | ✓                 | ✓               |
| Swimming pool filled                       |                   | ✓               |
| Other continuous use of water for 24 hours |                   | ✓               |

## 10: How to Tell if Water is in Use

To determine if water is in use, complete the following steps.

1. Watch the flow indicator  for two minutes.
2. Determine which of the following conditions exists. If the arrow is:
  - Flashing, then water is running very slowly.
  - Continuously on, then water is running.
  - Not flashing, then water is not running.

### What To Do In Case of a Leak

---

The following checklist can be helpful if the E-CODER<sup>®</sup> leak indicator shows a possible leak.


**Table 6: Checklist for Leaks**

|                                     |  |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | Check all faucets for possible leaks.  |
| <input checked="" type="checkbox"/> | Check all toilets and toilet valves.   |
| <input checked="" type="checkbox"/> | Check the ice maker and water dispenser.   |
| <input checked="" type="checkbox"/> | Check the yard and surrounding grounds for a wet spot or indication of a pipe leaking. |

## If a Continuous Leak is Repaired

---


If a continuous leak is found and repaired, complete the following steps.

1. Use no water for at least 15 minutes.
2. Check the leak icon . If the leak indicator changes from Continuously ON to Flashing, then a continuous leak is no longer indicated.

## If an Intermittent Leak is Repaired

---

If an intermittent leak is found and repaired, complete the following steps:

1. Check the leak icon  after at least 24 hours. If the leak has been correctly repaired, the leak changes from Flashing to OFF.
2. Refer to the following tables which describe the standard functions of the E-CODER flags.

**Table 7: E-CODER® Flags**

| Flag   | Description  |
|--|--|
| <b>Backflow Flag (Resets After 35 Days)</b>  |  |
| Based on reverse movement of the eighth digit, the eighth digit is variable based on the meter size. |  |
| No backflow event  | Eighth digit reversed less than one digit                                  |
| Minor backflow event   | Eighth digit reversed more than one digit up to 100 times the eighth digit |
| Major backflow event   | Eighth digit reversed greater than 100 times the eighth digit              |



**Table 7: E-CODER® Flags (continued)**

| Flag   | Description  |
|--|--|
| Flashing leak icon   | Eighth digit incremented in 50 of the 96 15-minute interval data updates within the past 24 hours  |
| Solid leak icon  | Eighth digit incremented in all of the 96 15-minute interval data updates within the past 24 hours |
| <b>Leak Status Flag (Resets After 35 Days)</b>                               |  |
| Based on total amount of 15-minute periods recorded in the previous 24 hours |  |
| Leak icon off  | Eighth digit incremented in less than 50 of the past 96 15-minute interval data updates            |
| <b>Consecutive Days with Zero Consumption Flag (Resets After 35 Days)</b>    |  |
| Number of days the "leak status" was at a minimum value                      |  |

## 11: Contact Information

Within the United States, Neptune Customer Support is available Monday through Friday, 7:00 A.M. to 5:00 P.M. Central Standard Time, by telephone or email.

### By Phone

---

To contact Neptune Customer Support by phone, complete the following steps.

1. Call **(800) 647-4832**.
2. Select one of the following options:
  - Press **1** if you have a Technical Support Personal Identification Number (PIN).
  - Press **2** if you do not have a Technical Support PIN.
3. Enter the six-digit **PIN** and press **#**.
4. Select one of the following options:
  - Press **2** for Technical Support.
  - Press **3** for maintenance contracts or renewals .
  - Press **4** for Return Material Authorization (RMA) for Canadian Accounts.

You are directed to the appropriate team of Customer Support Specialists. The specialists are dedicated to you until the issue is resolved to your satisfaction.





**Neptune Technology Group Inc.**

1600 Alabama Highway 229  
Tallahassee, AL 36078  
USA Tel: (800) 633-8754  
Fax: (334) 283-7293

**Neptune Technology Group**

(Canada) Ltd.  
7275 West Credit Avenue  
Mississauga, Ontario L5N 5M9  
Canada Tel: (905) 858-4211  
Fax: (905) 858-0428

**Neptune Technology Group Inc.**

Avenida Ejercito Nacional No 418  
Piso 12, Despacho 1203  
Colonia Polanco V Sección  
C.P. 11560 Delegación, Miguel Hidalgo  
Mexico D.F.  
Tel: (55) 5203-5708, (55) 5203-4032,  
(55) 5203-5294

Online  
[www.neptunetg.com](http://www.neptunetg.com)

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A PRODUCT SHEET OF NEPTUNE TECHNOLOGY GROUP

# R900<sup>®</sup> Wall or Pit Meter Interface Unit (MIU)

## Build Onto Your Existing Technology Investment

As part of Neptune's R900<sup>®</sup> System, the R900<sup>®</sup> meter interface unit (MIU) was designed for flexibility. Like its fellow system components, the R900 MIU works seamlessly with prior generations of equipment. At the same time, it allows your utility to incorporate innovations as you need. A single radio frequency unit that can transmit meter reading data using any reading method – mobile or fixed network – the R900 MIU never has to be reprogrammed. That makes migrating to new technologies simple whenever your utility is ready to implement them. When it's time to add new features or functionality, you can do it at your own pace, confident of continual system support without stranded assets.

## Conserve Resources, Simplify Operations

With the pressures your utility faces, Neptune<sup>®</sup> knows you don't have time, personnel, water, or revenue to waste. That's why we designed the R900 MIU and the rest of the system for ease of use. In addition, the R900 MIU's interleaved, high-power, 1 Watt fixed network message reduces infrastructure costs while allowing reading in any mode – without separate reading systems, site visits, or any type of MIU reconfiguration. The R900 MIU provides fixed network transmission capability at all times, while it also transmits readings for walk-by or mobile methods. Making operations even easier, the user-friendly, intuitive R900 System design requires only minimal training, providing you flexibility to adapt to changes in your workforce and reallocate staff to different departments as needed.

## Reduce Complaints, Delinquencies, And Write-Offs

Neptune's R900 MIU greatly improves access to meter readings, while delivering detailed consumption profile information as well as alerts for leak or backflow, helping your utility more proactively identify and resolve customers' questions. This accurate, timely data can be used to head off high bill complaints, reduce delinquent payments, and eliminate write-offs.

Because detailed data logging information from the last 96 days is always available, just waiting to be transmitted by the R900 MIU when needed, personnel can take care of a customer's issue then and there, in a single site visit. Not only can the data boost efficiency and customer service, but it will also help your utility make better-informed decisions going forward.



## KEY BENEFITS

### Facilitates Migration to AMI

- 1 Watt fixed network message reduces infrastructure costs
- Interleaved mobile and fixed network messages facilitate migration without changing the "modes" in the MIU

### Reduces Non-Revenue Water

- Provides leak history/diagnostics
- Enables proactive leak notification
- Provides hourly consumption data
- Improves meter reading accuracy
- Eliminates estimated reads

### Identifies Potential Theft

- Tamper detection
- Reverse flow detection
- Identifies significant periods of zero consumption

### Simplifies Installation Process

- Easy to install/no programming required
- Reduces labor cost

## Technical Specifications

### Electrical Specifications

- MIU power: Lithium battery with capacitor

### Transmitter Specifications

- Two-way MIU
- Transmit period (interleaved mobile and fixed network messages):
  - Standard mobile message every 14 seconds at 100 mW
  - Standard fixed network message every 7½ minutes at 1 Watt
- FCC verification: Part 15.247
  - Transmitter channels: 50; frequency-hopping, spread-spectrum
  - Channel frequency: 910 to 920 MHz
- Encoder register reading interval:
  - Every 15 minutes
- Data logging interval:
  - 96 days of hourly data

### Environmental Conditions

- Operating temperature: -22°F to +149°F (-30°C to +65°C)
- Storage temperature: -40°F to +158°F (-40°C to +70°C)
- Operating humidity: 100% condensing

### Antennas

- Wall MIU: standard internal antenna
- Pit MIU: standard through-the-lid antenna
  - 18' Coax
  - 6' Coax
  - 20' Coax

### Encoded Register Compatibility

- Neptune ARB® V, ProRead™, ProCoder™, and E-CODER®
- Sensus ECR II, ICE, iPerl, Electronic Register and OMNI
- Hersey/Mueller Translator
- Badger ADE and HR E|LCD
- Elster/AMCO InVision (Sensus protocol version)

## Options

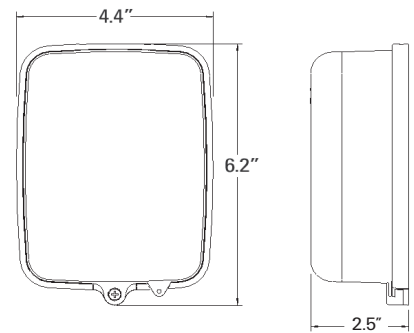
### System Compatibility

- Handhelds with R900® Belt Clip Transceiver - mobile RF
- MRX920™ - mobile RF
- R900® Gateways - fixed network RF

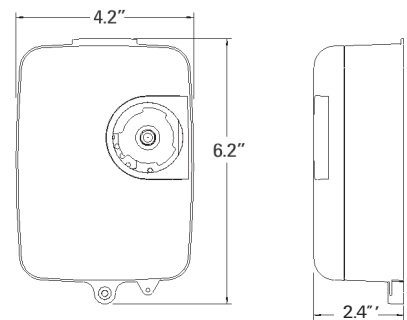
## Warranty

20 years (10/10); refer to specific Warranty Statement

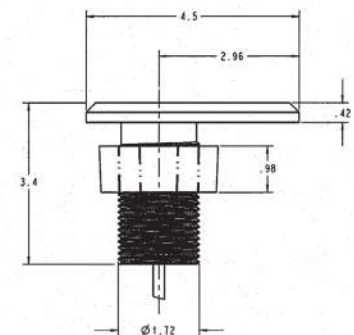
## Dimensions



R900 Wall MIU



R900 Pit MIU



R900 Pit Antenna





R900<sup>®</sup> MIU Wall and Pit  
Installation and Maintenance Guide







R900<sup>®</sup> MIU Wall and Pit  
Installation and Maintenance Guide

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## FCC Notice

This device complies with Part 15 of the FCC Rules. Operation is subject to the following two conditions: (1) this device may not cause harmful interference, and (2) this device must accept any interference received, including interference that may cause undesired operation.

**NOTE:** This equipment has been tested and found to comply with the limits for a Class B digital device, pursuant to Part 15 of the FCC Rules. These limits are designed to provide reasonable protection against harmful interference in a residential installation. This equipment generates, uses, and can radiate radio frequency energy and, if not installed and used in accordance with the instructions, may cause harmful interference to radio communications. However, there is no guarantee that interference will not occur in a particular installation. If this equipment does cause harmful interference to radio or television reception, which can be determined by turning the equipment off and on, the user is encouraged to try to correct the interference by one or more of the following measures:

- Reorient or relocate the receiving antenna.
- Increase the separation between the equipment and receiver.
- Connect the equipment into an outlet on a circuit different from that to which the receiver is connected.
- Consult the dealer or an experienced radio / TV technician for help.

## **RF Exposure Information**

This equipment complies with the FCC RF radiation requirements for uncontrolled environments. To maintain compliance with these requirements, the antenna and any radiating elements should be installed to ensure that a minimum separation distance of 20 cm is maintained from the general population.

## **Professional Installation**

In accordance with section 15.203 of the FCC rules and regulations, the MIU must be professionally installed by trained meter installers.

Changes or modifications not expressly approved by the party responsible for compliance could void the user's authority to operate the equipment.

## **Industry Canada (IC) Statements**

Section 8.4 of RSS-GEN

This device complies with Industry Canada License-exempt RSS standard(s). Operation is subject to the following two conditions:

- This device may not cause harmful interference.
- This device must accept any interference received, including interference that may cause undesired operation.

.Cet appareil est conforme aux normes RSS exonérées de licence d'Industrie Canada. L'opération est soumise aux deux conditions suivantes: 1) cet appareil ne doit pas provoquer d'interférence, et 2) cet appareil doit accepter toute interférence, y compris les interférences pouvant entraîner un fonctionnement indésirable de l'appareil.

Section 8.3 of RSS-GEN

Under Industry Canada regulations, this radio transmitter may only operate using an antenna of a type and maximum (or lesser) gain approved for the transmitter by Industry Canada. To reduce potential radio interference to other users, the antenna type and its gain should be so chosen that the equivalent isotropically radiated power (e.i.r.p.) is not more than that necessary for successful communication.

This radio transmitter IC: 4171B-L900M has been approved by Industry Canada to operate with the antenna types listed below with the maximum permissible gain and required antenna impedance for each antenna type indicated. Antenna types not included in this list, having a gain greater than the maximum gain indicated for that type, are strictly prohibited for use with this device.

- Maximum permissible gain of +1 dBi and required impedance of 75 ohm.
- Approved Antenna type(s).
  - R900<sup>®</sup> Pit Antenna, part number 12527-XXX
  - High Gain R900<sup>®</sup> Pit Antenna, part number 13586-XXX
  - R900<sup>®</sup> Wall Antenna, part number 13717-000
  - Wire monopole, part number 12641-XXX

En vertu de la réglementation d'Industrie Canada, cet émetteur radio ne peut fonctionner qu'avec une antenne d'un type et un gain maximal (ou inférieur) approuvé pour l'émetteur par Industrie Canada. Pour réduire les interférences radio potentielles avec d'autres utilisateurs, le type d'antenne et son gain devraient être choisis de manière à ce que la puissance rayonnée isotropiquement équivalente (e.i.r.p.) ne soit pas supérieure à celle nécessaire à une communication.

Cet émetteur radio IC: 4171B-L900M a été approuvé par Industrie Canada pour fonctionner avec les types d'antennes énumérés ci-dessous avec le gain maximal admissible et l'impédance d'antenne requise pour chaque type d'antenne indiqué. Les types d'antenne non inclus dans cette liste, ayant un gain supérieur au gain maximal indiqué pour ce type, sont strictement interdits pour être utilisés avec ce périphérique.

- Gain maximal admissible de +1 dBi et impédance requise de 75 ohms.
- Type(s) d'antenne approuvé
  - Antenne de puits R900<sup>®</sup>, numéro de pièce 12527-XXX
  - Antenne de puits à gain élevé R900<sup>®</sup>, référence 13586-XXX
  - Antenne murale R900<sup>®</sup>, numéro d'article 13717-00
  - Fil monopôle, numéro d'article 12641-XXX

*R900<sup>®</sup> Wall and Pit MIU Installation and Maintenance Guide*  
 Literature No. IM R900 MIU 01.19  
 Part No. 12560-001

Neptune Technology Group Inc.  
 1600 Alabama Highway 229  
 Tallassee, AL 36078  
 Tel: (800) 633-8754  
 Fax: (334) 283-7293

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## Chapter 1: Product Description

This chapter provides a general description of the R900<sup>®</sup> Wall and Pit Meter Interface Unit (MIU).

The R900 MIU is a compact electronic device that collects meter reading data from an encoder register. It then transmits the data for collection by the meter reader. The unit is easily installed and operates within a radio frequency (RF) bandwidth which does not require an operating license. The R900 MIU can be mounted as far as 500 feet from the encoder register and optimum broadcast signal strength is obtainable, ensuring a high percentage of accurate, one-pass readings.



Figure 1 – Wall MIU



Figure 2 – Pit MIU

The R900 MIU meets FCC regulations Part 15.247, allowing higher output power and greater range. The R900 MIU uses frequency-hopping, spread-spectrum technology to avoid RF interference and enhanced security. The MIU reads the encoder registers at 15-minute intervals and transmits a mobile message every 14-20 seconds that includes the meter reading data and the unique MIU ID. This allows the meter to be read by a Hand-Held Unit (HHU) or mobile data collection unit. The MIU also transmits a high-power fixed network message every seven and one-half minutes on an interleaved basis to an R900<sup>®</sup> Gateway. If connected to a LoRa<sup>®</sup> network, the R900 MIU can also transmit time-synchronized hourly readings every three hours on an interleaved basis, to a LoRa network.

The R900 MIU is designed to offer advantages to utility organizations of all sizes:

- Increases meter reading accuracy
- Eliminates hard-to-read meters
- Protects utility liability by increasing meter reader safety

### R900<sup>®</sup> MIU Programming

---

The MIU does NOT require field programming.

This chapter contains the specifications for the R900<sup>®</sup> Meter Interface Unit (MIU).

### Electrical Specifications

---

A lithium battery supplies the power for the MIU.

### Transmitter Specifications

---

The following table defines the transmitter specifications for the MIU.

Table 1 – Transmitter Specifications

| Specification        | Definition   |
|----------------------|--|
| Transmit Period      | <ul style="list-style-type: none"><li>• Every 14-20 seconds – standard mobile message</li><li>• Every seven and one-half minutes – standard, high-power, fixed network message</li><li>• Every three hours – standard LoRa<sup>®</sup> high-power, fixed network message</li></ul> |
| Encoder Reading      | Register interrogated every 15 minutes   |
| Transmitter Channels | <ul style="list-style-type: none"><li>• 50 (R900 mobile and fixed)</li><li>• 64 (LoRa fixed network message)</li></ul>   |
| Channel Frequency    | 902-928 MHz  |
| Output Power         | Meets Federal Communications Commission (FCC) Part 15.247  |
| FCC Verification     | Part 15.247  |

## Encoder Register Interface

---

The following table defines the supported encoder maximum cable lengths.

Table 2 – Maximum Cable Lengths

| Specification                 | Definition   |
|-------------------------------|--|
| Neptune ARB® V1               | 300 feet (91 meters). This meets the manufacturer's published specifications for wire length between the encoder and the remote receptacle. The length is based on solid three-conductor wire, 22 American Wire Gauge (AWG). |
| Neptune ProRead™ and E-CODER® | 500 feet (152 meters)  |
| Sensus Protocol registers     | 200 feet (61 meters)   |

## Specifications - R900® Pit MIU

---

This section defines specifications for the pit MIU.

### Environmental Conditions

---

The following table defines the environmental conditions for the pit MIU.

Table 3 – Environmental Conditions – Pit MIU

| Condition             | Definition                   |
|-----------------------|------------------------------|
| Operating Temperature | -22° to 149°F (-30° to 65°C) |
| Storage Temperature   | -40° to 158°F (-40° to 70°C) |
| Operating Humidity    | 0 to 100% condensing         |



## Functional Specifications

The following table defines the functional specifications for the pit MIU.

Table 4 – Functional Specifications – Pit MIU

| Specification    | Definition     |
|------------------|----------------|
| Register Reading | Eight digits   |
| MIU ID           | 9 or 10 digits |

## Dimensions and Weight

The following table defines the dimensions and weight for the pit MIU.

Table 5 – Dimensions and Weight Specifications – Pit MIU

| Specification | Definition  |
|---------------|---|
| Dimensions    | See "Pit MIU Dimensions - Diagram 1" below, "Pit MIU Dimensions - Diagram 2" on the next page, and "Pit MIU Antenna" on the next page |
| Weight        | 1.0 lbs. (454 grams)  |



Figure 3 – Pit MIU Dimensions - Diagram 1



Figure 4 – Pit MIU Dimensions - Diagram 2

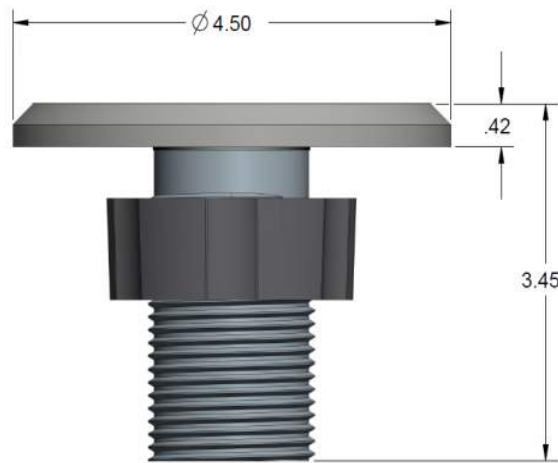


Figure 5 – Pit MIU Antenna

## Specifications - R900<sup>®</sup> Wall MIU

---

This section defines specifications for the wall MIU.

### Environmental Conditions

---

The environmental conditions for the wall MIU are the same as for the pit MIU. See "Environmental Conditions" on page 4.

### Functional Specifications

---

The functional conditions for the wall MIU are the same as for the pit MIU. See "Specifications" on page 3.

## Dimensions and Weight

The following table defines the dimensions and weight for the wall MIU.

Table 6 – Dimensions and Weight Specifications – Wall MIU

| Specification | Definition  |
|---------------|---|
| Dimensions    | See "Wall MIU Dimensions - Front" and "Wall MIU Dimensions - Side" below. |
| Weight        | 1.0 lbs. (454 grams)  |



Figure 6 – Wall MIU Dimensions - Front



Figure 7 – Wall MIU Dimensions - Side

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## Chapter 3: General Installation Guidelines

This chapter describes tools, materials, and general installation information for the R900<sup>®</sup> Meter Interface Unit (MIU).

### Tools and Materials

The following table shows the recommended tools and materials you need to successfully install the R900 MIU.



Some items do not apply to your specific installation, or the list may not contain all required tools or materials.

Table 7 – Recommended Tools and Materials

| Item                         | Description / Recommendations   | Use   |
|------------------------------|---|---|
| Tool Kit                     | Contains standard tools including: <ul style="list-style-type: none"><li>• Assorted screwdrivers</li><li>• Needle-nose pliers</li><li>• Wire stripper</li><li>• Diagonal cutters</li><li>• Electrician's knife</li><li>• Hammer</li><li>• Crimping tool Part # 5500-158</li></ul> | Perform various installation procedures                     |
| Magnet                       | 6 lb. force Part # 12287-001  | Activate the MIU  |
| Cable                        | Solid three-wire conductor #22 American Wire Gauge (AWG) (black / green / red) Part # 6431-352  | Connect the MIU to the encoder register                     |
| Moisture Protection Compound | Novaguard sealant part # 96018-072  | Cover exposed wires and terminal screws on register and MIU |
| Scotchlok™ Connectors        | Part # 8138-125   | Connect wall MIU or replacement pit MIU to encoder register |
| Site Work Order              | Your utility provides this documentation  | Receive and record information about the work site          |

## Safety and Preliminary Checks

---

Observe the following safety and preliminary checks before and during each installation:

- Verify that you are at the location specified on the site work order.
- Verify that the site is safe for you and your equipment.
- Notify the customer of your presence and tell the customer that you need access to the water meter.
- If the site work order does not have an MIU ID number on it, write in the ID number of the MIU you are about to install. If the site work order already has an MIU ID number on it, verify that it matches the ID number on the MIU you are about to install.

## Verifying and Preparing the Encoder Register

---

The R900 MIU is designed for use with the following encoder registers:

- ARB® V
- ProRead™
- ProRead AutoDetect
- E-CODER®
- ProCoder™
- Competitor registers using Sensus include:
  - Sensus ECRII
  - ICE
  - iPerl
  - OMNI and electronic register
  - Hersey / Mueller Translator
  - Badger ADE
  - HR E|LCD

Before installing an MIU, the encoder register must be correctly wired and programmed to work with the MIU. E-CODER registers do not require programming.



When you use a ProRead encoder register, the non-AutoDetect ProRead register must be programmed for three-wire mode.

If connecting the MIU to a new ProRead encoder register, or if a three-conductor cable is already connected to a ProRead encoder register, ensure that the ProRead register is programmed for three-wire mode using the ProRead programmer and its RF / MIU 6, 8, or 10ID TDI format. You can do this through the ProRead receptacle before removing the receptacle.

## Install a Register (Non Pre-Wired or Potted Only)

Follow these steps to install a non pre-wired or potted register.

1. Before wiring the pit encoder register, make sure the cable is long enough. When you complete the installation, you can remove the pit lid easily without straining the cable. Use only 22 AWG cable to make the connection from the encoder register to the MIU.
2. Remove the terminal screw cover from the encoder register.
3. Strip 3/4 inch of jacket from the cable, leaving only the three insulated wires.
4. Take precautions not to nick or cut the insulation on the three wires and strip 1/2 inch of insulation from each of the three wires.

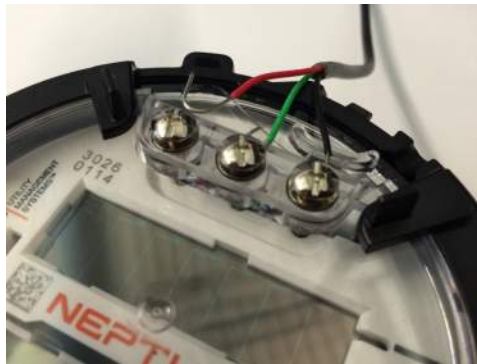


Figure 8 – Wiring a Neptune® Encoder Register

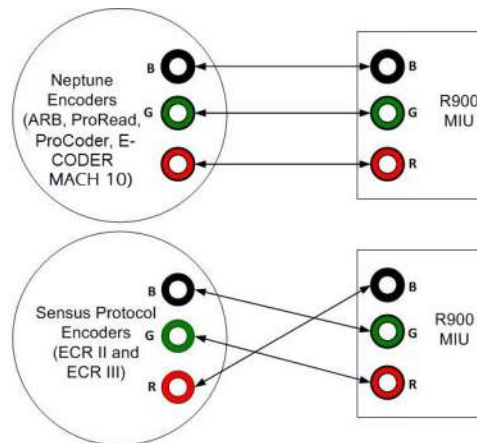


Figure 9 – MIU Color Code for Wires

5. If required, connect the three conductor wires to the encoder register's terminals using the manufacturer's instructions. See "Wiring a Neptune® Encoder Register" on the previous page and "MIU Color Code for Wires" on the previous page.
6. Thread the cable around the strain relief posts of the encoder.



Figure 10 – Cable Threaded around Strain Relief Posts

7. Apply sealant liberally and ensure that it encapsulates the terminal screws and exposed wires.



Figure 11 – Apply the Sealant



Neptune requires Novaguard G661 sealant or Dow Corning compound 4. Any leak point can cause a reading failure in a submerged meter setting.



8. Snap the cover onto the encoder register.



Figure 12 – Covering the Terminal Screws

9. Run the cable to the MIU and fasten it securely.



Do not exceed maximum cable lengths as defined in "Encoder Register Interface" on page 4. If the encoder register is pre-wired and potted, use Scotchloks for connecting the register to the MIU.

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This chapter describes storage and unpacking instructions, preliminary tests, tools, materials, site selection, and wall installation for the R900<sup>®</sup> Meter Interface Unit (MIU).

### Prior to Installation

---

Any existing network registers must be reprogrammed.



The R900 MIU cannot be networked.

### Storage

---

After receipt, inspect the shipping containers for damage, and inspect the contents of any damaged cartons prior to storage.

After you inspect the cartons, store them in a clean, dry environment. The R900 MIU has an internal battery and storing it for more than one year may affect product life. Use a first-in first-out inventory control system. See "Environmental Conditions" on page 4.

### Unpacking

---

Handle the R900 MIU carefully; however, no additional special handling is required. After unpacking the MIU, inspect for damage. If the MIU appears to be damaged or proves to be defective upon installation, notify your Neptune Sales Representative. If one or more items require reshipment, use the original cardboard box and packing material.

### Tools and Materials

---

Tables 1 and 2 in the "Specifications" section show the recommended tools and materials you need to successfully install the R900 MIU.



Some items may not apply to your specific installation, or the list may not contain all required tools or materials.

## Site Selection



Always follow your company's safety practices and installation guidelines when installing an MIU. Never perform an installation during a lightning storm or under excessively wet conditions.

Installation and operation in moderate temperatures increase reliability and product life. See "Environmental Conditions" on page 4.

Follow these guidelines when selecting a location to install the R900 MIU:

- Install the MIU approximately 5 feet above the ground
- Mount on the outside of the building and in a location that provides a direct line-of-sight to the path of the meter reading device.
- Install the MIU in a vertical and upright position. The preferred mounting surface for the MIU is a flat wall, but you can also mount it to a pipe.
- Ensure the location is clear of all obstructions. Do not install behind metal fences or walls.

The maximum cable length between the encoder register and MIU depends on the register's manufacturer and model. See the following table for maximum cable lengths.

Table 8 – Cable Lengths and Manufacturers for Wall Installation

| Encoder Register  | Maximum Cable Lengths   |
|---|---|
| Neptune ARB <sup>®</sup> V  | 300 feet (91 meters) This meets the manufacturer's published specification for wire length between encoder and remote receptacle. |
| Neptune ProRead <sup>™</sup> , ProCoder <sup>™</sup> , E-CODER <sup>®</sup> | 500 feet (152 meters)   |
| Sensus Protocol registers   | 200 feet (61 meters)  |

## Installing the R900® Wall MIU

Follow the steps in this section to install the R900 Wall MIU.

### Removing the Main Housing

Complete these steps to remove the MIU main housing.

1. Remove the main housing from the mounting adapter.



The Hi-Lo fastener for securing the main MIU housing to the adapter plate ships separately.



Figure 13 – Wall MIU Main Housing

2. Study Figure 14 – Mounting Adapter and the location requirements, then decide how to install the MIU and mount the adapter with the set screw positioned at the bottom:
  - The cable enters through the bottom or rear cable entry of the mounting adapter. A variety of holes in the mounting adapter allows for quick and easy installation.
  - When the MIU replaces a receptacle, use the appropriate holes to allow reuse of the receptacle's original mounting holes.
  - When mounting the MIU to a pipe, use the bolt hole to bolt the mounting adapter to a pipe clamp.

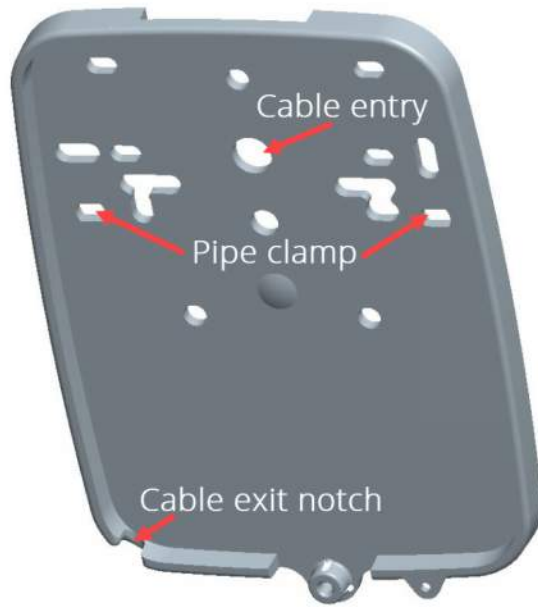


Figure 14 – Mounting Adapter

### Applying the Scotchlok™ Connectors

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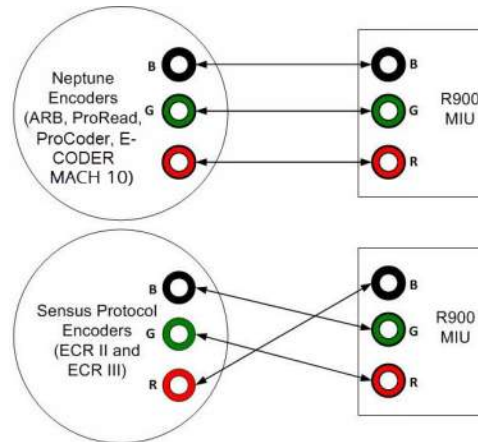
Follow the steps to apply the Scotchlok™ connectors.

1. Using Scotchlok gel caps, connect the register wires to the pigtail from the MIU.



Figure 15 – Gel Cap Connections

- Pair the wires according to the following color diagram.



- Slide the paired wires into the grooves provided until they seat into the back of the gel cap.
- Using an appropriate crimping tool, firmly squeeze the gel cap to ensure a good connection.
- Repeat steps 1 through 4 until all connections are complete.
- For rear cable entry, store excess wire and Scotchloks in the hollow cavity in the back of the MIU using the strain relief guides as shown in the following figure.

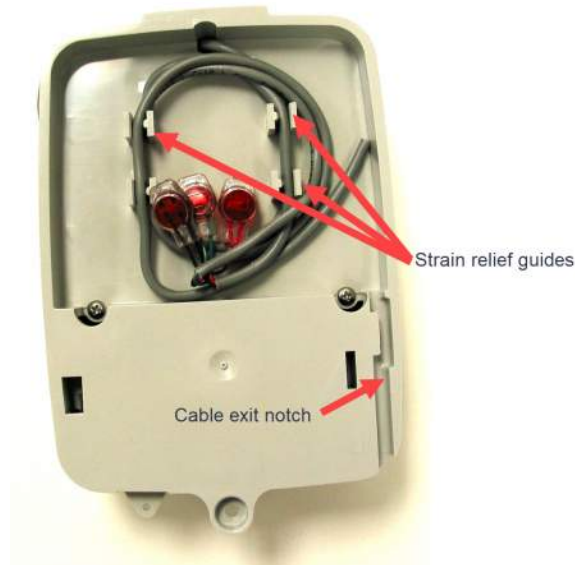


Figure 16 – Cable in Back of Mounting Adapter

- Continue to guide the remaining wire through the cable exit notch at the bottom right side of the MIU as shown in the previous figure.

## Activating and Completing the Installation

---

Install and activate the MIU.

1. Slide the tongue on the top of the MIU into the groove on the top of the mounting adapter.
2. Secure the MIU to the mounting adapter using the set screw.



Figure 17 – Securing the Mounting Adapter

3. Position the magnet against the left side of the MIU and swipe it bringing it from the side and around the corner to the top to activate the MIU.



Figure 18 – Activating the MIU



## Testing the Installation

Complete the following steps to test the installation.

1. Power up the Hand-Held Unit (HHU) test device and start the testing programs provided.



To avoid RF signal saturation of the HHU, do one of the following:

- Position yourself at least 2 to 3 feet from the MIU.
- Remove the antenna from the HHU.

When the MIU is installed correctly, its ID number and meter readings appear on the HHU display.

2. Verify the correct meter readings by comparing it to the meter's dial. See the following table for next steps.

| If...   | Then...   |
|---|---|
| The readings are the same,  | Proceed to "Data Logging Extraction" on page 37.  |
| A meter reading does not appear on the HHU display, or the meter reading on the HHU display is not the same as the reading on the meter's dial, | <ul style="list-style-type: none"> <li>• Reactivate the MIU using the magnet.</li> <li>• Verify all electrical connections.</li> <li>• Test the installation again.</li> </ul>  |
| You use a ProRead or ProCoder encoder register,   | <ul style="list-style-type: none"> <li>• Ensure the unit is programmed in three-wire mode.</li> <li>• Verify all electrical connections.</li> <li>• Reactivate the MIU. (See step 1).</li> <li>• If a problem still exists, contact your Neptune Sales Representative.</li> </ul> |

3. To complete the installation, install a seal wire or seal clip through the seal holes at the bottom of the main housing.



Figure 19 – Install Seal Wire

4. Verify that the requirements of the site work order have been met and that you have recorded all information.
5. Clean up the installation site before leaving.

This chapter provides instructions for:

- Storing and unpacking the MIU
- Performing preliminary tests
- Verifying tools and materials
- Selecting a site
- Installing the unit

### Prior to Installation

---

This section defines preparations to take before you install the MIU.

#### Storage

---



After receipt, inspect all shipping containers for damage and inspect the contents of any damaged cartons prior to storage.

After you inspect the cartons, store them in a clean, dry environment. The R900<sup>®</sup> MIU has an internal battery and storing it for more than one year may affect product life. Use a first-in first-out inventory control system. See “Environmental Conditions” on page 4.

#### Unpacking

---

Handle the R900 MIU carefully; however, no additional special handling is required. After unpacking the MIU, inspect it for damage. If the MIU appears to be damaged or proves to be defective upon installation, notify your Neptune Sales Representative. If one or more items requires reshipment, use the original cardboard box and packing material.

#### Tools and Materials

---

See "Tools and Materials" on page 9 for the recommended tools and materials you need to successfully install the R900 MIU.



Some items may not apply to your specific installation, or the list may not contain all required tools or materials.

## Site Selection

---



Always follow your company's safety practices and installation guidelines when installing an MIU. Never perform an installation during a lightning storm or under excessively wet conditions.

Installation and operation in moderate temperatures increase reliability and product life. See "Environmental Conditions" on page 4.

Follow these guidelines when selecting a location to install the R900 MIU:

- Select a location where there is no chance that another object can be set over the antenna.
- Avoid installing the MIU behind metal fences or walls.
- Make sure the pit location gives adequate room for installing both the MIU and the pit antenna.
- Install pit antennas above the lid as illustrated in "Antenna Placement for High Traffic Areas" on the facing page.



For maximum performance, locate the flange of the pit antenna above the pit lid.

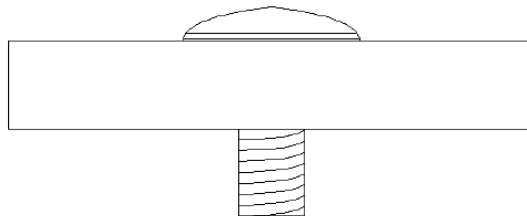


Figure 20 – Antenna Placement for Low Traffic Areas

When installing in a high traffic area, Neptune recommends that the dome of the antenna be recessed in the pit lid as shown in the following figure. However, recessing the antenna does reduce its range.

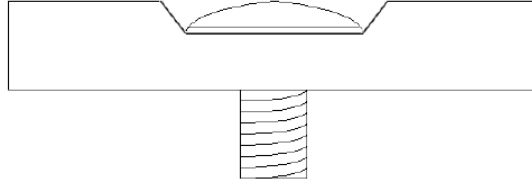


Figure 21 – Antenna Placement for High Traffic Areas

Table 9 – Cable Lengths and Manufacturers for Pit Installation

| Encoder Register  | Maximum Cable Length  |
|---|-----------------------|
| Neptune ARB® V. Meets manufacturer's published specification for wire length between encoder and remote receptacle. | 300 feet (91 meters)  |
| Neptune ProRead™, E-CODER® and ProCoder™  | 500 feet (152 meters) |
| Sensus Protocol registers   | 200 feet (61 meters)  |

## Pit MIU Installation

---

The following section describes how to install a single R900 MIU in a pit location.

### Installing the Antenna

---

Follow the steps in this section to install the antenna for the pit MIU.

1. Select a location for the MIU that meets the recommendations in "Site Selection" on page 24.
2. Insert the antenna cable and housing through the 1-3/4 inch hole in the meter pit lid.



Figure 22 – Inserting Antenna into Pit Lid

3. Slip the large plastic nut over the antenna cable and thread it onto the antenna assembly.



Figure 23 – Locking Nut on Antenna

4. Hand tighten the nut securely to the lid.



Figure 24 – Securing the Locking Nut

The following figure shows the completed antenna installation.



Figure 25 – Installation Complete

## Begin the Installation

---

Follow these steps to install the pit MIU.

1. Do one of the following. If you are:
  - Installing the antenna on a new MIU, remove the black plastic thread protector cap from the male F connector on the MIU.
  - Replacing an existing antenna, clean all dirt, debris, and dielectric grease from the latch plate on the MIU housing.



Figure 26 – MIU Housing and Latch Plate

2. Align the F connector center conductor and insert the antenna connector into the three-lobed plastic latch plate of the MIU housing.



Figure 27 – Aligning the Connector to the Housing



3. Push in and turn the connector clockwise until it is properly seated on the three-lobed black plastic latch plate.



### Installing the Scotchlok™ Connectors

Follow this procedure to install the 3M Scotchlok™ connectors.

1. Complete the steps outlined in "Pit MIU Installation" on page 26 to install the MIU through the lid.
2. Connect the MIU wires to the encoder wires using Scotchlok connectors.
3. Hold the connector between index finger and thumb with the red cap facing down.



Figure 28 – 3M Scotchlok™ Connector

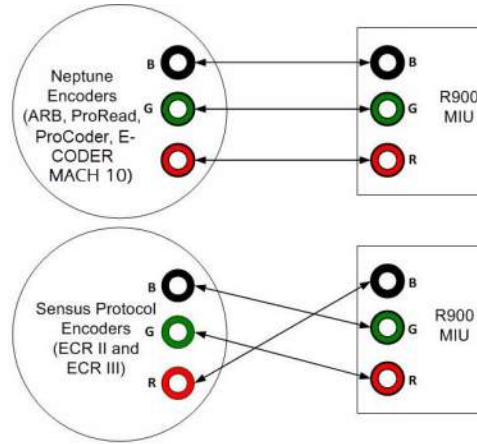


Figure 29 – MIU Color Code for Wires

4. Take a non-stripped black wire from the pigtail and a non-stripped black wire from the receptacle / MIU and insert the wires into the Scotchlok connector until fully seated in the connector.

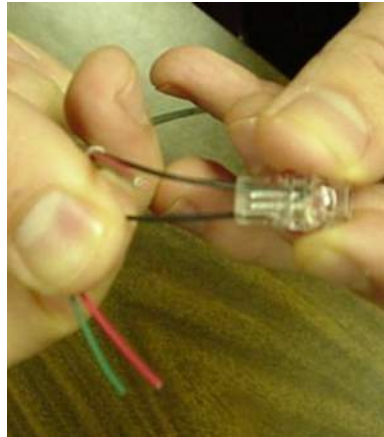


Figure 30 – Seating Connector Wires



Do not strip colored insulation from wires, or strip and twist bare wires prior to inserting in the connector. Insert the insulated colored wires directly into the Scotchlok connector.

5. Place the connector, red cap side down, between the jaws of the crimping tool.



Figure 31 – Crimping Tool

6. Check to ensure the wires are still fully seated in the connector before crimping the connector. The following figure illustrates improper connections due to wires not being fully seated.

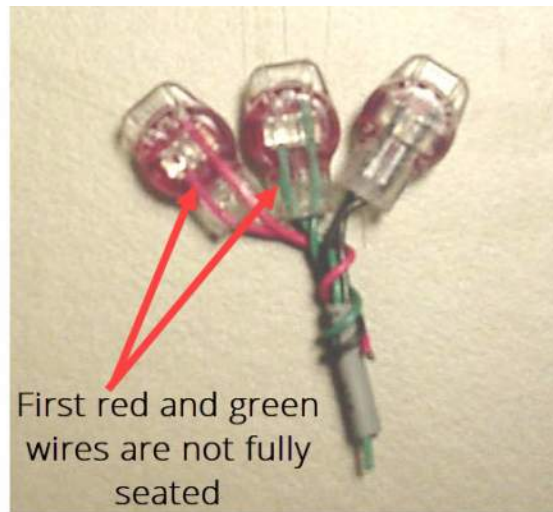


Figure 32 – Improper Connections

7. Squeeze the connector firmly with the proper crimping tool until you hear a pop and gel leaks out the end of the connector.
8. Repeat steps 2 through 4 for each color wire.

9. After you connect all three color wires, read the encoder register to ensure proper connections and functionality of the receptacle / MIU.

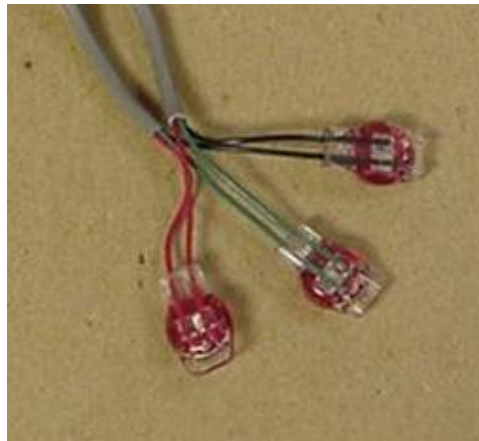


Figure 33 – Three Color Wires Connected

### Connecting the Splice Tube

---

To finish the installation of the Scotchloks, complete the following steps to install the connector splice tube.

1. Push all three connected Scotchloks into the splice tube until they are fully encapsulated in the silicone grease.



Figure 34 – Splice Tube

2. Separate each gray wire and place them in the slots on each side.

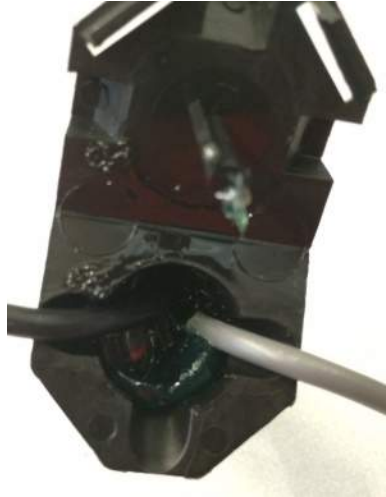


Figure 35 – Gray Wire in Slots

3. Snap the cover closed to finish the installation.



Figure 36 – Cover in Place

## Tying the Cable and Activating the MIU

Complete this procedure to activate the MIU.

1. Follow these suggestions to place the MIU in the pit location:
  - In a shallow pit application, you can place the MIU beside the meter.



Be careful not to lodge the MIU between the meter box and any components inside the box.

- In a deep pit application, use a cable tie to suspend the MIU from the antenna shaft.

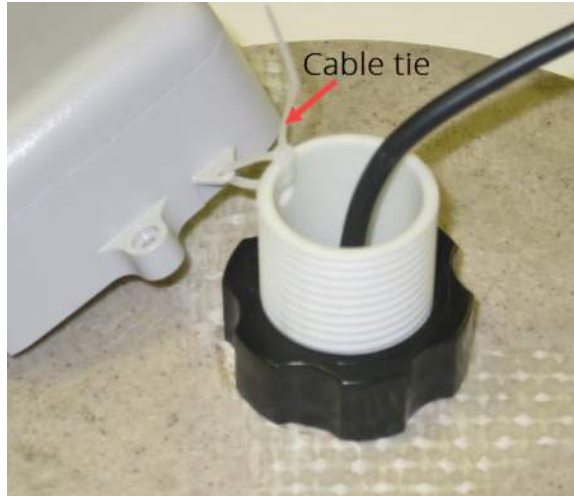


Figure 37 – Attaching the MIU to the Antenna Shaft



Make sure the MIU is placed in such a way that it does not lodge itself when the pit lid is removed.

2. After you place the MIU, position the magnet against the left side of the MIU as shown, and swipe it from the side and around the corner to the top to activate the MIU.



Figure 38 – Activating the MIU

## Testing the Installation

If the R900 MIU is connected to an E-CODER register or another register with an eight-digit output, the R900 MIU transmits an eight-digit read. For example, read 12345678 (E-CODER or other eight-digit register output).

1. Power on the Hand-Held Unit (HHU) and enable the RF test mode.



To avoid RF signal saturation of the HHU, position yourself at least 2-3 feet from the MIU.

When the MIU is installed correctly, its ID numbers and meter readings appear on the HHU display.

2. Verify the correct meter readings by comparing it to the meter's dial. If the readings are the same, proceed to the next chapter.
3. If a meter reading does not appear on the HHU display, or the reading is not the same as the reading on the meter's dial, do one of the following:
  - Reactivate the MIU using the magnet.
  - Verify all electrical connections.
  - Verify registers are programmed correctly.
  - Test the installation again.
4. If the installation includes a ProRead encoder register:
  - Ensure the unit is programmed in three-wire mode.
  - Verify all electrical connections.
  - Reactivate the MIU (see step 1).

If a problem still exists, contact your Neptune Sales Representative.

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The R900 MIU can store interval data for data logging. The R900<sup>®</sup> MIU is activated using the Trimble<sup>®</sup> Nomad<sup>®</sup> and R900<sup>®</sup> Belt Clip Transceiver (BCT) and is explained in more detail in the following section.

The R900 MIU stores consumption in hourly intervals for a rolling total of 96 days. This is equal to 2,304 hourly intervals of consumption. The data logging data is extracted through radio frequency (RF) activation. The RF activation allows the utility workers to visit the location and extract the data without physically interacting with the meter itself. This limits worker exposure to animals, or other dangerous situations.

The extraction process takes about 30 seconds. The activation is done through the Hand-Held Unit (HHU) connected to the R900 BCT via Bluetooth<sup>®</sup>. The R900 BCT sends the activation signal to the R900 MIU, which sends the data intervals to the R900 BCT. The HHU saves the data.

### Pairing with the Belt Clip Transceiver (BCT)

---

To pair a BCT, complete the following steps.

1. Change the date if you have a specific day to target.
2. Click **INITIALIZE** to pair with the R900 BCT.
3. Type the MIU ID.
4. Click **CAPTURE**.

The system transmits reads like the data logger reads. The data logger has 96 days of hourly reads and off cycle has 96 days of daily reads.

## Accessing Data Logging

Complete the following steps to log the data.

1. On the host software home screen on the HHU, click **MENU**.



Figure 39 – HHU Home Screen

2. On the HHU Menu screen, click **UTILS** (option 4).

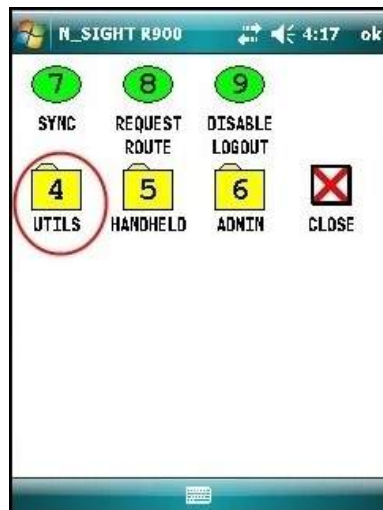


Figure 40 – N\_SIGHT® R900® Menu Screen

3. Click **DATA LOGGER** (option 9).

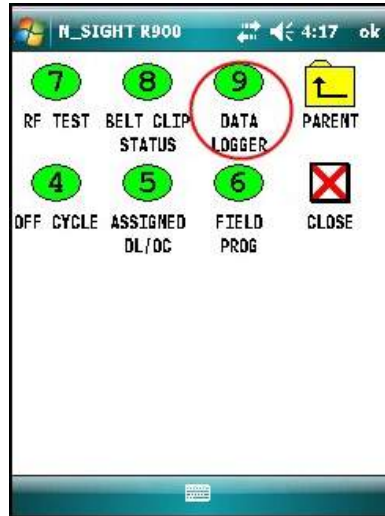


Figure 41 – Data Logger Option

4. Type your reader ID and password for the host software, and then click **LOGIN**.

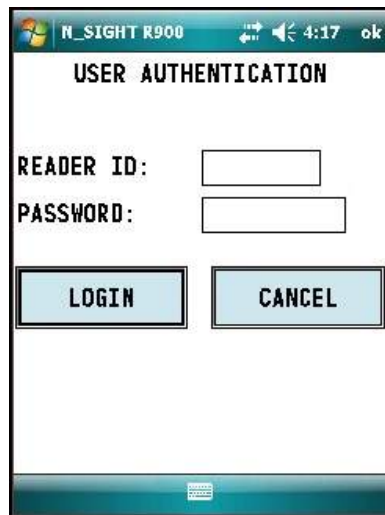


Figure 42 – Reader ID Input

## Initializing the Data Logger

You must initialize the R900 BCT each time you attempt to data log.

1. Verify the time is correct, and then click **YES**.

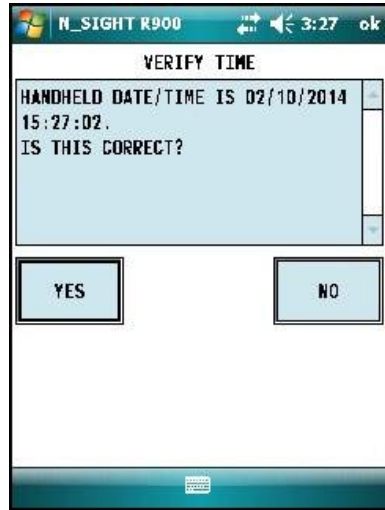


Figure 43 – HHU Time Confirmation



The HHU must be synchronized prior to data logging, to set the clock.

2. The Initialize Device screen appears if you are not connected or you are not in range of your R900 BCT. Click **INITIALIZE**.

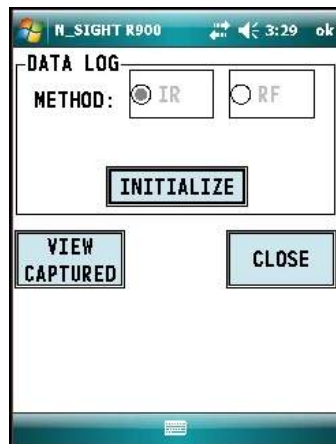


Figure 44 – Initialize RF Device

3. Select **RF**, and then type the MIU ID. You can type the MIU ID using the number pad keys or expand the on-screen keyboard.

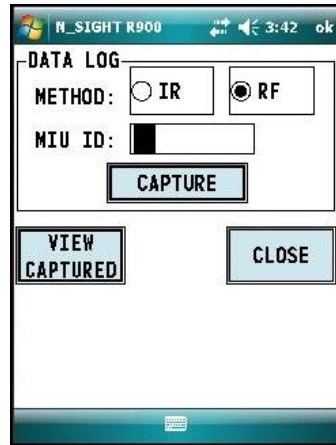


Figure 45 – MIU ID Entry

4. After you type the MIU ID, click **CAPTURE**.

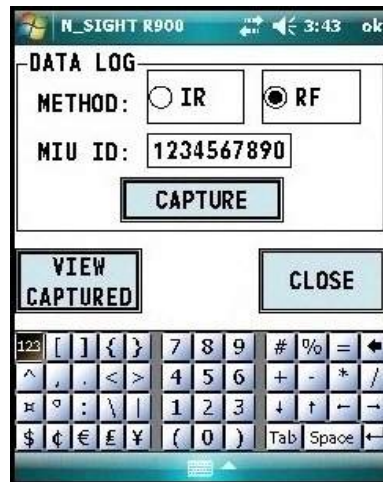


Figure 46 – Capture Button

5. You are prompted to provide the meter size and unit of measure. Type this information now, and then click **OK** , or after the data logging has completed.

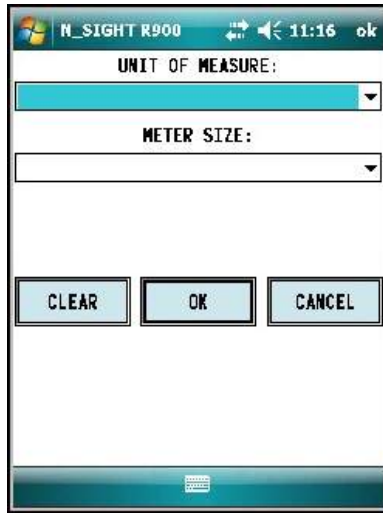


Figure 47 – Meter Size Selection

## Initiating RF-Activated Data Logging

---

Follow this procedure to initiate RF-activated data logging.

1. Click **START** to initiate the data logging.

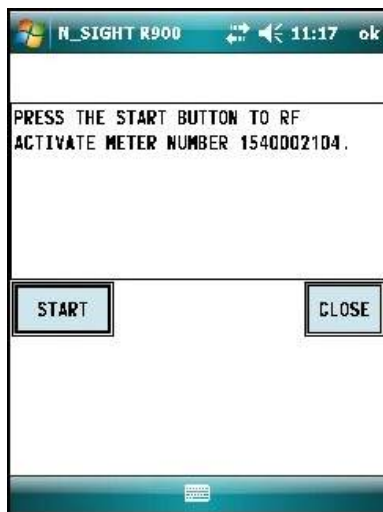


Figure 48 – Start Button

The R900 BCT activates the R900 and listens for the data logger to start transmitting.

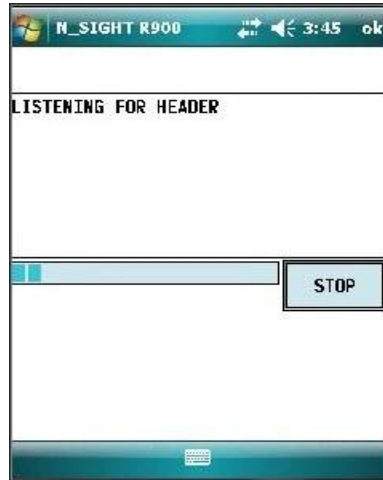


Figure 49 – Listening for Data

The data appears on the screen.

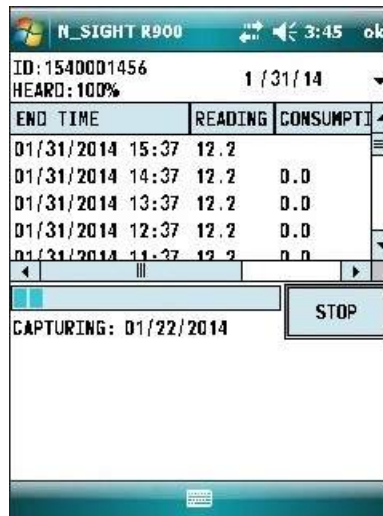


Figure 50 – Receiving Data

2. After the data logging process is completed, choose the meter size. See step 5 under Initializing the Data Logger.
3. Click **GRAPH** to display the data in a graph. See "Sample Data Logging Graph " on the next page for more information.

The HHU processes and saves the data. After closing the data logging screen, the unit performs a backup.

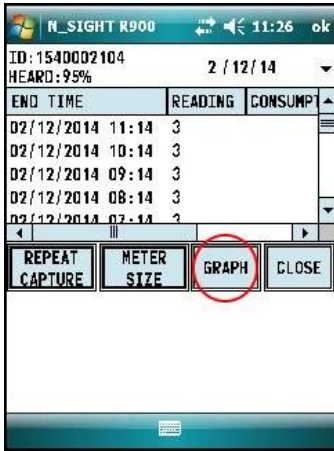


Figure 51 – Graph Button

### Sample Data Logging Graph

The following are two examples of the graphs the system can produce with data logging.

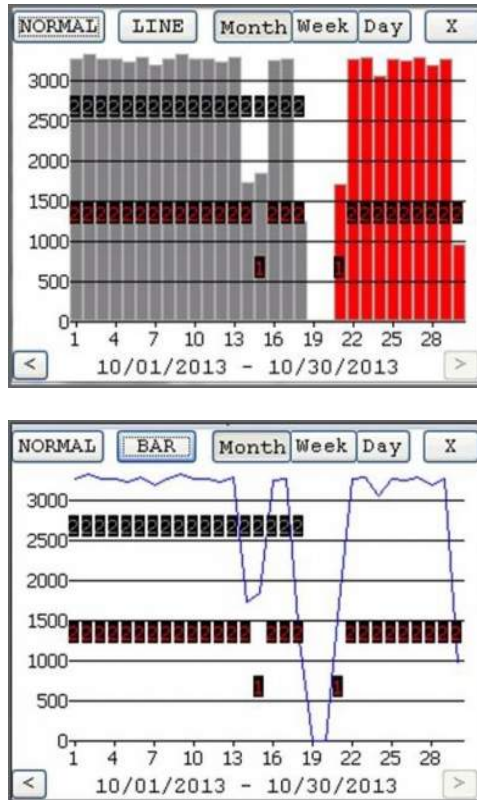


Figure 52 – Data Logging Graph Examples



Table 10 – Data Logging Graph Legend

| Color Code | Description  |
|------------|--|
| 1 red      | Intermittent leak  |
| 2 red      | Continuous leak  |
| 1 gray     | Minor backflow   |
| 2 gray     | Major backflow   |
| Blue bars  | No flags   |
| Red bars   | Leak   |
| Gray bars  | Backflow. If the Backflow flag and the Leak flag appear at the same time, Backflow (gray bars) has precedence over Leak. |

## Off Cycle Data Extraction

Off cycle reads are 96 days of daily reads taken at 15-minute intervals over a 24-hour period. This allows utilities to retrieve move out reads or monitor vacant usage to prevent theft.

To navigate to off cycle, complete the following steps.

1. On the host software home screen on the HHU, click **MENU**.



Figure 53 – HHU Home Screen

2. On the HHU Menu screen, click UTILS (option 4).

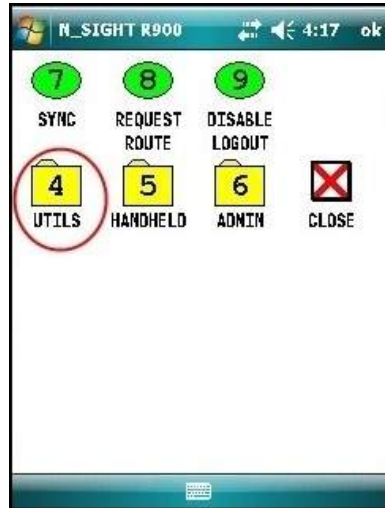


Figure 54 – HHU Menu

3. Click OFF CYCLE (option 4).

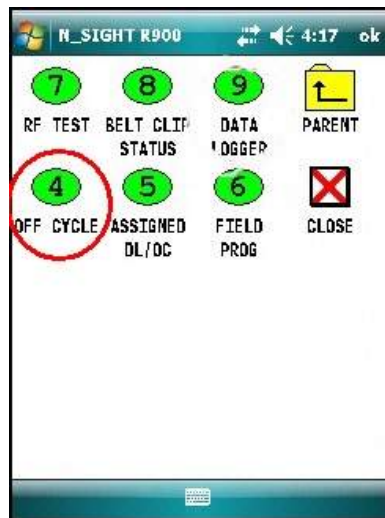


Figure 55 – Off Cycle Option

4. Type the read ID or the password.
5. Click **LOGIN**.
6. Confirm the date and time are correct.
7. Click **YES**.

## Chapter 7: Maintenance and Troubleshooting

This chapter defines maintenance and troubleshooting procedures for the R900<sup>®</sup> MIU.

### Six-Wheel Encoder Normal Operation

If the odometer reads 123456, the display shows 1 2 3 4 5 5 0 0.



Note that the sixth digit displayed is a five, if the last digit on the odometer is five through nine. The sixth digit is zero, if the last digit on the odometer is zero through four. The R900 MIU adds two zeros on the end to provide an eight-digit reading to the host software.

### Four-Wheel Encoder Normal Operation

If the odometer reads 123456, the display shows 1 2 3 4 0 0 0 0.



The E-CODER<sup>®</sup>)R900<sup>™</sup> adds four zeros on the end to provide an eight-digit reading to the host software.

### Troubleshooting

This section provides examples of possible reading values and what they indicate.

Table 11 – Example Reading Values

| Reading Value | Definition  | Troubleshooting  |
|---------------|---|--|
| .....         | Failure to retrieve reading   | <ul style="list-style-type: none"><li>• Usually indicates a cut wire. Check the connection between the register and MIU.</li><li>• If using a non-autodetect ProRead<sup>™</sup> register, verify that it is programmed for three-wire mode.</li></ul> |
| ???????       | Indicates an ambiguous, bad read, replaces ----- and HHHHHHHH               | N/A  |
| MMMMMMMM      | Indicates an out-of-range reading (>99999999), diagnostic code from the MIU | <ul style="list-style-type: none"><li>• Indicates that no meter reading history is available.</li><li>• Swipe the MIU with a magnet to force the MIU to read the register.</li></ul>   |
| UUUUUUUU      | Indicates undefined out of range reading, corrupt valve                     | N/A  |

## Replacement Parts

---

The following table lists the available replacement parts for the R900 MIU.

Table 12 – Available Replacement Parts

| Part Name                                     | Part Number |
|---|-------------|
| Solid three-conductor wire, 22 AWG (1000 ft.) | 6431-352    |
| Dow Corning #4 compound (5.3 oz. tube)        | 96018-064   |
| GE Novaguard (4 cc packet)                    | 96018-072   |
| Scotchloks                                    | 8138-125    |
| Mounting Adapter for ProRead Register         | 12539-001   |
| Mounting Bracket for E-CODER Register         | 13443-000   |
| Fastener Screw                                | 8328-302    |
| Magnet  | 12287-001   |
| Flat Washers                                  | 8340-054    |

## Contact Information

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Within North America, Neptune Customer Support is available Monday through Friday, 7:00 A.M. to 5:00 P.M. Central Standard Time, by telephone, email, or fax.

### By Phone

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To contact Neptune Customer Support by phone, complete the following steps.

1. Call **(800) 647-4832**.
2. Select one of the following options:
  - **1** if you have a Technical Support Personal Identification Number (PIN)
  - **2** if you do not have a Technical Support PIN
3. Enter the six-digit PIN and press #.
4. Select one of the following options.
  - **2** for Technical Support
  - **3** for maintenance contracts or renewals
  - **4** for Return Material Authorization (RMA) for Canadian Accounts

You are directed to the appropriate team of Customer Support Specialists. The specialists are dedicated to you until the issue is resolved to your satisfaction. When you call, be prepared to give the following information:

- Your name and utility or company name
- A description of what occurred and what you were doing at the time
- A description of any actions taken to correct the issue

### By Fax

---

To contact Neptune Customer Support by fax, send a description of your problem to (334) 283-7497. Please include on the fax cover sheet the best time of day for a customer support specialist to contact you.

### By Email

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To contact Neptune Support by email send your message to [support@neptunetg.com](mailto:support@neptunetg.com).

This page intentionally left blank.

## A

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### antenna

The MIU antenna used for pit installations.

## F

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### FCC

Federal Communications Commission

## M

---

### main housing

The main body of the MIU that attaches to the mounting adapter.

### main housing fastener screw

The set screw (Hi-Lo fastener) that holds the main housing to the mounting adapter.

### maximum cable lengths

The length set by the manufacturer for the wire between the encoder and the remote receptacle. The specifications for this length are based on a solid 3-conductor wire.

### MIU

Meter Interface Unit

### mounting adapter

The back plate of the MIU that is attached to the wall

## S

---

### **seal wire**

The wire inserted into the seal holes adjacent to the main housing fastener screw. This seal must be broken to remove the main housing from the mounting adapter.

### **strain relief posts**

The Posts located on the encoder register and the back of the main MIU housing

## T

---

### **terminal screw cover**

The plastic cover on the encoder register that protects the terminal screws and exposed wires

### **terminal screws**

The screws on the encoder register face that are used to connect and anchor the three (3) conductor wire to the register



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**Neptune Technology Group Inc.**

1600 Alabama Highway 229  
Tallassee, AL 36078  
USA Tel: (800) 633-8754  
Fax: (334) 283-7293

**Neptune Technology Group**

(Canada) Ltd.  
7275 West Credit Avenue  
Mississauga, Ontario L5N 5M9  
Canada Tel: (905) 858-4211  
Fax: (905) 858-0428

**Neptune Technology Group Inc.**

Avenida Ejercito Nacional No 418  
Piso 12, Despacho 1203  
Colonia Polanco V Sección  
C.P. 11560 Delegación, Miguel Hidalgo  
Mexico D.F.  
Tel: (55) 5203-5708, (55) 5203-4032,  
(55) 5203-5294

Online

[www.neptunetg.com](http://www.neptunetg.com)