

**JACK H. WILSON WATER TREATMENT PLANT
RENEWAL AND RESILIENCY PROJECT**

CENTRAL ARKANSAS WATER PROJECT #5421

BID PACKAGE: Ornamental Fencing and Gates

DECEMBER 2024

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ADVERTISEMENT FOR BIDS

Max Foote Construction Co. LLC

Contractor

225 Antibes Street West, Suite 3

Address

Mandeville, LA 70448

Separate sealed bids for the following trade packages :

- 1) Pavement and Drainage Improvements
- 2) Ornamental Fences and Gates
- 3) Concrete Restoration
- 4) Architectural
- 5) Non-Architectural Coatings
- 6) Yard Piping
- 7) Raw Water Pipeline
- 8) Miscellaneous Metals
- 9) FRP Baffle System
- 10) Gates, Operators, and Stop Plates/Logs
- 11) Multistage Centrifugal Blowers
- 12) Vertical Turbine Solids Handling Pumps
- 13) Sample Pumps
- 14) Vertical Turbine Pumps
- 15) Wet Pit Submersible Solids Handling Pump
- 16) Submersible Sump Pump
- 17) Polyethylene Storage Tanks
- 18) FRP Tanks
- 19) Liquid Lime System
- 20) Chemical Feed Equipment
- 21) Vertical Shaft Mixers
- 22) Solids Collection Equipment
- 23) Rotary Skimmers & Accessories
- 24) GAC Filter Media
- 25) Sand Filter Media

- 26) Filter Equipment
- 27) Floating Decanters

will be received by Max Foote Construction Co. LLC c/o Mr. Matt Pittman at the office of Contractor until 2:00 p.m., on January 8, 2025 and then at said office publicly opened and read aloud.

The Contract Documents may be examined at the following locations:

Capitol Imaging, 11223 Otter Creek East Blvd. Mabelvale, AR 72103 (501) 376-2446

Copies of the Contract Documents may be obtained via phone (501) 376-2446 or capitolblueplanroom.com upon payment for each set. The bidder and/or supplier should request the package individually for the 27 separate sections listed.

All Contract Documents are non-refundable.

Site visitation will be available at the project site on December 10th and 11th from 8:00 a.m. – 4:00 p.m. by contacting Mr. Pittman at (318) 294-5694 or email at mrpittman@maxfoote.com. Additional visitations are available by appointment after these dates.

Any contract or contracts awarded under this invitation for bids will be subject to the requirements of the Arkansas Revolving Loan Fund (RLF) Programs as described in the contract documents.

All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. Bidders on this work will be required to comply with the President's Executive Order 11246, as amended. The requirements for Bidders and Contractors under this order are explained in the specifications.

Each Bidder must comply with the requirements, terms, and conditions of the Arkansas Natural Resources Commission, the Disadvantaged, Minority and Women Business Enterprise (DBE/MBE/WBE) requirements, the Consolidated Appropriations Act of 2014 (Public Law 113-76) including the "American Iron and Steel (AIS)" requirement, Labor Standards, and Equal Employment Opportunity provisions during the performance of this contract. The Bidder commits itself to the requirements for the participation contained herein and all other requirements, terms, and conditions of these bid conditions by submitting a properly signed Bid. Each requirement listed above for the RLF programs are in the Supplemental Conditions in the Contract Documents.

INFORMATION FOR BIDDERS

Bids will be received by Max Foote Construction Co. LLC (herein called the "Contractor") at Max Foote Construction Company, LLC 225 Antibes West Suite 3 Mandeville, LA 70448 until January 8, 2025 at 2:00 P.M. central standard time and then at said office publicly opened and read aloud.

Each Bid must be submitted in a sealed envelope, addressed to Mr. Matt Pittman.

Each sealed envelope containing a Bid must be plainly marked on the outside as Bid for Ornamental Fencing, Gates, and related items and the envelope should bear on the outside the Bidder's name, address, and license number if applicable, and the name of the project for which the Bid is submitted. If forwarded by mail, the sealed envelope containing the Bid must be enclosed in another envelope addressed to the Contractor, 225 Antibes West Suite 3, Mandeville LA 70448.

Digital submission of the bid proposal and associated documents will be allowed to Max Foote Construction Co. Inc. LLC via electronic mail to mrpittman@maxfoote.com.

The Bidders attention is called to the requirements of the Supplemental General Conditions for the Revolving Loan Fund (RLF) contained in the contract documents including but not limited to Disadvantaged, Minority and Women's Business (DBE/MBE/WBE) participation and reporting requirements as well as , the "American Iron and Steel" requirement, Labor Standards, and Equal Employment Opportunity. Further, Bidders will be required to submit with their Bids, a Contractor's Act of Assurance Form certifying their understanding of and compliance with the Supplemental General Conditions. In addition, post Bid completion of DBE/MBE/WBE Compliance Evaluation Forms will be required and approved before the Contract can be Awarded.

All Bids must be made on the required Bid form. All blank spaces for Bid prices must be filled in, in ink or typewritten, and the Bid form must be fully completed and executed when submitted. Only one copy of the Bid form is required.

The Contractor may waive any informalities or minor defects or reject any and all Bids. Any Bid may be withdrawn prior to the above scheduled time for the opening of Bids or authorized postponement thereof. Any Bid received after the time and date specified shall not be considered. No Bidder may withdraw a Bid within sixty (60) days after the actual date of the opening thereof. Should there be reasons why the contract cannot be Awarded within the specified period, the time may be extended by mutual agreement between the Contractor and the Bidder.

Bidders must satisfy themselves of the accuracy of the estimated quantities in the Bid schedule by examination of the site and a review of the drawings and specifications including Addenda. After Bids have been submitted, the Bidder shall not assert that there was a misunderstanding concerning the quantities of Work or of the nature of the Work to be done.

The Contractor shall provide to Bidders prior to Bidding, all information that is pertinent to, and delineates and describes, the land owned and rights-of-way acquired or to be acquired.

The Contract Documents contain the provisions required for the construction of the Project. Information obtained from an Officer, Agent, or Employee of the Contractor or any other person shall not affect the risks or obligations assumed by the Contractor or relieve the contractor from fulfilling any of the conditions of the Contract.

After Bids have been opened and prior to Award, the awarded Bidder will have fifteen business days to submit their DBE solicitation process and forms. All Bidders, as a condition of bidding, are required to document to the Contractor and to the Commission that the “good faith efforts” were taken in the preparation of bids to obtain DBE/MBE/WBE participation.

The Contractor may elect to have a Performance Bond and a Payment Bond each in the amount of 100 percent of the Contract Price, with a corporate surety approved by the Contractor, required for the faithful performance of the contract.

Attorneys-in-Fact who sign Bid Bonds or Payment Bonds and Performance Bonds must file with each Bond a certified and effective dated copy of their Power of Attorney. Attorneys-in-Fact that sign the Bonds must be licensed to conduct business in the State of Arkansas.

The party to whom the contract is Awarded will be required to execute the Agreement, and obtain the performance Bond and payment Bond, if required, within ten calendar days from the date when Notice of Award is delivered to the Bidder. The Notice of Award shall be accompanied by the necessary Agreement and Bond forms.

Successful Bidder must comply with the requirements of Arkansas Code Ann. §17-25-401-409 (1995) in accordance with the procedures established by the Contractors Licensing Board (Reference Supplemental General Conditions).

Successful Bidder must comply with the requirements of Act 291 of 1993 concerning trenches or other excavations five feet deep or more in accordance with OSHA standards.

The Contractor within ten days of receipt of acceptable Performance Bond, Payment Bond and Agreement signed by the party to whom the Agreement was awarded shall sign the Agreement and return to such party an executed duplicate of the Agreement.

The Notice to Proceed shall be issued within ten days of the execution of the Agreement by the Contractor. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the Contractor and Contractor. If the Notice to Proceed has not been issued within the ten day period or within the period mutually

agreed upon, the Contractor may terminate the Agreement without further liability on the part of either party.

The Bidder must present satisfactory evidence that he has been regularly engaged in the type of work Bid upon, giving the length of time so engaged, and that he is fully prepared with the necessary capital, material, machinery, and expert workmen to perform the contract.

The attention of prospective Bidders is directed to Act 150 of the 1965 Acts of Arkansas, being an "Act Regulating the Practice of Contracting in the State of Arkansas". When the project presented for Bid is financed in whole or in part with State funds and is estimated to cost \$20,000.00 or more, the prospective Bidder must show evidence of license with the "Contractor's Licensing Board" for the State of Arkansas before a proposal form will be furnished.

The Contractor may make such investigations as deemed necessary to determine the ability of the Bidder to perform the Work, and the Bidder shall furnish to the Contractor all such information and data for this purpose as the Contractor may request. The Contractor reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Contractor that such Bidder is properly qualified to carry out the obligations of the Agreement and to complete the Work contemplated therein.

All applicable laws, ordinances and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the contract throughout.

Each Bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the Contract Documents. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to its Bid.

Further, the Bidder agrees to abide by the requirements set forth in the Supplemental Conditions.

The awarded Bidder shall supply the names and addresses of major material Suppliers and Subcontractors when required to do so by the Contractor.

Inspection trips for prospective Bidders can be arranged by contacting Mr. Matt Pittman at 318-294-5694 or email mrpittman@maxfoote.com prior to the inspection trip dates of December 10th and 11th between the hours of 8am-4pm. Max Foote Construction Company will allow for additional visits by appointment only after this date up to seven (7) days prior to the bid opening.

All equipment must be delivered to the project site by bid package delivery deadline or the manufacturer's quoted lead time from Contractor's release for fabrication and delivery, whichever occurs first.

All questions about the meaning or intent of the Bidding Documents shall be submitted to Max Foote Construction Co. in writing to mrpittman@maxfoote.com. To receive consideration, questions must be received by Contractor at least 7 days prior to the date for the opening of Bids. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents for receipt not later than three (3) business days prior to the date for the opening of Bids. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

Addenda may also be issued to clarify, correct or change the Bidding Documents as deemed advisable by Owner or Engineer. Such Addenda, if any, will be issued in the manner and within the period stated in these Instructions to Bidders.

Supplemental Instruction to Bidders

The following instructions shall be adhered to in preparing and submitting of proposals:

All attachments and exhibits to the Contact with the Owners shall be recognized by this Trade Contractor becoming an inclusion to the specified scope of work:

In respect, each proposal should include (though not all inclusive) the following costs:

- a) All applicable Sales Tax and Freight on Board to the Jobsite.
- b) Comply with prevailing wage rates as required by the Construction Documents.
- c) Costs for Owner and Construction Manager required employee orientation, safety training, infection control training, and photo ID badge.
- d) Attendance at pre-construction and project coordination meetings as required by the specifications or as deemed necessary by the Project Manager.
- e) Costs of delivery of Submittals, including but not limited to shop drawings, product data, samples, mock-ups, operating, service, and maintenance manuals, SDS information, and other submittals required by the Contract Documents.
- f) All testing required by the Specifications, Provide test certificates where specified.
- g) Hook-up and consumption charges for temporary utility service and telephones for trailers and sheds. It is each Trade Contactor's responsibility to maintain the temporary services and remove such services when no longer needed.
- h) Task lighting and special electrical service requirements. The Electrical Contractor will provide temporary power to accommodate the use of power tools, lighting, and masonry saws.
- i) Telephones, radios, computers, internet access
- j) Drinking water and ice for their forces.
- k) Storage sheds, office trailers, labor sheds, etc. as required for their operations.

- l) Portable, gas driven welders (if welding is required).
 - m) All parking for employees coordinate with the Project Superintendent.
 - n) The Trade Contractor shall provide all equipment, including but not limited to hoisting and certified operators as necessary to complete the work as required.
 - o) Daily clean up and removal of all identifiable debris from site. All bidders are responsible for their own housekeeping and removal of trash from the project. All bidders maintain broom clean work areas. Should the bidder fail to maintain a clean work area, the MFCC will back-charge the Trade Contractor for any expenses incurred in performing this work.
 - p) All bidders are required to provide temporary' protection for their work and materials.
 - q) Provide weather protection as required to protect and perform the work unless specifically excluded in bid package.
 - r) Compliance with OSHA, E.P.A., A.D.A, and applicable state and local requirements governing the work.
 - s) All applicable trade permits, licenses, and inspection fees, including bonds required for work done in City Right-of-Way, unless specifically excluded in bid package.
 - t) Compliance with Construction Manager's insurance requirements,
 - u) Engineering layout, professional surveys, and grade control as required in the performance of the work.
 - v) Layout and field dimensions associated with the work.
 - w) Touch-up painting of any pre-finished items as required.
- 4) Trade Contractor's work shall comply with Max Foote Construction Company LLC safety policies and OSHA safety regulations. Safety policy can be reviewed at Max Foote Construction Co. LLC Construction offices, Hard hats and safety glasses are mandatory during all phases of the project and must be worn always.

- 5) Trade Contractor's work shall be in strict compliance with all adopted Building Codes. Any Codes related conflicts in the Contract Documents shall be clarified and approved by the Local Code Authority prior to installation.
- 6) Trade Contractor shall be held responsible for timely submission of all submittals, including but not limited to shop drawings, product data, samples, mock-ups, operating, service, and maintenance manuals, SDS information, and other submittals required by the Contract Documents.
- 7) The Field Project Manager or Superintendent cannot be removed or replaced without express written consent from Max Foote Construction Co. , LLC.
- 8) Trade Contractor shall coordinate delivery of required materials associated with the Trade Agreement. Trade Contractors shall provide equipment and personnel necessary to unload, stack, protect and store materials onsite, Trade Contractor shall inventory all delivered items and inspect for damaged or missing items. Any damaged or missing items shall be noted on the Bill of Lading. Construction Manager/General Contractors are not responsible for damaged or misplaced materials or equipment. Trade Contractor shall file all damage claims with insurance carriers. Placement of staged items shall be coordinated with the Superintendent.
- 9) All bidders are required to coordinate their work with the Construction Manager/General Contractor and other trades affecting their work.
- 10)The date of Substantial Completion to be determined prior to issuance of the Construction Notice to Proceed. Each firm submitting a proposal is advised that time is essential, and it will be incumbent upon the firm to whom a contract is awarded to comply with the project schedule requirements. If a trade contractor should fall behind schedule due to conditions within his control, it shall be his responsibility to implement whatever means are necessary to accelerate his work until it is compliant with the schedule, The cost of accelerating the work shall be borne by the Trade Contractor.

Liquidated damages imposed against the subcontractor for failure to meet the final agreed upon completion date will be one thousand dollars each workday beyond the final agreed upon completion date. The contractor shall be relieved of delays due to causes beyond his control such as Acts of God, national emergency, strikes, or fire. The contractor must notify the CM/GC in writing, on a timely basis, of such developments stating reasons, justification, and extent of delay. Weather days beyond those to be normally anticipated will be allowed to be used at the discretion of the CM/GC and the use of each weather day must be documented and filed with the CM/GC within 10 days of each occurrence. Normal weather days will be in accordance with the average inclement weather days as recorded by the National Weather Bureau for the geographical area of the contract and per requirements of the Supplemental General Conditions.

All bidders must include the required manpower and equipment per the project schedule to facilitate timely completion of the work and prevent delay in the performance of the work of their package or other 'trades affected by the work of their package. Lost time due to weather conditions must be made up by the Trade Contractor.

Trade Contractor shall comply with the established work hours or Owner specified durations necessary to minimize impact on Owner operations, Established work hours for the project are (five) 8-hour days Monday through Friday unless prior approval is received from the Max Foote Construction Co. LLC.

The project schedule shall be an integral part of the plans and specifications. The bidder, by submitting pricing on a particular bid package agrees to the durations and sequencing as indicated on the project schedule. Bidder also acknowledges that failure to meet productivity and sequencing requirements as defined by the project schedule could result in additional charges due to other contractors to facilitate accelerating the schedule, Max Foote Construction Co. LLC has ownership of all scheduled free float.

Trade Contractor shall sequence work as directed by Max Foote Construction Co. LLC without exception, Trade Contractor shall be responsible for damage to adjoining areas or other Trade Contractor's work remains.

Punch lists issued by Construction Manager, the Engineer or the Owner will be completed within fourteen (14) calendar days from date issued. If the Trade Contractor fails to comply with this requirement, the CM reserves the right to perform the work for the Trade Contractor and back-charge the Trade Contractor,

Superseded General Decision Number: AR20230056

State: Arkansas

Construction Type: Heavy
HEAVY CONSTRUCTION PROJECTS (Including Water and Sewer Lines)

County: Pulaski County in Arkansas.

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. . 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. . 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

SUAR2015-053 01/09/2017

	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 16.46 **	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 18.34	3.41
ELECTRICIAN.....	\$ 23.22	9.75
LABORER: Common or General.....	\$ 12.16 **	0.00
LABORER: Pipelayer.....	\$ 13.39 **	2.19
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 18.03	0.00
OPERATOR: Bulldozer.....	\$ 16.32 **	1.65
OPERATOR: Crane.....	\$ 24.21	6.79
OPERATOR: Loader.....	\$ 15.43 **	0.00
PAINTER (Brush and Roller).....	\$ 18.00	0.00
TRUCK DRIVER: Dump Truck.....	\$ 13.71 **	0.00

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

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

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)).

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of

each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

Superseded General Decision Number: AR20230032

State: Arkansas

Construction Type: Building
BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

County: Pulaski County in Arkansas.

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).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> . Executive Order 14026 generally applies to the contract. . 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.
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> . Executive Order 13658 generally applies to the contract. . 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	03/22/2024

BOIL0069-002 01/01/2021

	Rates	Fringes
BOILERMAKER.....	\$ 30.49	23.13

* CARP0216-003 01/01/2024

	Rates	Fringes
MILLWRIGHT.....	\$ 31.65	11.83

ELEC0295-010 01/01/2024

	Rates	Fringes
ELECTRICIAN (Includes Low Voltage Wiring).....	\$ 28.94	14.95

* PAIN0424-010 07/01/2021

	Rates	Fringes
PAINTER (Brush, Roller, and Spray, Excludes Drywall Finishing/Taping).....	\$ 16.25 **	10.42

PLUM0155-014 08/01/2023

	Rates	Fringes
PLUMBER (Includes HVAC Pipe Installation).....	\$ 31.58	13.36

PLUM0155-016 08/01/2023

	Rates	Fringes
PIPEFITTER (Excludes HVAC Pipe Installation).....	\$ 31.58	13.36

SHEE0036-034 06/01/2021

	Rates	Fringes
SHEET METAL WORKER (Includes HVAC Duct Installation).....	\$ 24.44	13.66

* SUAR2015-029 01/09/2017

	Rates	Fringes
BRICKLAYER.....	\$ 20.37	3.77

CARPENTER, Includes Acoustical Ceiling Installation, and Drywall Hanging.....	\$ 17.51	2.26
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CEMENT MASON/CONCRETE FINISHER...	\$ 19.91	3.30
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DRYWALL FINISHER/TAPER.....	\$ 15.38 **	0.00
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INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 17.16 **	4.76
IRONWORKER, REINFORCING.....	\$ 14.00 **	0.00
IRONWORKER, STRUCTURAL.....	\$ 19.84	0.00
LABORER: Common or General.....	\$ 12.85 **	0.00
LABORER: Mason Tender - Brick...	\$ 12.37 **	0.00
LABORER: Pipelayer.....	\$ 14.00 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 28.21	0.00
OPERATOR: Bulldozer.....	\$ 16.74 **	0.00
OPERATOR: Crane.....	\$ 17.52	0.00
OPERATOR: Grader/Blade.....	\$ 14.66 **	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 23.75	0.00
OPERATOR: Roller.....	\$ 14.78 **	0.00
ROOFER.....	\$ 15.39 **	0.00
SPRINKLER FITTER (Fire Sprinklers).....	\$ 23.56	2.77
TRUCK DRIVER: Dump Truck.....	\$ 13.80 **	0.71

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

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

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)).

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.

State Adopted Rate Identifiers

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

WAGE DETERMINATION APPEALS PROCESS

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

- * 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

"

BID

Proposal of _____ (hereinafter called "Bidder"), organized and existing under the laws of the State of _____ doing business as _____*. To the Max Foote Construction Co. LLC (hereinafter called "Contractor").

In compliance with your Advertisement for Bids, Bidder hereby proposes to perform all Work for the construction of Ornamental Fencing, Gates, and Related Items in strict accordance with the Contract Documents, within the time set forth therein, and at the prices stated below.

The Contractor's Act of Assurance Form must be included in the bid proposal. The DBE/MBE/WBE Compliance Evaluation Forms must be supplied after the Awarded Bidder is confirmed.

By submission of this Bid, each Bidder certifies, and in the case of a joint Bid each party thereto certifies as to its own organization, that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

Bidder hereby agrees to commence Work under this contract on or before a date to be specified in the Notice to Proceed and to fully complete the Project within the consecutive calendar days listed in the index tab at the end of the bid document thereafter. Bidder further agrees to pay as liquidated damages, the sum of \$1000.00 for each consecutive calendar day thereafter as provided in the Supplemental Conditions.

Bidder acknowledges receipt of the following Addendum:

Addendum No.	Date Received	Acknowledgement

CONTRACTOR'S ACT OF ASSURANCE FORM

As the authorized agent of the individual, incorporation, or corporation (hereinafter referred to as the Contractor) bidding on or participating in a Revolving Loan Fund (RLF) financed project, I certify that I have read and understand the requirements of the RLF Supplemental General Conditions, and that the principles, agents and employees of the Contractor will comply with these requirements, including all relevant statutes and regulations issued pursuant thereto. As the authorized agent of the Contractor, I further certify that:

DBE / MBE / WBE During the bid process, and throughout the performance of the Contract, whenever subcontracts are to be awarded, I will take the six (6) affirmative steps described in the Supplemental General Conditions to use Disadvantaged, Minority and Women's Business (DBE / MBE / WBE) firms wherever possible. I will document to the borrower and the Arkansas Natural Resources Commission all efforts to secure DBE / MBE / WBE participation, including follow-up efforts, and will report to the Owner the dollar value of all DBE / MBE / WBE contracts and subcontracts awarded.

AMERICAN IRON AND STEEL I will comply with the 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 pursuant to this contract and the RLF Supplemental General Conditions. I understand that 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 I 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 detailed in the RLF Supplemental General Conditions.

EQUAL OPPORTUNITY I will comply with all requirements of 41 CFR Chapter 60 and Executive Orders 11246 and 11375, including inclusion of all required equal opportunity clauses in each subcontract awarded in excess of \$10,000, and will furnish a similar statement from each proposed subcontractor, when appropriate. I will also comply with all Equal Employment Opportunity requirements as defined by Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972 regarding sex discrimination.

NONSEGREGATED FACILITIES The Contractor that I represent does not and will not maintain any facilities provided for its employees in a segregated manner, or permit its employees to perform their services at any location under the Contractor's control where segregated facilities are maintained. I will also obtain a similar certification from each subcontractor prior to the award of any subcontract exceeding \$10,000 to said subcontractor, which is not exempt from the equal opportunity clause.

LABOR STANDARDS I will comply with the Labor Standards Provisions contained in Davis-Bacon wage rates specific to this contract and the RLF Supplemental General Conditions. I understand that the aggregate wage rates paid to any employees must equal or exceed the sum total of the base rate plus any listed fringe rate. I will furnish weekly payrolls and certifications as may be required by the Owner to affirm compliance. I will also require that weekly payrolls be submitted to the Owner for all Subcontracts.

OSHA REQUIREMENTS I will comply with the Department of Labor Occupational Safety and Health Administration (OSHA) Regulations promulgated under Section 107 of the Contract Work Hours and Safety Standard Act (40 U.S.C. 327-333) in performance of the contract.

PROCUREMENT PROHIBITIONS In compliance with Executive Order 11738, Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, I certify that I will not procure goods and services from persons who have been convicted of violations of either law, if the facility that gave rise to said violations produces said goods or services.

PRESERVATION OF OPEN COMPETITION In accordance with Executive Order 13202 and its amendments, I certify that I have not discriminated against my employees or any subcontractor based upon labor affiliation or lack thereof.

RESPONSIBILITIES OF PARTICIPANTS REGARDING TRANSACTIONS (A.K.A. DEBARMENT AND SUSPENSION) I certify that I shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." I am responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. I am responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. I acknowledge that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment. I further acknowledge that I may access the Excluded Parties List System at <http://www.epls.gov>. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

I understand that a false statement on this certification regarding any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution. I further certify that I will obtain a similar certification for each subcontract awarded.

AUTHORIZED AGENT

CONTRACTOR NAME: _____

ARKANSAS LICENSE NO. _____

SIGNATURE: _____

DATE: _____

PRINTED NAME: _____

TITLE: _____

Max Foote Construction Company, LLC
SUBCONTRACT AGREEMENT

SUBCONTRACT NUMBER: 348-16000

CONTRACTOR: Max Foote Construction Company, LLC
225 Antibes West
Mandeville, LA 70448
(985) 624-8569 Phone
(985) 624-8580 Fax

SUBCONTRACTOR:

AR STATE LICENSE NUMBER: _____ (Please provide)

FEDERAL TAX ID NUMBER: _____ (Please provide)

PROJECT: Jack H. Wilson WTP Renewal & Resiliency Project
CAW Proj # 5421
Hazen Sawyer Proj # 60711-003

PROJECT ADDRESS: 338 Pleasant Valley Drive
Little Rock, AR 72212

OWNER: Central Arkansas Water

ENGINEER/ARCHITECT: HAZEN & SAWYER, PC

PRIME CONTRACT DATE: 08/31/2023

SUBCONTRACT EFFECTIVE DATE:

EFFECTIVE from the date written above, Max Foote Construction Company, Inc. ("Contractor") and Subcontractor (identified above) enter into this subcontract ("Subcontract" or "Agreement") as follows:

Subcontractor shall furnish all labor, materials, services, tools, appliances, scaffolding, equipment, supervision, management, layout, shop drawings, submittals, testing, permits, licenses, storage, delivery, shipping, cartage and all other efforts necessary to perform fully and in every respect complete the work generally described as:

All _____ in strict accordance with the plans, specifications, addenda, and per the detailed scope of work as defined in "**Exhibit A - Scope of work**"

which is hereinafter referred to as the "Work" and is more specifically identified in the plans, specifications, and other documents identified below as the Contract Documents, for a lump sum of \$_____, tax included (the "Subcontract Sum"). Price: Total consideration to be paid shall be _____ And ____/100 US Dollars (\$ _____).

Initials _____
(Subcontractor)

CONTRACT DOCUMENTS:

Subcontractor will perform the Work in accordance with and comply with the following documents, referred to collectively as the Contract Documents, including any revisions, amendments or modifications to same (all of which are incorporated by reference herein): (1) this Subcontract and all exhibits, attachments and documents referenced herein; (2) the agreement between Owner and Contractor, and all exhibits, attachments and documents referenced therein and all contract documents defined therein ("Prime Contract"); (3) all plans and drawings for the Project applicable to or affecting Subcontractor's Work; (4) Project specifications, addenda, and approved alternates for the Project insofar as they relate to the Work of Subcontractor; (5) all written change orders that may be issued to this Subcontract or to the Prime Contract, to the extent applicable to Subcontractor's Work; and (6) Contractor's schedule. All Contract Documents are available for inspection or copying by Subcontractor, upon request.

PERFORMANCE AND PAYMENT BONDS

Subcontractor shall provide performance and payment bonds as designated below:

- Xxx Furnish concurrently with acceptance of this Subcontract: 100% Performance & 100% Payment Bond at Subcontractor's cost.
- Furnish concurrently with acceptance of this Subcontract: 100 % Performance & Payment Bond at Contractor's cost.
- No performance or payment bonds are required.

All packages that are not equipment specific will require bonds to be provided.

No payments shall be due Subcontractor under this Agreement until and unless such bonds, if required, have been provided. Failure to provide such bonds upon execution of this Subcontract shall give Contractor the right, in Contractor's sole discretion, to terminate this Subcontract for cause.

OTHER CONDITIONS OF THIS SUBCONTRACT:

A. Subcontractor shall:

- (1) Execute and perform all Work covered hereby in a good and workmanlike manner, free from defects, and in strict conformity with the Contract Documents (including all plans, specifications, addenda and other documents identified above), and in strict conformity with all applicable codes, statutes, ordinances and/or regulations of competent public authorities. Anything pertaining to the Subcontractor's Work that is mentioned in the specifications but not shown in the drawings, or shown or mentioned in the drawings but not mentioned in the specifications, shall be in like effect as if shown or mentioned in both, and in the event of conflict, contradiction or ambiguity in the plans, drawings, specifications or other Contract Documents applicable to the Work, then the stricter, greater or higher quality requirement or obligation shall control. Subcontractor shall give all notices required by all law, ordinances, rules, regulations, and orders of public authorities regarding the Work. If Subcontractor believes that implementation of any instruction received from Contractor would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Subcontractor shall notify Contractor in writing. In the event that a specific requirement of the Subcontract or Contract Documents conflicts with applicable laws, regulations and codes, Subcontractor shall furnish Work which complies with such laws, regulations and codes.
- (2) Do all cutting, fitting, patching, and restorations that may be required in the several parts of its Work and/or in the existing premises as Subcontractor finds them at the time such Work is undertaken.
- (3) Deliver to Contractor with Subcontract execution and prior to commencement of the Work, certificates showing all insurance coverages in accordance with this Subcontract, including the attached Exhibit "B". NO MONEY SHALL BE DEEMED DUE THE SUBCONTRACTOR HEREUNDER UNTIL SUCH CERTIFICATES ARE DELIVERED TO CONTRACTOR.
- (4) Promptly submit shop drawings and submittal data, and, where appropriate, samples as required for approval by Contractor and/or Engineer (the term "Engineer" as used herein shall mean those Project design professional, whether engineer, architect, or otherwise, who may be identified in this Subcontract) and in such sequence as to cause no delay in the Work or in the activities of Contractor or other subcontractors. Should shop drawings, submittal data, and/or samples vary from the Contract Documents, written advice thereof shall accompany the matter submitted. Subcontractor is responsible for any Engineer or other review costs charged to Contractor for multiple submittal reviews.
- (5) Commence the Work immediately upon Contractor's direction to do so, and execute the Work with all due diligence, and at a rate

that will not cause delay in the progress of work being carried on by the Contractor and its other subcontractors, and at a rate to ensure completion of Subcontractor's Work within the time specified within the Contractor's schedule. The Contractor may order the Subcontractor, at Subcontractor's expense, to increase manpower and/or work such overtime as may be necessary to catch up or keep abreast with the Contractor's schedule. Additionally, failure to progress the Work as necessary to meet the Contractor's schedule will authorize Contractor, without prejudice to any right or remedy Contractor may have, to supplement Subcontractor's forces to remedy such deficiencies, at Subcontractor's expense. Such rights to supplement Subcontractor's forces and to attempt to remedy Subcontractor's deficient progress shall not give rise to any obligation or requirement that Contractor exercise such rights. It is specifically agreed that **TIME IS OF THE ESSENCE** in the performance and completion of the Subcontract.

Subcontractor shall be directly liable for any and all damage or loss incurred by the Contractor (including but not limited to any liquidated damages assessed under the Prime Contract) for any failure by Subcontractor to commence, proceed, or complete the Work with due diligence and at a rate necessary to comply with Contractor's schedule and to have the Work completed and accepted by the Owner within the time specified within the Prime Contract. No extension of time for Subcontractor's performance of the Work shall be allowed or recognized without the written consent of the Contractor.

- (6) Clean up after Subcontractor's own Work and agrees that, if this is not accomplished promptly, the same may be done by the Contractor at Subcontractor's expense. Subcontractor agrees to keep those areas in which it is working neat in appearance and free of rubbish and will collect all of its refuse and dispose of same daily, in accordance with instructions of the Contractor. Subcontractor is solely responsible for any damage, destruction, loss, or theft of Subcontractor's materials, equipment, or other property.
- (7) Ensure attendance by Subcontractor's supervisory personnel at all job coordination meetings as deemed necessary by Contractor.
- (8) Submit to Contractor a schedule of values in the form requested by Contractor. An acceptable schedule of values must be approved by Contractor prior to any payments being released to Subcontractor. Subcontractor's schedule of values shall allocate the entire Subcontract Sum among the various portions of Subcontractor's Work. Compensation for design and design-related services shall be shown separately.
- (9) Use its best efforts to minimize any interference with the occupancy or beneficial use of any of the Owner's areas occupied or used by Owner and/or buildings adjacent to the site of the Work. Without prior approval of the Contractor and Owner, Subcontractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by Owner or Contractor.

B. Subcontractor agrees that:

- (1) Contractor may, without invalidating this Subcontract, order extra work, make additions to, deletions from, or changes in the Work to be performed, and Subcontractor agrees to be bound thereby and perform accordingly. Upon request of Contractor, and in a time and manner sufficient to permit Contractor to comply with its obligations under the Prime Contract, Subcontractor shall submit a written proposal for any applicable price or time adjustment attributable to the changed work, amply detailed and supported and conforming to the requirements of the Contract Documents.
- (2) If the Contractor and Subcontractor are able to agree upon the amount of adjustment of payment and/or time, if any, associated with a change, such agreement shall be set forth in a change order. If the Contractor and Subcontractor are unable to agree upon such adjustments, Contractor may issue a change directive to Subcontractor directing that such work be performed and Subcontractor will proceed to perform as directed, and any adjustments to the Subcontract Sum or the time for completion of Subcontractor's Work shall be determined on the basis of applicable provisions of the Prime Contract or other Contract Documents which establish a method of determining pricing and/or time extensions. In the absence of provision of the Prime Contract establishing such pricing or time extensions, then pricing and time extensions shall be determined equitably, subject to ultimate determination in accordance with the dispute resolution provisions of this Subcontract. No extra work or change shall be made except pursuant to written change order or change directive executed by Contractor, and no payment shall be made to Subcontractor in addition to the original Subcontract Sum, unless so authorized in a written change order or change directive executed by Contractor.
- (3) The Subcontractor shall make all claims promptly to the Contractor for additional costs, extensions of time, damages for delays or other claims or damages in accordance with the provisions of the Prime Contract and/or other portions of the Contract Documents relating to such claims. A claim which Contractor may make or pass along to Owner, or which affects or will become part of a claim which the Contractor is required to make under the Prime Contract within a specified time

Initials _____
(Subcontractor)

period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

- (4) In no event shall Subcontractor be entitled to payments associated with claims for additional or changed Work, damages for delays or other claims or damages unless Contractor, as a condition precedent, receives payment for same from Owner.
- (5) It will comply with all Equal Opportunity Regulations, Federal Safety Regulations, and Contractor's Labor Agreement. Subcontractor will also comply with all applicable requirements of the Civil Rights Act of 1964, Executive Order No. 11246, Executive Order No. 11375, Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Act of 1974, as amended, and the Williams-Steger Occupational Safety and Health Act of 1970.
- (6) Subcontractor shall perform all Work as an independent contractor. Subcontractor is fully responsible to Contractor for all Work included under this Subcontract and for all activities and work of any of Subcontractor's employees, agents, subcontractors, suppliers and anyone else working for or through Subcontractor, and this responsibility may in no way be delegated and relieved without the written consent of Contractor.
- (7) It will provide general liability (including Products/Completed Operations Coverage), professional liability, if Subcontractor is performing design or design-related work, and auto liability coverage with minimum requirements and limits as listed on Exhibit "B", and shall include as additional insureds Contractor and Owner and any other person or entity that Contractor is required by the Prime Contract or other Contract Documents to name as additional insureds on its policies. Such policies shall be on a primary and non-contributory basis. Workers' compensation coverage will be provided as set forth on Exhibit "B". All policies shall include a waiver of subrogation clause in favor of Contractor, Owner and any other party designated by Contractor. The Certificates of Insurance provided by Subcontractor shall contain a provision that coverage afforded under the policies will not be altered, cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to Contractor. Subcontractor must comply with the same requirements for insurance (including waiver of subrogation clauses and additional insured clauses), indemnification clauses, and other requirements of the Prime Contract that Contractor must comply with to Owner, but in no way, less than the requirements listed above and in Exhibit "B".
- (8) To the fullest extent permitted by law, Subcontractor shall hold harmless, defend and indemnify Contractor and Owner, and their respective officers, employees, agents, consultants and representatives, as well as any persons or entities whom Contractor is required to indemnify pursuant to the Prime Contract or other Contract Documents, from any and all liability, damages, claims, losses, economic losses, suits, actions, demands, awards, judgments, attorneys fees and expenses and costs of whatever nature or kind ("Claim") arising out of or in any way connected with this Subcontract and/or Subcontractor's performance of the Work, provided that such Claim is attributable to bodily injury, sickness, disease or death, economic losses or to injury to or destruction of tangible property, including the loss of use therefrom, but only to the extent caused by the negligent acts, breaches, omissions or fault of Subcontractor, its Sub-Subcontractors, suppliers or any individuals or entities 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, regardless of whether or not such Claim is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity (whether at law, under contract or otherwise) that would otherwise exist in favor of the parties indemnified hereunder.
- (9) To the extent of payments made to Subcontractor, Subcontractor agrees to indemnify Contractor and Owner against all claims, lien claims and bond claims, including expenses, costs of bonds to remove liens, and attorneys' fees related to such claims, which may be asserted by materialmen, suppliers, subcontractors or employees of Subcontractor or anyone claiming under one of them or under Subcontractor. Subcontractor also agrees that if liens are placed on the Work, the premises on which the Work is performed, or against bonds associated with the Project and/or the Work, Subcontractor will immediately have such lien removed, including but not limited to bonding off such lien or claim. Contractor, at its discretion, may take action to protect itself against such liens or claims that may arise from the Work of this Subcontract. Such action may include suspension of payment to the Subcontractor, making payments directly to claimants, or joint checks to Subcontractor and any person to whom Subcontractor is obligated.
- (10) All Work, including materials and workmanship, furnished by or under it will be free from defects and that its Work shall comply fully with the provisions of this Subcontract, including the requirements of the Contract Documents. Subcontractor shall immediately, and in no event later than seventy-two (72) hours, after receiving notice from Contractor proceed to take

Initials _____
(Subcontractor)

down and remove all portions of Work which Contractor or Owner shall have determined to have been unsound, improper, or in any way failing to conform to the Contract Documents or this Subcontract and shall replace same with proper and satisfactory Work, and shall make good all work damaged or destroyed thereby. In addition to any other obligations that Subcontractor may owe the Contractor or Owner pursuant to the Contract Documents or at law, Subcontractor warrants its Work against defects and nonconformances with the Contract Documents, and shall make good such defective or nonconforming Work at no cost to Contractor or Owner, as specified and/or required in Exhibit "A" hereto and other portions of the Contract Documents, including all warranty terms, conditions and/or durations specified therein (the longer duration applying in the event of conflict), but in no event less than a period of one (1) year from the date of acceptance of the entire Project by the Owner.

- (11) Safety is of prime importance on this job. Subcontractor agrees that it is responsible for and is in control of the means and methods for performing the Work subcontracted herein, is responsible for the safety and health of its employees and others coming in contact with its work area and is responsible for correcting any and all unsafe conditions or work practices under its control. Subcontractor represents that it has special expertise regarding the control of its work practices, particularly with regard to establishing and maintaining safe work practices on the Work subcontracted herein. Subcontractor agrees to comply with OSHA in all respects and agrees that the safety and health of jobsite employees is of primary importance in the execution of the Work subcontracted. While Subcontractor is fully and independently responsible for the safety and health of its employees and others coming in contact with its work area and is responsible for establishing and maintaining safe conditions and work practices under its control, and while Contractor has no obligation to inspect Subcontractor's safety related work practices, nothing in this paragraph shall prevent Contractor from notifying Subcontractor of unsafe conditions it might observe, prevent Contractor from demanding that Subcontractor correct unsafe conditions or prevent Contractor from requiring Subcontractor to comply with safety requirements specific to this Project.
- (12) It has inspected and is familiar with: the Contract Documents, including but not limited to all plans, specifications and addenda; the Project site; the overall Project; the accommodations for delivery and handling of materials; and the general conditions of the Work. Before proceeding with any Work, Subcontractor shall lay out and field measure all Work and Subcontractor shall measure and otherwise verify all existing conditions including but not limited to all previous and surrounding work performed by others. Subcontractor shall attempt to detect and shall report to Contractor any defect, interference or non-conformity in existing conditions or in the work of others which affects Subcontractor's Work.
- (13) This Subcontract may not be assigned, and that a substantial portion of the Work may not be subcontracted to third-parties by Subcontractor without the written consent of Contractor.
- (14) Contractor shall be entitled to, but is not required to, communicate directly with any subcontractors or material suppliers retained by Subcontractor, as deemed necessary by Contractor.

C. Not applicable.

D. Subcontractor shall submit monthly to Contractor progress payment applications ("Application for Payment") in such form and supported by such data as Contractor may require. Applications for Payment DELIVERED to Contractor's Office AFTER CLOSE OF BUSINESS ON THE 20TH DAY OF THE MONTH will be included in NEXT calendar month's accounting. Subject to withholding of retainage by Contractor and other conditions of this Subcontract, Contractor agrees to pay the Subcontractor for monthly pay applications properly and timely submitted by Subcontractor within fourteen (14) days of Contractor's receipt of payment from Owner for the Contractor's monthly pay application in which the Subcontractor's Application for Payment is incorporated. It is a condition precedent to Contractor's obligation to pay Subcontractor for progress payments, final payment, change order payments, termination related payments, claims, damages or any other amounts that might be sought by Subcontractor, that Contractor shall have received payment associated therewith from Owner. Subcontractor acknowledges that it relies on the credit of the Owner, not the Contractor, for payment for the Subcontractor's Work. Should the Subcontractor's portion of Contractor's pay application to Owner be withheld or reduced for any reason, payment to the Subcontractor shall be reduced accordingly. Payment by Owner to Contractor is an absolute condition precedent to Subcontractor filing or bringing against Contractor or Contractor's surety any action for nonpayment or any claim for payment or compensation by way of arbitration, mediation, federal or state court action, or through any other forum for resolution of disputes. Contractor and Subcontractor hereby expressly acknowledge and agree that Contractor's surety is an intended third party beneficiary of this Article. In the event any

Initials _____
(Subcontractor)

action is asserted by Subcontractor against Contractor or its surety for nonpayment, this Article shall be a complete defense to nonpayment by Contractor and its surety.

- E. With each Application for Payment, Subcontractor shall submit Subcontractor's most recent schedule of values.
- F. Contractor shall retain from payments to Subcontractor 5% of the gross amount of each monthly payment request or 5% of so much thereof as is approved for payment, whichever is less; such shall be accumulated and not be released to Subcontractor until final payment is due Subcontractor as provided below.
- G. Each Application for Payment shall be accompanied by the following, all in the form and substance satisfactory to Contractor and Owner:
 - (1) A current lien waiver duly executed and an acknowledged sworn statement furnished by Subcontractor showing all subcontractors and materialmen with whom the Subcontractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any subcontractor and materialmen and the requested progress payment and the amount to be paid to the Subcontractor for such progress payment, together with similar sworn statements from all such subcontractors and materialmen;
 - (2) Duly executed waivers of liens from all subcontractors and, when appropriate, from materialmen and lower tier subcontractors establishing payment or satisfaction of payment of all amounts requested by the Subcontractor on behalf of such entities or persons in any previous Application for Payment; and
 - (3) All information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or Contractor.
- H. Approval and payment of the Subcontractor's monthly Application for Payment shall not be evidence of the proper performance or progress of the Work, and no payment shall be construed to be acceptance of defective, faulty or improper Work. Contractor may offset against any sums due Subcontractor hereunder the amount of any obligations of the Subcontractor to Contractor (whether liquidated or unliquidated) for this Project or any other project, including but not limited to amounts sufficient to: (a) defend, satisfy and discharge any asserted claim that Subcontractor (or anyone providing work or materials under or through Subcontractor) has failed to make payments for labor, materials, services, equipment, taxes or other items or obligations furnished or incurred; (b) complete Subcontractor's Work if it appears that funds remaining in the Subcontract balance are insufficient; (c) reimburse Contractor for backcharges applicable to Subcontractor; (d) protect Contractor from the possible consequences of any default or breach or imminent default or breach by Subcontractor; or (e) remedy or compensate Contractor for Subcontractor's defective or nonconforming work, contract breaches or any other costs, claims or damages arising from Subcontractor's work on this Project or other projects.
- I. Final payment to Subcontractor shall be made after the last of the following to occur: (a) completion of the Work by Subcontractor, (b) acceptance thereof by the Contractor and Owner, (c) the issuance of a Certificate of Occupancy by the governmental authority having jurisdiction of the Project, (d) final payment by Owner to Contractor, (e) furnishing of evidence satisfactory to the Contractor that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished or incurred in connection with the Work, (f) delivery of all guarantees, warranties, bonds, instruction manuals, performance charts, diagrams, as-built drawings and similar items required of Subcontractor or its suppliers or subcontractors, (g) delivery of a general release in a form satisfactory to the Contractor, executed by the Subcontractor in favor of the Contractor and Owner, and (h) when bonds are required, release of surety for Contractor to make final payment to Subcontractor.
- J. Should the Contractor employ an attorney to enforce any part of this Subcontract and should Contractor prevail, the fees of such attorney and all related costs shall be charged to and paid by the Subcontractor and its surety, if any.
- K. In addition to Subcontractor's obligations stated in this Subcontract, Subcontractor hereby assumes toward Contractor and shall be bound by all of the duties, obligations and responsibilities that Contractor has by the Contract Documents assumed toward the Owner, insofar as applicable to Subcontractor's work. In addition to Contractor's rights under this Subcontract, the Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.
- L. To the extent that Owner terminates the Prime Contract, this Subcontract shall likewise be terminated and Subcontractor shall be paid only those amounts that Contractor receives from Owner for Subcontractor's properly completed Work and other charges that Owner may recognize and pay specifically associated with Subcontractor. Contractor's payment obligations to Subcontractor in the event of Owner's

Initials _____
(Subcontractor)

termination are subject to the condition precedent that Contractor shall have received payment from Owner associated with Subcontractor's Work. Contractor may also terminate this Subcontract at any time, and except where termination is due to Subcontractor's fault, Contractor shall owe to Subcontractor only that portion of the Subcontract Sum corresponding to the Subcontract Work properly completed pursuant to the requirements of and in accordance with the Contract Documents, together with reasonable costs necessarily incurred by the Subcontractor in terminating the remaining portion of the Subcontract Work, less any payments made before termination. In no event (whether Subcontract termination is due to Owner's termination or Contractor's termination for any reason, including convenience) shall Subcontractor be entitled to receive payments for anticipated profit for Work not performed. In no event shall Contractor be obligated to pay Subcontractor amounts aggregating in excess of the total Subcontract Sum.

- M. If (a) the Subcontractor fails to perform under this Subcontract or to perform any acts or things herein required or agreed to be done or performed; (b) the Subcontractor is or becomes insolvent; or (c) the Subcontractor files, causes to be filed or is the subject of any insolvency or bankruptcy petition or proceeding or any petition or proceeding involving reorganization, debt adjustment, composition, arrangement, debt reduction, liquidation, dissolution or similar relief under any present or future state or federal law or act relating to bankruptcy, insolvency or other relief for debtors; or (d) the Subcontractor is unable to pay and discharge any obligation arising out of or related to this Subcontract, including failure to make prompt payments for materials or labor used on or in connection with the Project; or (e) the Subcontractor fails to carry forward and complete the Work as provided herein as rapidly as the Contractor may judge that the progress of the structure or structures will permit; or (f) the Subcontractor is unable to perform hereunder because of strikes, picketing, or boycotting of any kind that results in the Subcontractor's employees, suppliers or subcontractors being unable or unwilling to proceed with the Work; or (g) the Subcontractor or its employees, suppliers or subcontractors refuse to work after having been requested by the Contractor to proceed with the Work; or (h) the Subcontractor fails to comply with instructions of the Contractor; or (i) the Subcontractor fails to comply with any and all applicable law; or (j) the Subcontractor otherwise is guilty of a breach of this Subcontract, then without prejudice to any other right or remedy under applicable law or this Subcontract, and after giving the Subcontractor forty-eight (48) hours notice of the Contractor's intent to do so, Contractor may: (1) terminate this Subcontract and the employment of the Subcontractor and remove the Subcontractor from the Project; and may (2) take control of the Work in whole or in part and immediately take possession of and use to complete Work as the Contractor may think best all property delivered to the Project site for the purpose of completing the Work and all property delivered, stored or maintained elsewhere for use on the Project, including without limitation all materials, supplies, tools, equipment, scaffolding, hoisting facilities, drawings, submittals, samples, bonds, permits and licenses obtained by or brought onto the Project site by the Subcontractor or delivered to the Project site on behalf of the Subcontractor. The Contractor shall be entitled to proceed and complete the work on the Contractor's own account or through another Subcontractor. The Subcontractor shall not be entitled to receive any further payments until the Work is completed and accepted. Without limitation of the foregoing, any rent, compensation, reimbursement or other payment claimed by the Subcontractor for the Contractor's possession and use of property to complete the Work under this section shall be due, if at all, only when the Work is completed and accepted and the amount of the Contractor's offset is liquidated. If Contractor's expenses in completing the Work, including compensation for additional managerial and administrative services and all other expenses incurred to complete this Subcontract, shall exceed the unpaid balance of the Subcontract, the Subcontractor shall owe the difference to the Contractor. If Contractor's expenses in completing the Work are less than the unpaid balance, then Subcontractor shall be entitled to such percentage of the excess as corresponds to the percentage of completion Contractor reasonably believes the Subcontractor had achieved.
- N. Subcontractor waives claims against Contractor for consequential damages arising out of this Subcontract.
- O. Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.
- (1) The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to this Subcontract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.
 - (2) The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- P. Except for Contractor's claims against Subcontractor resulting from or pertaining to claims asserted against Contractor by third-parties

Initials _____
(Subcontractor)

(other than the Owner), and except as provided in Section Q, any claims arising out of or related to this Subcontract which have not been resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

- (1) A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations.
- (2) An arbitration may, at Contractor's discretion, be joined with any other arbitration involving common issues of law or fact. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.
- (3) The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.
- (4) The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

- Q. Notwithstanding the provision of Section P, Contractor and Subcontractor agree that in the event any claims between them are the subject of, or relate in any way to a dispute or potential dispute between Contractor and Owner (including but not limited to Subcontractor claims that Contractor may make against Owner), such claims between Contractor and Subcontractor shall, at Contractor's discretion, be subject to the dispute resolution provisions of the Prime Contract and/or be resolved in the same manner and in accordance with the same procedures applicable to the dispute between Contractor and Owner. Subcontractor consents to venue, jurisdiction and joinder in any court or arbitration proceedings where the disputes between Contractor and Owner are to be filed or are pending.
- R. Subcontractor agrees to continue to perform its Work despite the existence of disputes. The existence of a dispute shall not be grounds for any failure to perform by Subcontractor nor limit the right of Contractor to proceed, in good faith, to remedy any default by Subcontractor.
- S. Subcontractor shall provide professional services if required by the Subcontract or if the Subcontractor otherwise needs to provide such services in order to carry out the Subcontractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Subcontractor shall not be required to provide professional services in violation of applicable law. The Subcontractor shall cause such services to be provided by a properly licensed design 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 by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Contractor. Design and design-related services performed by Subcontractor and/or its employees and design professionals shall be performed consistent with the professional standard of skill and care ordinarily provided by design professionals practicing in the same locality under the same or similar circumstances.
- T. With regard to any design or design-related services provided by Subcontractor, Subcontractor grants to Contractor and Owner a non-exclusive license to reproduce and use Subcontractor's drawings, specifications, and other documents, including those in electronic form, prepared by Subcontractor ("Instruments of Service") in connection with the Project, including the further development by the Owner and others retained by the Owner for such purposes, and such license shall extend to any design professionals retained by the Contractor or Owner for such purposes. If this Subcontract is terminated for any reason, Subcontractor hereby conveys and each of its design professionals shall be contractually required to convey to the Owner a non-exclusive license to use that design professional's Instruments of Service for the completion, use and maintenance of the Project. Submission or distribution of the Subcontractor's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of any rights reserved by Subcontractor.
- U. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.
- V. The terms and conditions of this Subcontract shall be governed by and interpreted in accordance with the laws of the state in which the Project is located.

Initials _____
(Subcontractor)

Max Foote Construction Company, LLC

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

SAMPLE

Initials _____
(Subcontractor)

EXHIBIT "A" - "WORK"
Project Requirements

Submittals Due:		One Electronic
Resubmittals Due:	Due within two weeks if required	One Electronic
O&M Manuals Due:	Sixty days after approved submittal	Preliminary: One Electronic
		Final: Three hard copies and one electronic
Required Warranty:	Per bid documents.	
Specification Details:		

Subject to the terms & conditions set forth; & your acceptance of this subcontract within seven (7) days from the date hereof, we propose to contract with you for the following work associated with the construction of the Jack H. Wilson WTP Renewal and Resiliency Project in Little Rock, Arkansas, as prepared by Hawkins-Weir Engineers, Inc. from Little Rock, Arkansas and Hazen and Sawyer Engineering from Dallas, Texas. Subcontractor agrees to furnish and pay for all materials, labor, equipment, facilities and supplies necessary to perform the work as shown on the contract plans and as specified in the contract documents including any addenda and in accordance with the project schedule.

All Packages and correspondence must be marked with the purchase order number ____-____.

1. Furnish all labor, materials, equipment & supervision necessary to complete the Electrical and Instrumentation work in accordance with the project plans and specifications and as shown on the contract drawings.
2. Furnish payment schedule of values for progress billing purposes prior to submitting pay application request.
3. Furnish the required labor, supervision, construction equipment and materials to avoid any delays in the project schedule. Provide monthly schedule updates based upon the CMAR provided project schedule.
4. Furnish 1 electronic copy of submittal data and shop drawings in accordance with specification section 01 33 00. Submittals shall be for materials specified only and all information not pertinent shall be deleted or crossed out. Clearly list any deviation from the specifications. Submittals shall be for materials specified only and all information not pertinent shall be deleted or crossed out. Clearly list any deviation from the specifications. Supplier is responsible for any Engineer's submittal review costs charged to contractor for submittal review. Engineer will review a submittal no more than twice.
5. Furnish Operations and Maintenance Data in accordance with specification sections 01 78 23 and the above specified equipment section.
6. Furnish a factory representative to inspect the installation of the equipment, start-up, demonstrate and train the city personnel in the operation of the equipment in accordance with specification section 01 75 00 and the above specified scope sections. Furnish written reports for all equipment checkout, operational testing/commissioning and operator training. Vendor is aware that more than one trip may be required to accommodate installation checkout prior to actual plant/equipment startup and commissioning and the cost of the necessary trips is included in the price.
7. It is understood that time is critical to this project and that the scheduled dates as stated in the Project Requirements listed above, must be maintained or improved. Supplier shall be responsible for complete and accurate submittal data, O & M manuals and factory testing. Failure to do so does not relieve the supplier from meeting the scheduled dates and thus will be accountable for any liquidated damages incurred by Max Foote Construction Co., Inc. as a result thereof.
8. Subcontractor shall coordinate his work with the work of MFCC and other subcontractors at the project site to provide a complete and functional electrical system as well as coordinating with the local utility companies. Work closely with the project superintendent to avoid any conflicts and/or delays.

Initials _____
(Subcontractor)

9. Subcontractor is responsible for the coordination, review, and delivery of submittals for all materials and equipment pertaining to their scope of work.

10. Review equipment submittals, including equipment furnished by Owner, to ensure compatibility of said equipment with instrumentation and control equipment. MFCC to furnish subcontractor with said copies of submittals.

11. At a minimum, all materials shall include a warranty for a period of one (1) year from substantial completion as required by the Contract Documents unless stated otherwise in the individual equipment and/or material specification section. Submit written warranties/bonds as required.

12. Subcontractor shall obtain any required certifications, permits and licenses.

13. Subcontractor to maintain project record drawings per specification section 01 78 39. Final copy to be provided to CMAR at project closeout.

14. Equipment shall be designed and manufactured with due regard for health and safety of operation, maintenance and accessibility, durability of parts and shall comply with the applicable OSHA, state and local health and safety regulations.

15. Comply with all Equal Opportunity Regulations, Federal Safety Regulations and Contractor's Labor Agreement. The provisions of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veteran's Readjustment Act of 1974, as amended, are hereby incorporated by reference.

16. Contract amount includes bond as furnished by Subcontractor.

SAMPLE

Initials _____
(Subcontractor)

EXHIBIT "B" - INSURANCE AND BONDS

The Subcontractor shall provide policies of liability insurance as required by the Prime Contract, or as follows:

ARTICLE B.1

§B.1.1 The Subcontractor will purchase and maintain, at its expense, insurance of the types and amounts indicated below in order to protect the Subcontractor, Contractor, and Owner from claims that may arise out of or result from the Subcontractor’s operations under the Subcontract, whether those operations are by the Subcontractor or its subcontractors or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. The types of coverage and the limits of coverage required herein are as follows:

§B.1.1.1 Workers' Compensation Insurance with statutory limits of liability and minimum Employer’s Liability limits of One Million and no/100 (\$1,000,000.00) Dollars.

§B.1.1.2 Commercial General Liability Insurance (including but not limited to personal injury, broad-form property damage, contractual and premises) with combined single limits of One Million and no/100 (\$1,000,000.00) Dollars for Bodily Injury (per occurrence), Property Damage (per occurrence), and Contractual (which shall include contractual liability applicable to Subcontractor’s agreements to indemnify Contractor and Owner) (“Claims made” form shall not be acceptable; the “occurrence form” shall not have a “sunset clause”).

§B.1.1.3 Automobile Liability Insurance with a minimum One Million and no/100 (\$ 1,000,000.00) Dollars combined single limit per occurrence for bodily injury and property damage. The insurance shall include coverage for owned autos, hired autos and non-owned autos.

§B.1.2 The insurance required herein must be in form and substance satisfactory to the Contractor and Owner and must in all cases be written on an occurrence basis, except for the Professional Liability insurance, rather than a claims-made basis. The insurance must be issued by a carrier satisfactory to the Contractor and Owner and authorized to do business in AR and must be maintained until the entire Work is completed, except that the products and completed operation’s coverage must be maintained for at least an additional three-year period following completion of the Work.

§B.1.3 Any and all deductibles shall be assumed by and be at the sole risk of the Subcontractor.

§B.1.4 Subcontractors

Subcontractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates from each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

§B 1.5 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Contractor and Owner. At the option of the Contractor and Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Contractor and Owner, its officers, officials, employees and volunteers; or the Subcontractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

§B.1.6 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

General Liability and Automobile Liability Coverage

Except for the Professional Liability and Workers' Compensation insurance, the Contractor and Owner and their officers, directors, and employees, and any other person or entity that Contractor is required by the Prime Contract or other Contract Documents to name as additional insureds on its policies, are to be added as “additional insureds” as respects liability arising out of activities performed by or on behalf of the Subcontractor, products and completed operations of the Subcontractor and premises owned, occupied or used by the Subcontractor.

It is understood that the business auto policy under “Who is an Insured” automatically provides liability coverage in favor of the Owner and Contractor.

Initials _____
(Subcontractor)

Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Contractor and Owner, and their officers, officials or employees.

The Subcontractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the overall limits of the insurer's liability.

Workers' Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Contractor and Owner, their officers, officials, employees and volunteers for losses arising from work performed by the Subcontractor for the Contractor.

All Coverages

Each insurance policy required by this Article shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Owner and Contractor.

§B.1.7 Acceptability of Insurers

Insurance is to be placed with insurers with an A. M. Best's rating of no less than A-:VI. This rating requirement will be waived for the workers' compensation coverage

ARTICLE B.2

The Subcontractor shall provide surety bonds as follows: (if required as specified under "Performance and Payment Bonds" above)

§B.2.1 The Subcontractor shall furnish both a Performance Bond and a Labor and Material Payment Bond in form and substance satisfactory to the Contractor and Owner, and without limitation, complying with the following specific requirements:

The Bond shall be executed by a good and solvent surety licensed in the state where the Project is located and approved by the Owner, and shall remain in effect for a period not less than two (2) years following the date of substantial completion of the Project.

The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Subcontract Sum; and

The surety on both the Performance Bond and the Labor and Material Payment Bond shall agree that it shall be obligated under the Bonds to any successor, grantee or assignee of the Owner.

§B.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Subcontractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

Initials _____
(Subcontractor)

PAYMENT BOND

Know All Persons By These Presents: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called
(Corporation, Partnership, or Individual)

Principal and _____
(Name of Surety)

hereinafter called Surety, are held and firmly bound unto _____

(Name of Owner)

(Address of Owner)

hereinafter called Owner and unto all persons, firms and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total aggregate penal sum of _____ Dollars (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The Condition of This Obligation is such that whereas, the Principal entered into a certain contract with the Owner dated the _____ day _____ of 20 _____, a copy of which is hereto attached and made a part hereof for the construction of:

Now, therefore, if the Principal shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in such contract, and any authorized extensions or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such Work, and for all labor cost incurred in such Work including that by a Subcontractor, and to any mechanic or materialman lienholder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

Provided, that beneficiaries or claimants hereunder shall be limited to the Subcontractors, and persons, firms and corporations having a direct contract with the Principal or its Subcontractors.

Provided, further, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the Work or to the Specifications.

Provided, further, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the Owner or the Surety above named within ninety days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid

project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date of which Principal ceased work on said Contract, is being understood, however, that if any limitation embodied in the Bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

Provided, further, that it is expressly agreed that this Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than twenty percent, so as to bind the Principal and the Surety to the full and faithful performance of the Contract as so amended. The term "Amendment", whenever used in this Bond and whether referring to this Bond, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

Provided, further, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Witness whereof, this instrument is executed in _____ counterparts, each
(Number)
of which shall be deemed an original, this the _____ day of
_____ 20 _____.

(Corp. Seal) **Contractor** _____ **Principal**

Attest: _____
Witness as to Principal
(If Corp. then Corp. Sec.)

By: _____
(If Corp then CEO)

Address

Address

Surety _____

Attest: _____
Witness as to Surety

By: _____
Attorney-in-Fact

Address

Address

Note: Date of Bond must not be prior to date of Contract.

If Contractor is partnership, all partners should execute Bond.

Important: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be in accordance with Section 16 of the RLF Supplemental General Conditions and be authorized to transact business in the State of Arkansas.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal, and

(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of

_____ Dollars, \$(_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 20__, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on the BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the _____^(Number) day of _____, 20__.

ATTEST:

(Principal) Secretary
(SEAL)
(Witness as to Principal)
(Address)

Principal
BY
(Address)
Surety

ATTEST:

(Surety) Secretary
(SEAL)
Witness as to Surety
(Address)

BY
Attorney-in-Fact
(Address)

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

NOTICE OF AWARD

To: _____

Project Description: _____

The Contractor considered the Bid submitted by you for the above-described Work in response to its Advertisement for Bids, dated _____, 20 ____ and Information for Bidders.

You are hereby notified that your Bid has been accepted for items in the amount of \$_____.

You are required by the Information for Bidders to execute the Agreement and furnish the required Contractor's Performance Bond, Payment Bond and certificates of insurance within ten calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said Bonds within ten (10) days from the date of this Notice, said Contractor will be entitled to consider all your rights arising out of the Contractor's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The Contractor will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the Contractor.

Dated this _____ day of _____, 20 _____.

Contractor

By _____

Title _____

Acceptance of Notice

Receipt of the above Notice of Award is hereby acknowledged by

this the _____ day of _____ 20 _____

By _____

Title _____

NOTICE TO PROCEED

To: _____ Date: _____
_____ Project: _____

You are hereby notified to commence Work in accordance with the Agreement dated _____, 20_____, on or before _____, 20_____
and you are to complete the Work within _____ consecutive calendar days thereafter. The date of completion of all Work is therefore _____, 20_____.

Contractor
By _____
Title _____

Acceptance of Notice

Receipt of the above Notice to Proceed
is hereby acknowledged by

this the _____, 20_____

By _____
Title _____

Employer Identification
Number _____

REVOLVING LOAN FUND (RLF) SUPPLEMENTAL GENERAL CONDITIONS

- | | |
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1. SUPERSESSSION

These Supplemental General Conditions supersede any conflicting provisions of the Contract Documents.

2. DEFINITIONS

Wherever used in the Contract Documents, the following terms shall have the meanings indicated and shall be applicable to both the singular and plural thereof:

- A. **Addenda** - Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the Contract Documents, Drawings and Specifications, by additions, deletions, clarifications, or corrections.
- B. **Bid** - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- C. **Bidder** - Any person, firm or corporation submitting a Bid for the Work.
- D. **Bonds** - Bid, Performance, and Payment Bonds and other instruments of surety, furnished by the Contractor and the Contractor's surety in accordance with the Contract Documents.
- E. **Change Order** - A written order to the Contractor authorizing an addition, deletion, or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Price or Contract Time.
- F. **Commission** - The Arkansas Natural Resources Commission.
- G. **Contract Documents** - The contract, including Advertisement for Bids, Information for Bidders, Bid, Bid Bond, Agreement, Payment Bond, Performance Bond, Notice of Award, Notice to Proceed, Change Order, Drawings, Specifications, General Conditions, Supplemental General Conditions, and Addenda.
- H. **Contract Price** - The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
- I. **Contract Time** - The number of calendar days stated in the Contract Documents for the completion of the Work.
- J. **Subcontractor** - The person, firm or corporation with whom the Contractor has executed the Agreement.
- K. **Drawings** - The parts of the Contract Documents, which show the characteristics, and scope of the Work to be performed and which have been prepared or approved by the Engineer.
- L. **Engineer** - The person, firm, or corporation named as such in the Contract Documents.
- M. **Field Order** - A written order effecting a change in the Work not involving an adjustment in the Contract Price, an extension of the Contract Time, or a change affecting the overall integrity of the design of the project issued by the Engineer, not the Engineer's Resident Inspector, to the Contractor during construction.
- N. **Notice of Award** - The written notice of the acceptance of the Bid from the Contractor to the successful Bidder.

- O. **Notice to Proceed** - Written communication issued by the Contractor to the Contractor authorizing him/her to proceed with the Work and establishing the date for commencement of the Work.
 - P. **Contractor** – Max Foot Construction Co. LLC.
 - Q. **Project** - The undertaking to be performed as provided in the Contract Documents.
 - R. **Resident Project Representative** - The authorized representative of the Contractor who is assigned to the Project site or any part thereof.
 - S. **Shop Drawings** - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, manufacturer, Supplier or distributor, which illustrates how specific portions of the Work shall be fabricated or installed.
 - T. **Specifications** - A part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
 - U. **Subcontractor** - An individual, firm or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.
 - V. **Substantial Completion** - That date certified by the Engineer when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it is intended.
 - W. **Additional Supplemental General Conditions** - Modifications to Supplemental General Conditions required by a State agency for participation in the Project and approved by the agency in writing prior to inclusion in the Contract Documents, or such requirements that may be imposed by applicable state laws.
 - X. **Supplier** - Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.
 - Y. **Work** - All labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in the Project.
 - Z. **Written Notice** - Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at their last given address, or delivered in person to said party or their authorized representative on the Work.
3. **ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS**
- A. The Contractor may be furnished additional instructions and detail drawings, by the Engineer, as necessary to carry out the Work required by the Contract Documents.
 - B. The additional drawings and instructions thus supplied will become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional detailed drawings and instructions.

4. DRAWINGS AND SPECIFICATIONS

- A. The intent of the Drawings and Specifications is that the Contractor shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental work necessary to complete the Project in an acceptable manner, ready for use, occupancy or operation by the Contractor.
- B. In case of conflict between the Drawings and Specifications, the Specifications shall govern. Figure dimensions on Drawings shall govern over general Drawings.
- C. Any discrepancies found between the Drawings and Specifications and site conditions or any inconsistencies or ambiguities in the Drawings or Specifications shall be immediately reported to the Engineer, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Contractor after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.
- D. In the case of defective Specifications for which the Contractor is responsible, the equitable adjustment shall include any increased cost the Contractor reasonably incurred in attempting to comply with those defective Specifications.

5. BIDDING AND CONTRACT AWARD

- A. Prospective Bidders are advised that other sections of these Supplemental General Conditions describe requirements pertaining to bidding and the performance of the RLF funded contract. The Supplemental General Conditions should be thoroughly reviewed by prospective Bidders prior to the preparation and submission of bids.
- B. Awards shall be made only to the responsible Contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Bidders are required to comply with the requirements of these Supplemental General Conditions in the preparation and submission of bids. Failure by the bidder to comply with the requirements outlined herein may result in the rejection of the bid as non-responsive.
- C. Bidders shall submit with the bid proposal an executed Contractor's Act of Assurance form as provided in these contract documents. Through execution of this form, the Bidder warrants its understanding of and compliance with these Supplemental General Conditions and all relevant requirements pertaining to the RLF funded work. In addition, each prime Contractor is required to submit an executed Contractor's Act of Assurance form to the Contractor for each subcontract awarded above \$2,000.00.

6. AMERICAN IRON AND STEEL (AIS)

The Contractor acknowledges to and for the benefit of the Contractor and the Commission 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 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 Contractor and the Commission 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 Contractor or the Commission. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Contractor or Commission to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Contractor or Commission resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Commission or any damages owed to the Commission by the Contractor). While the Contractor has no direct contractual privity with the Commission, as a lender to the Contractor for the funding of its project, the Contractor and the Contractor agree that the Commission 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 Commission. A copy of the EPA Memorandum implementing the American Iron and Steel requirement and its procedures is attached as Appendix D to these Supplemental General Conditions.

7. DISADVANTAGED, MINORITY, AND WOMEN’S BUSINESS ENTERPRISES

Whenever subcontracts are solicited, the Contractor is required to take affirmative steps (known as “good faith efforts”) to assure that disadvantaged business enterprises (DBE), which includes small and minority and women’s business enterprises (MBE/WBE) as well, are used when possible as sources of materials, supplies, equipment, construction activities and professional services. DBE utilization is authorized by 40 CFR Parts 30, 31, 33, 35, and 40, OMB Circular A-102, and Executive Orders 11625, 12432 and 12138.

The Contractor and Loan Recipient shall at a minimum, take the following affirmative actions, known as “good faith efforts” in the procurement of subcontracts for construction, equipment, services, and supplies:

- i. Ensure DBE firms are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities and include small, minority and women's businesses on solicitation lists;

- ii. Assure that small, minority and women's businesses are solicited whenever they are potential sources;
- iii. Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small, minority and women's businesses;
- iv. Establish delivery schedules, when the requirements of the work permit, which will encourage participation by small, minority and women's businesses;
- v. Use the services of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, AHTD and AEDC as appropriate.
- vi. Continue the above steps, including follow-up contact as necessary, throughout the performance of the contract.

Prime Contractors must also follow the steps indicated below in the paragraph entitled “DBE/MBE/WBE Requirements Prior to Award” and all other instructions of this document.

DBE/MBE/WBE Requirements Prior to Award: All Bidders, as a condition of bidding, are required to document to the Contractor and to the Commission that the “good faith efforts” were taken in the preparation of bids to obtain DBE/MBE/WBE participation. Contractors, including DBE Prime Contractors, must conduct the “six good faith efforts” as well. Steps for Compliance are as follows:

- i. Solicit DBE/MBE/WBE quotes through direct solicitation communication, document that this was done, and submit within fifteen days of the bid opening. Examples of direct solicitation communication that must be conducted by the low bidder are: faxes, letters, phone calls, and emails. Indicate the source of the DBE/MBE/WBE list(s) used. Sources of DBE Certified Lists are listed below. Newspaper Advertisements/Public Notices alone will not meet the required DBE solicitation efforts.
- ii. Document efforts and responses received.
- iii. Document contracts awarded, or intent to award, and indicate whether the contract is with a DBE/MBE or WBE certified firm.
- iv. Document the basis on which the subcontractor/supplier was selected and/or rejected for all contracts awarded.

Note: Subcontracts include: supplies, services, equipment, and construction activity.

If the subcontractor states that they can complete the entire project using only in-house services and supplies, then the Contractor must indicate they will not use a subcontractor or procure supplies, services, and equipment on the DBE Compliance Evaluation Form and shall write a letter to that effect to required parties. Note, this occurs very infrequently.

Required Form: These forms are to be submitted within fifteen days of the bid opening.

- DBE Compliance Evaluation Form Supplemental Conditions of the Revolving Loan Fund. (This form is numbered RLF-96 for CWRLF projects.) This form is to be completed and submitted within fifteen days of the bid opening.
- EPA Forms: 6100-2; 6100-3; and 6100-4

Lists of DBE/MBE/WBE firms are available from:

- Arkansas Highway and Transportation Department, Programs and Contracts Division; 10324 I-30; Post Office Box 2261; Little Rock, Arkansas 72203, Phone: (501) 569-2259 www.ahtd.state.ar.us/contract/program/letting
- Arkansas Economic Development Commission, Small and Minority Business Team; One Capitol Mall; Little Rock, Arkansas 72201; Phone: (501) 682-6105 <http://www.arkansasedc.com>.
- Arkansas Small Business Administration, Business Opportunity Section; 2120 Riverfront Drive, Suite 100; Little Rock, Arkansas 72202-1747; Phone: (501) 324-7379; <http://pro-net.sba.gov/> or <http://www.ccr.gov>.

A copy of 40 CFR Part 33, Subpart C- Good Faith Efforts is attached to these Supplemental General Conditions.

DBE/MBE/WBE Reporting Requirements: In addition to the reporting and documentation requirements during bidding, the Contractor is required to report to the Contractor within fifteen days of the end of each calendar quarter, or to the Division as requested, all contracts awarded to DBE/MBE/WBE firms throughout the life of the contract, including the one year Project Performance Period. The Contractor is required to report to the Division within thirty days of the end of each calendar quarter, all contracts awarded by the Contractor and subcontracts awarded by the Contractor's Contractors to DBE/MBE/WBE firms. In accordance with 40 CFR 35, Subpart K, the Division must report to the Environmental Protection Agency all DBE/MBE/WBE participation in the RLF program.

8. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, sex, age, marital status, 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, color, creed, sex, age, marital status, 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 furnish and post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this equal employment opportunity clause.
- B. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for

employment without regard to race, color, creed, sex, age, marital status, or national origin.

- C. In the event of the Contractor's noncompliance with the equal employment opportunity clause of this contract or with any rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part.
- D. The Contractor shall include the provisions of subparagraph's (A) through (C) in every subcontract or purchase order involved with this contract.
- E. The Contractor or any Subcontractor shall have an affirmative action plan which declares that it does not discriminate on the basis of race, color, creed, national origin, sex, marital status, or age and which specifies goals and target dates to assure the implementation of that plan. The Contractor shall establish procedures to assure compliance with this requirement by the Contractor and to assure that suspected or reported violations are promptly investigated.
- F. The Contractor and Subcontractors supplying materials, equipment and/or labor must comply with the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794), Section 13 of the Federal Water Pollution Control Act Amendments of 1972 regarding sex discrimination (Public Law 92-500), and the Age Discrimination Act of 1973.

The Contractor and all Subcontractors shall provide equal employment opportunity for all qualified applicants and all contractor solicitations for employees must contain the Equal Employment Opportunity statement. The Prime Contractor must assure Subcontractor compliance with the Civil Rights Act for each subcontract by including the Act of Assurance form and these Supplemental General Conditions in each Subcontract in excess of \$10,000. Applicable Equal Employment Opportunity regulations and Nondiscrimination provisions are described in the Appendix to these Supplemental General Conditions.

9. LABOR STANDARDS

The Contractor and all Subcontractors awarded subcontracts shall pay all laborers and mechanics employed on the project not less than the prevailing wage rates, as determined by the United States Secretary of Labor, in accordance with the Davis-Bacon Act as provided for in the Supplemental General Condition's Appendix A.

The wage decision identifies job classifications and minimum wages to be paid to all workers. Payrolls must be submitted weekly by the Contractor and all non-exempt Subcontractors to the Contractor showing each worker's name, address, job classification, hourly rate of pay, daily regular and overtime hours, gross and net pay, and any fringe benefits where applicable. All workers are required to receive overtime pay in any week in which the hours worked exceed 40 hours per work week. Overtime is paid at a rate not less than 1 and 1/2 times the worker's base rate of pay.

The Contractor is responsible for monitoring contractor compliance with Davis-Bacon Act requirements of Appendix A. The Contractor's responsibilities will include, but not be limited to, payroll review for compliance, maintain payroll files, and conduct on-site interviews with the Contractor's employees to verify payroll accuracy. The Contractor will provide the Commission a letter with each pay request certifying wages, through payroll review and employee interviews, met the Davis-Bacon Requirements of this contract. Copies of completed interviews will be forwarded to the Commission.

10. RESPONSIBILITIES OF PARTICIPANTS REGARDING TRANSACTIONS

(A.K.A. DEBARMENT AND SUSPENSION)

Individuals or organizations that have been debarred or excluded from participating in Federal Assistance programs under 40 CFR Part 32 are prohibited from participating in the RLF program. This prohibition applies for every contract and subcontract for materials, supplies, equipment, and services. Contractors and Subcontractors shall execute the Contractors Act of Assurance Form as provided in the Contract Documents certifying compliance with 40 CFR Part 32.

11. PROCUREMENT PROHIBITIONS

As required by Executive Order 11738, Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, RLF loan recipients, Prime Contractors and Subcontractors are prohibited from procuring goods and services from persons who have been convicted of violations of either law if the goods or services are to be produced by the facility that gave rise to the violation.

12. SUBSTITUTIONS (of "or Equal")

All RLF procurement transactions shall be conducted in a manner that promotes maximum free and open competition. Whenever a material, article, or piece of equipment is identified on the Drawings or Specifications by reference to brand name or catalogue numbers, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered for substitution. The Contractor may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the Contract Documents by reference to brand name or catalogue number, and if, in the opinion of the Engineer, such material, article or piece of equipment is of equal substance and function to that specified, the Engineer may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the Contract Price and the Contract Documents shall be appropriately modified by Change Order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the Project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time.

13. INSURANCE

- A. The Subcontractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of, or result from, the Subcontractor's execution of the Work, whether such execution be by the Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
- i. Claims under worker's compensation, disability benefit and other similar employee benefit acts;
 - ii. Claims for damages because of bodily injury, occupational sickness or disease, or death of employees;
 - iii. Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees;
 - iv. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person; and
 - v. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.
- B. Certificates of Insurance acceptable to the Contractor and the Commission shall be filed with the Contractor and the Commission prior to commencement of the Work. Each insurance policy shall contain a clause providing that it shall not be canceled by the insurance company without written notice to the Contractor and the Commission of intention to cancel that is in accordance with Arkansas Code Annotated §23-66-206. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled unless at least fifteen days prior written notice has been given to the Contractor and the Commission. The Insurance shall be made by an agent licensed by the Insurance Commissioner of the State of Arkansas to represent the surety company executing the bonds. Furthermore, the Commission will be a "Certificate Holder" and the words "will endeavor" must be removed from the insurance form.
- C. The Subcontractor shall procure and maintain, at the their own expense, during the Contract Time, liability insurance as hereinafter specified:

General Public Liability and Property Damage Insurance including vehicle coverage issued to the Contractor and protecting the Contractor from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the Contract Documents, whether such operations be by the Subcontractor or anyone directly or indirectly employed by the Contractor or by a Subcontractor employed by the Contractor. Insurance shall be written with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom sustained by any one person in any one accident; and a limit of liability of not less than \$2,000,000 aggregate for any such damage sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$1,000,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than

\$1,000,000 aggregate for any such damage sustained by two or more persons in any one accident.

- D. The Subcontractor shall furnish umbrella liability coverage, and keep it in effect during the term of the contract which provides excess limits over the primary coverages. The minimal amount of coverage will be determined by the Risk Management Division of the Arkansas Insurance Department.
- E. The Subcontractor shall procure and maintain, at the their own expense, during the Contract Time, in accordance with the provisions of the laws of the State in which the Work is performed, Worker's Compensation Insurance, including occupational disease provisions, for all of the Subcontractor's employees at the site of the Project and in case any Work is sublet, the Contractor shall require such Subcontractor similarly to provide Worker's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under Worker's Compensation statute, the Contractor shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of its employees not otherwise protected.
- F. The Subcontractor shall secure, if applicable, "All Risk" type Builder's Risk Insurance for Work to be performed. Unless specifically authorized by the Contractor, the amount of such insurance shall not be less than the Contract Price totaled in the Bid. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the Contract Time, and until the Work is accepted by the Contractor. The policy shall name as the insured the Subcontractor, and the Contractor.

14. CONTRACT SECURITY

- A. The Subcontractor shall within ten days after the receipt of the Notice of Award furnish the Contractor and the Commission with a Performance Bond and a Payment Bond in penal sums equal to the amount of the Contract Price, conditioned upon the performance by the Subcontractor of all undertakings, covenants, terms, conditions and agreements of the Contract Documents, and upon the prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the Work provided by the Contract Documents. Such Bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the State in which the Work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570, provided that the contract amount shall not exceed the underwriting limitation listed for the surety in Circular 570. For contracts in excess of \$100,000.00, the Bonds shall be issued by a Bonding Company by the A.M. BEST Rating Book as follows:
 - i. contracts in excess of \$100,000.00, but less than \$1,000,000.00 - "B+" rating or higher and contract amount may not exceed 2.0% of the policyholder's surplus.

ii. contracts in excess of \$1,000,000.00 - "A" rating or higher and contracts may not exceed 2.0% of the policyholder's surplus.

B. In addition, the Bonds shall be executed by an Agent licensed by the Insurance Commissioner of the State of Arkansas to represent the surety company executing the bonds. The mere countersigning of a bond will not be sufficient. The Agent shall file with the bonds its Power of Attorney. The expense of these Bonds shall be borne by the Contractor. If at any time a surety on any such Bond is declared bankrupt or loses its right to do business in the State of Arkansas or is removed from the above list of Surety Companies, the Subcontractor shall notify the Contractor, Engineer, and the Commission and substitute an acceptable Bond (or Bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Contractor and Commission. The Contractor shall pay the premiums on such Bond. No further payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable Bond to the Contractor and the Commission

15. ASSIGNMENTS

The Subcontractor shall not sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of any right, title or interest therein, or any obligations thereunder, without written consent of the Contractor.

16. INDEMNIFICATION

A. The Subcontractor will indemnify and hold harmless the Contractor and the Engineer and their agents and employees from and against all claims; damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Work, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the Contractor, and Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

B. In any and all claims against the Contractor or the Engineer, or any of their agents or employees, by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under worker's compensation acts, disability benefits acts or other employee benefits acts.

C. The obligation of the Contractor under this paragraph shall not extend to the liability of the Engineer, its agents or employees arising out of the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs or Specifications.

17. SEPARATE CONTRACTS

- A. The Contractor reserves the right to let other contracts in connection with this Project. The Subcontractor shall afford other entities reasonable opportunity for the introduction and storage of their materials and the execution of their Work, and shall properly connect and coordinate the Work with theirs. If the proper execution or results of any part of the Subcontractor's Work depends upon the Work of any other entities, the Contractor shall inspect and promptly report to the Engineer any defects in such Work that render it unsuitable for such proper execution and results.

18. SCHEDULES, REPORTS AND RECORDS

- A. The Subcontractor shall submit to the Contractor and the Engineer such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the Contract Documents for the Work to be performed. One copy of the up-to-date schedule shall be maintained at the job site.
- B. Prior to the first partial payment estimate, the Subcontractor shall submit construction progress schedules showing the order in which the Subcontractor proposes to carry on the Work, including dates at which the various parts of the Work will be started, estimated date of completion of each part and, as applicable:
- i. The dates at which special detailed drawings will be required; and
 - ii. Respective dates for submission of Shop Drawings, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.
- C. The Subcontractor shall also submit a schedule of payments that the Contractor anticipates will be earned during the course of the Work that must be updated each month.

19. JOB BULLETIN BOARD

The Subcontractor shall maintain a weather-tight job bulletin board in an area frequented by the Contractor's employees for the duration of construction. The job bulletin board shall display at a minimum a copy of the Davis-Bacon Wage Decision, a Davis-Bacon poster, a notice to employees concerning minimum wage requirements, Equal Employment Opportunity (Labor Standards) information, and a notice to labor unions as applicable. A copy of the construction schedule (i.e. critical path chart) is to be placed on the job bulletin board and updated monthly, showing project progress.

20. MATERIALS, SERVICES AND FACILITIES

- A. It is understood that, except as otherwise specifically stated in the Contract Documents, the Subcontractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete and deliver the Work within the specified time.

- B. Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection. Materials not located in or near the project site will not be eligible for re-imbusement.
- C. Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the Manufacturer.
- D. Materials, supplies, and equipment shall be in accordance with samples submitted by the Contractor and approved by the Engineer.
- E. Materials, supplies or equipment to be incorporated into the Work shall not be purchased by the Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the Seller.

21. SAFETY STANDARDS

- A. The Subcontractor is responsible for complying with the Department of Labor Safety and Health Regulations promulgated under Section 107 of the Contract Work Hours and Safety Standard Act (40 U.S.C. 327-333). The Contractor shall not require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards promulgated by regulations of the Secretary of Labor.

Job site situations which pose an immediate and serious threat to life or safety will be referred to the Occupational Safety and Health Administration (OSHA).

- B. Act 291 of the 1993 Arkansas General Assembly applies to all public improvement construction projects that involve any trench or excavation which equals or exceeds five feet in depth. Beginning March 1, 1993, Act 291 requires that:
 - i. The current edition of Occupational Safety and Health Administration Standard for Excavation and Trenches Safety System, 29 CFR 1926, Subpart P, be specifically incorporated into the specifications for the project; and
 - ii. The contract bid form include a separate pay item for trench and excavation safety systems and be included in the base bid.

22. PROTECTION OF LIVES AND PROPERTY

- A. In order to protect the lives and health of its employees under the contract, the Subcontractor shall comply with all pertinent provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment or work under the contract.

- B. The Subcontractor alone shall be responsible for the safety, efficiency, and adequacy of its plant, appliances and methods and for any damage which may result from his failure or his improper construction, maintenance or operation.

23. PROTECTION OF WORK, PROPERTY, AND PERSONS

- A. The Subcontractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Subcontractor will take all necessary precautions for the safety of, will provide the necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other persons who may be affected thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- B. The Subcontractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Subcontractor will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. The Subcontractor will notify all parties at the site of adjacent utilities when prosecution of the Work may affect them. The Subcontractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or part, by any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the Contract Documents or to the acts or omissions of the Contractor, of the Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.
- C. In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Subcontractor, without special instructions or authorization from the Engineer or Contractor, shall act to prevent threatened damage, injury or loss. The Subcontractor will give the Contractor and Engineer prompt Written Notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved.

24. PROTECTION OF THE ENVIRONMENT

The Subcontractor will provide for protection of the environment as required by the Contract Documents, Local Ordinance, State and Federal Law and these Supplemental General Conditions. The Subcontractor shall:

- i. Limit the area of construction disturbance to areas within temporary and permanent easements and the land areas designated for the Contractors use in performing the work.
- ii. Provide for the protection of trees, shrubs and grass wherever possible.

- iii. Provide for the prevention of air pollution through burning permits as required. The Subcontractor shall provide dust control on haul roads as site conditions dictate.
- iv. Control noise pollution by providing efficient mufflers on all machinery and limiting work hours if required by the Contract Documents.
- v. Control excessive erosion and sedimentation at the job site through prompt seeding of disturbed areas and the construction of temporary control measures as required in the contract documents and by Storm Water Permits.
- vi. Perform the work in coordination with the Contractor and in a manner that will provide for the continuous transport and treatment of process water during construction.
- vii. Cease all work in areas where species classified as threatened or endangered under the Endangered Species Act (Public Law 93-205 as amended) are discovered and promptly notify the Engineer..

25. TAXES

The Subcontractor will pay all sales, consumer, use and other similar taxes required by the laws of the place where the Work is performed.

26. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- A. The date of beginning and the time for completion of the Work are essential conditions of the Contract Documents and the Work embraced shall be commenced on a date specified in the Notice to Proceed.
- B. The Subcontractor will proceed with the Work at such rate of progress to insure full completion within the Contract Time. It is expressly understood and agreed, by and between the Subcontractor and the Contractor that the Contract Time for the completion of the Work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the Work.
- C. If the Subcontractor shall fail to complete the Work within the Contract Time, or extension of time granted by the Contractor, then the Subcontractor will pay to the Contractor the amount for liquidated damages as specified in the Bid for each calendar day that the Contractor shall be in default after the time stipulated in the Contract Documents.
- D. The Subcontractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is due to the following and the Subcontractor has promptly given Written Notice of such delay to the Contractor or Engineer.
 - i. To any preference, priority or allocation order duly issued by the Contractor.
 - ii. To unforeseeable causes beyond the control and without the fault or negligence of the Subcontractor, including but not restricted to, acts of God, or of the public enemy, acts of the Contractor, acts of another Subcontractor in the performance of a contract with the Contractor, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and
 - iii. To any delays of Subcontractors occasioned by any of the causes specified in paragraphs (i.) and (ii) of this article.
- E. Where justified, adjustments to the Contract Time specified in the Contract Documents shall be made in conjunction with changes in the work and with equitable adjustments in the contract price as described in these Supplemental General Conditions. Where delays in project completion are not due to changes in the work or acts of the Contractor, extensions to the contract time will be made only where there is sufficient documented evidence that delays in project completion were caused by events beyond the Subcontractor's control. Requests for time extensions by the Subcontractor must be submitted with the pay estimate for the month that the lost days are being sought.

Appendix A.

United States Environmental Protection Agency
Washington, DC 20460

Labor Standards Provisions for
Federally Assisted Contracts

Davis-Bacon and Related Acts

ATTACHMENT 1

CWSRF: The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance 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 with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled “Wage Rate Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6).” This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

DWSRF: The recipient agrees to include in all agreements to provide assistance for any construction project carried out in whole or in part with such assistance made available by a drinking water revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12), a term and condition requiring compliance with the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions All contracts and subcontracts for any construction project carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled “Wage Rate Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6).” This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

ATTACHMENT 2

Wage Rate Requirements

Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

I. Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6) for Subrecipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2013 Continuing Resolution with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact Lorraine Fleury at fleury.lorraine@epa.gov or at 215-814-2341 of EPA, Region III Grants and Audit Management Branch for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements.
Under the FY 2013 Continuing Resolution, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.
2. Obtaining Wage Determinations.
 - (a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes

or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
 - (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.
 - (c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
 - (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.
3. Contract and Subcontract provisions.
 - (a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by

pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2013 Continuing Resolution, the following clauses:

(1) Minimum wages.

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

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

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

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

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

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

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

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

- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the

amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

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

(3) Payrolls and basic records.

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

- (ii) (A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

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

- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

(4) Apprentices and trainees,

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

in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

- (iv) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.
 - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.
 - (a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
 - (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.
 - (3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
 - (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or

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

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

5. Compliance Verification

- (a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB.

Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

- (c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the

examinations the subrecipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

- (d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/contacts/whd/america2.htm>.

II. Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6) for Subrecipients That Are Not Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the FY2013 Continuing Resolution with respect to subrecipients that are not governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact Julie Milazzo at Milazzo.julie@epa.gov or at 415-972-3687, EPA Grants Management Office for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

Under these terms and conditions, the subrecipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.
Under the FY 2013 Continuing Resolution, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.
2. Obtaining Wage Determinations.
 - (a) Subrecipients must obtain proposed wage determinations for specific localities at www.wdol.gov. After the Subrecipient obtains its proposed wage determination, it must submit the wage determination to the Arkansas Natural Resources Commission's Water

Resource Development Division for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.

- (b) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
 - (i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
 - (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (c) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.
- (d) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or

ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2013 Continuing Resolution, the following clauses:

(1) Minimum Wages.

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

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

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

- (ii) (A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (2) Withholding. The subrecipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (3) Payrolls and basic records.
 - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the

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

- (ii) (A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

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

- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and

that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

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

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

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

(4) Apprentices and Trainees

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

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

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

wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iv) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.
 - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

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

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause

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

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

5. Compliance Verification

- (a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."
- (c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that

the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

- (d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

Appendix B.

Rules and Regulations

Title 41- Public Contract and Property Management

Chapter 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor

Compliance Responsibility for Equal Employment Opportunity

Final Rule

Part 60-1 Obligations of Contractors and Sub-Contractors

§60-1.4 Equal Opportunity Clause

(a) **FEDERALLY ASSISTED CONSTRUCTION CONTRACTS** (1) 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:

- (2) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other form 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.
- (3) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (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, 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 non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may 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 (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: PROVIDED, HOWEVER, That in the event a contractor becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interest 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 compliances.

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.

(b) SUBCONTRACTS. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(c) INCORPORATION 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.

(d) 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.

(e) 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.

Part 60-4 - Construction Contractors - Affirmative Action Requirements
§60-4.2 Solicitations.

(a) All Federal contracting officers and all applicants shall include the notice set forth in paragraph (d) of this section and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth in §60-4.3 of this part in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts to be performed in geographical areas designated by the Director pursuant to §60-4.6 of the part. Administering agencies shall require the inclusion of the notice set forth in paragraph (d) of this section and the specifications set forth in §60-4.3 of this part as a condition of any grant, contract, subcontract, loan, insurance or guarantee involving federally assisted construction covered by this part 60-4.

(b) All nonconstruction contractors covered by Executive Order 11246 and the implementing regulations shall include the notice in paragraph (d) of this section in all construction agreements which are necessary in whole or in part to the performance of the covered nonconstruction contract.

(c) Contracting officers, applicants and nonconstruction contractors shall give (SIC) written notice to the Director within 10 working days of award of a contract subject to these provisions. The notification shall include the name, address and telephone number of the contractor; employer identification number; dollar amount of the contract, estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed.

(d) The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to §60-4.5 of this part (see 4) CFR 60-4.2 (a)):

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

- (1) The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
- (2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Time Tables	Goals for minority participation for each trade Insert goals for each year.	Goals for female participation in each trade Insert goals for each year.
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These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed, with regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specification set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of the meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4, Compliance with the goals will be measured against the total work hours performed.

- (3) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction sub-contract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract ; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
- (4) As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

§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 nonconstruction 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 Contracts 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 a 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 a 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 7a 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 the goals in each craft during the period specified.
- (5) Neither the provisions of any collective bargaining agreement, or 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. The 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 therefore, along with what-ever 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 meets 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 complied under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the 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 new media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with who 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 obligation under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated 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 contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participating may be asserted as fulfilling any one or more to 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 work force 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 to 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 Contract fails to comply with the requirements to 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 of 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.

Appendix C.

40 CFR PART 33

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES
IN UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROGRAMS

Subpart C—Good Faith Efforts

§ 33.301 What does this subpart require?

A recipient, including one exempted from applying the fair share objective requirements by § 33.411, is required to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, even if it has achieved its fair share objectives under subpart D of this part:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) 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.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

§ 33.302 Are there any additional contract administration requirements?

- (a) 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.
- (b) 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.
- (c) 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 described in § 33.301 if soliciting a replacement subcontractor.
- (d) A recipient must require its prime contractor to employ the six good faith efforts described in § 33.301 even if the prime contractor has achieved its fair share objectives under subpart D of this part.

§ 33.303 Are there special rules for loans under EPA financial assistance agreements?

A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, such as a State under the CWRLF or DWSRF or an eligible entity under the Brownfields Cleanup Revolving Loan Fund program, must require that borrowers receiving identified loans comply with the good faith efforts described in § 33.301 and the contract administration requirements of § 33.302. This provision does not require that such private and nonprofit borrowers expend identified loan funds in compliance with any other procurement procedures contained in 40 CFR part 30, part 31, or part 35, subpart O, as applicable.

§ 33.304 Must a Native American (either as an individual, organization, Tribe or Tribal Government) recipient or prime contractor follow the six good faith efforts?

- (a) A Native American (either as an individual, organization, corporation, Tribe or Tribal Government) recipient or prime contractor must follow the six good faith efforts only if doing so would not conflict with existing Tribal or Federal law, including but not limited to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e), which establishes, among other things, that any federal contract, subcontract, grant, or subgrant awarded to Indian organizations or for the benefit of Indians, shall require preference in the award of subcontracts and subgrants to Indian organizations and to Indian-owned economic enterprises.
- (b) Tribal organizations awarded an EPA financial assistance agreement have the ability to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. Tribal governments with promulgated tribal laws and regulations concerning the solicitation and recruitment of Native-owned and other minority business enterprises, including women-owned business enterprises, have the discretion to utilize these tribal laws and regulations in lieu of the six good faith efforts. If the effort to recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts. All tribal recipients still must retain records documenting compliance in accordance with § 33.501 and must report to EPA on their accomplishments in accordance with § 33.502.
- (c) Any recipient, whether or not Native American, of an EPA financial assistance agreement for the benefit of Native Americans, is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to solicit and recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts.
- (d) Native Americans are defined in § 33.103 to include American Indians, Eskimos, Aleuts and Native Hawaiians.

Appendix D.

MEMORANDUM

SUBJECT: Implementation of American Iron and Steel provisions of P.L. 113-76, Consolidated Appropriations Act, 2014

FROM: Andrew Sawyers, Director
Office of Wastewater Management (4201M)

Peter 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 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 specifications and plans 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

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 Fiscal Year 2014. 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.

Covered Iron and Steel Products

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).

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.

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.

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.

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.

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.

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.

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 or 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.

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;
- Steel Hinged Hatches, Square and Rectangular;
- Steel Riser Rings;
- Trash receptacles;
- Tree Grates;
- Tree Guards;
- Trench Grates; and
- Valve Boxes, Covers and Risers.

What is ‘structural steel’?

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section 3 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.

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, gates, and screens.

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)), electrical/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, and analytical instrumentation, and dewatering equipment.

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.

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 rebar 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 rebar is considered to be a construction material and must be produced in the US.

Compliance

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.

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 AIS requirements 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 Attachment 3, is a sample certification. These certifications should be collected and maintained by the assistance recipients.

Alternatively, the final manufacturer that delivers the iron or steel product to either 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.

How should a State ensure assistance recipients are complying with the AIS requirement?

States should, as a best practice, conduct site visits of projects during construction and review documentation demonstrating proof of compliance which the assistance recipient has gathered.

What happens if a State or EPA finds a non-compliant iron and/or steel product permanently incorporated in the project?

If a potentially noncompliant product is identified, the State should notify the assistance recipient of the apparent unauthorized use of a 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. More information can be found at this website: <http://www.epa.gov/oig/hotline.htm>.

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 to apply for waivers of the AIS requirement directly to EPA Headquarters. 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. The assistance recipient may seek a waiver at any point before, during, or after the bid process, but before installation of the product, if one or more of the following 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 Attachment 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 Engineer. 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. For DWSRF waiver requests, please send the application to: 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 Attachment 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 3-step process:

1. Posting – After receiving a complete 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.grants_funding/aisrequirement.cfm
2. Evaluation – After receiving an application for waiver of the AIS requirements, EPA Headquarters will use the checklist in Attachment 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 additional time 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 (U.S. 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 or (202) 564-0614 or Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division, at anderer.kirsten@epa.gov or (202) 564-3134.

Attachment 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 waiver applicants 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"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Description of the foreign and domestic construction materials — Unit of measure — Quantity — Price — Time of delivery or availability — Location of the construction project — Name and address of the proposed supplier — A detailed justification for the use of foreign construction materials • Waiver request was submitted according to the instructions in the memorandum • 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 		
<p>Cost</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products — Relevant excerpts from the bid documents used by the contractors to complete the comparison — 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 		
<p>Availability</p> <ul style="list-style-type: none"> • 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"> — Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials — 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. — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Waiver request includes a statement from the prime contractor confirming the non-availability of the domestic construction materials for which the waiver is sought • Has the State received other waiver requests for the materials described in this waiver request, for comparable projects? 		

Attachment 2: EPA 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
Cost				
<ul style="list-style-type: none"> • Does the waiver request include the following information? <ul style="list-style-type: none"> — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products — Relevant excerpts from the bid documents used by the contractors to complete the comparison — A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market • Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%? 				
Availability				
<ul style="list-style-type: none"> • 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"> — Supplier information or other documentation indicating availability/delivery date for materials — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials • 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? • 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) • Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include: <ul style="list-style-type: none"> — Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State — Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States — Correspondence with construction trade associations indicating the non-availability of the materials • Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits? 				

Attachment 3: Sample Certification for Step Certification Process

The following information is provided as a sample letter of step certification for Buy America compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address
City, State Zip

Subject: Buy America Step Certification for Project (XXXXXX-XXXXXXXA)

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

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 Buy America compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address
City, State Zip

Subject: Buy America Certification for Project (XXXXXX-XXXXXXA)

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:

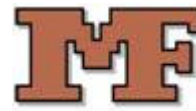
1. XXXX
2. XXXX
3. XXXX

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

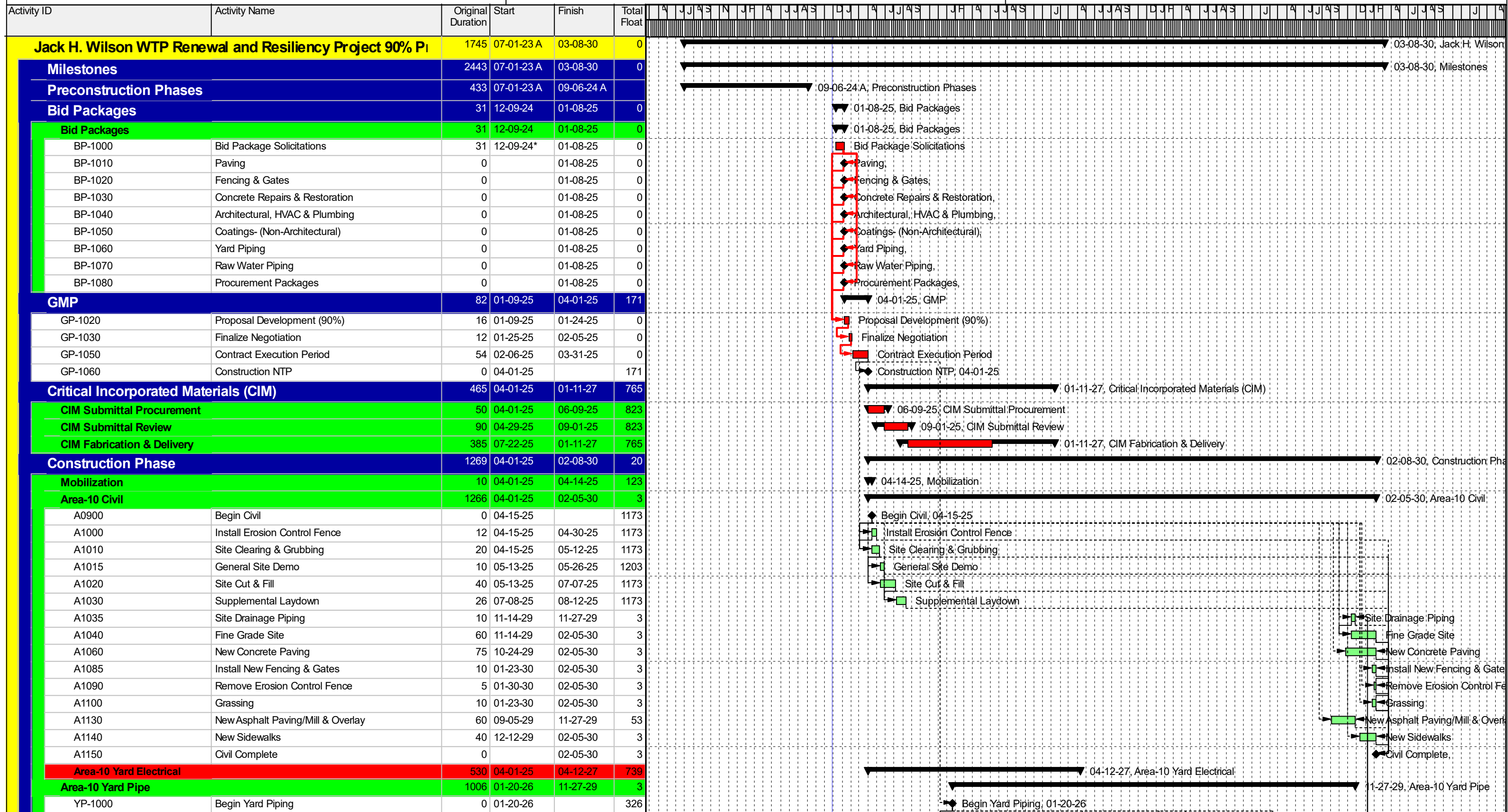
Bid Package	Package Name	Inclusions	Exclusions	Drawings	Spec Sections	Spec Name
2	Ornamental Fences and Gates	Fencing, Gates, Operators, Keypad Relocation, and Associated Conrete.	Electrical Service Feed, Masonry.	C1305 - C1306, CZ6, A0003	32 31 19	Ornamental Fences and Gates

Jack H. Wilson WTP Renewal & Resiliency Project
90% Preliminary Bid Schedule



MAX FOOTE CONSTRUCTION CO.

Project Start Date: 07-01-23
Project Finish Date: 03-08-30
Project Data Date: 11-27-24



█ Actual Level of Effort
 █ Remaining Work
 █ Critical Remaining Work
 ◆ Milestone
 ▬ summary

