



CITY OF MEMPHIS

REQUEST FOR QUOTE #284754

Lagoon 5 Renovation for the T.E. Maxson WWTF

City Project: SW02011

Addendum No. 7

This Addendum will become part of the Contract Documents. In case of difference with any previous Addenda or communications, this Addendum takes precedence. Receipt will be acknowledged by inserting the Addendum number and its date in the RFQ Response.

The following information is included with Addendum No. 6 for the above-referenced project. Bidders shall fully consider and acknowledge this Addendum in the preparation and submittal of their formal Bid. Failure to do so may result in the rejection of the Bid.

Be advised that this Addendum DOES result in a change of the Bid TIME (the date remains the same). It is moved to 12:00PM local time, May 28, 2025.

Be advised that the deadline for questions from plan holders is 5PM, local time, Friday, May 16, 2025. The final addendum will be issued no later than Wednesday, May 21, 2025.

Specifications section 00430 – Equal Business Opportunity Program is removed from the Contract Documents.

List of Attachments:

- 1) Bidder Questions and Answers by Project Team.
- 2) Settlement Gauge detail.
- 3) Revised specifications section "Table of Contents". Updated to show the removal of section 00430.

- 4) Revised specifications section 00010 – Legal Notice to Bidders. Updated the bid date and time.
- 5) Revised specifications section 00100 – Instructions to Bidders. Updated the bid date and time, removed reference to M/WBE goals for the project.
- 6) Revised specifications section 00510 – Construction Contract. Removed reference to “City of Memphis Minority / Women Business Enterprise Program” being part of the Contract Documents.
- 7) Revised specifications section 00710 – General Conditions of the Contract.
- 8) Revised specifications section “WIFIA Specification Package and Bid Contract Language”. The M/WBE goals have been reduced to 0%.



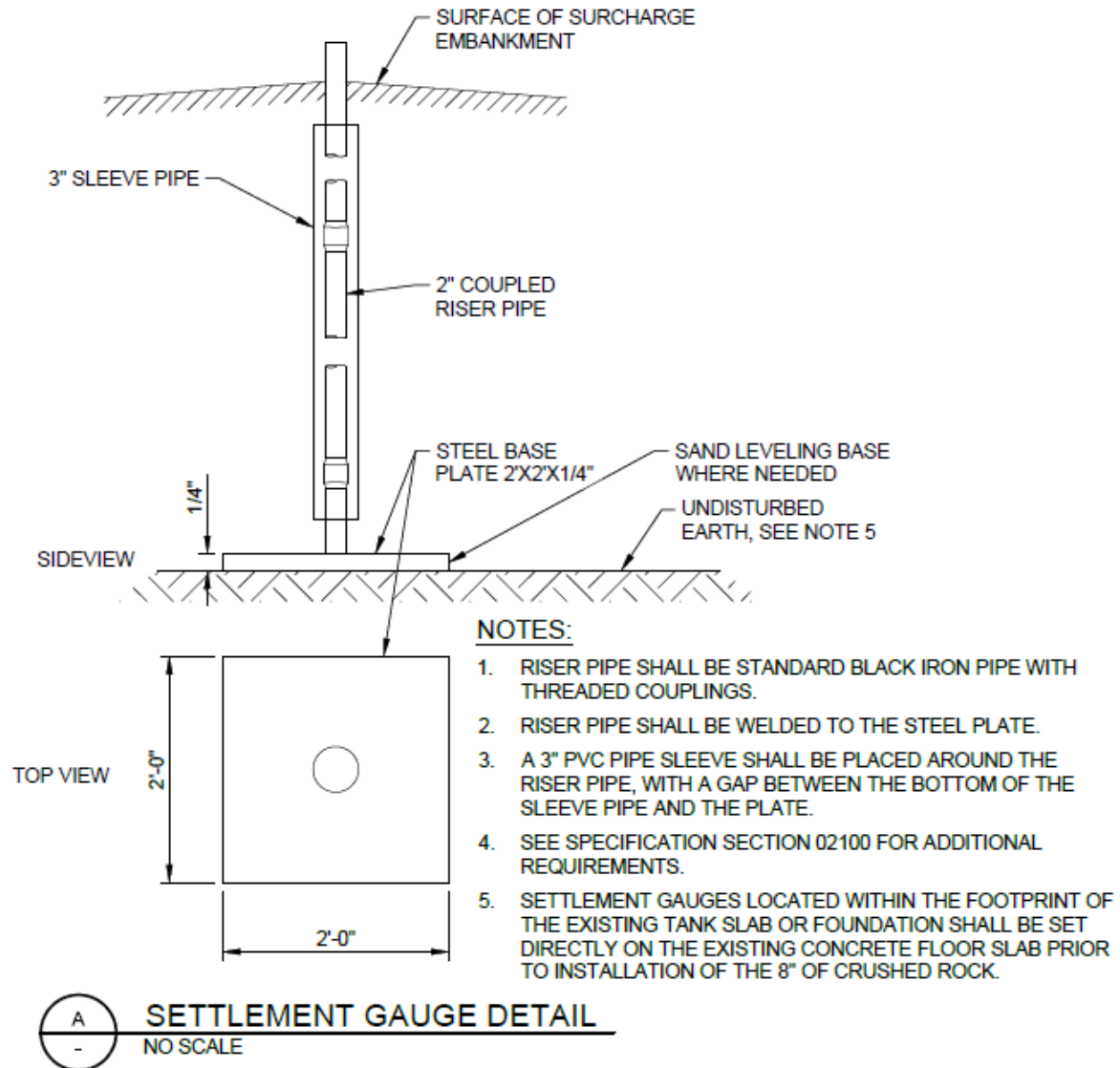
Bidder Questions and Answers by Project Team as of May 7, 2025.

- 1) On page C-1 in the upper left corner, there is a note that states the 12' asphalt road should be extended 860' north towards lagoon 3. Is there a drawing that shows this area that has existing and design contours? It will be difficult to provide an accurate takeoff not knowing what is there currently?
 - a. Your bid should reflect this quantity of 12'-wide pavement as indicated. The existing path is a gravel drive over which the asphalt will be laid.
- 2) Can you please confirm that the pre-bid meeting was mandatory.
 - a. The pre-bid meeting was listed as mandatory in the City's legal notification. However, with the recent removal of M/WBE goals, the City has waived the "mandatory" requirement of the pre-bid meeting.
- 3) Please confirm that the power in the PLC building is 3 phase 460 Volts to run the dewatering pumps. Can you confirm what amperage output? Is there a backup electrical source site?
 - a. Your electrical subcontractor is welcome to perform a site visit coordinated with plant staff to verify certain electrical parameters.
- 4) Will a rise in the ground water level that impacts basin construction be considered as a changed condition of the contract?
 - a. No. These contract documents do not include any measure of ground water levels. Contractor will use his or her best judgement and experience to adequately dewater the site for excavation.
- 5) Will the bid form unit rate be used to generate the change order value for dry sludge in excess of 39,300 tons and will contract time be extended to allow the processing of the additional material?
 - a. Article 9 of specification section 00710 covers changes in the work.
- 6) If the Landfill deems any materials to be disposed of offsite as not acceptable, will said material (including sludge) be handled through a change order?
 - a. This addendum will not authorize future change orders. For the purposes of this bid, assume that the sludge dry tonnage will be acceptable. Potential changes in the work will be considered on a case-by-case basis according to the provisions in the contract.
- 7) If applicable, please confirm that the owner is responsible and is the owner of any hazardous materials at the site and will direct the contractor on how to handle it through a change order process.
 - a. This addendum will not authorize future change orders. For the purposes of this bid, assume that the sludge dry tonnage is nonhazardous. Potential changes in the work will be considered on a case-by-case basis according to the provisions in the contract.
- 8) What are the odor control requirements and acceptance criteria for handling the sludge and how will said odors be measured?
 - a. This work is occurring at a wastewater treatment plant. Some odor is anticipated. Use your experience to anticipate "reasonable precautions". If the Contractor is controlling dust and processing sludge in a timely fashion, not much else can be expected. Mechanical odor control equipment will not be required.

- 9) Is the onsite sludge disposal area ready to receive the dry sludge without any modification?
 - a. Yes.
- 10) Who is responsible for the cost of water (in excess of 1mgd) and electric utilities (800AMP) that would be needed to dewater the sludge?
 - a. The Contractor will be responsible for water costs if run through an MLGW hydrant meter. If makeup water can be drawn from an existing lagoon, there will be no charge for this water.
 - b. The design team is checking with the Owner on the electrical question. This answer should be available with Addendum 08.
- 11) If applicable, who has design responsibility for the seismic certification requirements for the lagoon embankments, cover, ring wall, equipment, structures, and the supply sludge and gas pipe?
 - a. The plans and specifications are deemed adequate for applicable design requirements.
- 12) Please confirm the typical details and locations needed for settlement plate installations as required for the 60-day settlement period.
 - a. The locations are covered in specifications section 02200, paragraph 3.10.
 - b. A detail for the settlement gauges is included in this addendum as Attachment 2.
- 13) Please confirm that weather delay days will be considered excusable delays to the contract schedule.
 - a. Specifications section 00710 covers weather delays.
- 14) What testing is required for the perforated gas pipe?
 - a. Specifications section 02634, paragraph 3-3.02 stipulates that perforated gas collection piping under the floating covers is exempt from leakage testing.
- 15) What is the topsoil depth required and is there adequate existing topsoil on the jobsite that can be used?
 - a. Specifications section 02200, paragraph 3-6 covers topsoil placement. Bidders should determine what topsoil may be available from the site and prepare to import topsoil as necessary to satisfy the contract documents.
- 16) Section 13500-3-2 states that "System Supplier shall not be responsible for any configuration support tasks." Who is responsible for programming the PLC and checking the I/O points and what scope is included in the \$20,000 Emerson allowance?
 - a. Since Emerson will be a subcontractor on this work, responsibility falls on the Contractor. A revised specification section 13500 will be provided with Addendum 08 clarifying this point.
- 17) Please provide cut sections of the existing lagoon showing the existing lagoon slopes and bottom elevation.
 - a. Bidders have been provided with the existing and proposed contour objects in CAD shown on the Civil sheets. This should be adequate to cut cross sections.
- 18) The VOC test results will not be ready in time to inform our bid. Please explain how this will be addressed if the VOC test fails and the sludge cannot be disposed of on site.
 - a. Prepare your bid as if the sludge will be disposed onsite.
- 19) Please provide a list of the permits required along with the respective costs and number of calendar days the contractor should allow in the project schedule for obtaining all required permit approvals.

- a. Use your experience in this type of construction to determine this information. The design team will acquire TDEC permits for construction stormwater, ARAPs, and the modification to the treatment works.
- 20) Please confirm that the remedial design is based on all available site information, and any encountered variations from conditions assumed in the design will be considered changed conditions eligible for compensation, with no contractor liability if the constructed design fails to perform as intended.
 - a. This addendum will not authorize future change orders. Potential changes in the work will be considered on a case-by-case basis according to the provisions in the contract.
- 21) Will the excavated soils be considered suitable to build the new lagoon berms and contours?
 - a. The required soil types for the lagoon embankments are shown on the cross sections provided in the plans.
 - b. The bidders have been supplied with a soils reports for informational purposes, although this soils report is not part of the contract documents. This is all the information available on the availability of certain types of soil found near Lagoon 5.
- 22) Please confirm that the designated "General Location for Excess Soil and Residuals Disposal" area has enough capacity to store the excavated excess soils.
 - a. It is believed to be adequate.
- 23) When would the project likely start now given the extensions on the bid date?
 - a. Add three weeks to previous estimates.
- 24) Is the Horn Lake Cutoff a suitable discharge location for subsurface deep well dewatering?
 - a. Local existing drainage conveyances should be adequate for this purpose. Keep in mind that the Contractor will have a responsibility for erosion protection and sediment control over his or her site, including discharge points for dewatering operations. If this discharge requires a separate permit beyond the Construction General Permit, it will be the responsibility of the Contractor.
- 25) Could confirm with MLG&W the cost for renting the Meter and Backflow Preventor and the usage rates?
 - a. Contractor should contact MLGW for this information.
- 26) Does the Dewatering Submittal need to be stamped by a PE?
 - a. The adequacy of the dewatering system is considered means and methods and is the responsibility of the Contractor. The requirements of the dewatering system submittal are listed in the specifications section 02200.

End of Attachment 1, Addendum 7 for Maxson Lagoon 5 Renovations.



End of Attachment 2, Addendum 7 for Maxson Lagoon 5 Renovations.

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**T.E. Maxson Lagoon 5 Renovations (SW02011)
Thomas E. Maxson Wastewater Treatment Plant, 2671 Plant Road
Memphis, TN 38109**

PROJECT MANUAL

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SECTION 00010 - LEGAL NOTICE TO BIDDERS

Sealed bids will be received at the Office of the City of Memphis Purchasing Agent, Room 368, City Hall, 125 N. Main, Memphis, TN 38103, until **12:00 P.M (noon), local time, May 28, 2025**, for furnishing the City of Memphis with the following:

FOR THE DIVISION OF: **Public Works**

FOR THE CONSTRUCTION OF: **T.E. Maxson Lagoon 5 Renovations (SW02011)**

Plans, Specifications and attendant deposit information available from:

Black & Veatch
Attn: Jeffrey Old, PE
845 Crossover Lane, Suite 120
Memphis, TN 38117
(901) 495-2649
Email: oldjw@bv.com

A MANDATORY PRE-BID CONFERENCE WILL BE HELD ON April 9, 2025, AT 10:00a.m. AT T.E. Maxson WWTP Conference Room, 2671 Plant Road, Memphis, TN 38109 FOR THE PURPOSE OF DISCUSSING THE PROJECT. A SITE TOUR WILL FOLLOW.

All bids must include on the outside of the bid envelope, the name of the project, the bid due date and the bid opening time.

LICENSING DISCLOSURE REQUIREMENTS:

The classification for this Project shall be **MU**.

All bidders must be licensed contractors as required by Title 62, Chapter 6, of the Tennessee Code Annotated and must comply with the requirements of Tenn. Code Ann. 62-6-119.

In addition, the City of Memphis requires that the bidder's license number, license expiration date, and that part of the license classification that applies to the bid, appear on the outside of the envelope containing the bid. The bidder shall also include, on the outside of the bid envelope, the name, license number, license expiration date, and license classification of any subcontractor to be used by the bidder for electrical, plumbing, heating, ventilation & air conditioning work, and masonry provided that such classifications (i.e. electrical, plumbing, heating ventilation & air conditioning and masonry) are applicable to the project. In the event that such classifications are not applicable to the project, the bidder shall indicate same on the outside of the bid envelope, by designating the classification and the words "not applicable" or "NA".

The above licensing disclosure requirements shall not apply to any bid that is less than \$25,000. If any bid amount, whether for the total bid submitted by the bidder as general contractor or for a sub-bid for electrical, plumbing, and/or heating ventilation & air conditioning work, is less than \$25,000, or if the masonry bid amount is less than \$100,000, the licensing disclosure requirements set out above are not applicable. In lieu thereof the bidder must provide on the outside of the bid envelope, his name and address and/or the name and address of any such subcontractor whose sub-bid is less than \$25,000 (\$100,000 for masonry), along with the words "exempt from licensing requirement."

THE CITY OF MEMPHIS WILL NOT OPEN OR CONSIDER ANY BID WHICH DOES NOT COMPLY WITH THE ABOVE LICENSING DISCLOSURE REQUIREMENTS.

"CERTIFICATION BY EACH BIDDER MUST BE MADE WITH RESPECT TO NONDISCRIMINATION IN EMPLOYMENT."

"CERTIFICATION BY EACH BIDDER MUST BE MADE WITH RESPECT TO A DRUG FREE WORKPLACE."

A BID BOND IS REQUIRED IF THE BID AMOUNT EXCEEDS \$100,000.

Awards of contracts will be made on the basis of the lowest and best bids as determined by the City of Memphis. **"Lowest Bid" is defined as the total amount of the Base Bid plus any alternates the City elects to use. "Best Bid" shall be defined as the responsive quotation, that meets the intent of contract documents.**

Any claim of error in a bid must be filed in writing with the **Administrator of Environmental Construction, at 125 N. Main St., Suite 620, Memphis, TN 38103** by noon the next working day following bid opening if a contractor wishes to withdraw his bid without forfeiture of his bid bond.

Any protest of award must be filed in writing with the City Purchasing Agent within ten (10) calendar days of the intent of an award announcement. The Intent of Award announcement will be sent to all bidders by the City Purchasing Agent, after review of all opened bids.

By Order of the Mayor of the City of Memphis, Tennessee.

CITY PURCHASING AGENT

END OF SECTION 00010

SECTION 00100 - INSTRUCTIONS TO BIDDERS

1. PROJECT DESCRIPTION

Project consists of: The renovation of an existing lagoon, roughly 35 acres in surface area, into a three-celled lagoon with liners, covers, piping, gas collection system, electrical improvements, site work, erosion prevention and sediment control measures, controls and instrumentation, and other improvements.

2. BIDDING DOCUMENTS

For the mutual protection of the City, City's Consultant (hereafter "the Consultant"), and all subcontractors and material suppliers, partial sets of documents will not be issued. Therefore, all contractors intending to submit a bid shall obtain one (1) complete set of documents from the consultant or the consultant's designated plans provider for his bid to be accepted. This will also place the Contractor on the mailing list for possible addenda issuance.

Bidding documents are available per the instructions below:

a) Contractor Bidders:

One (1) complete set of bidding documents, drawings, and specifications in electronic format shall be obtained from Black & Veatch by emailing a request to Jeff Old, oldjw@bv.com with the subject line: "Maxson Lagoon 5 Bid Document Request". Each bidder must request the plans so that the bidder's company can be logged and receive all bid-related communication.

b) Subcontractors, material suppliers, and other interested parties desiring to acquire a Construction Bid Set:

Drawings and Specifications in electronic format may request plans in the same way described above.

c) Each bidder will receive a bid envelope from Black & Veatch. They will be available at the Pre-Bid Meeting and by direct request to Jeff Old at the email address above.

3. PLAN ROOM DISTRIBUTION: *(Note A/E team to check prior to bid set printing)*

Complete sets of contract documents are available for review at the following locations:

Builders Exchange Plan Room; 642 South Cooper Street; Memphis, TN; phone # 272-7495.

Memphis Area Minority Contractors Association, 480 Dr. M.L. King Jr. Avenue, Memphis, TN 38103, Phone: (901) 526-9300. (MAMCA_1@hotmail.com)

4. ADDENDA

The Consultant will forward one (1) copy of all addenda to holders of each set of documents. Request For Information (RFI's) will be accepted up to seven (7) days from bid opening. All such, addendums will become a part of the contract documents and subject to all conditions contained therein and must be listed on the Bid Form for the bid to be accepted. Note: no addendum shall be issued within seventy-two (72) hours prior to the date set for the opening of bids, unless said addendum delays the opening of said bids.

5. INTERPRETATION

Requests for interpretation should solely be addressed to the Consultant either by E-mail or in writing (E-mail is preferred). No oral interpretation will be made to any bidder as to meaning of drawings and specifications. Requests for interpretation will be accepted up to seven (7) calendar days prior to date set for opening of bids. All interpretations will be made in the form of an addendum and will be issued as promptly as practicable to all parties registered with the Consultant as having documents. Note: no addendum shall be issued inside of seventy-two (72) hours prior to the date set for the opening of bids, unless said addendum, delays the opening of said bids.

6. PREPARATION OF BIDS

Each bid must be submitted using the forms attached hereto, and must include in the Bid Envelope the following fully executed items:

- a) The written bid on the form provided by the City's Consultant; all spaces must be completed in ink or typewritten.
- b) Bid security in the form of a Bid Bond or certified check in the amount of 5% of the bidder's proposed bid if the bid amount exceeds \$100,000.
- c) City of Memphis Construction Contract Certificate of Nondiscrimination on the form provided.
- d) City of Memphis Construction Contract Certificate of a Drug Free Workplace on the form provided.
- e) Statement of Qualifications

7. BIDS

Bid Forms with attachments are incorporated herein. DO NOT REMOVE any bidding forms from the Project Manual. Prior to bid date, the Consultant will furnish a duplicate copy of bid forms to each bidder to be used in the submission of his/her bid as previously stipulated.

8. BID EXCLUSIONS/QUALIFICATIONS

Any bid that is qualified in any way or which contains any exclusions will automatically be classified as non-conforming and shall not be given consideration for contract award.

9. BID GUARANTEE REQUIREMENTS

Submit bid guarantee as a guarantee that:

- a) Bidder will not withdraw bid for one hundred twenty (120) days after opening of proposals without Owner's written consent.
- b) If bid is accepted, bidder will enter into formal contract with Owner, within ten (10) days after receipt of contract documents for execution.
- c) If bid is accepted, bidder will execute required Performance bond and will obtain required insurance coverage within ten (10) days after receipt of contract.
- d) Contract between Owner and Contractor will be submitted to the Contractor for signature, then returned to the Owner for signature. Performance Bond and all certificates of

insurance must be submitted by the Contractor at the same time as he returns the signed contract to the Owner.

For bid proposals which exceed \$100,000, a bidder's bond or certified or cashier's check made payable to the City of Memphis on a solvent bank will be provided in the amount of 5% of the bid. Said instrument to remain in effect and will be returned only after the contract has been fully executed and secured. Additionally, the successful bidder shall execute a performance bond in an amount equal to 100% of the contract sum as security for the faithful performance of the contract and for the payment of labor and material furnished and incorporated into the work. The only acceptable form of instrument for this bond is bound herein. Bond shall be furnished through an agent domiciled and legally authorized to do business in the State of Tennessee, and delivered to the Owner not later than ten (10) calendar days after the date shown on written notice from the City. The proposed surety company must be one acceptable to the City of Memphis.

Bidder shall be liable to the Owner for full amount of bid guarantee as representing damage to the Owner on account of default of bidder if:

- (a) Bid is withdrawn within one hundred twenty (120) days after receipt of bids without approval of Owner.
- (b) Bidder fails to enter into contract with Owner and execute required Performance Bond and provide required insurance coverage within ten (10) calendar days subsequent to notice of award of contract.

10. EXAMINATION OF SITE

Before submitting a bid, the bidder shall personally visit the site of proposed work and arrive at a clear understanding of the conditions under which the work is to be performed. No consideration will be allowed subsequently by reason of error or oversight on the part of the bidder or on account of interference by either the City or existing conditions. Neglecting any of the above requirements will not be acceptable as reason for delay in the work or for adjustments of the contract sum. Bidders must make an appointment with Noah McClellan at telephone # (901) 636-7123 to visit the project site.

11. FIELD MEASUREMENTS

The Contractor shall make his own measurements to verify square footage, dimensions and quantities to complete the project. The dimensions and areas indicated on the drawings are for reference only and are not to be construed as the actual dimensions and areas.

12. STATE OF TENNESSEE CONTRACTOR REQUIREMENTS

If bid is \$25,000 or over, bidders must be licensed contractors in the State of Tennessee as required by Title 62, Chapter 6, of the Tennessee Code Annotated. CLASSIFICATION FOR THIS PROJECT SHALL BE MU.

Additionally, the bidder shall include the name, license number, expiration date thereof, and license classification of the contractor applying to the bid for electrical, plumbing, heating/ventilation/air conditioning and masonry, on the outside of the envelope containing the bid; otherwise, the bid shall not be opened or considered. In the event the aforementioned classifications are not applicable to the project, the bidder shall indicate not applicable (NA) on the appropriate line.

13. SUBCONTRACTORS

No less than thirty percent (30%) of the total contract cost of the work shall be performed by the Contractor's own organization, thus limiting the total allowable amount of subletting to no more than seventy percent (70%) of the total contract cost of the work to be performed. All transactions, negotiations, and correspondence of the City shall be with the Contractor. The City will refer all matters regarding payments, changes, scheduling work progress, etc. of sub-contractors to the contractor. Sub-contractors shall be recognized only in the capacity of employees or work crews of the contractor and shall be subject to the same requirements as to character and competence. The Contractor shall not assign, transfer, convey, sell, or otherwise dispose of the whole or any part of the contract to any person, firm, or corporation without the written consent of the City. Subletting any part of the work to be done under the contract shall not, under any circumstances, relieve the Contractor of any liabilities or obligations. At pre-construction the contractor shall submit copies of executed sub-contracts to the City.

If the Contractor shall sublet any part of this contract, the Contractor shall be as fully responsible to the City for the acts or omissions of the subcontractor and of the persons either directly or indirectly employed by his subcontractor as he is for the acts and omissions of persons directly employed by himself. Within fourteen days (14) after bids are opened, the apparent low bidder and any other bidder so requested, shall submit a list of all subcontractors he expects to use in the work. An experience statement with pertinent information as to similar projects and other evidence of qualifications shall be furnished for each named subcontractor, as requested by the City. If the City, after due investigation, has reasonable objection to any proposed subcontractor, City may, before contract execution, request the apparent low bidder to submit an acceptable substitute without an increase in his bid. If the apparent low bidder declines to make any such substitution, he will not thereby sacrifice his bid security. Any subcontractor so listed and to whom the City does not make any written objection prior to contract execution will be deemed acceptable by City.

Contractor shall not be required to employ any subcontractor against whom he has reasonable objection.

The use of subcontractors listed by the bidder and accepted by the City prior to contract execution will be required in the performance of the work.

14. CONTINGENCY ALLOWANCE

Once bids have been received and a successful bid identified, the City may add a contingency allowance to the construction contract as part of the total contract amount. This contingency allowance is to be used for any possible construction change orders that occur during the life of the contract and shall be reflected as a separate line item on the schedule of values. Any unused portion of the allowance remaining at the completion of the contract shall revert back to the City as a credit.

While calculating bond and insurance costs for bid preparation purposes only, bidders should add 8% to their overall bid to accommodate the increase in the contract amount due to the possible inclusion of a contingency allowance by the City after bids have been taken.

15. PRE-BID CONFERENCE

A Pre-Bid Conference will be held on April 9, 2025, at 10:00AM local time at T.E. Maxson Wastewater Treatment Plant Conference Room, 2671 Plant Road Memphis, TN 38109. All parties interested in bidding on this project are hereby invited and urged to attend this meeting.

16. POST BID OBJECTIONS

No objections with regard to the application, meaning, or interpretation of these specifications will be considered after the opening of the subject bids.

17. RECEIPT AND OPENING OF BIDS

The City of Memphis (herein called the "City") invites bids on the forms attached hereto. All blanks must be appropriately filled in. Bids will be received by the City at the office of the City Purchasing Agent, Room 368, City Hall, 125 N. Main, Memphis, TN 38103, until 12:00 P.M. (noon) on May 28, 2025; and then opened and read during the City of Memphis Bid Session. Bid Sessions are now available on Teams for viewing. You can visit the City of Memphis Business website to obtain the link. Please see link below for access to attend the weekly Teams meeting. <https://www.memphistn.gov/business/>

Each bid shall be submitted in a sealed envelope, with the name, license number, expiration date thereof, and license classification of the contractors applying to bid for the prime contract and for the electrical, plumbing, heating, ventilation, and air conditioning contracts, appear on the outside of the envelope containing the bid. All bidders are requested but not required to use the "City of Memphis Bid Envelope" with all applicable information filled out on the outside of the envelope including:

- a) Name of Project:
- b) Contractor's Name:
- c) Contractor's Address:
- d) Contractor's License Number, expiration date, and that part of the classification applying to the bid. This information shall also be provided for the contractor applying to the bid for electrical, plumbing, heating/ventilation/air conditioning, and masonry work.
- e) The above due date, and bid opening time:

If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed to City Purchasing Agent; Room 368, City Hall; 125 N. Main; Memphis, TN 38103.

Any bid may be withdrawn prior to the above scheduled time for opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be opened. Bidders must comply with all applicable licensing requirements.

The City of Memphis reserves the right to reject any and all bids and to waive any informality in bidding.

THE CITY OF MEMPHIS RESERVES THE RIGHT TO DELAY AWARD OF THIS CONTRACT FOR A PERIOD OF UP TO ONE HUNDRED TWENTY (120) DAYS AFTER RECEIPT OF BIDS.

18. TIME OF COMPLETION

The work shall begin immediately upon date indicated on the Notice-to-Proceed and shall be completed in accordance with the following schedule:

Work shall be completed within Seven Hundred and Seventy (770) Calendar Days.

All time noted above is based upon consecutive calendar days (and the time allowed for each bid item is intended to be concurrent with the other bid items). Upon acceptance of this contract, the contractor agrees to pay the City of Memphis the sum of **(\$1,500.00)** per day for liquidated damages for every calendar day that the work remains incomplete beyond the specified **770 days** from date of Notice-to-Proceed. Additionally, the Contractor agrees to pay the City of Memphis **(\$1,500.00)** per day for liquidated damages for each calendar day. The punchlist work and submission of all close-out documents remains incomplete beyond thirty (30) days from date of Substantial Completion.

Contract time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor if proper notice is provided and per the guidelines of Section 00710 Article 3 of the contract specifications. Such delays shall include, but not be limited to, acts or neglect by the Owner or others performing additional work as contemplated by Section 00710 Article 17 of the contract specifications, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

19. NONDISCRIMINATION

All entities contracting with the City agree to abide by and to take affirmative action when necessary to ensure compliance with the nondiscrimination clauses set out below, and agree to show proof of non-discrimination upon request and to post in conspicuous places available to all associate agents and their employees. In the event of non-compliance with city nondiscrimination clauses, or with provisions of Executive Orders 11141 (age), 11246, 11375 (women), 12086 (Viet Nam veterans), 110478 (federal employees), 11625 (minority business) 11701 (veterans), Title 41, Chapter 60 (handicapped) and specifically the handicapped affirmative action clause in Section 60-741.6.9 of OFCCP Rules, and any and all other federal laws prohibiting discrimination, contracts may be canceled, terminated, or suspended in whole or in part by the City of Memphis.

The bidder shall execute the specified City of Memphis Certificate agreeing that, if awarded the contract, he/she shall not discriminate against any subcontractor, employee, or applicant for employment on the grounds of race, color, national origin or sex, in accordance with the citations listed in the above paragraph; and shall require the execution of such a certificate for each subcontractor prior to award of any subcontract with the further requirement that each subcontractor shall include identical requirements in any lower tier subcontracts which might in turn be made. **FAILURE TO EXECUTE AND SUBMIT SUCH CERTIFICATE WITH THE BID SHALL CAUSE THE BID TO BE REJECTED AS NON-CONFORMING.**

The successful bidder and all subcontractors under the general contract shall maintain copies of their payrolls and all subcontracts for each weekly payroll period for the life of the construction and for a period of **FIVE YEARS** after final release and payment is made by the City to the contractor.

20. PREVAILING WAGE ORDINANCE

It is the policy of the City of Memphis that a responsible bidder awarded a contract by the City of Memphis that falls within the guidelines of the current City of Memphis Prevailing Wage Ordinance must comply with the most current Prevailing Wage Rates (as determined by the

U.S. Department of Labor) for corresponding classes of laborers and mechanics employed on similar projects in the area **on the date the legal notice is published**. Any firm, individual, partnership or corporation that is awarded a contract by the City of Memphis for the construction, improvement, enlargement, alteration or replacement of a City of Memphis public work or project in excess of **\$50,000** shall be required by the City of Memphis to pay local Prevailing Wages for laborers, workers, mechanics or others, as listed by the Tennessee Department of Labor, Classification of Workers, established for Region 1, at the time the project is bid and continue until the completion of such project. **Furthermore, the entity awarded the contract will classify its employees according to the State of Tennessee, Department of Labor and Workforce Development, Classification of Workers, and if applicable, adhere to the guidelines for apprentice and apprenticeship programs.** Toward achieving that objective, the Prevailing Wage Program is hereby established and requires each bidder to abide by the following:

a). CONTRACTOR/SUBCONTRACTOR RESPONSIBILITIES

Every contractor and all subcontractors **must**:

1. Classify all workers in conformity with the wage rate as determined by the U.S. Department of Labor. Refer to <https://sam.gov> for the most current classifications and wage rate determinations.
2. Post and keep posted in a conspicuous place at the site of the construction work a copy of the Prevailing Wage Rates and make these rates available to all covered workers employed on the project at all reasonable times. Fringe benefits, when listed by the U.S. Department of Labor, **are** included in City Prevailing Wage Rates and must be paid to laborers/mechanics on City-funded projects.
3. Pay overtime compensation of one and one-half times the basic rate of pay for all hours worked over 40 per week as required by any applicable federal or state laws, rules or regulations.
4. Make only those deductions from wages authorized by law. Indicate the amount of FICA, Withholding Tax and if applicable "Other" when a voluntary deduction is withheld. A voluntary deduction must be authorized in writing and signed by the employee. A short note from the employee is all that is needed and should accompany the first payroll that identifies the deduction.
5. Keep contracts for the construction, demolition, improvement, enlargement, alteration or replacement of a City of Memphis public work or project as a single contract, and **not** deliberately divide it into multiple contracts for the sole purpose of circumventing the Prevailing Wage Ordinance.
6. **Notify the Prevailing Wage Office at the address set forth below of the contract(s) contractor and/or subcontractors have been awarded, and list subcontractors expected to be used. Award recipients shall submit expected classifications of laborers/mechanics to ensure all worker classifications have prevailing wages listed.** If classifications are not listed, the Prevailing Wage Office will determine the wages to be used for such classifications.
7. Submit payroll reports on a **weekly** basis to the Prevailing Wage Office utilizing the LCPTracker certified payroll reporting software. Each weekly certified payroll report must be submitted by the award recipient within **7 DAYS** after the regular payment date period. It is the responsibility of the award recipient to review **ALL**

payroll reports for proper compliance prior to submitting such reports to the Prevailing Wage Office. The award recipient is responsible for the full compliance of all subcontractors and will be held accountable for any payroll reporting and wage restitution. The contractor and subcontractor must complete a Statement of Compliance which states that the certified payrolls are correct and complete, and that the wage rates paid to the workers during the reporting period equal or exceed the Prevailing Wage Rates included in the construction contract, and that the classifications used conform with the work the employee performs. The primary contractor is responsible for submitting all certified payrolls including those of the subcontractor(s) used through the life of the construction project.

b) PAYMENTS TO COVERED WORKERS

1. CLASSIFICATION OF COVERED WORKERS

All contractors and subcontractors must classify covered workers in the contract and payroll records, in conformity with the schedule of classifications appearing in the “City of Memphis Prevailing Wage Rates with Fringe Benefits” which are bound herein. The contractor and subcontractors must pay each worker at least the minimum Prevailing Wage rate for that classification regardless of their level of skill. The only workers who can be paid less than the rate for their craft are apprentice and trainees who are registered in an approved Bureau of Apprenticeship Training (BAT) program. For an employee with split classifications, list the employee once for each classification, distribute the hours of work accordingly and list the rate of pay and gross earnings for each classification.

2. INSPECTION OF RECORDS

The contractor and subcontractor(s) will make their employment records available for inspection by representatives of the contracting agency, the Prevailing Wage Commission, and the Tennessee Department of Labor, and will permit such representatives to visit construction projects at all reasonable times.

3. RESTITUTION FOR UNDERPAYMENT OF WAGES

Where underpayment of wages has occurred, the employer will be required to pay wage restitution to the affected employee. Wage restitution must be paid promptly in the full amount due, less the permissible and authorized deductions. Wage restitution is the difference between the hourly wage paid to the employee and the Prevailing Wage Rate required, as stated on the Prevailing Wage Rates schedule, for all hours worked in which underpayment occurred. The difference in the wage rate is called the “Adjustment Rate.” The Adjustment Rate multiplied by the number of hours worked equals the gross amount of restitution due the employee.

4. BOND FOR COMPLIANCE

The bond of the contractor or subcontractor shall contain a provision obligating such contractor or subcontractor to a faithful performance of each requirement imposed upon such contractor or subcontractor under the terms of the contract.

5. VIOLATIONS, PENALTIES, SANCTIONS

A contractor who knowingly or willfully fails to comply with the provisions of the Prevailing Wage Ordinance as determined by the Prevailing Wage Commission

shall be fined not less than the maximum amount allowable under Tennessee Code Annotated § 6-54-306, as amended, for each violation. Any contractor who is found to have knowingly or willingly committed two (2) violations of the Prevailing Wage Ordinance in any twenty-four (24)- month period shall be prohibited from being awarded a contract by the City of Memphis for a period of twenty-four (24) months from adjudication of the second violation.

c) **SUBCONTRACTS**

The contractor shall insert in all subcontracts the clause set forth in (b) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

d) **CITY OF MEMPHIS PREVAILING WAGE OFFICE**

City of Memphis
Prevailing Wage Office
125 N. Main St.
Memphis, TN 38103
(901) 636-6311
prevailingwage@memphistn.gov

END OF SECTION 00100

PUBLIC WORKS VERSION 2011B SECTION 00510 – Change 3 (04/25/2025)**SECTION 00510 - CONSTRUCTION CONTRACT**

Contract For: **T.E. Maxson Lagoon 5 Renovations (SW02011)**

This Agreement made and entered into as of this ____ day of ____, 20____ by and between _____(hereafter “Contractor”), and the City of Memphis, a Municipal Corporation organized under the laws of the State of Tennessee (hereafter “City”).

Whereas City published a legal Notice to Bidders pursuant to the **T.E. Maxson Lagoon 5 Renovations** and issued drawings and specifications for the construction and performance of specified incidental work; and

Whereas Contractor submitted a proposal dated _____, in accordance with such Notice to Bidders, drawings and specifications; and such proposal was accepted by City as the lowest and best bid;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

Contractor hereby agrees to construct the project in accordance with the drawings and specifications bid upon and provided hereto, and in accordance with all other documents incorporated herein as set forth in this Section, at the stipulated sum price of _____ (\$_____)

Contractor shall promptly begin construction on the date specified hereafter in the written Notice to Proceed provided by City’s Consultant, and shall fully complete all work within **770** calendar days.

Should Contractor fail to complete all work within **770** days, Contractor shall pay City **\$1,500.00** per day as liquidated damages for each calendar day required for the completion of the contract beyond the time stipulated. Additionally, Contractor shall pay City **\$1,500.00** per day as liquidated damages for each calendar day that all punchlist work and submission of all close-out documents remain incomplete beyond thirty (30) days from the date of substantial completion.

A. Contractor agrees to execute a Performance Bond in an amount equal to 100% of the contract sum with Surety to be approved by the Mayor and City Attorney, or their designated representatives, as security for full and faithful performance of the contract and for the payment of labor and material furnished.

B. City reserves the right to require that Contractor provide an additional bond or bonds in such form and amount, and with such surety or sureties as approved by City, should City determine that the surety or sureties provided by Contractor to be insufficient to cover the performance of Contractor’s work. In such event, no further payment shall be due Contractor until such new or additional bonds shall be provided in the manner and form satisfactory to City. This Contract shall not take effect until such Bond has been executed and approved.

C. Contractor agrees to maintain the different types of insurance deemed appropriate by City as expressly set forth in the Contract Specifications with insurance companies acceptable to City at Contractor’s sole cost and expense, and shall provide evidence of such insurance to City contemporaneous with the commencement of this Agreement.

PUBLIC WORKS VERSION 2011B SECTION 00510 – Change 3 (04/25/2025)

Upon completion of all work to be performed under this Agreement, Contractor shall provide a written statement of all work performed. Any outstanding balance owed by City shall be paid to Contractor or Contractor's successors or assigns out of the funds designated by City for this project, excepting therefrom any sum to be lawfully retained under the terms of this Agreement, and all such funds as may be due the City,

The Mayor or his designated representative shall have the right to suspend the work provided for herein due to any default by Contractor, and such suspension shall not affect the right of the City to any damages for such breach.

The Mayor or his designated representative reserves the right to discharge the Contractor for breach of any provision of this Contract, and such discharge shall not affect the right of the City against Sureties on the bond provided.

It is agreed an enumeration of drawings, specifications and addenda which form a part of this Contract, as set forth in Article 2 of the General Conditions, "Contract Documents", is as follows:

Project Manual dated **March, 2025**

Legal Notice to Bidders

Instructions to Bidders

Bid Form

Bid Bond

City of Memphis Construction Contractor's Certificate of Nondiscrimination

City of Memphis Construction Contractor's Certificate of a Drug Free Workplace

Construction Contract

Escrow Agreement

Performance Bond

Partial Release of Liens for Subcontractors

Final Release of Liens for Subcontractors

Final Release of Liens for General Contractors

General Conditions of the Contract for Construction

Drawings as listed in Index of Drawings, Section 00850

Addenda Issued

PUBLIC WORKS VERSION 2011B SECTION 00510 – Change 3 (04/25/2025)

Witness the signatures of the parties hereto, by their duly authorized officers, on the day and year first written.

CONTRACTOR

Contractor's Company Name

Corporate Secretary - Signature

Signature

Printed or Typed Name

Printed or Typed Name and Title

CITY OF MEMPHIS

Owner

APPROVED AS TO LEGAL FORM

APPROVED

City Attorney

Director of Public Works

Mayor

ATTESTED:

Deputy Comptroller

END OF SECTION 00510

SECTION 00710 - GENERAL CONDITIONS OF THE CONTRACT

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GENERAL CONDITIONS OF THE CONTRACT

ARTICLE 1 - SCOPE OF THE WORK

Section 1.1 Scope of the Work

- A. The Project consists of the renovation of an existing lagoon, roughly 35 acres in surface area, into a three-celled lagoon with liners, covers, piping, gas collection system, electrical improvements, site work, erosion prevention and sediment control measures, controls and instrumentation, and other improvements.

Please see Section 00850 for additional information

ARTICLE 2 - CONTRACT DOCUMENTS

Section 2.1 Definition

- A. The Contract Documents include the General Conditions of the Contract, the Construction Contract, the Drawings and Specifications, all Addenda, all Exhibits or modifications to any of them, issued prior to or after execution of the Construction Contract, as well as each document as set forth in Section 00510-2 of the Agreement attached hereto. As used in this Agreement, a “modification” is either:
 - 1. A written and signed amendment to the Agreement;
 - 2. A Change Order or Construction Change Order (as defined in this Agreement);
 - 3. A written interpretation issued by the Owner;
 - 4. A Construction Change Directive issued by the Owner.

Section 2.2 Intent of Contract Documents

- A. The intent of the Contract Documents is to include all materials, appliances, labor and services of every kind necessary for the proper execution of the Work. The Contract Documents are to be considered as one document, and whatever is called for by any one of the documents shall be as binding as if called for by all.

Section 2.3 Errors in Contract Documents

- A. If the Contractor finds any error, inconsistency, omission, discrepancy or variance with any applicable laws in any respect in the Contract Documents, it shall notify the Owner in writing of any errors discovered within five working (5) calendar days of such discovery and before beginning the affected portion of the Work. The Owner will make any correction, interpretation or clarification promptly, basing its decision on the intent of the Contract Documents. Failure of the Contractor to timely notify the Owner of any such error or inconsistency within the time provided by this paragraph shall bar the Contractor from making any claim for additional time or compensation caused by any such error or inconsistency even if the error or inconsistency caused the Contractor to incur additional expense or time of performance.

Section 2.4 Copies of Contract Documents

- A. The Owner shall furnish to the Contractor up to five (5) copies of the Contract. Additional copies will be furnished, upon request, at the cost of reproduction.

Section 2.5 Reuse of Contract Documents

- A. Neither the Contractor nor any Subcontractor or Supplier or other person or organization

Performing or furnishing any of the Work under a direct or indirect contract with the Owner shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of Owner/Engineer; and they shall not reuse any of them on extensions of the Project or any other project without written consent of the Owner and specific written verification or adaptation by the Owner.

ARTICLE 3 - PROGRESS OF THE WORK

Section 3.1 Commencement and Completion

- A. The Contractor shall commence the Work within ten (10) calendar days following receipt of a written Notice to Proceed from the Owner and shall substantially complete the work per Section 00510, the "Construction Contract". The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor warrants that it will deliver the Project to the Owner free from any and all liens or other encumbrances. Contractor further agrees to promptly (which is defined for purposes of this paragraph as no more than three calendar days from receipt of any lien or other notice) notify the Owner of the existence of any and all liens filed by any subcontractors, materialmen, suppliers or sub-contractors. Time is of the essence, and the Substantial Completion Date may be altered only as provided in this Agreement. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work. For purposes of this Agreement, Substantial Completion shall occur when the Project has been constructed to the point that only minor, or punch list items remain to be performed and the Work can be occupied by the Owner and used for the purpose for which it was intended ("Substantial Completion"). Owner will, upon request of the Contractor, issue a certificate establishing the Substantial Completion Date at any time after Substantial Completion has occurred.

Section 3.2 The Progress Schedule

- A. Prior to commencement of on-site construction activities and in any event within seven (7) calendar days from the receipt of the Notice to Proceed from Owner, Contractor shall submit to the Owner a preliminary progress schedule in the form of either a bar chart or Critical Path Method (CPM) schedule. Said preliminary progress schedule will be consistent with the information set forth in the bidding documents concerning the Substantial Completion Dates, the sequencing of activities and shall include, but not be limited to, the durations for all major items of work to be performed; the start and finish date of all such activities; and the Substantial Completion Date of the Project as set out in this Agreement. Within thirty (30) calendar days from the submission of the preliminary progress schedule, the Contractor shall submit to the Owner for approval, a more detailed progress schedule, which shall be either a bar chart or Critical Path Method (CPM) schedule depicting all activities which will occur on the Project; the duration of such activities; the start and finish dates of such activities; the final and Substantial Completion Date; and the inter-dependence of all such activities. The Contractor shall submit to the Owner updated progress schedules each month to reflect actual progress made and to forecast future progress of the Work. The Owner reserves the right to reasonably reschedule the Work or the sequence of the activities of the Contractor for no additional compensation should it deem such rescheduling to be in its best interest. Float is defined as the amount of time between the early start date and the late start date for any of the activities depicted on the CPM Progress Schedule. Float is not for the exclusive use or

benefit of either the Owner or the Contractor. Ownership of the float is vested in the Project rather than the Owner or the Contractor.

Section 3.3 Extension of Substantial or Final Completion Date

- A. Time is of the essence and an extension of the Substantial Completion Date or Final Completion Dates (which are defined in Sections 3.1A and 4.6B respectively of this Agreement) will only occur as permitted in this Section 3.3. Contractor may receive an extension of the Substantial or Final Completion Date equal to the duration of any delay that occurs by reason of any of the following (an "Excusable Delay"):
- 1) A written request from the Owner to the Contractor for extra Work or change in the Work pursuant to Section 9.2 of this Agreement;
 - 2) Unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities similar to the Work;
 - 3) An order of a court of competent jurisdiction suspending the Work;
 - 4) Abnormal inclement weather as defined in Section 3.3D; or
 - 5) A natural catastrophe, such as a flood or earthquake.
- B. Local strikes, lock outs, the non-availability of labor, materials, inclement weather, the Owner's right to suspend work, or delays caused or attributable to the negligence or fault of the Contractor or its Subcontractors will not constitute the basis for an Excusable Delay justifying an extension of the Substantial or Final Completion Date. No extension to the Substantial or Final Completion Date shall be granted for the period of time during a delay in the performance of the Work which is caused in part by the Owner or the Architect and in part by the Contractor or one for whom the Contractor is responsible ("Concurrent Delays").
- C. In order to obtain an extension of the Substantial or the Final Completion Date due to an Excusable Delay, the Contractor in each instance shall give written notice to the Owner within five (5) calendar days after the discovery of the occurrence of each Excusable Delay, which shall also include the Contractor's anticipated schedule impact on the CPM progress schedule, the Substantial and the Final Completion Dates. Upon the failure of the Contractor to do so, it's right, if any, to an extension will be considered waived. The term "discovery of the occurrence," for purposes of this paragraph, means when a competent Construction Manager discovered or should have discovered such occurrence. The Owner shall render a written decision which shall be made in good faith and shall be conclusive upon the parties granting or refusing the request of the Contractor for an extension, within thirty (30) calendar days after receipt of the request for a time extension of the Substantial and/or Final Completion Date. The Owner may in its sole and absolute discretion deny the Contractor's request for an extension of the Substantial or Final Completion Date for an Excusable Delay that only affects portions of the Work not found on the CPM progress schedule. Notwithstanding the Owner granting the Contractor's claim for an extension of time for an Excusable Delay, the Contractor must take reasonable steps to limit the duration of the Excusable Delay giving rise to the claim. The Owner's granting of the Contractor's claim for an extension of time caused by an Excusable Delay will not impair any right to terminate this Agreement or to exercise any other remedy which the Owner has elsewhere in this Agreement or the Contract Documents.

Section 3.4 No Damage for Delay

- A. Contractor agrees to prosecute the Work and to require the subcontractors to prosecute the Work in a timely and proper method so as to meet the dates reflected on the progress schedule, including the Substantial and Final Completion Dates. In the event that the Contractor is delayed in the prosecution of the Work through no fault of the Contractor or its subcontractors, and for causes as set forth in Paragraph 3.3A(3) through (5) of this

Agreement, and defined therein as Excusable Delay, then the Contractor may seek a time extension in accordance with the provisions of Paragraph 3.3C. Except as otherwise provided in Section 3.4B below, Contractor agrees that such time extension is the sole and exclusive remedy for any damages, delays, disruptions and/or interferences caused by or attributable to such Excusable Delays. Contractor also agrees that the Owner shall not be liable for any monetary damages, including but not limited to, home office overhead, sustained by Contractor for acceleration, disruption, suspension of the work or any other damages related to the progress schedule. In no event shall Owner be liable to Contractor for any consequential or incidental damages arising out of or relating in any manner to the Project, the Work, and/or the Contract Documents, including but not limited to, damages incurred by Contractor for rental expenses, lost profit, overhead, income, financing, business and reputation, loss of management or employee productivity or of the services of such persons, or damages incurred by the Contractor for principal offices expenses including the compensation of personnel stationed there. .

- B. Limited Circumstances Permitting Increase in the Lump Sum Price. If an Excusable Delay of the nature described in Section 3.3A(1) or (2) occurs, the Contractor may receive, in addition to an extension of the Substantial or Final Completion Date, a reasonable adjustment in the Lump Sum Price to reflect the actual costs, if any, that the Contractor and its Subcontractors incur due to such Excusable Delays. In order to obtain an adjustment for an Excusable Delay set forth in Section 3.3A(1) or (2), the Contractor must promptly and fully comply with all Change Order and Change Directive procedures set forth in Section 9.2 hereinbelow. If the Contractor fails to make a claim for an adjustment in the Lump Sum Price in accordance with Section 9.2, the Contractor waives its right, if any, to an adjustment in the Lump Sum Price by virtue of the occurrence of an Excusable Delay pursuant to Section 3.3A(1) or (2).

Section 3.5 Liquidated Damage

- A. In order to compensate the Owner for failing to achieve the Substantial Completion Date or Final Completion Date, as such date has been adjusted for Excusable Delays as defined herein, the Contractor shall pay to the Owner as liquidated damages and not as a penalty the following amounts:
1. The Contractor agrees to pay the City of Memphis the sum of (~~\$1,500.00~~) per day for every calendar day the work remains incomplete until Substantial Completion is achieved.
 2. The Contractor agrees to pay the City of Memphis the sum of (~~\$1,500.00~~) per day for each calendar day the punchlist work and submission of all close-out documents remains incomplete beyond thirty (30) calendar days from date of Substantial Completion.
- B. The Contractor agrees that any assessment by the Owner of liquidated damages or payment by the Contractor to the Owner of liquidated damages is to compensate the Owner only for the damages arising out of the Contractor 's delay in achieving the Substantial or Final Completion Date, and is not a release of any of the Owner's other rights, claims or damages against the Contractor, including claims of the Owner for defective or improper workmanship of the Contractor.

ARTICLE 4 - PAYMENT

Section 4.1 Payment Procedure

- A. Progress payments shall be made by the Owner to the Contractor in accordance with the following procedure:

1. a. Within ten (10) calendar days from the Notice to Proceed, the Contractor shall send the Consultant the completed schedule of values contained in the bidding document for approval by the Consultant.

b. At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Consultant an itemized and notarized Application and Certificate for Payment, based on the Work completed during the current month, using AIA Document G702. Contractor shall not be paid any amounts exceeding the Lump Sum Price as set forth in the construction contract, Section 00510, unless modified by a properly executed written Change Order or Change Order Directive in accordance with the Provisions of Article 9 of this Agreement.
2. Each Application and Certificate for Payment, at the Owner's request, shall be accompanied by:
 - a. Payroll information.
 - b. Affidavit from each certified sub-contractor indicating they have been paid what is due them through the previous applications for payment utilizing the forms found in section 00640 or section 00641 as appropriate.
 - c. An approved updated progress schedule as required in Section 3.2.
 - d. Updated schedule of submittals/submittal status log per Section 15.6.
 - e. Other documentation may be requested by the Owner for his proper review of the Application and Certificate for Payment.
3. The Owner shall promptly review each Application and Certificate for Payment and approve it for such amount as is properly due under the Contract Documents.
4. Payments by the Owner shall be made within thirty (30) calendar days after receipt of such Application by the Owner, subject to the Owner's right to withhold payments pursuant to Article 7, Section 7.7.

Section 4.2 Retainage

- A. In making progress payments pursuant to Section 4.1, the Owner may retain five percent (5%) of the approved amount of any Application and Certificate for Payment. Such retained amounts shall not be due and payable to the Contractor until Final Completion of the Work by the Contractor and Final Acceptance, as defined in Section 4.6 of this Agreement, of the Work by the Owner. Periodic reductions in the amount of retainage will be permitted by the Owner if deemed appropriate to the state of contract completion. The contractor may retain from each sub-contractor a percentage no greater than that retained by the Owner.
- B. For Contract values of \$500,000 or greater, the retained funds must be deposited in a separate interest bearing escrow account with a third party providing proper security for the performance of the obligation of the Owner or the Contractor pursuant to T.C.A. 66-34-101 et seq. The Contractor must submit the signed document contained in Section 00520 "Escrow Agreement" at the time he submits his signed contract to the City. If the Contractor fails to submit the document at the time of contract submission to the City, the City will not execute a construction contract with the Contractor.
- C. By signing this Agreement, the Contractor expressly waives (herein referred to as a "Waiver") all liens, claims, rights, encumbrances, security interests, any other benefit of, and all rights that might arise pursuant to T.C.A.' 66-11-101 et. seq. or any other Tennessee statute (herein referred to as a "Lien"). As a condition precedent to subcontracting any portion of the Work, the Contractor shall first obtain a similar universal Waiver of Lien in

writing from each Subcontractor, Sub-subcontractor, materialman, supplier, lessor, vendor performing services or providing materials or labor in connection with the Work and any other person that could qualify for a Lien, claim, right or other security interest under Tennessee law.

Section 4.3 Payment for Material Stored On-Site

- A. Payment for the actual unit cost of materials suitably stored on the site of the Work and intended for incorporation in the Work will be made by the Owner to the Contractor upon storage subject to the provisions of Sections 4.1 and 4.2 and the following conditions:
 - 1. The Contractor shall furnish supporting evidence satisfactory to the Owner evidencing the cost of the materials and shipment to the site of the Work;
 - 2. The materials shall not be stored on the site of the Work for more than forty-five (45) calendar days before they are installed in place, without the written consent of Owner;
 - 3. The materials shall be stored on-site in accordance with applicable recommendations of the manufacturer and the instructions of the Owner;
 - 4. All materials delivered to the site of the Work shall be stored and handled so as to preclude inclusion of any foreign substances and to prevent any discoloration or damage which might reduce the effectiveness of the materials as part of the Work.
 - 5. Payment for stored materials will be subject to retainage as defined in Section 4.2;
 - 6. The representative of the Owner may inspect and inventory any stored materials;
 - 7. No payment will be made for stored material unless such material is specially manufactured for the Project. For example, no payment will be made for material that is commercially available such as conduit, sheetrock, piping, etc.
- B. Payment will not be made for materials stored off the site of the Work without the written consent of Owner. In the event that the Owner consents to payment for materials stored off site, such payment shall be conditioned upon submission by the Contractor of bills of sale or such other documentation satisfactory to the Owner to establish the title of the Owner to such materials or equipment, and the submission of satisfactory insurance certificates for the stored materials.

Section 4.4 Use of Payments

- A. The Contractor shall use all sums paid to it pursuant to this Agreement for the performance of the Work in accordance with the Contract Documents and Article 8 of this agreement. Upon the request of the Owner, the Contractor shall furnish satisfactory proof, including but not limited to partial releases of liens utilizing the form found in section 00640 of the contract documents, as to the disposition of any monies paid to the Contractor by the Owner; provided, however, no provision of this agreement shall be construed to require the Owner to be in any way responsible for the proper disposition or application of the monies paid to the Contractor.

Section 4.5 Payment Not a Waiver

- A. Neither the approval or making of any payment to the Contractor, nor the partial or entire use or occupancy of the Work by the Owner shall be an acceptance of any portion of Work.

Section 4.6 Final Payment, Final Acceptance, and Final Completion

- A. Final Payment by the Owner shall constitute a waiver of all claims by the Owner for performance of the Work except for claims of the Owner arising from unsettled liens, incomplete or defective workmanship, defective materials, failure to perform in accordance with the progress schedule, or for the breach of any guarantees of warranties provided by the Contractor under this Agreement. Acceptance of the Final Payment by the Contractor shall constitute a waiver and release of any and all claims which the Contractor may have then or in the future have against the Owner arising from the Work or this Agreement.
- B. Final Completion of the Work shall occur only after all Work (including punch list items) provided for in the Contract Documents has been finally completed ("Final Completion"). Final Acceptance of the Work shall occur when all Work has been accepted in writing by the Owner, and the Contractor has provided the Owner with instructions and operating manuals, parts lists, modified construction documents approved by the Architect are suitable for preparing final "as-built" drawings, final release of liens by all subcontractors utilizing the form found in section 00641 of the Contract Documents, final release of liens from the Contractor utilizing the form found in section 00642 of the Contract Documents, and the Contractor has complied with all other items required by the Contract Documents and this Agreement ("Final Acceptance").
- C. Neither the Final Payment nor the remaining retainage shall become due until the Contractor submits to the Owner the following:
 - 1. An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied;
 - 2. A consent of surety to Final Payment; and
 - 3. Other data establishing payment or satisfaction of all such obligations, such as receipts, final release of liens by all subcontractors utilizing the form found in section 00641 of the contract documents and final release of liens from the General Contractor utilizing the form found in section 00642 of the contract documents.
- D. If any subcontractor, sub-subcontractor, laborer, vendor or materialman refuses to furnish a release or waiver required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to indemnify it against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees incurred by Owner.
- E. The Owner shall issue a Certificate of Final Completion when, the Project has been completed and all conditions required by Paragraph 4.6 have been complied with by Contractor.

Section 4.7 The Right of Owner to Withhold Payment

- A. The Owner may withhold or, on account of subsequent discovered evidence, nullify the whole or part of any payment, including Final Payment, and withhold retainage, to such extent as may be necessary to reasonably protect itself from any of the following:
 - 1. Defective work; or

2. Third-party claims filed or reasonable evidence indicating probable filing of such claims; or
3. Reasonable doubt that the Work will be substantially completed by the Substantial Completion Dates; or
4. Failure of the Contractor to make payments to subcontractors or for equipment, materials or labor; or
5. Evidence of fraud, over-billing or overpayment; or
6. Failure of the Contractor to prosecute the Work in accordance with the Contract Documents; or
7. A reasonable doubt that the Work can be completed for the unpaid balance of the Lump Sum Price as defined herein; or
8. Damage to another contractor, subcontractor or sub-subcontractor caused by the Contractor; or
9. Failure to pay Prevailing Wage Rates per Section 00100, or
10. Failure of the Contractor to maintain monthly updates to the As-Built Drawings.
11. Failure of the Contractor to submit partial release of liens from all subcontractors utilizing the form found in section 00640 of the contract documents.

ARTICLE 5 - EQUIPMENT AND MATERIALS

Section 5.1 Materials Provided by Contractor

- A. Unless otherwise provided in the Contract Documents, the Contractor shall provide all equipment, materials, labor, tools, water, power to the site of the Work, and all other facilities necessary for the performance of the Work.
- B. All equipment, machinery, material, and articles incorporated in the Work shall be new and unused, and when not specified in detail in the Contract Documents, the same shall be of the most suitable grade and quality for the purpose intended.

Section 5.2 Type of Equipment Used

- A. When any equipment, material or article is referred to by trade name, make or catalog number, the reference shall be regarded as establishing the standard of quality and performance required and shall not be construed as limiting competition. The Contractor may, with the prior written approval of the Owner, use other equipment, materials or articles which are equal in quality and performance to that named in the Contract Documents; provided, however, that in no event shall such approval be construed as a waiver of the right of Owner to require equipment, materials or articles which conform to the standard of quality and performance established by reference to the trade name, make or catalog number of the equipment, materials or article for which the situation has been approved. Any cost of re-design and additional expense resulting from the substitution shall be at the sole expense of the Contractor.

Section 5.3 Non-Conforming Materials

- A. Equipment, materials or articles installed or used in the Work which do not comply with the requirements of the Contract Documents, and which have not been previously approved in writing by the Owner shall be installed or used at the risk to the Contractor of subsequent rejection by the Owner.
- B. The Contractor shall be fully and solely responsible for quality control for all materials used in the performance of the Work.

Section 5.4 Owner Furnishing Equipment or Fixtures

- A. The Owner may directly furnish any or all of the equipment or fixtures required for the Project. In the event the Owner elects to do so, the contract contingency shall be increased by the amount which was to be charged by the Contractor for such equipment or fixtures as set forth and included in the Contract Documents. A Construction Change Order increasing the contract contingency for that item of work shall be executed by Owner and Contractor to reflect an increase in the contract contingency for that item of Work. The Contractor shall assume responsibility for and be fully responsible for the care, custody and control of all Owner furnished equipment once said equipment arrives on the job site or in any approved off-site storage facility.

Section 5.5 Substitutes or “Or Equal” Items

- A. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by the Owner if sufficient information is submitted by the Contractor to allow the Owner to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by the Owner will include the following as supplemented in the General Requirements.
 - 1. Requests for review of substitute items of material and equipment will not be accepted by the Owner from anyone other than the Contractor.
 - 2. The Contractor shall make written application to the Owner for acceptance thereof;
 - 3. The application will certify that the proposed substitute will perform adequately the functions and achieve the results called for by the general design;
 - 4. The application will state that the substitution is similar and of equal substance to that specified and be suited to the same use as that specified;
 - 5. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice the Contractor's achievement of Substantial Completion on time;
 - 6. The application will state whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the Owner for work on the Project) to adapt the design to the proposed substitute;
 - 7. The application will state whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty;

8. The application will identify all variations of the proposed substitute from that specified and also indicate available maintenance, repair and replacement service;
 9. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Owner in evaluating the proposed substitute. The Owner may require the Contractor to furnish at the Contractor's expense additional data about the proposed substitute;
- B. The Owner will be allowed a reasonable time within which to evaluate each proposed substitute during the course of construction. The Owner will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the Owner's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. The Owner may require the Contractor to furnish at the Contractor's expense a special performance guarantee or other surety with respect to any substitute. The Owner will record the Owner's consultants in evaluating substitutions proposed by the Contractor and in making changes in the Contract Documents occasioned thereby.

ARTICLE 6 - "AS BUILT" DRAWINGS AND DATA

Section 6.1 "As Built" Drawings

- A. A complete set of drawings shall be maintained by the Contractor at the construction site for the purpose of showing "as built" conditions. The drawings shall be kept up-to-date and marked each day to show all changes and variations and each entry shall be dated and verified as made. At the completion of the Work and prior to Final Payment, a complete set of modified construction documents approved by the Consultant and suitable for preparing final "as built" drawings shall be submitted to the Consultant.

Section 6.2 Operation Maintenance Data and Training

- A. The Contractor shall furnish complete and necessary data for the operation, repair and maintenance of each operating component of the Work (herein the "Data"). The Data shall include prints of shop drawings, "as-installed" conditions, sources of equipment and principal materials, specified tests and performance data, repair and maintenance data, lubrication instructions and recommendations, parts lists, and other catalog data or information required to operate and maintain any part of the Work. Care shall be taken to include all pertinent data and to exclude inapplicable or duplicate information. As specified in the Contract Documents, the Contractor shall also provide systems training of maintenance personnel.
- B. Prior to Final Payment, Data shall be provided to the Owner in accordance with associated sections of the contract documents.
- C. Installation information for all machinery and equipment also shall be kept on the site of the Work during construction, but used or marked prints or data sheets are not to be used in assembling the final maintenance and operating manuals described in Paragraph (a).

Section 6.3 Information from Suppliers (Not Applicable)

ARTICLE 7 - SUBCONTRACTS

Section 7.1 Definition

- A. As used in the Contract Documents, a “Subcontractor” is a person or organization that has a contract with the Contractor to perform any portion of the Work or to furnish any equipment or materials to the Project.
- B. As used in the Contract Documents, a “Sub-subcontractor” is a person or organization that has a direct or indirect contract with the Subcontractor to perform any portion of the Work, or to furnish any equipment or materials to the Project.

Section 7.2 No Contractual Relationship with Owner

- A. Nothing contained in the Contract Documents or otherwise shall create any contractual relationship between the Owner and any Subcontractor or Sub-subcontractor, and no subcontract or sub-subcontract shall relieve the Contractor of its responsibilities and obligations should any Subcontractor or Sub-subcontractor fail to perform its work in a satisfactory manner. The Contractor agrees to be as fully responsible to the Owner for the acts and omissions of its Subcontractors and their Sub-subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it.

Section 7.3 Award of Subcontracts

- A. Unless otherwise specified in the Contract Documents, the Contractor, within fourteen (14) calendar days after bids are opened, the apparent low bidder, and any other bidder so requested, shall submit a list of all subcontractors he expects to use in the work. An experience statement with pertinent information as to similar projects and other evidence of qualification shall be furnished for each named subcontractor, as requested by the City. If the City or Consultant, after due investigation, has a reasonable objection to any proposed subcontractor, he may, before contract execution, request the apparent low bidder to submit an acceptable substitute without an increase in his/her bid. If the apparent low bidder declines to make any such substitution, he will not thereby sacrifice his/her bid security. Any subcontractor so listed and to whom the City or Consultant does not make any written objection prior to contract execution will be deemed acceptable to City and Consultant. The Contractor shall not be required to employ any subcontractor against whom he has reasonable objection. The use of subcontractors listed by the bidder and accepted by the City prior to contract execution will be required in the performance of the work. Every subcontractor proposed for this project shall be required to execute the appropriate City form entitled “Construction Contract Certificate of Non Discrimination”, Section 00420.
- B. The Contractor shall not contract with any Subcontractor or material supplier (nor shall they contract with any Sub-subcontractor) or any person or organization (including those who are to furnish materials or equipment) proposed for portions of the Work designated in the Contract Documents or, if none is so designated, with any Subcontractor proposed for principal portions of the Work who has not been previously approved in writing by the Owner.
- C. If the Owner, for good cause, refuses to accept any Subcontractor or material supplier (or Sub-subcontractor) or person or organization on a list submitted by the Contractor, the Contractor shall submit an acceptable substitute. The Contractor shall indemnify, defend and hold harmless the Owner, its directors, officers and employees from all liabilities,

claims or causes of action arising from the rejection of any Subcontractor, Sub-subcontractor or material supplier by the Owner.

Section 7.4 Change of Subcontractors

- A. The Owner may require a change of any Subcontractor. In such event, the Contractor shall submit a suitable substitute which is approved by the Owner.

Section 7.5 No Substitution of Subcontractors

- A. The Contractor shall not make any substitution for any Subcontractor nor allow the substitution of any Sub-subcontractor who has been accepted by the Owner, unless the substitution is required and previously approved by the Owner. Acceptable reasons for substitution (other than where required by the Owner) shall be limited to the following:
 - 1. Inability of the Subcontractor or Sub-subcontractor to provide bonds, if required;
 - 2. Failure of the Subcontractor or Sub-subcontractor to perform according to approved schedules or other provisions of the Contract Documents; or
 - 3. Other reasons which would reasonably render the Subcontractor or Sub-subcontractor unable to perform its work according to the Contract Documents as evidenced in writing by the Contractor.

Section 7.6 Subcontract Terms

- A. All portions of the Work performed by a Subcontractor or Sub-subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provisions that:
 - 1. Preserve and protect the rights of the Owner under the Contract Documents with respect to the portion of the Work to be performed under the Subcontract (or Sub-subcontract) so that the subcontracting will not prejudice such rights;
 - 2. Require that such work be performed in accordance with the requirements of the Contract Documents;
 - 3. Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party including a partial release of liens utilizing the form found in section 00640 of the contract documents;
 - 4. Require that all requests for additional compensation, extensions of time or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like requests by the Contractor upon the Owner; and
 - 5. Obligate each Subcontractor or Sub-subcontractor specifically to consent to the provisions of Sections 3.2, 3.3, 3.4, 16.1, 24.2 and 24.3.

ARTICLE 8 - PAYMENT TO SUBCONTRACTORS FROM CONTRACTOR

Section 8.1 Payments to Subcontractors From the Contractor

- A. The Contractor shall pay each Subcontractor an amount equal to the percentage of completion allowed to the Contractor on account of the work of such Subcontractor, less the percentage retained from payments to the Contractor. The Contractor shall also require each Subcontractor to make similar payments to its Sub-subcontractors.

Section 8.2 Withholding of Payment by the Owner

- A. If the Owner withholds monies for any cause which is the fault of the Contractor and not the fault of a particular Subcontractor, the Contractor shall pay that Subcontractor on demand, made at any time after the progress payment by the Owner should otherwise have been issued, for its work to the extent completed, less the retained percentage. Notwithstanding this Section 8.2, Contractor may withhold funds from any Subcontractor that is not performing its work in accordance with the Contract Documents. If the Owner has paid the Contractor for the work of a Subcontractor, which is withheld by the Contractor, then the Contractor shall refund to the Owner all funds paid by the Owner for such Subcontractor's work.

Section 8.3 Independent Obligation to Pay

- A. The obligation of the Contractor to pay its subcontractors (and their obligation to pay sub-subcontractors) is an independent obligation from the obligation of the Owner to make payment to the Contractor. The Owner shall have no obligation to pay or to see to the payment of any monies to any Subcontractor or Sub-subcontractor.

ARTICLE 9 - CHANGES

Section 9.1 Changes in The Work

- A. The Owner, without invalidating the Agreement, may order extra work or make changes by altering, adding to or deducting from the Work by executing a Change Order or Construction Directive in a form provided by the Owner. A Change Order is defined as any change to the contract which increases the Contract amount. A Construction Directive is defined as any action taking place within the confines of the contract contingency fund or increases contract time. All work performed pursuant to a valid Change Order or Construction Directive shall be performed under the conditions of this Agreement and the Contract Documents. Change Orders or Construction Directives will not exceed ten percent (10%) of the original contract amount.
- B. The Owner shall have authority to make changes in the Work not involving extra cost, and not inconsistent with the purposes of the Work, but otherwise, no extra Work or change in the Work shall be made unless pursuant to a Change Order and no claim by Contractor for additional cost or fee or any extension of the Substantial or Final Completion Date shall be valid unless so ordered in a written Construction Directive.

Section 9.2 Change Order / Construction Directive Procedure

- A. Upon receipt of a request from the Owner for extra Work or changes in the Work, the Contractor shall promptly furnish to the Owner a statement setting forth in detail the proposal of the Contractor for performing the extra Work or changes and the effect of the extra Work or changes, if any, on the Contract Price / Substantial or Final Completion Date, including a statement of what effect, if any, the proposal will have on the CPM progress schedule, or changes in the contingency fund. The Contractor's statement in response to

a request from the Owner for extra Work or Changes in the Work shall also include all supporting documentation for any request, including but not limited to, qualities of product of labor, equipment, hours, labor rates, labor burden, number of personnel, material cost, material quantities and equipment costs, taxes, insurance and bonds, overhead and profit, justification for any change in the Substantial or Final Completion Date, including any change on the CPM progress schedule, and credit for deletions from the Work. Any delays in the processing of a Change Order due to the lack of proper submittals or documentation by the Contractor shall not constitute grounds for a time extension or the basis of any claim. If the Owner approves in writing the proposal of the Contractor, a Change Order or Construction Change Order in the form provided by the Owner shall be executed by the parties and, where applicable, the Lump Sum Price or Substantial or Final Completion Date or the contingency fund shall be adjusted accordingly. In making any proposal in accordance with this Section 9.2 with respect to extra Work or changes in the Work, that will require materials or work covered by unit prices obtained from Subcontractors, the Contractor shall base its proposal on those unit prices without application of any multiplier or mark-up. In making any such proposal, the Contractor must observe, and must cause each of its Subcontractors to observe, that the extra work or changes in the Work will observe the requirements set forth hereinbelow.

Section 9.3 Changes in the Contract Price

- A. Increases in the Scope: The increase in the Contract Price attributable to a Change Order or Construction Directive (as defined in Section 9.4 "Force Account"), performed by the Contractor or any of its subcontractors shall not exceed the sum of the following:
1. The actual labor cost to perform the Change Order or Construction Directive, including insurance and taxes;
 2. The actual unit cost of materials used in performing the Change Order or Construction Directive, including sales taxes;
 3. The actual cost of increased, field related General Conditions directly related to the Change Order;
 4. The actual cost for additional bond (change orders only); and
 5. For Change Order or Construction Directive, the total percent of overhead and profit (OH&P), shall not exceed the following:
 - a. Change Order or Construction Directive involving contractor's work only: The contractor shall be entitled to a 10% OH&P mark-up.
 - b. Change Order Construction Directive involving subcontractor and contractor work: The firm(s) doing the work shall be entitled to a 10% OH&P mark-up. The contractor shall be entitled to a 5% OH&P Mark-up on the subcontractor's work.
 - c. Change Order Construction Directive involving multiple (two or more) tiers of subcontractors: The firm(s) doing the work shall be entitled to a 10% OH&P mark-up. One 5% OH&P subcontractor mark-up shall be allowed. The Contractor shall be entitled to a 5% OH&P mark-up on the subcontractor's work.

For purposes of adjustments in the Contract Price, "overhead" by either the Contractor or any of its Subcontractors shall include items such as drawing detailing, document/revision control, common tools, communications, modeling, common safety equipment, uniforms, and other home office expenses.

- B. Decreases in the Scope: The decrease in the Contract Price or increase in the contract contingency fund attributable to a Change Order or Construction Directive deleting a portion of the Scope of Work shall equal the sum of the following:
1. The actual labor cost that the Contractor would have incurred to perform the Work deleted in the Change Order or Construction Directive including the cost of overhead, profit, General Conditions, insurance and taxes.
 2. The actual unit cost of materials, supplies, products, equipment and rental equipment that the Contractor would have used in performing the Work deleted in the Change Order or Construction Directive, including sales taxes;
 3. The actual cost of Subcontractors and Sub-subcontractors that the Contractor would have incurred in performing the Work deleted in the Change Order or Construction Directive, including overhead, profit, General Conditions, insurance and taxes; and
 4. The actual credit for the cost associated with the lower limits required for the bonds including Subcontractor and Sub-subcontractor bonds, if applicable, as a result of the reduction in the Scope of the Work.

Section 9.4 Force Account

- A. In the event that the Owner and the Contractor cannot agree on the amount or time extension, if any, due to the Contractor for a Change Order or Construction Directive pursuant to this Agreement, the Owner may direct the Contractor to proceed with the performance of the Change Order or Construction Directive by a Construction Directive as applicable. In such event, the Contractor's compensation will be calculated pursuant to the provisions of Section 9.3.

Section 9.5 Unconditional Obligation to Proceed

- A. Notwithstanding anything herein to the contrary, the Contractor will proceed with the Work so as to complete the Work on or before the Substantial Completion Dates even if it has a dispute with the Owner concerning the amount to be paid under this Section or any extension of time which is or could be due to the Contractor pursuant to a Change Order or Construction Directive or otherwise.

ARTICLE 10 - THE UNDERSTANDING OF THE CONTRACTOR

Section 10.1 Examination of Work Site

- A. The Contractor acknowledges that it has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials, equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions and all other matters which can in any way affect the Work.
- B. If the Owner has obtained any geotechnical data, soil and subsurface tests and other soil engineering tests and reports in areas where the Work is to be performed for the purpose of study and design, which data, tests and reports will be made available to Contractor on request. The interpretation of such data, tests and reports shall be the sole responsibility of the Contractor. Owner does not assume any responsibility whatsoever in respect to the sufficiency or accuracy of such investigation, the reports thereof, or the interpretation set

forth and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout such areas, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered. Notwithstanding anything herein to the contrary, should the Contractor encounter underground conditions which were unknown, unforeseen in the exercise of the Contractor's best professional judgment, and not reflected on the geotechnical data, the soils and subsurface tests or reports furnished to or available to the Contractor, the Contractor shall be reimbursed, pursuant to Section 9.3 of this Agreement, by the Owner for all actual documented additional costs incurred by the Contractor as a result of the unknown and unforeseen underground conditions.

Section 10.2 Sufficiency of Contract Documents

- A. The Contractor acknowledges that the Contract Documents are sufficient to enable it to determine the cost of all of the Work and that the Work can be completed in accordance with the Contract Documents for the Lump Sum Price.
- B. The Contractor acknowledges that any observed discrepancies, omissions, ambiguities or conflicts in the Contract Documents will be brought to the attention of the Owner, as set forth in Section 2.3 "Errors in Contract Documents" of this Agreement, and in a timely manner in order to insure substantial completion of the Work by the Substantial Completion Dates. In addition, the Contractor acknowledges that the Owner has not made nor shall it be deemed to have made any warranties, guarantees or representations of any kind whatsoever regarding the sufficiency of the Contract Documents.
- C. The Owner shall not be responsible for any damages resulting from any errors, inconsistencies or omissions in the Contract Documents which were discovered or observed and not noted by the Contractor in accordance with Paragraph (B) and Section 2.3.

Section 10.3 No Oral Modification

- A. No oral agreement or conversation with any officer, agent or employee of the Owner or its representatives, either before or after the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement or the Contract Documents. No extra compensation will be due from the Owner as a result of the Contractor not being aware of any matter which may affect the Work.

Section 10.4 Responsibility of the Contractor

- A. Should the contractor spill any wastewater, such that the sewage immediately or ultimately enters the waters of the State of Tennessee, then the contractor will be completely responsible for any fines or penalties imposed on the City or the contractor by the USEPA, the State of Tennessee or other agency.
- B. The Contractor is responsible for complying with all OSHA and TOSHA excavation, and confined space entry requirements.
- C. Traffic Control for any work performed shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices. If any work is planned to be conducted in the Right of Way, Contractor shall provide a traffic sketch to the City in advance for review (i.e., equipment, trucks, supplies,). After review, a formal Traffic Control Plan prepared by a Registered Professional Engineer in the State of Tennessee may be required. If a formal traffic control plan is required for the location, Contractor must obtain approval prior to commencement of this work

ARTICLE 11 - THE REPRESENTATIVE OF THE OWNER

Section 11.1 The Representative of the Owner

- A. The Representative of the Owner (The Owner is defined as the City of Memphis) will be a City project manager assigned from the Environmental Engineering Office of the Division of Public Works. The Owner shall have the right to replace the Representative of the Owner at any time with or without cause.

Section 11.2 Decisions of the Owner

- A. Initial Decision: The Representative of the Owner and/or the Consultant shall decide meaning and intent of the technical specifications and any plan or drawing where same may be found obscure or to be in dispute.
- B. Final Decision: Any unresolved dispute between the Representative of the Owner and/or the Consultant and the Contractor shall be referred to the Senior Environmental Administrator for resolution. Should the Contractor not be satisfied with the decision of the Senior Environmental Administrator, he/she shall be allowed to appeal the decision to the Director of Public Works, who, after such hearings and discussions as he deems appropriate, shall render a final and conclusive decision.
- C. Disputes: Any dispute arising from the execution of this contract shall be governed, construed and enforced according to the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, the construction, the interpretation, and the enforcement of this contract shall be instituted and litigated in courts of the State of Tennessee located in Shelby County, Tennessee, and in no other. In accordance herewith parties to this contract submit to the jurisdiction of the courts of the State of Tennessee, located in Shelby County, Tennessee.

ARTICLE 12 - SUPERVISION OF THE WORK; SAFETY AND SECURITY

Section 12.1 The Project Management of the Contractor

- A. The Contractor shall designate in writing to the Owner and keep on the Work during its progress a competent Project Management Team, including at a minimum a Project Manager and a Superintendent, satisfactory to the Owner. Any of these individuals shall be changed upon written request of the Owner, but shall not be changed by the Contractor except with the consent of the Owner. These individuals shall represent the Contractor and all directions given to any of them by the Owner shall be as binding. These individuals shall devote their full time to the Work and shall maintain an office on the site of the Work. They shall direct, coordinate and supervise all Work, inspect all materials delivered to the site of the Work to ascertain whether or not they comply with the requirements of the Contract Documents, and reject all non-conforming materials or workmanship.
- 2. The Superintendent shall be designated by the Contractor in writing at the time of submission of proposed subcontractors and a list of work experience shall be submitted for the Superintendent. The Superintendent shall be subject to the approval of the Owner. The Owner through the Consultant shall be notified immediately in writing of any change in superintendent. A list of work experience shall be submitted for the newly designated superintendent.

Section 12.2 Order and Discipline

- A. The Contractor shall at all times be responsible for enforcing strict discipline and good order among its employees, and any employee of its subcontractors and sub-subcontractors. If any person on the site of the Work shall appear to be incompetent, disorderly or intemperate, in any way disrupts or interferes with the Work, or is in any other way disqualified for or unfaithful to the job entrusted to him, such person shall be discharged immediately and he shall not again be employed on the Work without the prior written consent of the Owner.

Section 12.3 Cleaning Up

- A. During the performance of the Work, the Contractor shall keep the site of the Work clean and free of all rubbish, waste materials, debris and other materials in accordance with the instructions set forth in the Contract Documents. At the end of each working day the Contractor shall remove all waste materials, rubbish and debris from and about the Work as well as all surplus materials, and will leave the site of the Work clean in accordance with the Contract Documents.

Section 12.4 Safety and Security

- A. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
 - 1. employees on the Work and other persons who may be affected thereby;
 - 2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
 - 3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- B. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- C. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
- D. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such The Contractor shall promptly remedy all damage or loss to any property referred to in clause 12.4.A.2 activities under supervision of properly qualified personnel.
- E. The Contractor shall promptly remedy all damage or loss to any property referred to in clause 12.4.A.2 and 12.4.A.3 caused in whole or in part by the Contractor, any Subcontractor, and Sub-subcontractor, anyone directly or indirectly employed by and of them, or by anyone for whose acts any of them may be liable, and for which Contractor is responsible under clause 12.4.A.2 and 12.4.A.3.
- F. The Contractor shall designate a responsible member of the Contractor's organization at

- the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the Owner and the Consultant.
- G. These construction documents and the construction hereby contemplated are to be governed at all times by applicable provisions of the Federal and Local Laws including but not limited to the latest amendments of the following:
1. William-Steiger Occupational Safety and Health Act of 1970 Public Law 91-596.
 2. Part 1910 -Occupational Safety and Health Regulations for Construction, Chapter XIII of Title 29, Code of Federal Regulations.
 3. Part 1518 - Safety and Health Regulations for Construction , Chapter XII of Title 29, Code of Federal Regulations.
- H. Contractor alone shall be responsible for the safety, efficiency, and adequacy of his/her plant, appliances and methods; and for any damage which may result from their failure or their improper construction, maintenance or operation.

Section 12.5 Inspection of the Work

- A. The Owner and persons designated by the Owner shall at all times have access to the Work whenever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection. If the Owner discovers any defective Work in connection with any inspection, it shall report such defective Work to the Contractor in writing and the Contractor shall, at its expense, correct it.
- B. If the Contract Documents, the written instructions of the Owner, laws, ordinances, rules or regulations, or any public authority require any of the Work to be specifically tested or inspected, the Contractor shall give the Owner timely notice of its readiness for inspection and testing, and if the test or inspection is performed by an authority other than the Owner, of the date set for such test or inspection. Inspections by the Owner shall be promptly made and, where practicable, at the source of supply. If any of the Work should be covered up without the approval or consent of the Owner or any necessary authority, it shall be uncovered for examination, if required by the Owner or such other authority, at the sole expense of the Contractor.
- C. Reexamination of questioned Work that has been previously inspected by the Owner may be ordered by the Owner and, if so ordered, the questioned Work shall be uncovered by the Contractor. If such Work is found to be in compliance with the Contract Documents, the Owner shall pay the actual cost of the re-examination and repairs. If such Work is found not to be in compliance with the Contract Documents, the Contractor shall bear the costs of the re-examination and repairs.

ARTICLE 13 - PERMITS, LICENSES, LAWS AND REGULATIONS

Section 13.1 Contractor to Secure all Permits

- A. The Contractor shall secure and pay for all permits. Contractor shall be responsible for all inspections required by the City in conjunction with the issuance of said permits. Contractor shall secure and pay for all governmental fees, utilities, licenses and other permits necessary for the lawful and proper execution and completion of the Work.

Section 13.2 Compliance with Laws

- A. The Contractor shall give all notices and shall comply with all laws, ordinances, rules, regulations and orders of any public authority having jurisdiction over the Work, which have any bearing on the execution of the Work. If the Contractor observes that any of the Contract Documents are at variance in any respect with any such laws, ordinances, rules, regulations and orders, it shall promptly notify the Owner in writing and any necessary changes shall be made. If the Contractor fails to give such notice or executes any of the Work when it knew or should have known such Work was contrary to any such laws, ordinances, rules, regulations or orders, it shall bear all resulting costs to correct said Work to comply with such laws and regulations and be liable for any resulting fines, penalties, judgments or damages imposed on or incurred by the Owner.
- B. The Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it shall take such action as, from time to time, may be necessary to remain so qualified and shall obtain and maintain, at its own expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. Such permits and licenses shall be made available to the City, upon request.

The Contractor is assumed to be familiar with and shall comply with all applicable federal, state, and local laws, ordinances, and regulations in performing any of its obligations under this Agreement, including but not limited to the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA), and the Americans with Disabilities Act (ADA). The Contractor shall promptly notify the City of any conflict discovered between this Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict

ARTICLE 14 - TAXES

Section 14.1 Payment of Taxes by Contractor

- A. Any and all taxes, excise, duties and assessments in any manner levied, assessed or imposed by any government or subdivision or agency having jurisdiction over the Work (other than taxes on the real property of Owner) shall be the sole responsibility and liability of the Contractor. The taxes to be paid by the Contractor are those legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.
- B. The Contractor shall promptly pay and discharge when due, unless the validity or application is being contested by the Contractor in good faith, any and all taxes, excises, duties and assessments, together with any interest and penalties, if any, the responsibility and liability for which the Contractor has assumed pursuant to the provisions of Paragraph (a), unless any such tax, excise, duty or assessment is levied, assessed or imposed upon the Owner, in which case the Owner shall promptly give the Contractor notice of such levy, assessment or imposition, whereupon the Contractor shall promptly pay and discharge the same. Upon the written request and at the sole expense of the Contractor, the Owner shall assist the Contractor in contesting the validity or application of any such levy, assessment or imposition, and in the event a refund of all or any part of any tax, excise, duty or assessment (including interest and penalties, if any), said refund shall be refunded to the Contractor (less the amount of expenses associated with such contest not previously reimbursed by the Contractor to the Owner).

ARTICLE 15 - SHOP DRAWINGS AND SAMPLES; MATERIAL TESTING

Section 15.1 Definitions

- A. As used in this Agreement “Shop Drawings” are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor, any subcontractor, sub-subcontractor, manufacturer, supplier or distributor, and which illustrates some portion of the Work. Three (3) copies of required shop drawings shall be submitted to the Consultant for review approval or correction. One (1) copy shall be returned to the Contractor with approval or rejection.
- B. As used in this Agreement, “Samples” are physical examples furnished by the Contractor to illustrate materials, equipment or workmanship.

Section 15.2 Submissions

- A. Contractor shall review, stamp with its approval and submit, in orderly sequence so as to cause no delay in the Work or the work of any other contractor, all Shop Drawings and Samples required by the Contract Documents or subsequently by the Owner. Shop Drawings and Samples shall be properly identified as specified in the Contract Documents, or as the Owner may require. At the time of submission the Contractor shall inform the Consultant in writing of any deviation in the Shop Drawings or Samples from the requirements of the Contract Documents.
- B. By approving and submitting Shop Drawings and Samples, the Contractor represents that it has determined and verified all field measurements, field construction criteria, materials, catalog numbers and other data, and that it has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.

Section 15.3 Review by The Consultant

- A. The Consultant will review and approve Shop Drawings and Samples within fourteen (14) calendar days for conformance with the design concept of the Work and with the information given in the Contract Documents. The approval of the Owner or its agents of a given item shall not indicate approval of an assembly in which the item functions.
- B. The approval by the Consultant of Shop Drawings or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval of the specific deviation, nor shall the approval of the Owner relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.

Section 15.4 Corrections Made by Contractor

- A. The Contractor shall make any corrections required by the Consultant and shall submit the required number of corrected copies of Shop Drawings or new Samples until approved. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections requested by the Consultant on previous submissions.

Section 15.5 Prior Approval Required

- A. No portion of the Work requiring a Shop Drawing or Sample submission shall commence until the submission has been approved by the Consultant. All such portions of the Work shall be performed in accordance with approved Shop Drawings and Samples and the Contract Documents.

Section 15.6 Submittal Schedule

- A. Within seven (7) calendar days after execution of this Agreement, the Contractor shall provide the Owner with a preliminary submittal schedule of the dates that each Shop Drawing or Sample will be submitted for approval. Within thirty (30) calendar days after execution of this Agreement, the Contractor shall provide the Owner with a final schedule of the dates that each Shop Drawing or Sample will be submitted for approval. The sequence of the submittals of the Contractor shall be scheduled so as to permit an orderly review by the Owner. The schedule shall allow reasonable added time according to the number or complexity of Shop Drawings in each submittal for the checking, correction and rechecking of corrections, as well as for return of approved or rejected Shop Drawings and Samples to the Contractor. The submittal schedule shall allow not less than fourteen (14) calendar days for the Owner to review any Shop Drawing or Sample.

Section 15.7 Material Testing

- A. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Owner timely notice of its readiness so the Owner may observe such inspection, testing or approval. The Owner shall bear all costs of other inspection, tests or approvals.
- B. If the Owner determines that any Work requires special inspection, testing or approval which paragraph 15.7(A) does not include, he will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in paragraph 15.7(A). If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Owner's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order or Construction Change Order shall be issued.

ARTICLE 16 - THE RIGHT OF THE OWNER TO AUDIT

Section 16.1 Right to Audit

- A. The Contractor shall keep full and accurate records of all costs incurred and items billed in connection with the Work, which records shall be open to audit by the Owner, or any authorized representative for the Owner, during the course of the Work and until five (5) years after the Final Payment by Owner. In addition, the Contractor shall make it a condition of all subcontracts and sub-subcontracts entered into in furtherance of the Work that any and all Subcontractors and Sub-subcontractors will keep accurate records of costs incurred and items billed in connection with the subcontract (or sub-subcontract), and that such records shall be open to audit by the Owner, or any authorized representative of the Owner, during the course of the Work of the Subcontractor (or Sub-subcontractor) and until four (4) years after Final Payment by the Owner to the Contractor. The failure of the Contractor to obtain such a clause in any subcontract (or sub-subcontract) shall be grounds for termination of this Agreement by the Owner.

Section 16.2 Review of Subcontracts

- A. The Contractor shall provide the Owner with an executed copy of all subcontracts, sub-subcontracts and purchase orders entered into in furtherance of the Work, within seven (7) calendar days after the execution by Contractor of any and all subcontracts.

ARTICLE 17 - SEPARATE CONTRACTS

Section 17.1 The Right of The Owner to Award Separate Contracts

- A. The Owner reserves the right to award other contracts in connection with work at or in the vicinity of the Work and the Contractor agrees to cooperate fully and not to unreasonably interfere with the work of such other contractors.

Section 17.2 Cooperation

- A. The Contractor shall afford the other contractors of Owner the opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall, in accordance with the Contract Documents, properly connect and coordinate the Work with their work.

Section 17.3 Inspection of Work of Other Contractors

- A. If any part of the Work depends for proper execution or results upon the work of any other of the contractors of Owner, the Contractor shall inspect and promptly report to the Owner any discrepancies or defects in such work that render it unsuitable for such proper execution or results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the Work of the other contractor as fit and proper to receive the Work.

Section 17.4 Responsibility for Damage

- A. Should the Contractor cause damage to the work or property of any other contractor of the Owner, including but not limited to, delay, disruption, suspension of work and/or acceleration damages, the Contractor shall settle with such other contractor by agreement or arbitration (if appropriate) if the other contractor will so settle. If such other contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings at the expense of the Contractor, or provide counsel of Owner's choice for Owner at the expense of Contractor, and if any judgment or award against the Owner results, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and court costs which the Owner has incurred.

Section 17.5 Owner's Right to Clean Up

- A. If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 12.3, the Owner may clean up and allocate the cost amount those responsible as determined by the Owner.

ARTICLE 18 - WARRANTIES OF THE CONTRACTOR

Section 18.1 Warranty of Title

- A. The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application and Certificate for Payment, whether incorporated in the Work or not, will pass to the Owner upon the receipt of payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances (herein "Liens") and that none of the Work, materials or equipment covered by an Application and Certificate for Payment will have been acquired by the Contractor, or by any other person performing any part of the

Work or furnishing materials and equipment for the Work, subject to an agreement under which a Lien is retained by the seller or supplier.

Section 18.2 Special Warranties

- A. When special guarantees or warranties are required by the Contract Documents for specific parts of the Work, the Contractor shall procure certified copies of such guarantees or warranties, countersign them and submit them to the Owner in triplicate. Delivery of such guarantees or warranties will not relieve the Contractor from any obligations assumed under any provision of this Agreement of the Contract Documents

Section 18.3 Assignment of Warranties

- A. The Contractor hereby assigns to the Owner any and all existing assignable warranties, service life policies and patent indemnities of manufacturers other than the Contractor of materials, equipment or items incorporated in the Work. Upon the request of the Owner, the Contractor shall give the Owner assistance in enforcing the rights of the Owner arising under such warranties, service life policies and patent indemnities. At the request of the Owner, the Contractor shall give notice (with copies to the Owner) to any such manufacturers of the assignment of such warranties, service life policies and patent indemnities.

Section 18.4 General Warranty and Correction of Work

- A. In addition to any special guarantees or warranties contained in the Contract Documents, the Contractor warrants to the Owner that all materials and equipment furnished in performance of the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective.
- B. The Contractor shall promptly correct all defective Work whether observed before or after the Substantial Completion Dates and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such defective Work.
- C. If, within one (1) year after either Substantial Completion Date or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee or warranty required by the Contract Documents, any of the Work is found to be defective and not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so.
- D. All defective or non-conforming Work shall be removed from the site of the Work if necessary, and the Work shall be corrected to comply with the Contract Documents without cost to the Owner. The Contractor also shall bear the cost of making good all work of other contractors destroyed or damaged by removal or correction of the defective Work of Contractor.
- E. If the Contractor fails to correct defective Work in accordance with this Section and the Contract Documents, the Owner may correct it and hold the Contractor liable for all costs, expenses and damages, including attorney's fees and litigation costs incurred by Owner in correcting it.
- F. In addition to the foregoing warranty, a warranty period of one (1) year shall apply to workmanship under the same terms and conditions as the original warranty, to any work, supplied in correction of the defective work under warranty or the property of the Owner pursuant to the provisions of this Section 18.4 and the Contractor shall assign to the Owner

any warranties, including extended warranties, as to materials or designs furnished in the performance of such correction of defective Work.

- G. The Contractor shall furnish a written guarantee that all work executed under this contract shall be free from defects of materials and workmanship for a period of one year from date of acceptance of work by the Owner. This shall be understood to mean the replacement or correction of such defective work and material, together with the correction of damage to other work, occasioned by the defect, at the Contractor's expense. Where guarantees and/or warranties are written in the specification (or offered by the manufacturer at no additional cost) for a longer period than one year, such longer terms shall apply.
- H. Where a guarantee and/or warranty is required covering the results obtained from the use of a proprietary product or from installation, detail or method of application shown in the drawings or specified, if the Contractor is of the opinion that he will not be able to produce the required results, he shall file a written objection with the Consultant and await further instructions before proceeding with this part of the work.
- I. A manufacturer's warranty shall not relieve the contractor from his/her full responsibilities under guarantees and/or warranties called for in these specifications.
- J. The Contractor and/or the Manufacturer, depending which warranty is in effect, shall respond to a request for warranty work within one (1) working day of written notification by the Owner. Required repairs shall be initiated immediately upon response and proceed continuously until satisfactorily completed.
- K. It is understood that the Owner will perform or have performed emergency repairs as necessary, and that such work will in no way void the Contractor's and/or the Manufacturer's responsibilities under the warranty.

ARTICLE 19 - RIGHT OF THE OWNER TO DO WORK

Section 19.1 Right of The Owner to Do Work

- A. If the Contractor should neglect to prosecute the Work properly or fail to do anything required by the Contract Documents, and the Owner does not receive assurances from the Contractor of due performance reasonably satisfactory to the Owner within seven (7) calendar days after written demand is made, then the Owner may, without prejudice to any other remedy it may have under this Agreement or at law or in equity, make good any deficiencies in the Work, including but not limited to, supplementing the forces of the Contractor and deduct all costs of doing so from the payment then due and any payment thereafter due the Contractor.

Section 19.2 Deduction For Uncorrected Work.

- A. If the Owner deems it inexpedient to correct deficiencies in the Work pursuant to Section 19.1, the Owner may deduct the reasonable cost of doing so from the payment then due or any payment thereafter due the Contractor, but the making of such a deduction shall in no way be deemed an election of remedies by the Owner.

Section 19.3 Correction of Work Before Final Payment

- A. The Contractor shall promptly remove from the site of the Work all materials, equipment or other items rejected by the Owner as failing to conform to the Contract Documents, whether incorporated in the Work or not, and the Contractor shall promptly replace and re-execute

its original work to comply with the Contract Documents and without expense to the Owner. In addition, the Contractor shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

- B. If the Contractor does not remove rejected material, equipment or other items within a reasonable time (as fixed by written notice from the Owner) the Owner may remove such items and store them at the expense of the Contractor, or dispose of such material, equipment or other items at the sole discretion of Owner. If the Contractor does not pay the expense of such removal within ten (10) calendar days, the Owner may, upon ten (10) calendar days written notice, sell such items at auction or at private sale and shall account for the net proceeds of such sale, after deducting all the costs and expenses of removal that should have been borne by the Contractor.

Section 19.4 Owner May Stop the Work

- A. If the Work is defective, or the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of the Contractor or any other party.

Section 19.5 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, the Owner prefers to accept it, the Owner may do so. The Contractor shall bear all direct, indirect and consequential costs attributable to the Owner's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the Owner may issue a Change Order Directive as provided in Article 9.

ARTICLE 20 - INSURANCE

Section 20.1 Owner Controlled Insurance Program

- A. If the Owner is utilizing an Owner Controlled Insurance Program for the Work, substitution insurance language will be provided by the Owner.

Section 20.2 Contractor's Liability Insurance

- A. The Contractor shall not commence work under this contract until he has obtained all insurance required under this paragraph and such insurance has been approved by the City of Memphis Risk Manager, nor shall the contractor allow any sub-contractor to commence work on his sub-contract until all similar insurance required of the sub-contractor has been so obtained and approved by the City.
- B. Before commencing any work, the Contractor shall furnish the City of Memphis Risk Manager with Certificates of Insurance attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in force and effect. The theme/title of the project shall also be specified on the Certificate of Insurance.

- C. The Contractor shall be responsible from the time of signing the Contract or from the time of the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind resulting from this work to persons or property. In addition to the liability imposed upon the Contractor on account of bodily injury (including death) or property damage suffered through the Contractor's negligence, which liability is not impaired or otherwise affected hereby, the Contractor assumes the obligation to protect, defend, indemnify and hold the City, its officers and directors, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of any kind and character in connection with or arising directly or indirectly out of this contract and/or the performance hereof by act or omission of the Contractor or sub-contractor, or anyone either (1) directly or indirectly employed or (2) under the supervision of any of them in the prosecution of the work included in this contract.
- D. The Contractor, upon award of the contract, shall provide at his own cost and expense the following insurance to the City of Memphis utilizing insurance companies acceptable to the City and licensed in the State of Tennessee, which insurance shall be evidenced by certificates and/or policies as determined by the City. **Each certificate of policy shall require and contain verbatim the following clause:**

1. "THE CITY OF MEMPHIS, ITS OFFICIALS, AGENTS, EMPLOYEES AND REPRESENTATIVES ARE NAMED ADDITIONAL INSURES"

(The additional insured endorsement stating that the City of Memphis, its officials, agents, employees and representatives are additionally insured shall be attached to the Certificate of Insurance and will apply to both general liability and automobile liability.)

- E. If any of the Insurance Requirements are not complied with at their renewal dates, payment to the Contractor may be withheld until those requirements have been met, or at the option of the City, the City may pay the renewal premiums and withhold such payments from any monies due the contractor.

1. **Workers Compensation Insurance:** The Contractor shall maintain in force Workers' Compensation coverage in accordance with the Statutory Requirements and Limits of the State of Tennessee and shall require all sub-contractors to do likewise.

Employer's Liability	\$100,000 Each Accident
	\$500,000 Disease-Policy Limit
	\$100,000 Disease-Each Employee

2. **Automobile Liability Insurance:** To be taken out in the name of the Contractor as Named Insured and City as an Additional Insured; covering owned, non-owned, and hired vehicles with MINIMUM LIMITS OF:

\$1,000,000 each occurrence - Combined Single Limit

3. **Commercial General Liability Insurance:** Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage.

Commercial General Liability Insurance: MINIMUM LIMITS of:

\$2,000,000	General Aggregate per Project
\$2,000,000	Products-Completed Operations
\$1,000,000	Personal and Advertising Injury

\$1,000,000	Each Occurrence
\$ 50,000	Fire Damage any one Fire
\$ 5,000	Medical Expense any One Person

4. **Property Insurance:** Contractor shall be responsible for maintaining any and all property insurance on their own equipment and shall require all sub-contractors to do likewise.

Builder's Risk Coverage: To be taken out in the name of the City and Contractor as their interest may appear.

An "All Risk" installation floater in the amount of the contract endorsed to contain the following condition: "It is understood and agreed that coverage will cease only when the new construction (including building materials) is accepted by the City.

Additional coverage and limits may be required based upon the particular services contracted. If such additional coverage is required for a specific contract, those requirements will be described in the "Special Conditions" of the contract specifications.

The Contractor is required to provide copies of the insurance policies upon request.

- F. The Contractor shall provide notice to the Owner within three (3) business days following receipt of any notice of cancellation or material change in the Contractor's insurance policy from Contractor's insurer. Such notice shall be provided to the Owner by registered mail, return receipt requested, to the following addresses:

City of Memphis
Attn: Risk Management Department
170 N. Main St., 5th Floor
Memphis, TN 38103

City of Memphis
Attn: Division of Public Works
125 N. Main St., Suite 608
Memphis, TN 38103

ARTICLE 21 - SURETY BONDS

Section 21.1 Performance Bonds Required

- A. The Contractor shall furnish a performance bond in an amount equal to 100% of the contract sum as security for the faithful performance of the contract for the payment for labor and material furnished and incorporated into the work. The only acceptable form of instrument for this bond is bound herein (see Section 00610). Bond shall be furnished through an agent domiciled and legally authorized to do business in the State of Tennessee and delivered to the Consultant for the Owner not later than ten (10) calendar days after the date shown on written notice from the City or its Consultant. Surety company proposed shall be one acceptable to the Owner.

ARTICLE 22 - INDEMNIFICATION

Section 22.1 Indemnification of the Contractor

- A. To the fullest extent permitted by law, Contractor, on behalf of itself, its Subcontractors their agents, their employees or any entity or person for which the Contractor is or may be responsible, (all of said parties are herein sometimes collectively referred to as the “Indemnitors”), shall fully indemnify, defend, save and hold Owner, the Consultant and the Project Manager, their agents, employees, officers, directors, partners and related entities, (all of said parties are herein collectively referred to as the “Indemnitees”) harmless from and against all liability, damage, loss, claims, demands, actions and expenses of any nature whatsoever, including, but not limited to reasonable attorney’s fees which arise out of or are connected with: (i) any negligent act, error or omission by any Indemnitor in the performance of this Agreement; or (ii) the failure of the Indemnitor in the performance of this Agreement to comply with the laws, statutes, ordinances or regulations of any governmental authority; or (iii) the material breach of any term or condition of this Agreement by any of the Indemnitors.
- B. Without limiting the generality of the foregoing, the indemnity herein above set forth shall include all liability, damages, loss, claims, demands and actions on account of personal injury, death or property loss to any third party, any Indemnatee, any of Indemnatee’s employees, agents, licensees or invitees which arose out of or in connection with the work.
- C. The indemnity set forth in this Article shall survive any termination of this Agreement for the applicable statute of limitations period.

Section 22.2 Labor Indemnity

- A. The Contractor shall indemnify, defend and hold harmless the Owner from any and all administrative and judicial actions (including reasonable attorney’s fees related to any such action) incurred by the Owner in connection with any labor related activity arising from the performance of the Work of the Contractor. As used in this Agreement, “labor related activity” includes, but is not limited to, strikes, walk-outs, informational or organizational picketing, use of placards, distribution of hand-outs, leaflets or in the vicinity of any facility where the Owner conducts business. The Owner shall advise the Contractor if any labor related activity occurs and the Contractor shall arrange for the legal representation necessary to protect the Owner, provided such representation is previously approved by the Owner.

Section 22.3 Royalties and Patents

- A. The Contractor shall pay all royalties and license fees in any way relating to the Work, shall defend all suits or claims for infringement of any patent rights, and shall indemnify and hold the Owner harmless from loss on account of any such suit or claim.

Section 22.4 Attorneys’ Fees

- A. In the event it becomes necessary for Owner to employ an attorney to enforce any provision of this Agreement, then the Contractor shall be liable for all attorneys’ fees and litigation expense of Owner.

ARTICLE 23 - RIGHT TO OCCUPY BY OWNER

Section 23.1 Early Occupancy by Owner

- A. The Owner has the right to occupy or use ahead of schedule, at no additional cost to Owner, all or any substantially completed or partially completed portion of the Work when such occupancy and use are in its best interest, notwithstanding the time of completion for all of the Work.

Section 23.2 Corrections After Occupancy

- A. During the performance of the Work and after the Owner has taken occupancy of all or any substantially completed portion of the Work, the Contractor shall not disrupt the use and occupancy of the Owner to perform the Work or to make corrections in the Work but shall, at the discretion of the Owner, make such corrections at the expense of Contractor after normal working hours.

Section 23.3 Heating, Ventilating and Air-Conditioning Systems (Not Applicable)

ARTICLE 24 - DEFAULT; RIGHT TO TERMINATE OF OWNER

Section 24.1 Event of Default

- A. For the purposes of this Agreement, an Event of Default shall be if:
 - 1. At any time there shall be filed by or against the Contractor in any court a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of the property of the Contractor, and within twenty (20) calendar days from the filing date the Contractor fails to secure a discharge; or
 - 2. The Contractor makes an assignment for the benefit of creditors or petitions for or enters into an agreement or arrangement with its creditors; or
 - 3. The Contractor fails to timely and properly prosecute the Work, or fails to complete the work, or any portion thereof, entirely on or before any date established for partial, substantial or final completion; or
 - 4. The Contractor fails to make prompt payment to its Subcontractors or for materials or labor used in the Work; or
 - 5. The Contractor fails to supply sufficient labor, material and/or equipment so as to complete the Work timely and in accordance with the Contract Documents including, but not limited to the progress schedule; or
 - 6. The Contractor performs defective work and fails to promptly and properly correct such defective work; or
 - 7. Without limitation, the Contractor fails to perform any provision of this Agreement or the Contract Documents.
 - 8. The Contractor persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction.

- B. Upon the occurrence of an Event of Default, the Owner, by giving seven (7) calendar days prior written notice to the Contractor, and without prejudice to any other remedy the Owner may have, may provide such Event of Default has not been cured, terminate this Agreement and take possession of all or some of the materials, tools, equipment and appliances of the Contractor, and complete the Work by such means as the Owner deems fit. In such case, the Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Lump Sum Price shall exceed the aggregate of (1) the expense of the Owner of completing the Work, including compensation for additional managerial and administrative services, and (2) the losses and damages of Owner, including reasonable attorneys' fees and litigation expense because of the default of Contractor, such excess shall be paid to the Contractor. If the expense of completing the Work and the losses and damages of Owner shall exceed the unpaid balance of the Lump Sum Price, the Contractor and its Surety shall pay the difference to the Owner promptly on demand.

Section 24.2 Suspension by the Owner for Convenience

- A. The Owner may order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine (herein referred to as "Suspension").
- B. Provided the Suspension lasts for more than one hundred twenty (120) calendar days, an adjustment to the Lump Sum Price ("Adjustment") shall be made for the increased costs set forth in Section 24.2(c) which were incurred because of the Suspension. No Adjustment shall be made nor shall the date of Substantial Completion be extended except by written Change Order. No Adjustment shall be made to the extent:
 - 1. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is in full or in part responsible; or
 - 2. That an equitable adjustment is made or denied under another provision of this Agreement.
- C. The amount of the Contractor's compensation for a Suspension pursuant to this Section shall be limited to any properly documented costs of maintaining personnel and equipment in the field provided such costs are pre-approved by the Owner in writing. The Owner shall not be liable at any time for home office overhead expense or consequential damages. At the Owner's option, the Contractor may be ordered to demobilize its forces because the Project is suspended. In such event, the Owner will reimburse the Contractor for its actual, out of pocket costs directly attributable to demobilization and remobilization.

Section 24.3 Termination Without Cause

- A. The Owner may terminate this Agreement without cause by giving seven-(7) calendar days' prior written notice to the Contractor. In such event, the Owner will pay the Contractor for that portion of the Lump Sum Price, less the aggregate of previous payments, allocable to the Work completed by the Contractor as of the date of termination. The Owner also will reimburse the Contractor for all documented costs necessarily incurred by the Contractor for organizing and carrying out the stoppage of the Work which are paid directly by the Contractor. The Owner will not compensate the Contractor for any loss of its own profits or the profits of its Subcontractors, suppliers, vendors and materialmen. The Owner will not be responsible to reimburse the Contractor for any of its continuing contractual commitments to subcontractors, suppliers, vendors and materialmen or for penalties or damages for canceling such contractual commitments, and the Contractor shall make all of its subcontracts and other commitments subject to this provision.

Section 24.4 Assignment of Subcontracts

- A. In the event of termination by the Owner pursuant to this Article 24, the Owner may require the Contractor to promptly assign to it all or some subcontracts, materials, tools, equipment to be installed under this Agreement, or rental agreements, and any other commitments which the Owner, in its sole discretion, chooses to take by assignment. In such event, the Contractor shall promptly execute and deliver to the Owner written assignments of such commitments.

ARTICLE 25 - HAZARDOUS MATERIALS COVENANTS

Section 25.1 Hazardous Materials Covenants

- A. Contractor hereby represents and warrants to and for the benefit of Owner that the Project or Project Site will not be used or operated in any manner that will result in the storage, use, treatment, manufacture and disposal of any Hazardous Materials (hereinafter defined) upon the Project or Project Site or any portion thereof or which will result in Hazardous Materials contamination (hereinafter defined). For purposes hereof, the term “Hazardous Materials” shall mean and refer to (i) any “hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. ' 6901 et. seq.), as amended from time to time, and regulations promulgated thereunder, (ii) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. ' 9601 et. seq.) (ACERCLA@), as amended from time to time, and regulations promulgated thereunder. (iii) asbestos; (iv) polychlorinated biphenyls; (v) urea formaldehyde; (vi) any substance the presence of which on the premises is prohibited by any applicable environmental laws or regulations (“Laws”) or by any other legal requirements affecting the Project or the Project Site; (vii) petroleum based materials (with the exception of times affixed to vehicles); and (viii) any other substance which is defined as hazardous, toxic, infectious or radioactive by any Laws or by any other legal requirements affecting the Project or Project Site. The term “Hazardous Materials Contamination” shall mean and refer to the contamination of the Project or Project Site, soil, surface water, ground water, air, or other elements on, or of, the buildings, facilities, soil, surface water, ground water, air, or other elements on, or of, any other property as a result of Hazardous Materials at any time emanating from the Project or Project Site.
- B. In addition to and without limiting the generality of any other provision of this Contract, Contractor shall and hereby does indemnify and hold Owner harmless from and against any and all losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs and liabilities, including, but not limited to, attorney’s fees and costs of litigation, and costs and expenses of response, remedial and corrective work and other clean up activities, arising out of or in the manner connected with (i) the “release” or “threatened release” (as those terms are defined in CERCLA and the rules and regulations promulgated thereunder, as from time to time amended) by Contractor or Contractor’s employees, agents, delegees, invitees, licensees, concessionaires, sub-contractors or representatives, of any Hazardous Materials, or (ii) any occurrence of Hazardous Materials Contamination affecting the Project or Project Site. The provisions of this paragraph shall survive any payment or satisfaction of the Contract and such provisions shall remain in full force and effect.

ARTICLE 26 - MISCELLANEOUS

Section 26.1 No Waiver

- A. No consent or waiver, express or implied, by either party to or of any breach or default by the other in the performance of any of its obligations shall be deemed or construed to be a

consent or waiver to or of any other breach or default by such party. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party.

Section 26.2 Conflicts

- A. In the event of any conflict between the terms or provisions expressed in this Agreement and any term or provision in any of the other Contract Documents, the term or provision of this Agreement shall govern to the extent of the conflict.

Section 26.3 Assignment

- A. This Agreement shall not be assigned, delegated or transferred in whole or in part by the Contractor nor shall the Contractor assign any monies due or to become due to it without the prior written consent of the Owner.

Section 26.4 Governing Law

- A. This Agreement is entered into in Tennessee and shall be governed by and construed according to the Laws of Tennessee. Any and all disputes arising out of this Agreement, and/or the Project shall be decided by a state or federal court of competent jurisdiction in Memphis, Shelby County, Tennessee.

Section 26.5 Counterparts

- A. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 26.6 Article and Section Headings

- A. Article and Section headings contained in this Agreement are for ease of reference only and shall not affect the interpretation or meaning of this Agreement.

Section 26.7 Parties in Interest

- A. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors, assigns and legal representatives.

Section 26.8 Severability

- A. If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but it shall be construed as if such invalid, illegal or unenforceable provision had never been contained in it.

Section 26.9 Subcontractor Relations Requirements

- A. By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the obligations, terms and conditions of this Agreement and the Contract Documents, and

to assume toward the Contractor the obligations, terms, conditions and responsibilities which the Contractor, by this Agreement and these Contract Documents, assumes toward the Owner. Each Subcontractor agreement shall preserve and protect the rights of the Owner under this Agreement and the Contract Documents which respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice the rights of the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor prior to the execution of the Subcontract agreement, copies of this Agreement and the Contract Documents to which the Subcontractor will be bound. Subcontractors shall similarly make copies of this Agreement and the Contract Documents available to their respective Sub-subcontractors.

Section 26.10 Third Party Beneficiary

- A. This Agreement shall not be deemed to create any other relation between Contractor and Owner other than as expressly provided herein and shall not be for the benefit of any third party.

Section 26.11 Entire Agreement

- A. This Agreement, together with the other Contract Documents, constitutes the entire agreement between the Owner and the Contractor and supersedes all prior written or oral agreements, understandings, representations, negotiations and correspondence between the parties. This Agreement shall not be supplemented, amended or modified by any course of dealing, course of performance or usage of trade and may only be amended or modified by a written instrument duly executed by officers of both parties.

ARTICLE 27 - NON-DISCRIMINATION

- A. Contractor agrees that it will not discriminate upon the basis of race, color, creed, religion, national origin, age, disability or sex in the performance of the Work and that each solicitation or advertisement for employees, and each Agreement to which Contractor is a party, including without limitation, Subcontractors, shall specifically contain a provision to this effect. The Contractor shall, upon request, show evidence of such non-discrimination and shall post notices of non-discrimination in conspicuous places available to all employees and applicants.
- B. The Contractor shall execute the specified City of Memphis Certificate of Nondiscrimination at the time he executes the formal bid form and includes it in the bid envelope.
- C. The Contractor and all subcontractors under general contract shall maintain copies of every subcontract awarded and their own payrolls, for each weekly payroll period for the life of the construction contract and for a period of five (5) years after final release and payment is made by the City to the Contractor.
- D. Each contractor's request for payment, including final payment and each partial payment, if permitted by the contract, shall contain a certification by the Contractor that the performance by the contractor and subcontractor for the period of work covered by the payment request has been in accordance with the clauses of the contract and the requirements with respect to nondiscrimination.
- E. Representatives of the State of Tennessee, Department of Labor and the City Of Memphis, as designated by the Mayor, shall have the right to inspect the Contractor's facilities and payroll records during the life of the construction contract and for a period of five (5) years

after final release and final payment by the City for the purposes of verifying nondiscrimination in employment and payment of prevailing wages as appropriate.

- F. The Contractor shall incorporate the same requirements set forth in paragraphs A, B, C, D and E above, in all subcontracts awarded by him with the further requirement that each subcontract include identical requirements to be included in any lower tier subcontracts, together with the requirement to include it in any further subcontracts that might be made.

ARTICLE 28 - SUSPENSIVE LIABILITY AGREEMENT

Section 28.1 Suspensive Liability Condition

- A. Notwithstanding any term, condition, obligation or provision in this Agreement, any other writing, any other agreement, any oral understanding or agreement, or any conduct or failure to act by the Owner, Contractor stipulates and agrees conclusively that Contractor has against the Owner no right, entitlement or claim for any payment, compensation, cost or remuneration of any type other than pursuant to the terms of this Agreement.

ARTICLE 29 – EMPLOYMENT OF ILLEGAL IMMIGRANTS

- A. The Contractor hereby certifies to comply with all applicable federal and state laws prohibiting the employment of individuals not legally authorized to work in the United States. Contractor shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. In the event the Contractor fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this agreement may be canceled, terminated or suspended in whole or in part by the City, and the Contractor may be prohibited from contracting to supply goods and/or services to the City for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract with the City.

ARTICLE 30 – BOYCOTT OF ISRAEL

- A. In connection with Tennessee Code Annotated Section 12-4-119, Contractor certifies that it is not currently engaged in nor will it engage in a boycott of Israel. For this purpose, a “boycott of Israel” shall mean engaging in refusals to deal, terminating business activities, or other commercial actions that are intended to limit commercial relations with Israel, or companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or persons or entities doing business in Israel, when such actions are taken (i) in compliance with, or adherence to, calls for a boycott of Israel, or (ii) in a manner that discriminates on the basis of nationality, national origin, religion, or other unreasonable basis, and is not based on a valid business reason. This provision is not applicable to contracts with a value less than \$250,000 or to companies with less than 10 employees.

END OF SECTION 00710

WIFIA Specification Package and Bid Contract Language

The “Specification Package and Bid and Contract Language” packet is a document that includes everything that must be in the specification package as a requirement of the WIFIA program. The package provides all necessary language for WIFIA funded projects. Please note that some of the language is required and must be included verbatim and some is suggested. For suggested language, you may use your own language so long as it still ensures that provisions are included to guarantee compliance with the Federal requirements.

EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THE FEDERAL LANGUAGE PROVISIONS WITH RESPECT TO STATE OR LOCAL LAW.

Borrower-Specific Requirements

Note that compliance with the federal requirements in the bulleted list below are borrower-specific. The WIFIA program does not require federal requirements language in bids or contracts for these requirements.

- Demonstration Cities and Metropolitan Development Act, 42 USC 3301 et seq., as amended and Executive Order 12372, 47 FR 30959, July 16, 1982
- Prohibitions relating to violations of CWA and CAA with respect to Federal contracts, grants, or loans under 42 USC 7606 and 33 USC 1368 and EO 11738, 38 FR 25161, September 12, 1973
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601 et seq

Requirements for Professional Services Contracts versus Construction Contracts

Not all federal laws and regulations listed in this document apply to professional services contracts. In particular, contract language for American Iron and Steel requirements, Davis Bacon and Related Acts, and Equal Employment Opportunity (EEO), Executive Order 11246, do not apply to professional services contracts.

On the other hand, professional services contracts do require reference to the economic and miscellaneous authorities listed in this document.

Further, all contracts must abide by the civil rights and non-discrimination laws, whether referenced in contracts or not.

Economic and Miscellaneous Authorities

Debarment and Suspension, Executive Order 12549, 51 FR 6370, February 21, 1986

Suggested Contract Language: Contractor certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 2 CFR part 180 and part 1532 to participate in the Project. Suspension and debarment information can be accessed at <http://www.sam.gov>. Contractor represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement.

New Restrictions on Lobbying, 31 USC 1352

Suggested Contract Language: FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for USEPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, Contractor shall complete and submit to the City the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34. Contractor shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

Civil Rights, Nondiscrimination, EEO Authorities

General Introductory Language

Suggested Contract Language: CIVIL RIGHTS OBLIGATIONS. Contractor shall comply with the following federal non- discrimination requirements:

- a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
- b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
- c. The Age Discrimination Act of 1975, which prohibits age discrimination.
- d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
- e. 40 CFR Part 7, as it relates to the foregoing.
- f. Executive Order No. 11246

Title VI of the Civil Rights Act of 1964, 42 USC 2000d et seq

Incorporated by reference in introductory language only. No additional language.

Section 504 of the Rehabilitation Act, 29 USC 794, supplemented by EO 11914, 41 FR 17871, April 29, 1976 and 11250, 30 FR 13003, October 13, 1965

Incorporated by reference in introductory language only. No additional language.

Age Discrimination Act, 42 USC 6101 et seq

Incorporated by reference in introductory language only. No additional language.

40 CFR Part 7

Incorporated by reference in introductory language only. No additional language.

Equal Employment Opportunity, EO 11246, 30 FR 12319, September 28, 1965

*****EEO Required Contract Language. Must be included verbatim. *****

Equal Employment Opportunity Obligations Under EO 11246:

The Contractor shall comply with Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

Contractor's compliance with Executive order 11246 shall be based on implementation of the Equal Opportunity Clause, and specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4.

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

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advancements 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, religion, sex, sexual orientation, gender identity, or national origin.
- 3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the

compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- 4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, 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 No. 11246 of Sept. 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 No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 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 provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 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 may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) located at 41 CFR 60-4.3:

- 1) As used in these specifications:
 - a) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b) "Director" means Director, Office of Federal Contract Compliance Programs, United

- States Department of Labor, or any person to whom the Director delegates authority;
- c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d) "Minority" includes:
 - i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
 - 3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
 - 4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
 - 5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
 - 6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting

the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

- 7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
 - f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring,

assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
 - i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
 - l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the

Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

- 9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- 12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- 13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- 14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- 15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Segregated Facilities, 41 CFR 60-1.8

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or

oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; Provided, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

For bid solicitations, also include the following or equivalent information: *Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) located at 41 CFR § 60-4.2:*

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 workforce in each trade on all construction work in the covered area, are as follows:

Time-tables	Goals for minority participation for each trade	Goals for female participation in each trade
	32.3% ¹ 0.0%	6.9% ² 0.0%

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 non-federally 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 specifications 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 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.

¹ Goals can be found at: <https://www.dol.gov/agencies/ofccp/construction>

² Nationwide goal for all covered areas

Participation goals changed with Addendum 07, 5/7/2025.

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 subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the “covered area” is **Memphis, Shelby County, Tennessee**.

Participation by Disadvantaged Business Enterprises in Procurement under EPA Financial Assistance Agreements, 73 FR 15904

** Note: The WIFIA program only requires use of the EPA DBE program’s six good faith efforts during contract procurement. States may require additional DBE reporting.*

Suggested Contract Language: Disadvantaged Business Enterprises (DBE). The contractor must ensure that the DBE’s six good faith efforts are used during the procurement of subcontractors for **T.E. Maxson Biosolids Lagoon 5 Renovations**. The six good faith efforts are found at: <https://www.epa.gov/grants/disadvantaged-business-enterprise-program-requirements#sixgoodfaithefforts>

American Iron and Steel and Federal Labor Standards

American Iron and Steel Requirement

Suggested Contract Language: The Contractor acknowledges to and for the benefit of **City of Memphis** (“Purchaser”) and the United States Environmental Protection Agency (“EPA”) that it understands the goods and services under this Agreement are being funded with monies made available by the Water Infrastructure Finance and Innovation Act program of the EPA that has statutory requirements commonly known as “American Iron and Steel” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents, warrants and covenants to and for the benefit of the Purchaser and the EPA that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the EPA. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or the EPA to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or the EPA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EPA or any damages owed to the EPA by the Purchaser). While the Contractor has no direct contractual privity with the EPA, as a lender to the Purchaser for the funding of its project, the

Purchaser and the Contractor agree that the EPA 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 EPA.

Compliance with Davis Bacon and related acts (*Updated as of July 23, 2024*)

****DBRA Required Contract Language. Must be included verbatim. ****

(a) *Required contract clauses.* The Agency head will cause or require the contracting officer to require the contracting officer to insert in full, or (for contracts covered by the Federal Acquisition Regulation (48 CFR chapter 1)) by reference, in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the laws referenced by § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages* —

(i) *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) 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 must be paid the appropriate wage

rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (a)(4) of this section. 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 classifications and wage rates conformed under paragraph (a)(1)(iii) of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) *Frequently recurring classifications.*

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (a)(1)(iii) of this section, provided that:

- (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
- (2) The classification is used in the area by the construction industry; and
- (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) *Conformance.*

(A) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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 used 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) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.
- (C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must 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.
- (iv) *Fringe benefits not expressed as an hourly rate.* 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.

(vi) *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) *Withholding* —

(i) *Withholding requirements.* The [write in name of Federal agency or the recipient of Federal assistance] may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph (a)(3)(iv) of this section, the [Agency] may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, 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.

(ii) *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both,

over claims to those funds by:

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its reprocurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

(3) *Records and certified payrolls* —

(i) *Basic record requirements* —

- (A) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.
- (B) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.
- (C) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph (a)(1)(v) of this section 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must 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.

- (D) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) *Certified payroll requirements* —

- (A) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the [write in name of appropriate Federal agency] if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of agency]. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.
- (B) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (a)(3)(i)(B) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

- (C) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:
- (1) That the certified payroll for the payroll period contains the information required to be provided under paragraph (a)(3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (a)(3)(i) of this section, and such information and records are correct and complete;
 - (2) That each laborer or mechanic (including each helper and apprentice) working 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 29 CFR part 3; and
 - (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(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.
- (D) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(C) of this section.
- (E) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.
- (F) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.
- (G) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- (iii) *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related

documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iv) *Required disclosures and access* —

(A) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents that the [write the name of the agency] or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the [write the name of the agency] or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the [write in name of appropriate Federal agency] if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the

applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of agency], the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) *Apprentices and equal employment opportunity* —

(i) *Apprentices* —

- (A) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (B) *Fringe benefits.* Apprentices must 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, fringe benefits must be paid in accordance with that determination.
- (C) *Apprenticeship ratio.* The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(4)(i)(A) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage

determination for the work actually performed.

- (D) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.
- (ii) *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must 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 must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the [write in the name of the Federal agency] may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.
- (7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their

representatives.

(10) *Certification of eligibility.*

- (i) By entering into this contract, the contractor certifies that neither it nor 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 40 U.S.C. 3144(b) or § 5.12(a).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).
- (iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

(11) *Anti-retaliation.* It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or
- (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

(b) *Contract Work Hours and Safety Standards Act (CWHSSA).* The Agency Head must cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full, or (for contracts covered by the Federal Acquisition Regulation) by reference, 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 must be inserted in addition to the clauses required by paragraph (a) of this section or 29 CFR 4.6. As used in this paragraph (b), the terms "laborers and mechanics" include watchpersons and guards.

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

laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$32 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).

(3) *Withholding for unpaid wages and liquidated damages* —

(i) *Withholding process.* The [write in the name of the Federal agency or the recipient of Federal assistance] may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprourement costs;

- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
 - (D) A contractor's assignee(s);
 - (E) A contractor's successor(s); or
 - (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.
- (4) *Subcontracts*. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.
- (5) *Anti-retaliation*. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
 - (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
 - (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
 - (iv) Informing any other person about their rights under CWHSSA or this part.
- (c) *CWHSSA required records clause*. In addition to the clauses contained in paragraph (b) of this section, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by § 5.1, the Agency Head must cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on

the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made; and actual wages paid. Further, the Agency Head must cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph must 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 workers during working hours on the job.

- (d) *Incorporation of contract clauses and wage determinations by reference.* Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.
- (e) *Incorporation by operation of law.* The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by § 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

Build America, Buy America (Effective May 14, 2022)

Suggested Contract Language: The Contractor acknowledges to and for the benefit of **City of Memphis** (“Purchaser”) and the United States Environmental Protection Agency (“EPA”) that it understands the goods and services under this Agreement are being funded with federal monies made available by the Water Infrastructure Finance and Innovation Act program of EPA that have statutory requirements commonly known as “Build America, Buy America;” that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States (“Build America, Buy America Requirements”) including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and Funding Authority (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States

in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Purchaser or the Funding Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or Funding Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Authority or any damages owed to the Funding Authority by the Owner). If the Contractor has no direct contractual privity with the Purchaser and the Contractor agree that the Funding Authority 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 Funding Authority

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment
(Effective August 13, 2020)

Suggested Contract Language: The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), at Section 889, prohibits EPA financial assistance recipients, including WIFIA borrowers, from expending loan funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in the Act, "covered telecommunications equipment or services" means:

- a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- b) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- c) Telecommunications or video surveillance services provided by such entities or using such equipment.
- d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the

National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Act does not prohibit:

- a) Procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements.
- b) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.